

RESOLUTION NO. 5452

A RESOLUTION Authorizing the General Manager or His Designee to Execute a Mutual Aid and Assistance Agreement for Washington State for Intrastate Water/Wastewater Agency Response Network (WARN)

WHEREAS, Public Utility District No. 1 of Snohomish County ("District") has been a member of the Everett Water Utilities Council and has participated in a mutual aid agreement with other Snohomish County water and sewer utilities since 2006; and

WHEREAS, District staff have participated in discussions with various members of the Intrastate Water/Wastewater Agency Response Network ("WARN") and recommend that the District enter into the proposed Mutual Aid and Assistance Agreement, a copy of which is attached to this resolution as Exhibit 'A,' and incorporated herein by this reference; and

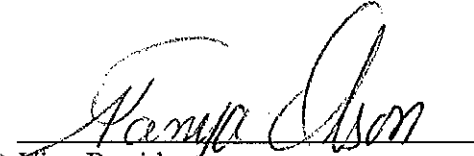
WHEREAS, based upon the information provided, the Board finds that it would be in the best interest of the District and its customers to enter into a Mutual Aid and Assistance Agreement with WARN so that the District has a broader access to resources in the event of an emergency.


NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Public Utility District No. 1 of Snohomish County, Washington, that the General Manager or his designee is hereby authorized to execute on behalf of the District the Mutual Aid and Assistance Agreement for Washington State for Intrastate Water/Wastewater Agency Response Network (WARN), substantially in the form attached hereto as Exhibit 'A,' and incorporated herein by this reference.

PASSED AND APPROVED this 15<sup>th</sup> day of September, 2009.

(not present)

\_\_\_\_\_  
President

  
\_\_\_\_\_  
Vice-President

  
\_\_\_\_\_  
Secretary

1     **Mutual Aid and Assistance Agreement for Washington State for Intrastate**  
 2             **Water/Wastewater Agency Response Network (WARN)**  
 3                             *As of: 04/13/09*

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 5     This Agreement ("Agreement") is made and entered into by public water and  
 6     wastewater utilities that have executed this Agreement.  
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 9                             **ARTICLE I**  
 10                            **PURPOSE**

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 12     Recognizing that emergencies may require aid or assistance in the form of  
 13     personnel, equipment, and supplies from outside the area of impact, the  
 14     signatories hereby establish an Intrastate Network for Mutual Aid and Assistance  
 15     (the "Network"). Through the Network, Members (as further defined in this  
 16     Agreement) may coordinate response activities and share resources during  
 17     emergencies.  
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 20                            **ARTICLE II**  
 21                            **DEFINITIONS**

22  
 23     A. Authorized Official – An employee or officer of a Member agency that is  
 24     authorized to:

- 25         1. Request assistance;
- 26         2. Offer assistance;
- 27         3. Decline to offer assistance;
- 28         4. Decline to accept offers of assistance, and
- 29         5. Withdraw assistance under this Agreement.

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 31     B. Emergency – A natural or human-caused event or circumstance causing, or  
 32     imminently threatening to cause, loss of life, injury to person or property,  
 33     human suffering, significant financial loss, or damage to environment. For  
 34     example, Emergencies may include fire, explosion, flood, severe weather,  
 35     drought, earthquake, volcanic activity, spills or releases of oil or hazardous  
 36     material, contamination, utility or transportation emergencies, disease, blight,  
 37     infestation, civil disturbance, riot, intentional acts, sabotage and war that are,  
 38     or could reasonably be beyond the capability of the services, personnel,  
 39     equipment, and facilities of a Member to fully manage and mitigate by itself.  
 40

41     C. Member – Any public agency which provides supply, transmission or  
 42     distribution of water; or collection, conveyance or treatment services of storm  
 43     water or waste water that executes this Agreement (individually a "Member")

- 1 and collectively the "Members"). The Members are further classified as  
2 follows:  
3
- 4 1. Requesting Member – A Member who requests aid or assistance under  
5 the Network.  
6
  - 7 2. Responding Member – A Member that responds to a request for aid or  
8 assistance under the Network.  
9
- 10 D. Period of Assistance – The period of time when a Responding Member assists  
11 a Requesting Member in response to a Request for Assistance. The Period of  
12 Assistance commences when personnel, equipment, or supplies depart from  
13 Responding Member's facility and ends when all of the resources return to the  
14 Responding Member's facility (*i.e.*, portal to portal).  
15
- 16 E. National Incident Management System (NIMS): The national, standardized  
17 system for incident management and response that sets uniform processes  
18 and procedures for emergency response operations.  
19
- 20 F. Associate – Any non-utility participant approved by the Statewide Committee  
21 that provides a support role for the Network (such as the State Department of  
22 Health). An Associate does not execute this Agreement.  
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25 **ARTICLE III**  
26 **ADMINISTRATION**  
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28 The Network is administered through Regional Committees and a Statewide  
29 Committee.  
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- 31 A. Regional Committees. The State is divided into regions that are  
32 geographically the same as the existing Department of Health Office of  
33 Drinking Water regions of the state, with the exception that the eastern region  
34 is divided to create a central region. Each region has a Regional Committee.  
35 Each Member within a region may appoint one person to be a member of its  
36 Regional Committee. Only those Regional Committee members appointed by  
37 Members are entitled to vote on matters before the Regional Committee. An  
38 Associate may be a non-voting member of a Regional Committee. Each  
39 Regional Committee shall elect a Chair by majority vote of the voting  
40 members of that Regional Committee and shall meet annually to review the  
41 operations and procedures of the Network.  
42
- 43 B. Statewide Committee. The Chairs of the Regional Committees are the voting  
44 members of the Statewide Committee. An Associate may be a non-voting

**Mutual Aid and Assistance Agreement for Washington State WARN**

1 member of the Statewide Committee. Further, the Statewide Committee also  
 2 may include as non-voting members representatives from the Washington  
 3 State Department of Health Office of Drinking Water, Washington State  
 4 Department of Ecology, Washington State Emergency Management Division,  
 5 Rural Community Assistance Corporation, Evergreen Rural Water of  
 6 Washington, Washington State Public Health Laboratory, EPA Region 10,  
 7 Washington Association of Sewer and Water Districts, and the Washington  
 8 PUD Association. Under the leadership of a Statewide Committee Chair  
 9 elected by majority vote of the voting members of the Statewide Committee,  
 10 the Statewide Committee shall plan and coordinate emergency planning and  
 11 response activities for the Network.

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 13 C. Members' administrative activities shall be voluntary and members shall not  
 14 be required to finance the administration of the Network, nor shall the Network  
 15 hold real or personal property.

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 18 **ARTICLE IV**  
 19 **PROCEDURES**

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 21 In coordination with the Regional Committees, and emergency management and  
 22 public health systems of the State, the Statewide Committee shall develop and  
 23 adopt operational and planning procedures for the Network that are consistent  
 24 with this Agreement. The Statewide Committee shall review these procedures at  
 25 least annually and shall update them as needed.

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 28 **ARTICLE V**  
 29 **REQUESTS FOR ASSISTANCE**

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 31 A. Member Information: Promptly after executing this Agreement, the signatory  
 32 Member shall deliver the following to the Statewide Committee: (1) a certified  
 33 copy of the action of Member's governing body that authorized the signing of  
 34 this Agreement and (2) an original signed Agreement. Each Member shall  
 35 identify an Authorized Official and one alternate Authorized Official. Each  
 36 Member shall provide current 24-hour contact information for its Authorized  
 37 Officials to the Statewide Committee, which shall maintain a current list of all  
 38 Members and the contact information for their Authorized Officials. The  
 39 Statewide Committee shall provide to all Members an updated version of this  
 40 list annually and whenever there is an addition or withdrawal of a Member  
 41 and whenever there is a change of Authorized Officials' contact information.

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 43 B. Request for Assistance. In the event of an Emergency, a Member's  
 44 Authorized Official may request mutual aid and assistance from Members

**Mutual Aid and Assistance Agreement for Washington State WARN**

1 ("Request for Assistance"). Requests for Assistance may be made orally or in  
 2 writing, provided that when a Request for Assistance is made orally, the  
 3 Requesting Member shall, as soon as practicable, identify and transmit in  
 4 writing the personnel, equipment and supplies requested. Requesting  
 5 Members shall direct Requests for Assistance to Authorized Officials. The  
 6 Statewide Committee shall provide specific protocols for Requests for  
 7 Assistance as part of the procedures created pursuant to Article IV of this  
 8 Agreement.

9  
 10 C. Response to a Request for Assistance – Members are not obligated to  
 11 respond to a Request for Assistance. After a Member receives a Request for  
 12 Assistance, the receiving Member's Authorized Official shall evaluate whether  
 13 to respond to the Request for Assistance, whether resources are available to  
 14 respond, or if other circumstances would hinder response. Following the  
 15 evaluation, the Authorized Official shall inform, as soon as possible, the  
 16 Requesting Member whether the Member will respond to the Request for  
 17 Assistance. If the Member is willing and able to provide assistance, the  
 18 Member shall inform the Requesting Member of the type of available  
 19 resources and the approximate arrival time of such assistance.

20  
 21 D. Discretion of Responding Member's Authorized Official – No Member has any  
 22 duty to respond to a Request for Assistance. When a Member receives a  
 23 Request for Assistance, the Authorized Official shall have sole and absolute  
 24 discretion as to whether or not to respond to the Request for Assistance, and  
 25 if responding in the affirmative, to determine the availability of resources to be  
 26 made available to the Requesting Member. The response of a Member's  
 27 Authorized Official regarding the availability of resources to a Requesting  
 28 Member shall be final.

29  
 30 E. No Liability for Failure to Respond – No Member will be liable to any other  
 31 Member for deciding not to respond to a Request for Assistance or otherwise  
 32 failing to respond to a Request for Assistance. All Members hereby waive all  
 33 claims against all other Members arising from or relating to any Member's  
 34 decision to not respond to a Request for Assistance or to any Member's failure  
 35 to respond to a Request for Assistance.

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 38 **ARTICLE VI**  
 39 **RESPONDING MEMBER PERSONNEL**

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 41 A. National Incident Management System - When providing assistance under  
 42 this Agreement, the Requesting Member and Responding Member are  
 43 encouraged (but are not obligated) to be organized and function under NIMS.  
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- 1 B. Coordination and Records – Employees of the Responding Member will  
2 remain under the direction and control of the Responding Member to the  
3 fullest extent possible. The Responding Member is an independent  
4 contractor at all times. The Requesting Member's Authorized Official shall  
5 coordinate response activities with the designated supervisor(s) of the  
6 Responding Member(s). The Responding Member's designated supervisor(s)  
7 shall keep accurate records of work performed by personnel during the Period  
8 of Assistance and for the equipment and supplies provided during work.  
9
- 10 C. Food and Shelter – Whenever practical, Responding Member personnel must  
11 be self sufficient for up to seventy-two (72) hours. Whenever practical, the  
12 Requesting Member shall supply adequate food and shelter for Responding  
13 Member personnel. If the Requesting Member is unable to provide food and  
14 shelter for Responding Member personnel, the Responding Member's  
15 designated supervisor is authorized to secure the food and shelter necessary  
16 to meet the needs of its personnel.  
17
- 18 D. Communication – The Requesting Member shall provide Responding  
19 Member personnel with communications equipment as available, radio  
20 frequency information to program existing radios if appropriate, or telephone  
21 contact numbers, in order to facilitate communications with local responders  
22 and utility personnel. Each Requesting Member shall provide contact  
23 information for an individual with whom Responding Member's personnel may  
24 coordinate while en-route for access, staging instructions and other logistical  
25 requirements.  
26
- 27 E. Status - Unless otherwise provided by law, the Responding Member's officers  
28 and employees shall have the same powers, duties, rights, privileges, and  
29 immunities as if they were performing their duties in the jurisdiction in which  
30 they are normally employed.  
31
- 32 F. Licenses and Permits – To the extent permitted by law, Responding Member  
33 personnel that hold licenses, certificates, or permits evidencing professional,  
34 mechanical, or other skills shall be allowed to carry out activities and tasks  
35 relevant and related to their respective credentials during a Period of  
36 Assistance.  
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39 **ARTICLE VII**  
40 **RIGHT TO WITHDRAW RESOURCES**  
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- 42 A. Right to Withdraw - A Responding Member may withdraw some or all of its  
43 resources at any time for any reason, as determined in the Responding  
44 Member's sole and absolute discretion. The Responding Member shall

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1 communicate written or oral notice of intention to withdraw all or some of a  
2 Responding Member's resources to the Requesting Member's Authorized  
3 Official as soon as practicable under the circumstances. To the greatest  
4 extent possible, but without limiting in any way a Responding Member's sole  
5 and absolute discretion, a Responding Member's determination to withdraw  
6 some or all of its resources provided to a Requesting Member should  
7 consider the status of the incident and incident stability, to minimize any  
8 adverse impacts from the withdrawal of resources by a Responding Member.

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10 B. No Liability for Withdrawal - No Member will be liable to any other Member  
11 for first responding to a Request for Assistance by providing resources (such  
12 as personnel, materials, and equipment) and later withdrawing or refusing to  
13 continue to provide some or all of those resources. All Members hereby  
14 waive all claims against all Members arising from or relating to such a  
15 withdrawal or refusal.

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18 **ARTICLE VIII**  
19 **COST- REIMBURSEMENT**  
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21 The Requesting Member shall reimburse the Responding Member for all costs  
22 incurred by the Responding Member during a Period of Assistance, unless  
23 otherwise agreed in writing by both Members.

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25 A. Personnel – The Requesting Member shall reimburse the Responding  
26 Member for personnel costs incurred for work performed during a Period of  
27 Assistance. Responding Member personnel costs will be calculated according  
28 to the terms provided in their employment contracts, hourly rate schedules or  
29 other conditions of employment. The Responding Member's designated  
30 supervisor(s) shall keep accurate records of work performed by personnel  
31 during a Period of Assistance. The Requesting Member shall include in its  
32 reimbursement of the Responding Member all personnel costs, including  
33 salaries or hourly wages, costs for fringe benefits, and indirect costs.

34  
35 Unless otherwise agreed in writing, the Requesting Member shall reimburse  
36 the Responding Member for all reasonable and necessary costs associated  
37 with providing food and shelter for the Responding Member's personnel, if the  
38 food and shelter are not provided by the Requesting Member. The  
39 Requesting Member is not required to reimburse the Responding Member for  
40 food and shelter costs in excess of State per diem rates unless the  
41 Responding Member demonstrates in writing that the excess costs were  
42 reasonable and necessary under the circumstances.

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- 1 B. Equipment – The Requesting Member shall reimburse the Responding  
2 Member for the use of equipment during a Period of Assistance, including, but  
3 not limited to, reasonable rental rates, all fuel, lubrication, maintenance,  
4 transportation, and loading/unloading of loaned equipment. The Requesting  
5 Member shall return all equipment to the Responding Member in good  
6 working order as soon as is practicable and reasonable under the  
7 circumstances. If equipment cannot be returned in good working order, then  
8 Requesting Member shall either provide in-kind replacement equipment to  
9 Responding Member at no cost to Responding Member or pay to Responding  
10 Member the actual replacement cost of the equipment. Reimbursement rates  
11 for equipment use will be no less than the Federal Emergency Management  
12 Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member  
13 uses rates different from those in the FEMA Schedule of Equipment Rates,  
14 the Responding Member shall provide such rates orally or in writing to the  
15 Requesting Member prior to supplying the equipment. If reimbursement rates  
16 are to be different than those in the FEMA Schedule of Equipment rates,  
17 Responding Member and Requesting Member shall agree in writing on which  
18 rates will be used prior to dispatch of the equipment to the Requesting  
19 Member. Requesting Member shall reimburse for equipment not referenced  
20 on the FEMA Schedule of Equipment Rates based on actual recovery of  
21 costs. If a Responding Member is required to lease equipment while its  
22 equipment is being repaired because of damage due to use during a Period of  
23 Assistance, Requesting Member shall reimburse Responding Member for  
24 such rental costs.  
25
- 26 C. Materials and Supplies – The Requesting Member shall reimburse the  
27 Responding Member in kind or at actual replacement cost, plus handling  
28 charges, for use of expendable or non-returnable supplies by the Responding  
29 Member during a Period of Assistance. The Responding Member shall not  
30 charge direct fees or rental charges to the Requesting Member for other  
31 supplies and reusable items that are returned to the Responding Member in a  
32 clean, damage-free condition. Reusable supplies that are returned to the  
33 Responding Member with damage will be treated as expendable supplies for  
34 purposes of cost reimbursement.  
35
- 36 D. Payment Period – In order to be reimbursed, the Responding Member shall  
37 provide an itemized bill to the Requesting Member no later than ninety (90)  
38 days following the end of the Period of Assistance for all expenses incurred  
39 by the Responding Member while providing assistance to a Requesting  
40 Member under this Agreement. The Responding Member may request  
41 additional time to submit the itemized bill, and Requesting Member shall not  
42 unreasonably withhold consent to such a request. The Requesting Member  
43 shall pay the itemized bill in full on or before the forty-fifth (45<sup>th</sup>) day following  
44 the billing date. The Requesting Member may request additional time to pay

1 the itemized bill, and Responding Member shall not unreasonably withhold  
 2 consent to such a request, but in no event will payment in full occur later than  
 3 one year after the date a final itemized bill is submitted to the Requesting  
 4 Member. If a Responding Member disputes a portion of an itemized bill, the  
 5 Requesting Member shall promptly pay those portions of the bill not under  
 6 dispute, pending the resolution of the payment of the disputed portion of the  
 7 bill.

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 9 E. Records - Where a Responding Member provides assistance to a Requesting  
 10 Member under this Agreement, both Members shall provide the other  
 11 Member access to the books, documents, notes, reports, papers and other  
 12 records relevant to this Agreement for the purposes of reviewing the accuracy  
 13 of a cost bill or making or undergoing a financial, maintenance or regulatory  
 14 audit. Both Members shall maintain these records for at least three (3) years  
 15 or longer where required by law.

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 18 **ARTICLE IX**  
 19 **DISPUTES**

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 21 **NEGOTIATION**

22 Members shall first attempt to resolve any controversy, claim or other dispute  
 23 arising out of or relating to this Agreement by direct negotiation.

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 25 **MEDIATION**

26 To the extent not resolved by direct negotiation, Members shall mediate any  
 27 controversy, claim or other dispute arising out of or relating to this Agreement.  
 28 Mediation is a condition precedent to arbitration. Unless the disputing Members  
 29 agree otherwise, the mediation will be administered by the American Arbitration  
 30 Association (AAA) under its Construction Industry Mediation Procedures. The  
 31 disputing Members shall pay in equal shares the mediator's fee and any filing  
 32 fees. Unless otherwise agreed by the disputing Members, the disputing  
 33 Members shall (1) hold the mediation no later than thirty (30) days after a  
 34 disputing Member delivers a request for mediation to the other disputing  
 35 Members and (2) hold the mediation at the location of the Requesting Member.  
 36 Agreements reached in mediation will be enforceable as settlement agreements.

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 38 **ARBITRATION**

39 To the extent not resolved by mediation, Members shall arbitrate all  
 40 controversies, claims and other disputes arising out of or relating to this  
 41 Agreement. Unless the disputing Members agree otherwise, the arbitration will  
 42 be administered by the AAA in accordance with its Construction Industry  
 43 Arbitration Rules in effect on the date a disputing Member makes a demand for  
 44 arbitration.

1 A disputing Member may make a demand for arbitration before negotiation or  
2 mediation if it appears that a claim might be barred by a statute of limitations if  
3 the demand were made after the negotiation or mediation. However, in such a  
4 case the arbitration will be stayed until the conclusion of negotiation and  
5 mediation.

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7 The decision and award rendered by the arbitrator(s) shall be final, and judgment  
8 may be entered upon it in accordance with applicable law in any court having  
9 jurisdiction thereof.

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**ARTICLE X**  
**DUTY TO INDEMNIFY**

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To the extent of its fault, a Member shall defend, indemnify, and hold harmless all other Members, their elected officials, Authorized Officials, officers, employees and agents from any and all costs, claims, judgments, losses, awards of damage, injury, death and liability of every kind, nature and description, including the reasonable cost of defense and attorneys' fees, directly or indirectly arising from or relating to this Agreement (collectively, "Indemnified Claims").

This indemnity obligation extends to all Indemnified Claims against a Member by an employee or former employee of another Member, and for this purpose, by mutual negotiation, each Member hereby expressly waives, with respect to each other Member only, all immunity and limitation under any applicable industrial insurance act, including Title 51 of the Revised Code of Washington, other worker compensation acts, disability benefit acts or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of Indemnified Claims.

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**ARTICLE XI**  
**WORKER'S COMPENSATION AND SITE CONDITIONS**

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees. The Requesting Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

Each Member shall promptly identify to the other Members concerns about site safety, environmental concerns, and other working conditions. The Safety Officer appointed within the Incident Command System during the Period of Assistance shall address specific safety conditions and mitigations.

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**ARTICLE XII**

**NOTICE**

Unless otherwise provided in this Agreement, all notices must be in writing. Notice to a Member must be delivered to the Member's Authorized Official.

**ARTICLE XIII**

**EFFECTIVE DATE**

This Agreement shall be effective with respect to each Member when that Member's authorized representative executes the Agreement. The Statewide Committee shall maintain a master list of all Members.

**ARTICLE XIV**

**WITHDRAWAL**

A Member may withdraw from this Agreement at any time by providing to the Statewide Committee Chair written notice of withdrawal signed by the withdrawing Member's Authorized Official or other person authorized by the withdrawing Member's governing body. Any withdrawal will be effective upon receipt by the Statewide Committee Chair of the notice of intent to withdraw. If there is no Statewide Committee Chair, the withdrawing Member shall provide written notice to each Member in its region, and the withdrawal will be effective upon delivery of those notices. Once withdrawal from this Agreement is effective, the withdrawing Member will have no further obligations under this Agreement, except that withdrawal from this Agreement will not affect any indemnification or reimbursement obligation under this Agreement that arises prior to the effective date of the withdrawal.

**ARTICLE XV**

**TERMINATION**

This Agreement shall terminate in its entirety when there are less than two Members. Termination of this Agreement will not affect any indemnification or reimbursement obligation under this Agreement arising prior to the termination. The Statewide Committee Chair shall provide written notice of termination to all remaining Members of the Agreement.

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**ARTICLE XVI**  
**AMENDMENT**

This Agreement may be amended if, after written notice of a proposed amendment to all Members, the proposed amendment is approved by a majority of Members in each region. The Statewide Committee Chair shall provide written notice to all Members of approved amendments. Approved amendments will take effect sixty (60) days after the date the notice is sent to the Members.

**ARTICLE XVII**  
**SEVERABILITY**

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**ARTICLE XVIII**  
**PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

Notwithstanding rights of subrogation asserted by a Member's insurance provider, this Agreement is for the sole benefit of the Members and no other person or entity shall have any rights under this Agreement as a third party beneficiary nor shall any Member owe duty to a third party not a signatory of this Agreement by virtue of this Agreement. Assignments of benefits and delegations of duties created by this Agreement are prohibited and of no effect.

**ARTICLE XIX**  
**GOVERNING LAW**

This Agreement is governed by the law of the State of Washington, specifically RCW 39.34, Interlocal Cooperation Act.

**ARTICLE XX**  
**EXECUTION IN COUNTERPARTS**

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This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

The water and wastewater utility listed below executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

Water/Wastewater Utility: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Please Print Name

\_\_\_\_\_  
Please Print Name

Approved as to form

By: \_\_\_\_\_  
Attorney for Member

\_\_\_\_\_  
Please Print Name