

FIRST AMENDED AND RESTATED BYLAWS

Of

MICHIGAN DAMAGE PREVENTION BOARD (a Michigan Nonprofit Corporation)

ARTICLE I OFFICES and SEAL

1.01 Principal Office. The principal office of Michigan Damage Prevention Board (“MDPB”) shall be located in Okemos, Michigan, or elsewhere in the State of Michigan, as the Board of Directors may from time to time designate. MDPB may have office at such other places, either in or outside the State of Michigan, as the Board of Directors may designate or as the business of MDPB may require.

1.02 Office. The registered office of MDPB required by the Nonprofit Corporation Act to be located in the State of Michigan may be, but need not be, identical with the principal office of MDPB and the address of the registered office may be changed by the Board of Directors.

ARTICLE II PURPOSE OF CORPORATION

2.01 Purpose. The MDPB is an organization that represents excavators, underground facility owners and other stakeholders. The mission of MDPB is (i) to reduce damage to underground utility infrastructure by making recommendations and implementing programs with regard to public education and awareness programs that further public safety by the reduction of damage to underground utility infrastructure and facilities, inclusive of complying with any requirements; (ii) to monitor, analyze, influence, propose and support best practices and procedures that reduce damage to underground utility facilities; (iii) to review, comment and make recommendations on proposed local, state and federal laws and rules pertaining to the underground utility infrastructure and facilities to prevent damage to these facilities; (iv) to facilitate productive discussion and decisions at meetings regarding best practices and procedures to reduce damage to underground utility infrastructure and facilities and promote public safety. In addition, MDPB shall provide input to MISS DIG on MISS DIG’s policies and procedures in compliance with section 4(2) of the MISS DIG ACT.

In fulfilling its mission, the MDPB shall, as one of the central coordinating bodies involved in utility damage prevention, act to fulfill the following purposes:

1. Create a shared objective for the protection of underground facilities.

2. Develop, conduct and support public awareness and education programs.
3. Identify and encourage appropriate best practices and procedures for the Identification and protection of underground facilities.
4. Establish a forum for the resolution of disputes among its members that involve any purpose of the Corporation set forth in Section 2.01 of these Bylaws.
5. Consider and act upon other issues deemed appropriate by the Board of Directors of MDPB.
6. MCPB is organized exclusively for charitable, scientific and educational purposes and no part of the net earnings of MDPB shall be inure to the benefit of any private member, director, officer, or other individual.
7. Notwithstanding any other provisions of these Articles, MDPB shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Internal Revenue Code Section 501 (c)(3), or by a corporation, contributions to which are deductible under Code Section 170 (c)(2).
8. No substantial part of the activities of MDPB shall be lobbying, or otherwise attempting to influence legislation, (except as provided in Code Section 501(h)). MDPB shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

ARTICLE III MEMBERSHIP

Membership in MDPB shall be by the Constituent Members as defined in Article IV, or their successors, and any additional organization or entity approved by the Board of Directors which desires or is required by law to carry out the purposes and achieve the objectives stated in Article II of these Bylaws.

ARTICLE IV BOARD OF DIRECTORS

4.01 General Powers. The business, property, and affairs of MDPC shall be managed by the Board of Directors.

4.02 Number. There shall be not less than 11 nor more than 21 directors on the board as shall be fixed from time to time by the Board of Directors.

The Board of Directors shall consist of a Director elected and appointed by a “Constituent Member” as further defined below. In addition, each Constituent Member shall elect a Substitute Director, which Substitute Director shall only act in the absence of the Director appointed by the Constituent Member. The following is the list of Constituent Members who shall have the right to appoint a Director and Substitute Director.

1. Associated Petroleum Industries of Michigan;
2. Consumers Energy Company;
3. The Detroit Edison Company; DTE Electric Company
4. Michigan Bell Telephone Company, d/b/a AT&T Michigan;
5. Michigan Consolidated Gas Company; DTE Gas Company
6. Michigan Electric Cooperative Association;
7. Michigan Electric and Gas Association;
8. Michigan Infrastructure and Transportation Association, Inc.;
9. Michigan Public Service Commission;
10. MISS Dig System, Inc.; and
11. SEMCO Energy, Inc.

In addition to the forgoing Directors, each of which shall have one vote at all meetings of the Board of Directors, one representative from each of the following groups (each of the following groups shall be hereinafter referred to as a “Group of Constituent Members”) shall appoint one person to be its representative to the Board with such person serving as a Non-voting Director of the Board:

- a. Utility Contract Locators;
- b. Local Units of Government;
- c. Cable TV Association;
- d. Agriculture;
- e. Engineering and Design;
- f. CAM;
- g. Landscape Association; and
- h. Fencing Association.

4.02.01 Change in Number of Directors or Categories of Constituent Members. Notwithstanding any other provision of any other Article of these Bylaws, the number of Directors or representation of Constituent Members may not be changed except upon a vote of two-thirds of the Board.

4.02.02 Resignation of a Constituent Member or Group of Constituent Members. A Constituent Member may resign from participation in the MDPB by providing ninety (90) days written notice to the Board of Directors, such notice shall also

serve as notice of the respective Director's resignation pursuant to section 4.05. Notice is required to allow the remaining Constituent Members in the Group of Constituent Members to fill the vacancy by appointing a replacement Director pursuant to section 4.02. If the Constituent Member resigning from participation had exclusive authority to appoint the respective Director, the Director's seat shall remain vacant until the Board takes action pursuant to section 6.02. Notwithstanding any other provision of any other Article of these Bylaws, a vacancy created by the resignation of a Constituent Member shall not prevent the Board from taking any action.

4.02.03 Failure of a Group of Constituent Members to agree upon appointment of a Director. Notwithstanding any other provision of any other Article of these Bylaws if any group of Constituent Members fails to agree on the appointment of a Director at the meeting designated for the Director's appointment, the remaining Board members may immediately elect a Director to represent the interest of the Group of Constituent Members. A Director so elected shall be seated for the full duration of his or her term unless the Director resigns pursuant to either sections 4.02.02 or 4.05.

4.03 Substitute Directors. Subject to qualification requirements imposed by the Nonprofit Corporation Act, if a Director is absent or unable to perform his or her duties, the Substitute Director shall perform the absent Director's duties until the absent Director otherwise directs.

4.04 Tenure. The first Directors shall hold office until the first annual meeting of Directors. At the first annual meeting of Directors and at each annual meeting thereafter, the Directors shall be appointment pursuant to Section 4.02. A Director shall hold office for 3 years. All Directors shall be eligible to be re-appointed to successive terms of office without limitation. Appointed voting Directors shall be divided into three (3) groups of voting Directors, as nearly equal in number as possible, with one group appointed each year at the annual meeting of the Constituent Members. The Constituent Members may place voting Directors into groups or appoint voting Directors to shorter terms by appropriated resolutions in order to divide the coting Directors into three (3) equal groups.

4.05 Resignation and Vacancies. A Director may resign or vacate a Director position by providing ninety (90) days written notice to the other Directors and the Constituent Members or Group of Constituent Members it represents. Notice is required to allow the applicable Constituent Member or Group of Constituent Members to fill the vacancy by appointing a replacement Director. No action may be taken by the Board unless all voting Director Positions are filled by the respective Constituent Members of Group of Constituent Members.

4.06 Removal. A Director may be removed with or without cause only by the delegating Constituent Member or Group of Constituent Members.

4.07 Annual Meeting. An annual meeting shall be held each year on the fourth Thursday in May of each year or as soon thereafter as reasonably possible. If the annual meeting is not held at that time, the Board shall cause the meeting to be held as soon thereafter as is convenient.

4.08 Regular Meetings. Regular meetings of the Board may be held at the time and place as determined by a Board resolution without notice other than the resolution.

4.09 Special Meetings. Special meetings of the Board may be called by any two or more voting Directors at a time and place as determined by those persons authorized to call special meetings. Notice of the time and place of special meeting shall be given to each Director in any manner at least two weeks before the meeting.

4.10 Statement of Purpose. The business to be transacted at, and the purpose of, any regular or special meeting of the Board must be specified in the notice for that meeting; provided, however, that notice may be amended upon a vote of Directors present at any meeting.

4.11 Waiver of Notice. The attendance of a Director at a Board meeting shall constitute a waiver of notice of the meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. In addition, the Director may submit a signed waiver of notice that shall constitute a waiver of notice of the meeting.

4.12 Participation in Meetings by Telecommunications. A Director may participate in a Board meeting by a conference telephone or by other similar communications equipment, only when all persons participating in the meeting may communicate with all other participants by a conference telephone or by other similar communications equipment and the names of the participants in the conference shall be divulged to all participants. Participation in a meeting pursuant to the Section constitutes presence in person at the meeting.

4.13 Quorum. A majority of the voting Directors then in office constitutes a quorum for the transaction of any business at any meeting of the Board. Actions voted on by a majority of Directors present at a meeting where a quorum is present shall constitute authorized actions of the Board.

4.14 Voting. Except as set forth in section 4.02.01, the vote of majority of the Directors present at a meeting at which a quorum is present constitutes the action of the Board or a Committee of Directors.

4.15 Consent to Corporate Actions. Any action required or permitted to be taken pursuant to Board authorization may be taken without a meeting if, before or after the action, all Directors consent to the action in writing. Written consents shall be filed with the minutes of the Board's proceeding.

4.16 Conduct of Meetings. At all meetings of the Board, the President shall preside. The Secretary shall act as secretary of each meeting of the Board. Should any questions arise regarding the procedure at any meeting; it shall be resolved by referenced to “Roberts’ Rules of Order Revised.”

4.17 Dissent. A Director who is present at a meeting of the Board, or a Committee of Directors, of which he or she is a member, at which action on a corporate matter is taken is presumed to have concurred in that action unless his or her dissent is entered in the minutes of the meeting or unless he or she filed his or her written dissent to the action with the person acting as secretary of the meeting before or promptly after the adjournment thereof. The right to dissent shall not apply to a Director who voted in favor of the action. A Director who is absent from a meeting of the Board, or a Committee of Directors, of which he or she is a member, at which any such action is taken is presumed to have concurred in the action unless he or she filed a dissent with the Secretary within a reasonable time after he or she has knowledge of the action.

ARTICLE V OFFICERS

5.01 Number. The Officers for MDPB shall be President, Vice President, Secretary, Treasurer and any other such officers as the Board of Directors may from time to time determine. Officers shall be elected by the Board at its annual meeting each year. An officer shall not execute, acknowledge, verify an instrument, or make decisions or judgments concerning the general control and management of the business affairs of MDPB without first obtaining the written approval for such action from the Board of Directors.

5.02 Term of Office. An officer shall hold office for the term appointed until a successor is appointed and qualified. An officer may resign at any time by providing written notice to the Board of Directors. Notice of resignation is effective on receipt or at a later time designated in the notice.

5.03 Removal. An officer elected or appointed by the Board may be removed by the Board with or without cause. The removal of an officer shall be without prejudice to his or her contract rights, if any. The election or appointment of an officer does not of itself create contract rights.

5.04 Vacancies. A vacancy may be filled by the Board for the unexpired portion of the term.

5.05 President. The President shall have and exercise general charge and supervision of the affairs of MDPB. The President shall perform such duties as are incident to the office or as may be assigned by the Board. In the name of MDPB, the President shall execute contracts and other instruments authorized by the Board. The President shall also preside at all Board meetings.

5.06 Vice President. The Vice President shall have the power to perform duties that may be assigned by the President or the Board. If the President is absent or unable to perform his or her duties, the Vice President shall perform the President's duties until the Board directs otherwise. The Vice President shall perform all duties incident to the office.

5.07 Secretary. The Secretary shall (a) keep minutes of Board meetings; (b) be responsible for providing notice to each Director as required by law, the articles of incorporation, or these amended and restated bylaws; (c) by the custodian of corporate records; (d) keep a register of the names and addresses of each officer and Director; (e) complete all required corporate filings; and (f) perform all duties incident to the office and other duties assigned by the Board.

5.08 Treasurer. The Treasurer shall (a) have charge and custody over corporate funds and securities; (b) keep accurate books and records of corporate receipts and disbursements; (c) make all books and records available for audit purposes; (d) deposit all monies and securities received by MDPB at such depositories in MDPB's name that may be designated by the Board; (e) complete all required corporate filings; and (f) perform all duties incident to the office and other duties assigned by the Board

ARTICLE VI CONSTITUENT MEMBERS

6.01 Recognition. The Constituent Members shall act solely by and through their respective Directors, which are their sole and exclusive representative agents for all matters arising out of, or in any way connected to MDPB. The Directors are acting only on behalf of those Constituent Members who have authorized them so to act, and in no event shall the Directors be bound as principal or be held liable in any manner for a breach of any agreement entered into by the Constituent Members.

6.02 Membership Categories. Membership categories shall be as specified as described in Article IV of these First Amended and Restated Bylaws. A unanimous vote of the Board is required to add, delete, or change the Membership categories if such vote is to reduce the Membership categories otherwise such votes shall by majority present at such meeting.

6.03 Dues. The Board may establish reasonable fees and dues for representation in the MDPB, as may be deemed necessary to the continued operation of MDPB.

ARTICLE VII COMMITTEES

7.01 General Powers. The Board may designate one or more committees, each committee consisting of one or more Directors. The Board may also designate one or more Directors as alternate committee members who may replace an absent or disqualified member at a committee meeting. All committees designated by the Board shall serve at the pleasure of the Board.

A committee designated by the Board may exercise any powers granted to the committee by the Board. No committee shall have the power to:

- (a) Amend the Articles of Incorporation;
- (b) Adopt an agreement of merger or consolidation;
- (c) Amend the bylaws of MDPB;
- (d) Fill vacancies on the Board;
- (e) Fix compensation of the Directors for serving on the Board or on a committee;
- (f) Recommend the sale, lease, or exchange of all or substantially all of MDPB's property and assets; or
- (g) Recommend dissolution of MDPB or a revocation of dissolution.

7.02 Meetings. Committees shall meet as directed by the Board, and their meetings shall be governed by the rules provided in Article II for meetings of the Board. Minutes shall be recorded at each committee meeting and shall be presented to the Board.

7.03 Consent to Committee Actions. Any action required or permitted to be taken pursuant to authorization of a committee may be taken without a meeting if, before or after the action, all members of the committee consent to the action in writing. Written consents shall be filed with the minutes of the committee's proceedings.

7.04 Quorum. Unless otherwise provided in the resolution of the Board designating a Committee, it shall not be necessary for a quorum to be present for the Committee to act. The Members of the Committee present at a meeting of the Committee shall be authorized to act.

7.05 Duties. The duties of the Committees are to notify the President and of all meeting times, dates and locations; create agendas and keep written minutes of each meeting to be filed with the records of Secretary of the Board; keep the President informed of the events of each meeting; fulfill requests of and answer to the Board; present monthly Committee reports at the Board Meetings; act in the best interest of the Board at all times.

ARTICLE VIII CORPORATE DOCUMENT PROCEDURE

All corporate documents (including 'stocks, bonds, agreements, insurance and annuity contracts, qualified and nonqualified deferred compensation plans, checks, notes, disbursements, loans, and other debt obligations) shall not be signed by the Officer, designated agent, or attorney-in-fact unless authorized by the Board by these Bylaws.

ARTICLE IX INDEMNIFICATION

9.01 Indemnification. MDPB shall indemnify, to the fullest extent authorized by law, any person, and such person's heirs and legal representatives, who is made or threatened to be made a party to any action, suit or proceeding (whether civil, criminal, administrative or investigative) whether brought by or in the right of MDPB or otherwise, by reason of the fact that such person is or was at any time a Director, officer, employee, or agent of MDPB at any time, or a member, trustee, director, non-director volunteer or officer of a subsidiary, or such person served on any formally constituted advisory board or voluntary committee of MDPB (including any subsidiary thereof), the Board of Directors, or any subsidiary's board, or any such person served at the request of MDPB as a director, non-director volunteer, member, officer, trustee, employee or agent of any other corporation, business corporation, partnership, joint venture, trust, association, or any other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred or to be incurred by the person in connection with such action, suit or proceedings if such person acted in good faith and in a manner the person reasonably believed to be in or proceeding, had no reasonable cause to believe that the conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of MDPB or, with respect to any criminal action or proceeding, did have reasonable cause to believe that the conduct was unlawful.

9.02 Expenses of Successful Defense. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in section 9.01 of this Article IX, or in defense of any claim, issue or matter in the action, suit, or proceeding, the person shall be indemnified against expenses (including actual and reasonable attorney fees) incurred in connection with the action and in any proceeding brought to enforce the mandatory indemnification provided by this Article.

9.03 Contract Right: Limitation on Indemnity. The right to indemnification conferred in this article shall be a contract right and shall apply to services of a director or officer as an employee or agent of MDPB as well as in such person's capacity as a director or officer. Except as provided in section 9.02 of this Article IX, MDPB shall have no obligations under this Article to indemnify any person in connection with any proceeding, or part thereof, initiated by such person without authorization by the Board.

9.04 Determination That Indemnification Is Proper. Any indemnification under section 9.01 of this Article (unless ordered by a court) shall be made by MDPB only as authorized in the specific case. MDPB must determine that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in section 9.01. Such determination shall be made in any of the following ways:

- (a) By a majority vote of a quorum of the Board consisting of Directors who were not parties to such action, suit, or proceeding,
- (b) If the quorum described in clause (a) above is not obtainable, then by a committee of Directors who are not parties to the action. The committee shall consist of not less than two disinterested Directors.
- (c) By independent legal counsel in a written opinion.

9.05 Proportionate Indemnity. If a person entitled to indemnification under section 9.01 of this Article IX for a portion of expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, MDPB shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

9.06 Expense Advance. Expenses incurred in defending a civil or criminal action, suit, or proceeding described in section 9.01 of this Article may be paid by MDPB in advance of the final disposition of the action, suit, or proceeding on receipt of an undertaking by or on behalf of the person involved to repay the expenses, if it is ultimately determined that the person is not entitled to be indemnified by MDPB. The undertaking shall be an unlimited general obligation of the person on whose behalf advances are made by need not be secured.

9.07 Non-exclusivity of Rights. The indemnification or advancement of expenses provided under this Article IX is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with MDPB. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

9.08 Indemnification of Employees and Agents of MDPB. MDPB may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of MDPB to the fullest extent of the provisions of this Article with respect to the indemnification and advancement of expenses of Directors and officers of MDPB.

9.09 Former Directors and Officers. The indemnification provided in this article continues for a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, and administrators of that person.

9.10 Insurance. MDPB may purchase and maintain Insurance on behalf of any person who (a) was or is a Director, officer, employee, or agent of MDPB or (b) was or is serving at the request of MDPB as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. Such insurance may protect against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not MDPB would have power to indemnify against such liability under this article or the laws of the State of Michigan.

9.11 Changes in Michigan Law. If there are any changes in the Michigan statutory provisions applicable to MDPB and relating to the subject matter of this Article IX, then the indemnification to which any person shall be entitled shall be determined by such changed provisions, by only to the extent that any such change permits MDPB to provide broader indemnification rights than such provisions permitted MDPB to provide before any such change.

ARTICLE X COMPENSATION

When authorized by the Board a person shall be reasonably compensated for services rendered to MDPB as an officer, employee, agent, or independent contractor, except as prohibited by these Bylaws.

ARTICLE XI FISCAL YEAR

The fiscal year of MDPB shall end on December 31.

ARTICLE XII DISSOLUTION

12.01 Dissolution. The MDPB shall dissolve and its affairs shall be wound up only on the unanimous consent of all Directors of MDPB.

12.02 Distribution of Assets. In the event of dissolution of the Corporation, the Board of Directors shall cause the assets of the Corporation to be distributed as follows:

- (a) All liabilities of the Corporation shall be paid or adequate provisions shall be made for payment
- (b) All of the Corporation's remaining assets, real and personal, shall be distributed to such charitable organization or organizations as are qualified as tax exempt under Code Section 501 (c)(3) as the Board of Directors shall determine. Any such assets not so disposed of, for whatever reason, shall be disposed of by order of the Circuit Court for the County of Ingham, Michigan to such organization or Organizations as said court shall determine, which are organized and operated exclusively for charitable purposes.

ARTICLE XIII AMENDMENT TO BYLAWS

13.01 Amendment by Directors. Except for Sections 4.02.01 and 6.02 which require an unanimous vote of the Board, these Bylaws may be adopted, amended, or repealed by a majority of the Board; provided that such Bylaws as amended or repealed are not in conflict with the Articles of Incorporation, the Nonprofit Corporation Act or other applicable law.

ARTICLE XIV RULES

14.01 Rules. The Board of Directors may adopt additional rules and regulations, not inconsistent with the Nonprofit Corporation Act or other applicable law, general or specific, for the conduct of their meetings and additional rules and regulations, general or specific, for the conduct of the affairs of MDPB.

ARTICLE XV DEFINITIONS

15.01 Definitions.

1. Generally, unless the context requires otherwise, the general provisions, rules of construction, and definitions contained in the Nonprofit Corporation Act shall govern the construction of these Bylaws.

2. The term “Board” or “Board of Directors” means the Board of Directors of MDPB.