COUNCIL OF THE TOWN OF LA PLATA
Resolution 10-8

Introduced By:	**Mayor Roy G. Hale**
Date Introduce	**April 27, 2010**
Date Adopted:	**April 27, 2010**
Date Effective:	**April 27, 2010**

A RESOLUTION concerning

Maryland Water and Wastewater Agency Response Network ("MDWARN") Agreement

FOR the purpose of authorizing the Town Manager to execute and deliver, on behalf of the Town of La Plata ("Town"), the Maryland Mutual Aid and Assistance Agreement for Intrastate Water/Wastewater Agency Response Network ("MDWARN"); and all matters generally relating thereto.

WHEREAS, the American Water Works Association, in conjunction with the United States Environmental Protection Agency, and the Department of Homeland Security, has developed the Water and Wastewater Agency Response Network (WARN), a national program to allow for response and recovery from all types of utility related emergencies; and

WHEREAS, WARN programs include the use of mutual aid and assistance agreements to allow utilities to cross jurisdictional boundaries to provide aid and share resources during and following an emergency; and

WHEREAS, The Council of the Town of La Plata, Maryland , agree that it would be beneficial to the Town to enter into the Maryland Mutual Aid and Assistance Agreement for Interstate Water/Wastewater Agency Response Network (WARN) (Attached hereto as Exhibit A), in order to participate in Maryland's Interstate Program for Mutual Aid and Assistance, as part of MDWARN, the WARN program specific to Maryland; and

WHEREAS, the Town's involvement with the Mutual Aid Agreement stays in force as long as the Town is a signatory to the agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of La Plata that, as evidenced by this Resolution, the Town shall enter into the Maryland Mutual Aid and Assistance Agreement for Interstate Water/Wastewater Agency Response Network (attached hereto as Exhibit A), in order to participate in Maryland's Interstate Program for Mutual Aid and Assistance, as part of MDWARN.

ADOPTED AND APPROVED by the Council of the Town of La Plata on April 27, 2010.

SEAL:

COUNCIL OF THE TOWN OF LA PLATA

Roy G. Hale, Mayor

R. Wayne Winkler, Councilman

C. Keith Back, Councilman

Paretta D. Mudd, Councilwoman

Joseph W. Norris, Councilman

ATTEST:

Danielle Mandley, Town Clerk
Date: 4/27/10

Exhibit A
To
Resolution 10-8

Maryland 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 Maryland, who, by executing this Agreement join the Maryland Water/Wastewater Agency Response Network ("MDWARN") and bind themselves to participate in Maryland's Intrastate Program for Mutual Aid and Assistance (the "Mutual Aid Program").

ARTICLE I
PURPOSE

The Utilities hereby establish the Mutual Aid Program to coordinate response activities and share resources during emergencies, including without limitation providing on a cost basis personnel, equipment, and supplies. This Agreement sets forth the procedures and standards for the administration of the Mutual Aid Program across jurisdictional and county boundaries in the State of Maryland.

ARTICLE II
DEFINITIONS

A. "Authorized Official" means an employee or officer of a Member Utility (defined below) authorized to:
   1. Request assistance;
   2. Offer assistance;
   3. Refuse to offer assistance; or
   4. Withdraw assistance under this Agreement.

B. "Emergency" means 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 Member Utility fully manage and mitigate internally.

C. "Member Utility" – Each of the undersigned Utilities.

   1. "Requesting Member" shall mean a Member Utility who requests aid or assistance under the Mutual Aid Program.

   2. "Responding Member" shall mean a Member Utility who responds to a request for aid or assistance under the Mutual Aid Program.

   3. "Non-Responding Member" means a Member Utility who does not provide aid or assistance under the Mutual Aid Program.

D. "Confidential Information" means all documents shared with any Member Utility that are marked confidential, including but not limited to any maps, reports, notes, papers, opinions, budget information or e-mails, which relate to the system vulnerabilities of a Member Utility. Confidential Information is subject to disclosure under the Maryland Public Information Act and/or the Member Utility's governmental public information act.

E. "Period of Assistance" means a specified period of time when a Responding Member assists a Requesting Member. The period commences when personnel, equipment, or supplies depart from the Responding Member's facility and ends when the resources return to their facility, or in other words the Period of Assistance runs from 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)" means 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 Program shall be administered through a Statewide Committee. The Statewide Committee includes representatives from Maryland Emergency Management Agency ("MEMA"), The Maryland Department of the Environment, the Maryland Rural Water Association and 5 Member Utilities members. Under the leadership of the Chair of the Statewide Committee, the Statewide Committee shall plan and coordinate emergency planning and response activities for the Mutual Aid Program. The purpose of the Statewide Committee is to provide local coordination of the Mutual Aid Program before, during, and after an emergency. The Statewide Committee under the leadership of an elected Chairperson, shall meet annually to address Mutual Aid Program issues and to review emergency preparedness and response procedures.

ARTICLE IV
PROCEDURES

The Statewide Committee shall develop operational and planning procedures for the Mutual Aid Program (collectively the "Procedures Manual") within six (6) months from the date of this Agreement. The Procedures Manual upon completion shall be distributed to all Member Utilities and Advisory Members. The Procedures Manual shall be reviewed at least annually and updated as needed by the Statewide Committee.

ARTICLE V
REQUESTS FOR ASSISTANCE

A. Member Utility Responsibility. Member Utilities shall identify an Authorized Official and alternates, provide contact information including 24-hour access, and maintain resource information that may be available from the Member Utility for a Mutual Aid Program response. The name of the Authorized Official and the contact information shall be updated annually, or when changes occur, and provided to the Statewide Committee.

In the event of an Emergency, a Requesting Member's Authorized Official may request mutual aid and assistance from a Member Utility. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies

shall be delivered in writing as soon as practical. Requests for assistance shall be directed to the Authorized Official of the Member Utility from which assistance is being requested. Specific protocols for requesting aid shall be provided in the Procedures Manual.

B. Response to a Request for Assistance. Member Utilities are not obligated to respond to a request. After a Member Utility receives a request for assistance, the Authorized Official evaluates whether or not its Member Utility can respond, by considering whether resources are available to respond, or if there are circumstances that might hinder a response. Following the evaluation, the Authorized Representative shall inform, as soon as possible, the Requesting Member whether the Member Utility will respond. If the Member Utility is willing and able to provide assistance, the Member Utility shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

C. Discretion of Responding Member's Authorized Official. – Execution of this Agreement does not create any duty or legal obligation on the part of a Member Utility to respond to a request for assistance. When a Member Utility receives a request for assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond, and the availability of resources to be used in such response. An Authorized Member's decisions regarding responding and/or 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 ("NIMS"). When providing assistance under this Agreement, the Requesting Member and Responding Member shall be organized and shall function under NIMS.

B. Control. When a Responding Member's employees provide mutual aid and assistance, the Responding Member's employees come under the direction and control of the Requesting Member, consistent with 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 Responding Member's supervisor of personnel (the "Supervisor"), as designated by the Authorized Official of the Responding Member. The Responding Member's Supervisor must keep accurate records of work performed by all personnel during the Period of Assistance.

C. Food and Shelter. Whenever practical, the 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 the Responding Member personnel, the Responding Member's 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 local 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. Communications. The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radios, in order to facilitate communications with local responders and utility personnel.

E. Status. Unless otherwise provided by law, the Responding Member's officials, officers and employees retain the same privileges, immunities, rights, duties and benefits as provided in their respective jurisdictions and under all applicable laws, ordinances and regulations.

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 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 and for any reason in the Responding Member's sole and absolute subjective discretion. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as practical 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 Period of Assistance as agreed 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 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 Supervisor must keep accurate records of work performed by personnel during the Period of Assistance. The Requesting Member's reimbursement to the Responding Member should include all personnel costs, such as 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 Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance and repair, 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 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 in writing to the Requesting Member prior to supplying the equipment. Mutual agreement on which rates are used must be reached in writing prior to dispatch of the equipment. 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 Requesting Member must receive the itemized bill within ninety (90) 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 full payment shall occur no later than the extension of time agreed to by the Responding Member.

E. Records. Each Responding Member and its Authorized Official and Supervisor 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 its Authorized Official and Supervisor, if applicable, 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, an alleged breach of the Agreement, the disputing Member Utilities shall first

attempt to resolve the dispute in the following order of dispute resolution if the first level of dispute resolution is not successful: first by negotiation, followed by mediation, and finally, if needed, settled by binding arbitration in accordance with the Rules of the American Arbitration Association. Any court of competent jurisdiction may enter the judgment rendered by the arbitrators as final judgment that is binding on the parties.

ARTICLE IX
REQUESTING MEMBER'S DUTY TO INDEMNIFY

To the extent permitted by law and subject to budget appropriations of a Member Utility that is a governmental body, the Requesting Member covenants to defend, indemnify and hold harmless the Responding Member, its officials, 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 Period of Assistance. The scope of the Requesting Member's covenant and obligation 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 covenant and obligation to indemnify is subject to, and shall be applied consistently with, the conditions set forth in Article X.

ARTICLE X
SIGNATORY INDEMNIFICATION

To the extent permitted by law and subject to budget appropriations of a Member Utility that is a governmental body, in the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising out of a Period of Assistance, the Member Utilities who receive and provide assistance shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their officials, 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 Utility, who becomes aware of a threatened or filed claim or suit that in anyway, directly or indirectly, affects or might affect other Member Utility, shall provide prompt and timely notice to all Member Utilities. Each Member Utility reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

ARTICLE XIII
INSURANCE

Each Member Utility shall maintain an insurance policy or maintain a self insurance program that insures activities that a Member Utility might undertake by virtue of membership in the Mutual Aid Program and being a signatory of this Agreement.

ARTICLE XIV
CONFIDENTIAL INFORMATION

To the extent allowed by law, each Member Utility shall maintain in the strictest of confidence and shall take all reasonable steps necessary to prevent the disclosure of Confidential Information disclosed under this Agreement. If any Member Utility, third party or other entity requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information, the Member Utility shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of 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. Confidential Information may be subject to disclosure under the Maryland Public Information Act and/or the Member Utility's governmental public information act.

ARTICLE XV
EFFECTIVE DATE and COUNTERPARTS

This Agreement shall be effective as to a Member Utility after the Member Utility's Authorized Official has been duly authorized to sign and then executes the Agreement and the Statewide Committee Chair receives the signed Agreement. The Statewide Committee Chair shall maintain a list of all Member Utilities. The Statewide Committee Chair shall maintain a master list of all members of the Mutual Aid Program. This Agreement may be signed in counterparts, with all counterparts being deemed to be legally effective and one Agreement binding all signatories.

ARTICLE XVI
WITHDRAWAL

A Member Utility may withdraw from this Agreement by providing written notice of its intent to withdraw to the Statewide Committee Chair. Withdrawal shall be effective 60 days after the date that the appropriate committee chairs receive said 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, which duty shall survive any such withdrawal.

ARTICLE XVII
MODIFICATION

No provision of this Agreement may be modified, altered or rescinded by individual Member Utilities. In accordance with the procedures set forth in this Article XVII, 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 Statewide 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 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, of any kind, between Member Utilities to the extent that such prior agreements are inconsistent with this Agreement.

ARTICLE XX
NO THIRD-PARTY BENEFICIARIES AND NO 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 or successor or assign. 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 PROGRAMS

To the extent practical, Member Utilities shall participate in Mutual Aid and Assistance Programs of the State of Maryland 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 is established.

[Signatures follow on the next page.]

Now, therefore, in consideration of the terms, covenants, conditions and obligations set forth in this Agreement, the undersigned Water and Wastewater Utility evidences its intent to be a Member Utility of the Intrastate Mutual Aid and Assistance Program for Water and Wastewater Utilities by executing this Agreement on this _____ day of _____ 20__.

Member Utility:

_____

By:_____

Title:_____

_____
Please Print Name

By: Daniel J. Mears

Title Town Manager

Daniel J. Mears
Please Print Name

Approved as to form and legal sufficiency

By:_____

_____
Please Print Name