RES13-030

Wilmington, Delaware
April 18, 2013

#3814

Sponsor:

Council Member Shabazz

WHEREAS, Wilm. C. § 2-10 requires City Council approval for any agreement entered into between the City and other governmental or quasi-governmental agencies for support, aid or mutual cooperation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby approves that certain Delaware Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network, a copy of which, in substantial form, is attached hereto and made a part hereof as Exhibit "A".

FURTHER RESOLVED that the Commissioner of the Department of Public Works is hereby authorized and directed to execute as many copies of said Agreement as may be necessary.

Passed by City Council,
April 18, 2013

ATTEST: Maribel Seijo
City Clerk

Approved as to form this 10th
day of April, 2013

Senior Assistant City Solicitor

SYNOPSIS: This Resolution authorizes the Department of Public Works for the City of Wilmington to enter into the Delaware Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network (WARN).

Delaware Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network (WARN)

AGREEMENT

This Agreement (the "Agreement") is made and entered into by public and private Water and Wastewater Utilities (the "Utilities") operating in the State of Delaware, who, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance, known as Delaware Water/Wastewater Agency Response Network (DEWARN).

The formation of a mutual aid and assistance network is consistent with Delaware Code, 20 Del. C. § 3203, and Homeland Security Presidential Directives No. 5 (HSPD-5) and No. 8 (HSPD-8). A basic premise of the National Response Plan, as established by HSPD-5, is that state and local resources and interstate mutual aid agreements will provide the first line of emergency response until such time state resources and capabilities are overwhelmed and Federal assistance is requested. HSPDD-8 calls for regional collaboration through mutual aid agreements and assistance compacts to strengthen preparedness and the capability to respond to, and recover from, emergency situations.

ARTICLE I.
PURPOSE

Recognizing that emergencies may require aid or assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory utilities hereby establish an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance Program, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Intrastate Mutual Aid and Assistance Program across jurisdictional and county boundaries in the State of Delaware. This Mutual Aid Program is limited to Water and Wastewater utilities and in no way affects other mutual aid or other agreements relating to the provision of other types of services in Emergency situations.

EXHIBIT "A"

ARTICLE II.
DEFINITIONS

A. Authorized Official – An employee or officer of a Member utility that is authorized to:
   1. Request assistance;
   2. Offer assistance;
   3. Refuse to offer assistance or
   4. Withdraw assistance under this agreement.

B. Emergency – A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate internally.

C. Members – Any public or private Water or Wastewater Utility that manifests intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.

   1. Associate Member – Any non utility participant, approved by the DEWARN Executive Committee, that provides a support role for the WARN program, for example State Division of Public Health, or associations, who are members of the DEWARN and do not officially sign the WARN agreement.

   2. Requesting Member – A Member who requests aid or assistance under the Mutual Aid and Assistance Program.

   3. Responding Member – A Member that responds to a request for aid or assistance under the Mutual Aid and Assistance Program.

   4. Non-Responding Member - A Member or Associate Member that does not provide aid or assistance during a Period of Assistance under the Mutual Aid and Assistance Program.

D. Confidential Information - Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Member or Associate Member.

E. Period of Assistance – A specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from Responding Member's facility and ends when the resources return to their facility (portal to portal). All protections identified in the agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.

F. National Incident Management System (NIMS): A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

ARTICLE III.
ADMINISTRATION

The Mutual Aid and Assistance Program shall be administered through an Executive Committee. The purpose of this Executive Committee is to provide local coordination of the Mutual Aid and Assistance Program before, during, and after an emergency. The Executive Committee shall be comprised of Members representing water and wastewater utilities throughout the State of Delaware, the Delaware Rural Water Association, the State Division of Public Health, Delaware Emergency Management Agency (DEMA) and the State Department of Natural Resources and Environmental Control (DNREC). Under the leadership of an elected Chairperson, the Executive Committee Members shall plan and coordinate emergency planning and response activities for the Mutual Aid and Assistance Program.

ARTICLE IV.
PROCEDURES

In coordination with the emergency management and public health system of the state, the Executive Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be reviewed at least annually and updated as needed by the Executive Committee.

ARTICLE V.
REQUESTS FOR ASSISTANCE

A. Member Responsibility: Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information that may be available from the utility for mutual aid and assistance response. Such contact information shall be updated annually or when changes occur, and provided to the Executive Committee.

   In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a participating Member. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall be prepared in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. Specific protocols for requesting aid shall be provided per the procedures described in Article IV.

B. Response to a Request for Assistance – Members of the Agreement are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Requesting Member whether it will respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources, the approximate arrival time of such assistance and the expected duration of resource availability

C. Discretion of Responding Member's Authorized Official – Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to

whether or not to respond, or the availability of resources to be used in such response. An Authorized Member's decisions on the availability of resources shall be final and shall not be challenged by any other Member Utility.

ARTICLE VI.
RESPONDING MEMBER PERSONNEL

A. National Incident Management System - When providing assistance under this Agreement, the Requesting Utility and Responding Utility shall be organized and shall function under the National Incident Management System.

B. Control - The Responding Members will determine the appropriate personnel available to allocate to the Requesting Member. Once on-site, the Responding Member's employees come under the direction and control of the Requesting Member, consistent with the NIMS Incident Command System, to address the needs identified by the Requesting Member. The Requesting Member's Authorized Official shall coordinate response activities with the supervisor(s) of the Responding Member(s) as designated by the Authorized Official of each respective Responding Member. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance.

C. Food and Shelter – Whenever practical, Responding Member personnel must be self sufficient for up to 72 hours. When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member is unable to provide food and shelter for Responding personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. Except as provided below, the cost for such resources must not exceed the State per diem rates for that area. To the extent Food and Shelter costs exceed the State per diem rates for the area, the Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains responsible for reimbursing the Responding Member for all reasonable and necessary costs associated with providing food and shelter, if such resources are not provided.

D. Communication – The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radio equipment, in order to facilitate communications with local responders and utility personnel.

E. Status - Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions.

F. Licenses and Permits – To the extent permitted by law, Responding Member personnel that hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

G. Right to Withdraw - The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Notice of intention to withdraw must be

communicated to the Requesting Member's Authorized Official as soon as is practicable under the circumstances.

ARTICLE VII.
COST- REIMBURSEMENT

The Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred during the specified Period of Assistance as agreed in whole or in part by both parties; provided, that any Responding Member may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the Requesting Member without charge or cost.

A. Personnel – The Responding Member shall be reimbursed by the Requesting Member for personnel costs incurred for work performed during the specified Period of Assistance. Responding Member personnel costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member should consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

B. Equipment – The Requesting Member shall reimburse the Responding Member for the use of equipment during the specified Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Responding Member in good working order as soon as is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the most recent Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates orally or in writing to the Requesting Member prior to supplying the equipment. Mutual agreement on which rates are used must be reached orally or in writing prior to dispatch of the equipment. Final written agreement must be provided to the requesting member within 48 hours of dispatch of the equipment, or as soon as reasonably possible. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. If Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.

C. Materials and Supplies – The Requesting Member must reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member must not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.

D. Payment Period – The Responding Member must provide an itemized bill to the Requesting Member for all expenses incurred by the Responding Member while providing assistance

under this Agreement. The Responding Member must send the itemized bill not later than (90) ninety days following the end of the Period of Assistance. The Responding Member may request additional periods of time within which to submit the itemized bill, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member must pay the bill in full on or before the forty-fifth (45th) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Member.

E. Records - Each Responding Member and their duly authorized representatives shall have access to a Requesting Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial, maintenance or regulatory audit. Such records shall be maintained for at least three (3) years or longer where required by law, and the review of such records shall be kept strictly confidential, unless otherwise required by law.

ARTICLE VIII.
DISPUTES

If any controversy or claim arises out of, or relates to, the execution of the Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation and finally shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. Any court of competent jurisdiction in the State of Delaware may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties. All Member Utilities expressly waive the right to a jury trial in any such litigation.

ARTICLE IX.
REQUESTING MEMBER'S DUTY TO INDEMNIFY

The Requesting Member shall assume the defense of, fully indemnify and hold harmless, the Responding Member, its officers and employees, from all claims, loss, damage, injury, death, expenses (including reasonable attorney's fees), and liability of every kind, nature and description, whatsoever, directly or indirectly arising from Responding Member's work during a specified Period of Assistance. The scope of the Requesting Member's duty to indemnify includes, but is not limited to, suits arising from, or related to, negligent or wrongful use of equipment or supplies on loan to the Requesting Member, or faulty workmanship or other negligent acts, errors or omissions by Requesting Member or the Responding Member personnel during the Period of Assistance.

The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

ARTICLE X.
SIGNATORY INDEMNIFICATION

In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a specified Period of Assistance, the Members who receive and provide assistance shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their officers, agents and employees from any liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance.

ARTICLE XI.
WORKER'S COMPENSATION CLAIMS

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.

ARTICLE XII.
NOTICE

A Member who becomes aware of a claim or suit that in anyway, directly or indirectly, contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suit or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XIII.
INSURANCE

Members of this Agreement shall maintain an insurance policy or maintain a self insurance program that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program.

ARTICLE XIV.
CONFIDENTIAL INFORMATION

To the extent provided by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, Associate Member, third party or other entity requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information disclosed under this Agreement, the Member or Associate Member shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall

cooperate fully in any judicial or administrative proceeding relating thereto.

ARTICLE XV.
EFFECTIVE DATE

This Agreement shall be effective after the Water and Wastewater Utility's authorized representative executes the Agreement and the Executive Committee Chair receives the signed Agreement. The Executive Committee Chair shall maintain a master list of all Members of the Mutual Aid and Assistance Program.

ARTICLE XVI.
WITHDRAWAL

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Executive Committee Chair. Withdrawal shall be effective 60 days after the date that the Executive Committee Chair receives notice. Withdrawal from this Agreement by any Member Utility shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance or a Requesting Member's duty to indemnify a Responding Member, which duties shall survive any such withdrawal.

ARTICLE XVII.
MODIFICATION

No provision of this Agreement may be modified, altered or rescinded by individual Member Utilities. Modifications to this Agreement may be made due to programmatic operational changes to support the Agreement, legislative action, creation of an interstate aid and assistance agreement, or other similar developments. Modifications require a simple majority vote of Members. The Executive Committee Chair must provide written notice to all Member Utilities of approved modifications to this Agreement. Approved modifications take effect 60 days after the date upon which notice is sent to the Member Utilities.

ARTICLE XVIII.
SEVERABILITY

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction in the State of Delaware 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 XIX.
PRIOR AGREEMENTS

This Agreement supersedes all prior Agreements between Members to the extent that such prior Agreements are inconsistent with this Agreement.

ARTICLE XX.
PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Member Utilities and no person or entity shall have any rights or remedies under this Agreement as a third party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and shall have no legal effect.

ARTICLE XXI.
INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS

To the extent practicable, Member Utilities shall participate in Mutual Aid and Assistance programs conducted under the State of Delaware Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for water and wastewater utilities through this Agreement if such a Program were established.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Water and Wastewater Utility listed here manifests its intent to be a Member of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _____ day of _____ 2013.

Water/Wastewater Utility:_____

By:_____

Title:_____

_____
Please Print Name

By:_____

Title_____

_____
Please Print Name

Approved as to form and legality

By: 3/1/13
Attorney for Utility

Richard L. Emge
Please Print Name
S. Asst. City Solicitor