

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

No.

v.

HON.

CITY OF FLINT, a Michigan
municipal corporation,

MAG.

Defendant.

COMPLAINT

INTRODUCTION

The residents of the City of Flint (Flint) have experienced a well-documented series of problems over the past three years associated with a switch in drinking water sources that took place between April 2014 and October 2015. Since October 2015, Flint has obtained its water from the Great Lakes Water Authority (GLWA), which has proven to be safe, reliable, and protective of public health. The Mayor of Flint has negotiated an agreement to keep Flint residents on water supplied by GLWA on a long-term basis and at a reduced cost. Continued use of

that reliable source is necessary to ensure the protection of public health in Flint.

Despite proposing no other reasonable alternative, the Flint City Council has refused to approve the agreement negotiated by the Mayor. The City Council's failure to act will cause an imminent and substantial endangerment to public health in Flint. If the City Council actually takes action and proposes an alternative that would either change Flint's water source or require use of its water treatment plant, any such proposal will violate the settlement agreement in *Concerned Pastors v. Khouri*, No. 16-cv-10277-DLL-SDD.

Plaintiff Michigan Department of Environmental Quality (MDEQ) files this action to ensure that Flint residents have continued access to a safe and reliable drinking water source. For the reasons set forth below, MDEQ requests that this Court declare that the City Council's inaction will result in a violation of applicable law and that Flint must enter into the agreement to use finished water supplied by GLWA. There is simply no other option that will adequately protect the public health in Flint.

JURISDICTION

1. MDEQ seeks a declaration that the City Council's inaction and delay in entering into the agreement with GLWA violates applicable law. It further seeks injunctive relief requiring Flint to immediately enter into the agreement to continue to use GLWA as Flint's long-term water source. This action is necessary because the City Council's refusal to enter into the agreement will place the public health in significant jeopardy, which is a violation of both the Michigan Safe Drinking Water Act, Mich. Comp. Laws § 325.1001, *et. seq.*, and the federal Safe Drinking Water Act, 42 U.S.C. § 300f, *et. seq.*, including the United States Environmental Protection Agency's (USEPA) January 21, 2016 Emergency Administrative Order, as amended (USEPA Order). (Ex. 1, USEPA Order.)

2. The MDEQ is the primary enforcement agency for the federal Safe Drinking Water Act in the State of Michigan. *See* 42 U.S.C. § 300g-2; Mich. Comp. Laws § 325.1001, *et seq.*

3. The federal Safe Drinking Water Act expressly contemplates that this Court has jurisdiction over enforcement actions filed by states "to require compliance with" the Act. 42 U.S.C. § 300j-8(b)(1)(B).

4. Additionally, the Court has jurisdiction to enforce Michigan's Safe Drinking Water Act because the Michigan law was passed pursuant to Michigan's effort to gain primacy under the federal act. *See Molinary v. Powell Mountain Coal Co.*, 125 F.3d 231, 236–37 (4th Cir. 1997).

5. As set forth above, an actual controversy exists between MDEQ and Flint that requires this Court to declare their rights and other legal obligations. *See* 28 U.S.C. § 2201.

PARTIES AND VENUE

6. The Plaintiff is the MDEQ, which is responsible for enforcing the state and federal Safe Drinking Water Acts in the State of Michigan.

7. The Defendant is the City of Flint. Flint is the owner and operator of a public water supply that is subject to both the Michigan and federal Safe Drinking Water Acts and provides water to nearly 100,000 people.

8. Venue is proper in this Court because the City of Flint is located in the U.S. District Court's Southern Division of the Eastern District of Michigan. 28 U.S.C. § 1391(b)(1).

GENERAL ALLEGATIONS

Effect of Flint's decision to switch water supplies from Detroit Water and Sewerage Department to Karegnondi Water Authority

9. From approximately 1967 to April 2014, Flint purchased water from the Detroit Water and Sewerage Department (DWSD) for use by its residents. DWSD drew the water from Lake Huron, treated it, and shipped the water via pipeline to Flint for distribution. This treated water is also referred to as finished water.

10. In April 2013, Flint declared its intention to join the Karegnondi Water Authority (KWA) and eventually to discontinue purchasing water from DWSD. KWA intended to build a pipeline to transport raw water from Lake Huron to Flint and other municipalities. Flint planned to use its water treatment plant to treat the raw water before distribution.

11. As part of its agreement with KWA, Flint agreed to pay approximately 30% of the costs associated with building the pipeline. Flint is obligated to pay approximately \$85,000,000 to KWA to re-pay bonds issued to fund the KWA pipeline. Flint is also obligated to pay a share of KWA's annual fixed costs of operating the KWA water system.

12. Following Flint's announcement that it was joining KWA, DWSD notified Flint that it would stop providing finished drinking water to Flint residents beginning in April 2014.

13. Because the KWA pipeline was not scheduled to be completed for several years, Flint was going to draw water from the Flint River during the interim period and treat that water at its water treatment plant prior to distribution to its residents.

14. From April 27, 2014 until October 16, 2015, Flint used its water treatment plant to treat and distribute drinking water to its residents.

15. In 2014, Flint approached the Genesee County Drain Commission (GCDC) regarding the sale of the 72" pipeline Flint had previously used to receive water from DWSD, which it believed it would no longer need. On May 30, 2014, GCDC and Flint executed a Water Transmission Acquisition Agreement wherein GCDC agreed to purchase the pipeline and paid \$3,987,700.00 to Flint.

16. As a result of multiple factors, the drinking water distributed by Flint during the interim period following its departure

from DWSD water and before its planned connection to the KWA has been associated with multiple threats to the public health.

17. As a result of those threats, on October 16, 2015, Flint switched its drinking water source to GLWA, a new legal entity that leased and operated DWSD assets used to supply water to Flint.

18. To enable Flint to return to its previous water source, the GCDC licensed Flint to use the 72" pipeline on a temporary basis.

19. Absent any further agreement, on October 1, 2017, the license for that pipeline with the GCDC may be terminated in order to allow the pipeline to be used for other purposes by GCDC.

20. Flint currently obtains its finished water from GLWA at a cost of approximately \$14,100,000 per year. This does not include the bond payments for the KWA that Flint is committed to pay.

21. GLWA has proven to be a safe and reliable source of water.

USEPA's January 21, 2016 Emergency Administrative Order

22. On January 21, 2016, the USEPA issued its Order applicable to both MDEQ and Flint. The USEPA amended the Order on November 17, 2016. (Ex. 1.) The USEPA's Order arose out of the agency's determination that the drinking water situation in Flint posed

an imminent and substantial endangerment to public health.

(Ex. 1, ¶ 1.)

23. Before switching from GLWA to another water source, the USEPA Order requires Flint to complete extensive planning, testing, and studies of the new water source. As part of its planning, Flint must demonstrate that it has the technical, managerial, and financial capacity to operate its water supply in compliance with the state and federal Safe Drinking Water Acts. Finally, Flint must demonstrate that the necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition from its current water source.

(*Id.* at ¶ 60.)

24. The USEPA Order also requires Flint, before leaving GLWA, to demonstrate that it has a sufficient number of qualified and trained personnel to operate its water treatment plant. (*Id.* at ¶ 61.)

The imminent public health crisis threatening Flint's residents

25. Absent any further agreements Flint may no longer have access to the 72" pipeline that it has been using to obtain finished water from GLWA starting on October 1, 2017.

26. Even if Flint can continue to use the 72" pipeline after October 1, 2017, a short-term extension of its current agreement with GLWA will cost Flint residents considerably more. A three-month delay alone will cost more than \$1,800,000 in extra costs for Flint compared to the long-term deal. Additionally, ongoing construction by GCDC would need to be completed on time or GCDC will need the 72" pipeline for water supply services for its own customers and Flint may face multi-million dollar damage claims from GCDC. (Ex. 2, December 22, 2016 letter from GCDC Director O'Brien to Director Creagh.)

27. Flint has no other currently available source of water. Although it had joined the KWA, Flint never built the connector pipeline necessary to deliver raw water from KWA to the Flint water treatment plant.

28. Even if Flint managed to build a connector pipeline to obtain raw KWA water prior to October 1, 2017, Flint's water treatment plant is not yet capable of treating that water. It will take approximately 3.5 years and between \$58,800,000 and \$67,900,000 to adequately prepare Flint's water treatment plant to treat and deliver KWA water.

29. Flint has not conducted the extensive planning, testing and studies the USEPA Order requires them to complete prior to switching water sources. It is impossible for Flint to comply with those requirements by October 1, 2017.

30. Flint does not currently have the necessary, capable and qualified personnel required to perform the duties and obligations necessary to ensure its water supply will comply with state and federal law if it attempts to rely entirely on its water treatment plant.

31. Additionally, beginning October 1, 2017, even though Flint will not be receiving KWA water, it is contractually obligated to pay \$7,000,000 per year in bond debt associated with the cost of building the KWA pipeline and at least \$1,100,000 per year for KWA administrative costs.

32. Flint is also required under the SDWA to establish a back-up water supply.

33. If Flint were able to build or otherwise obtain access to a pipeline to obtain water from GLWA by October 1, 2017, without the long-term deal, Flint will continue paying approximately \$14,100,000 per year for that water in addition to its KWA obligations.

34. These additional and substantial expenses will put considerable burden on Flint's already depleted water fund, which is used to fund necessary maintenance and improvements to Flint's aging water distribution system.

35. As a result of this financial strain, despite the fact that Flint's residents already pay one of the highest water rates in Michigan, Flint's interim chief financial officer has projected that it will be necessary to increase the price charged to residents for water by over 40% in an attempt to keep its water fund solvent. Even if Flint raises its water prices to pay both GLWA and KWA expenses, its water fund is projected to be insolvent by June 2018 unless it significantly improves the rate at which fees are collected from its customers.

36. If Flint's water fund becomes insolvent, the public health will be in danger because Flint will not be able to adequately improve, repair, and maintain its water distribution system.

37. Flint's distribution system has not been properly improved or maintained for many years. If Flint devotes its water fund to improving its water treatment plant in anticipation of treating water

from any other source, it will have to divert funds from other priorities, notably improving its water distribution system.

38. Considerable investment in Flint's water distribution system is still necessary because leaving the system in its current state of disrepair threatens the public health.

Mayor Weaver negotiates an agreement to keep Flint on the Great Lakes Water Authority water

39. In order to protect public health in Flint, the State of Michigan, including MDEQ, worked closely with Flint's mayor, KWA, GCDC, and GLWA to find a solution that would ensure public health in four important ways:

- (1) Flint would not have to change water sources on October 1, 2017;
- (2) Flint's water fund would remain solvent—thus enabling Flint not only to continue providing services to its residents, but to focus on improving, repairing, and maintaining its water distribution system and not have to significantly raise the price of water for its residents;

- (3) this water source solution for Flint would allow KWA and GCDC to provide a safe water supply to their customers, including finished water backup not previously available; and
- (4) GLWA customers that do not currently have access to a finished water backup would have one. (Ex. 3, Statement of Principles—Long Term Water Delivery to the City of Flint.).

That agreement was publicly announced on April 18, 2017.

40. A crucial element of the agreement is the construction of a new 42” pipeline that will run parallel to the existing 72” pipeline for use by GCDC.

41. Providing a 42” pipeline for Genesee County will ensure that Flint can continue using the 72” pipeline. The 42” pipeline is intended to be constructed and operational by October 1, 2017.

42. Another crucial element of the agreement is that in exchange for making GLWA its long term water source, GLWA price will be set at a level that allows Flint to meet both its KWA and GLWA obligations for a combined price of approximately \$12,000,000 per year instead of the approximately \$21,000,000 per year Flint would otherwise be obligated to pay.

43. The agreement will help ensure that Flint's water fund remains solvent, and decreases the need for Flint to raise water prices. As a result, Flint can focus on improving, repairing, and maintaining its water distribution system instead of improving its water treatment plant. In addition, the agreement allows access by Flint water customers to a fund that can provide approximately \$55,000 per year, plus an additional \$117,000 for the first year only, to assist low income customers to pay their water bills.

44. The agreement involves five different government entities and has various elements that depend on one another. The agreement's success, including its potential to eliminate the pending threat to public health, depends on the City's willingness to enter into the agreement.

45. Recognizing the urgency of the situation and resulting threat to the public health if the City does not timely act, on May 22, 2017, Flint's Mayor recommended to the City Council that the City enter into the agreement.

46. Despite the urgency of the situation, Flint's City Council refused to approve the recommendation, citing a desire for additional

public input on the agreement. A previously provided extended time period for public input had already expired on May 20, 2017.

47. On June 15, 2017, MDEQ sent a letter to the City Council and Mayor Weaver requesting that the City Council take action to either approve the agreement or to make a new proposal that would be both reasonable and ensure that Flint could timely comply with the requirements of the state and federal law. (Ex. 4, June 15, 2017 letter from Director Grether to City Council President Nelson and Mayor Weaver.)

48. MDEQ also warned Flint that its failure to act will place the public health at risk and violate the applicable Safe Drinking Water Acts, including the USEPA Order. As such, MDEQ advised that if the City Council failed to act or make a reasonable alternative proposal, it would request that the Michigan Department of Attorney General initiate legal action against Flint.

49. On June 23, 2017, notice was provided to Flint that, among other things, any attempt by the City Council to force a change in the water source will violate the settlement agreement in *Concerned*

Pastors v. Khouri, No. 16-cv-10277-DLL-SDD. (Ex. 5, June 23, 2017 letter from AAG Kuhl to City Administrator Jones and Mr. Kim.)

50. Following additional public review and comment, Flint's administration again presented the final agreement to the City Council on June 23, 2017. (Ex. 6, Resolution to Approve Master Agreement and Exhibit A only.) The City Council again refused to approve the agreement, stating it would postpone taking action for two more weeks. The City Council did not offer an alternative to the agreement but at least one council member continues to propose that the water treatment plant be operated to supply water to Flint residents. The City Council did approve a short-term contract for water supply with GLWA until September 30, 2017.

51. In fact, Flint's refusal to enter into the agreement will result in failure to adequately protect Flint's public health.

Count I: Violation of the Michigan Safe Drinking Water Act

52. The allegations above are incorporated here.

53. MDEQ has "power and control over public water supplies and suppliers of water" in Michigan. Mich. Comp. Laws § 325.1003. Accordingly, MDEQ has broad authority to "evaluate the adequacy of" a

water system “to protect the public health,” including whether a system “has the technical, financial, and managerial capacity to meet all requirements” of the Michigan Safe Drinking Water Act and its associated rules. Mich. Comp. Laws § 325.1004(2).

54. “When considered necessary for the protection of public health, [MDEQ] shall notify a supplier of the need to make changes in operations . . . as necessary to produce and distribute an adequate quantity of water meeting the state drinking water standards.” Mich. Comp. Laws § 325.1015(1).

55. MDEQ notified the City Council on June 15, 2017 of the need, so as to ensure the protection of public health, to either approve the agreement to obtain finished water from GLWA or to propose a reasonable alternative to obtain drinking water from some other source that will comply with state and federal law.

56. The City Council has refused to either approve the agreement or to propose another reasonable alternative.

57. The agreement negotiated by Mayor Weaver to ensure a long-term supply of finished water from GLWA is therefore the only option that will protect the public health in Flint, ensure the future

financial viability of Flint's water fund, and promote needed investment in Flint's water distribution system.

58. Flint does not have the technical, financial, and managerial capacity available to ensure that use of any other water source will adequately protect the public health.

59. As a result, MDEQ seeks an order from this Court that the City Council's failure to act will put the public health at risk and threaten the financial viability of the water supply. As a result, Flint is required by the Safe Drinking Water Act to enter into the agreement negotiated by Mayor Weaver to make GLWA its long-term water source.

Count II: Violation of the federal Safe Drinking Water Act

60. The allegations above are incorporated here.

61. As the primary enforcement agency, MDEQ has the prerogative to take enforcement action under 42 U.S.C. § 300g-3(a) to seek an order from this Court "as the protection of public health may require," 42 U.S.C. § 300g-3(b).

62. Paragraph 60 of the USEPA Order forbids Flint from switching water sources away from GLWA until it can demonstrate to MDEQ that it has the "technical, managerial and financial capacity to

operate its [system with a new water source] in compliance with [Safe Drinking Water Act] . . . and that necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition.”

63. Both the USEPA in a letter dated May 24, 2017 (Ex. 7, May 24, 2017 letter from Acting Regional Administrator Kaplan to City Councilwoman Fields.) and MDEQ on June 15, 2017 (Ex. 4) notified Flint that it will not be possible for Flint to switch water sources on October 1, 2017 in a way that complies with the USEPA Order.

64. Paragraph 61 of the USEPA Order also requires Flint to demonstrate to MDEQ that it has the “necessary, capable and qualified personnel” required to ensure that its water treatment plant can comply with the Safe Drinking Water Act.

65. Flint does not have a sufficient number of qualified personnel at its water treatment plant to operate the plant in compliance with the Safe Drinking Water Act.

66. Certain City Council members continue to propose that the water treatment plant be operated to supply water to Flint residents.

67. The agreement negotiated by Mayor Weaver to ensure a long-term supply of finished water from GLWA is the only option that

will be protective of public health in Flint, ensure the future financial viability of Flint's water fund, and promote investment in Flint's water distribution system.

68. Despite months to consider the agreement, the City Council has refused to either approve the agreement or to propose another reasonable alternative.

69. Flint does not have the technical, financial, and managerial capacity available to ensure that use of any other water source will be adequate to protect the public health.

70. MDEQ seeks an order from this Court that bars Flint from changing water sources because it has not complied with Paragraphs 60 and 61 of the USEPA's Order.

71. MDEQ also seeks an order from this Court that the City Council's failure to act will put the public health at risk, and therefore, Flint is required by the Safe Drinking Water Act to enter into the agreement negotiated by Mayor Weaver to make GLWA its long-term water source.

REQUEST FOR RELIEF

MDEQ requests the following relief from the Court:

- a. a finding that the City Council's failure to act has put the public health at risk in violation of the state and federal Safe Drinking Water Acts and the City Council has a duty to act in this matter;
- b. an order that, as a result of the risk to public health and threat to the financial viability of the water supply caused by the inaction of the City Council, Flint is required by the state and federal Safe Drinking Water Acts to enter into the agreement negotiated by Mayor Weaver to remain on finished water supplied by GLWA;
- c. an order that Flint cannot change water sources because it has not complied with Paragraphs 60 and 61 of the USEPA's Order; and,
- d. an order for all such other relief the Court deems equitable.

Respectfully submitted,

/s/ Richard S. Kuhl

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Dated: June 28, 2017

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EASTERN DISTRICT OF MICHIGAN
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INDEX OF EXHIBITS

Exhibit 1- USEPA Order with Amendment

Exhibit 2- December 22, 2016 Letter from GCDC Director O'Brien to
Director Creagh

Exhibit 3- Statement of Principles—Long Term Water Delivery to the
City of Flint

Exhibit 4- June 15, 2017 letter from Director Grether to City Council
President Nelson and Mayor Weaver

Exhibit 5- June 23, 2017 letter from AAG Kuhl to City Administrator
Jones and Mr. Kim

Exhibit 6- Resolution to Approve Master Agreement and Exhibit A only

Exhibit 7- May 24, 2017 letter from Acting Regional Administrator
Kaplan to City Councilwoman Fields

EXHIBIT

1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
WASHINGTON, D.C.

IN THE MATTER OF:	:	Proceedings Pursuant To
	:	Section 1431 of the Safe Drinking
City of Flint, Michigan; Michigan	:	Water Act, 42 U.S.C. § 300i
Department of Environmental	:	
Quality; and the State of Michigan,	:	EMERGENCY
	:	ADMINISTRATIVE ORDER
Respondents.	:	

I. INTRODUCTION

1. The Safe Drinking Water Act (“SDWA” or “Act”) provides the U.S. Environmental Protection Agency (“EPA” or “Agency”) with the authority to order actions when an imminent and substantial endangerment exists and the actions taken by the state and/or local authorities are inadequate to protect public health. EPA has determined that the City of Flint’s and the State of Michigan’s responses to the drinking water crisis in Flint have been inadequate to protect public health and that these failures continue. As a result, EPA is issuing this SDWA Emergency Order (“Order”) to make sure that the necessary actions to protect public health happen immediately. The Order requires that necessary information be provided promptly to the public in a clear and transparent way to assure that accurate, reliable, and trustworthy information is available to inform the public and decisions about next steps. In addition to the issuance of this Order, EPA will promptly begin sampling and analysis of lead levels in tap water in the City of Flint’s public water system (“PWS”). EPA will publish these sampling results on its website to provide the public with transparency into the process to abate the public health emergency in the City of

Flint. In the coming weeks, EPA may take additional actions under the SDWA to address the situation in the City of Flint.

II. STATUTORY AUTHORITY

2. This Order is issued under the authority vested in the Administrator of the EPA by Section 1431 of the SDWA, 42. U.S.C. § 300i. This Order is issued for the purpose of protecting the health of persons who are supplied drinking water by a PWS with conditions that may present an imminent and substantial endangerment to human health.

III. FINDINGS OF FACT

3. The City of Flint, Michigan (“City”) owns and operates a PWS that provides piped drinking water for human consumption to its nearly 100,000 citizens.
4. From December 2011 through April 2015, an emergency manager was appointed by the State of Michigan (“State”) under Public Act 436 to oversee the management of the City during its financial crisis. During that time, the City became a partner with the Karegnondi Water Authority (“KWA”) and decided to no longer purchase treated drinking water from the Detroit Water and Sewerage Department (“Detroit”).
5. The Michigan Department of Environmental Quality (“MDEQ”) has primary responsibility for the implementation and enforcement of the public water system program in Michigan.
6. Before April 2014, the City purchased finished drinking water from Detroit.
7. On or around April 25, 2014, the City ceased purchasing treated drinking water from Detroit and began drawing water from the Flint River as its source water.

8. Between July and December 2014, the City conducted the first of two rounds of six month lead sampling under the Lead and Copper Rule (“LCR”), 40 C.F.R. § 141.80 *et seq.*
9. The City conducted the second of two rounds of six month lead sampling under the LCR between January and June 2015. These rounds of sampling showed that the levels of lead in the City water supply were rapidly rising.
10. On or about April 24, 2015, MDEQ notified EPA that the City did not have corrosion control treatment in place at the Flint Water Treatment Plant.
11. During May and June, 2015, EPA Region 5 staff at all levels expressed concern to MDEQ and the City about increasing concentrations of lead in Flint drinking water and conveyed its concern about lack of corrosion control and recommended that the expertise of EPA’s Office of Research and Development should be used to avoid further water quality problems moving forward.
12. On July 21, 2015, EPA Region 5 discussed with MDEQ the City’s lead in drinking water issues and implementation of the LCR and MDEQ agreed to require corrosion control as soon as possible.
13. On August 17, 2015, MDEQ sent a letter to the City recommending the City implement corrosion control treatment as soon as possible, but no later than January 1, 2016, and to fully optimize its treatment within six months.
14. On August 31, 2015, EPA Region 5 had a call with MDEQ to discuss outreach to citizens to reduce exposures to high lead levels in Flint drinking water and reiterate EPA’s offer of technical assistance in implementing corrosion control treatment.

15. On September 3, 2015, Flint Mayor Dayne Walling announced that the City will implement corrosion control treatment and invited EPA corrosion control experts to join the Flint Technical Advisory Committee (“Flint TAC”).
16. On September 27, 2015, EPA Region 5 Administrator Susan Hedman called MDEQ Director Dan Wyant to discuss the need for expedited implementation of corrosion control treatment, the importance of following appropriate testing protocols, urged MDEQ to enlist Michigan Department of Health and Human Services’ involvement and discussed options to provide bottled water/premixed formula/filters until corrosion control is optimized.
17. On October 7, 2015, the Flint TAC met about the City’s corrosion control and treatment. The Flint TAC recommended returning to Detroit water as the best course of action for the City.
18. On October 16, 2015, EPA established the Flint Safe Drinking Water Task Force (“EPA Flint Task Force”) to provide the Agency’s technical expertise through regular dialogue with designated officials from MDEQ and the City.
19. On or around October 16, 2015, the City switched back to purchasing finished water from Detroit, now called the Great Lakes Water Authority.
20. On November 25, 2015, the EPA Flint Task Force requested information that would allow EPA to determine the progress being made on corrosion control in the City; this information has not been received by EPA. This information includes water quality parameter measurements (pH, total alkalinity, orthophosphate, chloride, turbidity, iron, calcium, temperature, conductivity) in the distribution system. The EPA Flint Task Force has also made subsequent requests and recommendations.

<http://www.epa.gov/mi/flint-drinking-water-documents> The City is required by its MDEQ permit to monitor for these parameters at 25 sites quarterly and at 10 of these sites weekly. Because the City has not provided the information requested by the EPA Flint Task Force EPA does not have the information that would provide any assurance that contamination in the City's water system has been controlled.

21. On or around December 9, 2015, the City began feeding additional orthophosphate at the Flint Water Treatment Plant to begin optimizing corrosion control treatment. Notwithstanding the orthophosphate addition, high levels of lead and other contaminants are presumed to persist in the City's water system until LCR optimization process, utilizing sampling and monitoring requirements, have confirmed lead levels have been reduced.
22. On December 14, 2015 the City declared an emergency.
23. On January 14, 2016, the Governor of the State requested a declaration of major disaster and emergency and requested federal aid.
24. On January 16, 2016, the President of the United States declared a federal emergency in the City.
25. The presence of lead in the City water supply is principally due to the lack of corrosion control treatment after the City's switch to the Flint River as a source in April 2014. The river's water was corrosive and removed protective coatings in the system. This allowed lead to leach into the drinking water, which can continue until the system's treatment is optimized.
26. Lead occurs in drinking water from two sources: lead in raw water supplies and corrosion of plumbing materials in the water distribution system (i.e., corrosion

byproducts). Most lead contamination is from corrosion byproducts. The amount of lead in drinking water attributable to corrosion byproducts depends on a number of factors, including the amount and age of lead bearing materials susceptible to corrosion, how long the water is in contact with the lead containing surfaces, and how corrosive the water in the system is toward these materials. *Final Rule: Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper*, 56 *Fed. Reg.* 26460, 26463 (June 7, 1991).

27. EPA has set the Maximum Contaminant Level Goal ("MCLG") at zero for lead because (1) there is no clear threshold for some non-carcinogenic lead health effects, (2) a substantial portion of the sensitive population already exceeds acceptable blood lead levels, and (3) lead is a probable carcinogen. 56 *Fed. Reg.* at 26467. Pregnant women, unborn children, and children under the age of six are particularly sensitive to lead exposure.
28. The concentration of lead in whole blood has been the most widely used index of total lead exposure. Lead exposure across a broad range of blood lead levels has been associated with a spectrum of patho-physiological effects, including interference with heme synthesis necessary in the formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed neurological physical development, and elevation in blood pressure. 56 *Fed. Reg.* 26467-68.
29. EPA finds that consumption of lead in water contributes to increase in blood lead levels. The Centers for Disease Control and Prevention uses a reference level of 5

micrograms per deciliter to identify children with elevated blood lead levels. This new level is based on the U.S. population of children ages 1 – 5 years who are in the highest 2.5% of children when tested for lead in their blood.

http://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm

30. Under the LCR, the “action level” for lead is the concentration of lead at which corrective action is required. 40 C.F.R. § 141.2.
31. EPA’s LCR includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers’ taps. The action level for lead is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during the monitoring period conducted in accordance with 40 C.F.R. § 141.86 is greater than 0.015mg/L (i.e., if the “90th percentile” is greater than 0.015mg/L). 40 C.F.R. § 141.80(c). When a large system exceeds this action level, the LCR requires the system to: 1) implement public education requirements; 2) implement all applicable source water treatment requirements specified by the primacy agency under 40 C.F.R. § 141.83; and (3) if the system is exceeding the action level after implementation of all applicable corrosion control and source water treatment requirements, then the system must replace lead service lines in accordance with 40 C.F.R. § 141.84.
32. All large systems (over 50,000 persons) are required to either complete corrosion control treatment steps in 40 C.F.R. § 141.91(d) or be deemed to have optimized corrosion control treatment under 40 C.F.R. § 141.81(b)(2) or (b)(3).

33. Based on the foregoing, EPA finds that water provided by the City to residents poses an imminent and substantial endangerment to the health of those persons. Those persons' health is substantially endangered by their ingestion of lead in waters that persons legitimately assume are safe for human consumption. This imminent and substantial endangerment will continue unless preventive actions are taken.
34. The City, MDEQ and the State have failed to take adequate measures to protect public health. Although some progress has been made in addressing the drinking water crisis in the City, there continue to be delays in responding to critical EPA recommendations and in implementing the actions necessary to reduce and minimize the presence of lead and other contaminants in the water supply both now and in the near future. The Respondents have failed and continue to fail to provide the information necessary for EPA, the EPA Flint Task Force and the City's PWS customers to fully understand and respond promptly and adequately to the current deficiencies. EPA remains concerned that the City lacks the professional expertise and resources needed to carry out the recommended actions and to safely manage the City's PWS.
35. In accordance with SDWA Section 1431(a), 42 U.S.C. § 300i(a), to the extent practicable EPA has consulted with state and local authorities regarding the information on which this EPA action is based.
36. This Order and the requirements set forth herein are necessary to ensure adequate protection of public health in the City.

37. As a result of the emergency, EPA will promptly begin sampling and analysis of lead levels and other contaminants in the City to assure that all regulatory authorities and the public have accurate and reliable information.
38. EPA will make its LCR sampling results available to the public on the Agency's website.

IV. CONCLUSIONS OF LAW

39. Section 1431 (a), 42 U.S.C. § 300i(a), specifies that the EPA Administrator, upon receipt of information that a contaminant which is present in or likely to enter a public water system that may present an imminent and substantial endangerment to the health of persons, and that State and local authorities have not acted to protect the health of such persons, may take such actions as she may deem necessary in order to protect the health of such persons.
40. The City owns and operates a "public water system" within the meaning of SDWA Section 1401.
41. MDEQ is an instrumentality of the State.
42. The City, State and MDEQ are "persons" as defined in SDWA Section 1401(c)(12).
43. Respondents' cessation of purchased water from Detroit and switch to the Flint River as its source water triggered a cascade of events that directly resulted in the contribution of lead and other "contaminants" that are within the meaning of SDWA Sections 1401(c)(6) and 1431 of the Act.
44. The contaminants introduced by Respondents are present in or likely to enter a PWS.
45. Based upon the information and evidence, EPA determines that Respondents' actions that resulted in the introduction of contaminants, which entered a public water system

and have been consumed and may continue to be consumed by those served by the public water system, present an imminent and substantial endangerment to the health of persons.

46. The lead and other contaminants will remain present in the PWS and will continue to present an imminent and substantial endangerment to the health of persons until the underlying problems with the corrosion control treatment and fundamental deficiencies in the operation of the PWS are corrected and sampling results confirm the lead and other contaminants are adequately treated.
47. Respondents have failed to take adequate measures to protect public health.
48. The EPA has consulted with the State and local authorities, to the extent practicable, to confirm the correctness of the information upon which this ORDER is based and to ascertain the actions which such authorities are or will be taking. All requisite conditions have been satisfied for the EPA action under SDWA Section 1431(a)(1), 42 U.S.C. § 300i(a)(1).
49. The EPA finds that there is an imminent and substantial endangerment to the people drinking water from the public water system of the City of Flint and that the actions taken by the State and/or the City are inadequate to protect public health. The actions required by this ORDER are necessary to protect the health of persons who are currently consuming or who may consume or use water from the City's PWS.

V. ORDER

Based on the foregoing Findings and Conclusions, and pursuant to Section 1431 of the Act, 42 U.S.C. 300i,

IT IS ORDERED:

Intent to Comply

50. Within one day of the effective date of this Order, Respondents shall notify EPA in writing of their intention to comply with the terms of this Order. For the purposes of this Order, “day” shall mean calendar day.

Reporting Requirements

51. Within five days of the effective date of this Order, the State shall create, and thereafter maintain, a publicly available website. Respondents must post on this website all reports, sampling results, plans, weekly status reports on the progress of all requirements and all other documentation required under this Order. The Respondents shall not publish to this website any personally identifiable information.

Response to EPA Flint Task Force Recommendations, Requests for Information and Sampling Activities

52. The Respondents shall within 10 days of the effective date of this Order respond in writing, in accordance with Paragraph 51, to all of the EPA Flint Task Force’s requests and recommendations made on November 25, 2015 and subsequent dates. The response shall include all actions Respondents have taken and intend to take in response to those requests and recommendations. The EPA Flint Task Force’s requests and recommendations are publicly available at <http://www.epa.gov/mi/flint-drinking-water-documents>.
53. Within 10 days of the effective date of the Order the Respondents shall provide the following information in accordance with Paragraph 51:
- a. Water quality parameter measurements (pH, total alkalinity, orthophosphate, chloride, turbidity, iron, calcium, temperature, conductivity) in the distribution

system. The City is required by the MDEQ permit to monitor for these parameters at 25 sites quarterly and at 10 of these sites weekly;

- b. All lead in water testing results for the City since January 2013, including those not used for LCR compliance; and
- c. Identification of areas (e.g., zip codes, neighborhoods) in the City with elevated blood lead levels.

54. Within 10 days of the effective date of the Order, the Respondents shall provide, without publicly disclosing any personally identifiable information, the following directly to the EPA in accordance with Paragraph 66:

- a. Existing inventory of homes with lead service lines in Excel or a similar format;
- b. Addresses of homes that have had water service interruptions or street disturbances (e.g., water main breaks, road/sidewalk construction, etc.) within the last year; and
- c. Addresses of currently unoccupied homes.

55. Respondents shall cooperate with EPA as the Agency conducts LCR sampling and other diagnostic activities in the City.

Treatment and Source Water

56. To ensure that treated water meets finished water quality goals and is consistently maintained throughout the distribution system, that existing and potential plant operational and mechanical start-up issues are identified and addressed, and that water plant operations staff are proficient in treating the existing and new source water, Respondents shall comply with Paragraphs 57, 58 and 59.

57. Respondents shall maintain chlorine residual in the distribution system in accordance with SDWA and the National Primary Drinking Water Regulations (“NPDWRs”).
58. The City shall continue to add corrosion inhibitors (e.g., orthophosphate booster) at levels sufficient to re-optimize corrosion control in the distribution system.
59. To address optimization of corrosion control for the system as operated with its current water source, within 14 days of the effective date of this Order the Respondents shall submit to MDEQ and post in accordance with Paragraph 51:
- a. Submit a plan and schedule to the MDEQ to review and revise as needed designated optimal corrosion control and water quality parameters as well as monitoring plans for LCR compliance and all other monitoring plans developed to ensure that the treatment plant is consistently and reliably meeting plant performance criteria and all other NPDWRs;
 - b. Submit a sampling plan for daily monitoring of water quality parameters in the distribution system with results compiled in a weekly report in an approved format; and
 - c. Submit an operations plan for the corrosion control equipment (storage day tanks, feed/injection systems), with results compiled in a weekly format, that includes monitoring, calibration, verification (pump catch, etc.) as well as daily monitoring of finished water corrosion control parameters. Results shall be submitted and posted weekly.
60. Respondents shall not effectuate a transition to a new water source for the City’s PWS (e.g., from KWA) until such time as they have submitted a written plan, developed through consultation with appropriate experts and after providing adequate

advanced notice and an opportunity for public comment, to MDEQ and in accordance with Paragraph 51, demonstrating that the City has the technical, managerial and financial capacity to operate its PWS in compliance with SDWA and the NPDWRs and that necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition. Such plans shall include, but not be limited to, provisions addressing:

- a. The impacts on corrosion control for any new source water and an operations plan for periodic use of existing sources of water;
- b. Completion of corrosion control study for any new sources;
- c. Implementation of a "performance period" that allows for the demonstration of the adequacy of treatment of the new water source to meet all NPDWRs before it can be distributed to residents; and
- d. The City's technical, managerial and financial capacity to meet SDWA's applicable requirements, including the NPDWRs, during and after the transition to any new water source.

Treatment and Distribution System Management

61. Within 15 days of the effective date of this Order, the City must demonstrate, and the MDEQ and State must ensure, the City has the necessary, capable and qualified personnel required to perform the duties and obligations required to ensure the PWS complies with the SDWA and the NPDWRs.
62. To ensure the City's PWS is adequately operated to meet SDWA and all NPDWRs, within 30 days of the effective date of this Order, the Respondents shall submit the steps they will take to develop and implement a distribution system water quality

optimization plan to MDEQ and in accordance with Paragraph 51, to evaluate and improve its programs that affect distribution system water quality, including: evaluating conditions within the distribution system; creating better documentation; and enhancing communication between the various utility functions that impact distribution system water quality. The MDEQ must ensure that this plan is adequate to ensure SDWA compliance and the State must ensure it is executed.

Independent Advisory Panel (“IAP”)

63. Within seven days of the effective date of this Order, the MDEQ and State, with the City’s input and concurrence, shall engage a panel of independent, nationally-recognized experts on drinking water treatment, sampling, distribution system operation, and members of the affected community to advise and make public recommendations to the City on steps needed to mitigate the imminent and substantial endangerment to the health of persons and general operation of the City’s PWS to ensure compliance with SDWA and the NPDWRs.
64. The charge to the IAP will include the following:
- a. Make recommendations to the Respondents, and for consideration by the EPA, to ensure the safe operation of the City’s PWS.
 - b. Make other recommendations to the Respondents, and for consideration by the EPA, to better serve the community served by the City’s PWS.

VI. PARTIES BOUND

65. The provisions of this Order shall apply to and bind Respondents and their officers, employees, agents, successors and assigns.

VII. GENERAL PROVISIONS

66. All submittals and inquiries pursuant to this Order shall be addressed to:

Mark Pollins, Director
Water Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
William Jefferson Clinton South Building
1200 Pennsylvania Avenue NW
Room 3104
Washington, DC 20460
pollins.mark@epa.gov

67. All plans, reports, notices or other documents submitted by Respondents under this Order shall be accompanied by the following statement signed by a responsible official.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

68. Record preservation. Respondents shall retain, during the pendency of this Order, and for a minimum of six years after its termination, all data, records and documents in its possession or control, or which comes into its possession or the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns, which relate in any way to this Order. After the above mentioned six year period, Respondents shall provide written notification to EPA 60 calendar days before the destruction of any data, records, or documents that relate in any way to this Order or its implementation. At the EPA's request, Respondents shall then make records available to the EPA for inspection and/or retention, or shall provide copies of any such records to EPA before discarding.

69. Within 10 days of the effective date of this Order, or at the time of retaining any agent, consultant, or contractor for the purpose of carrying out terms of this Order, Respondents shall enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, or contractors will be required to provide Respondents a copy of all documents produced under this Order.
70. EPA retains all of its information gathering and inspections authorities and rights, including the right to bring enforcement actions related thereto, under SDWA and any other applicable statutes or regulations.
71. Pursuant to SDWA Section 1431(b), 42 U.S.C. § 300i, in the event Respondents violate, fail or refuse to comply with any of the terms or provisions of this Order, EPA may commence a civil action in U.S. District Court to require compliance with this Order and to assess a civil penalty of up to \$21,500 per day of violation under SDWA, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
72. Compliance with the terms and conditions of this Order shall not in any way be construed to relieve Respondents of their obligations to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a determination of any issue related to any federal, state, or local permit. Compliance with this Order shall not be a defense to any actions subsequently commenced for any violation of federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.

73. EPA may modify this Order to ensure protection of human health and the environment. Such modification shall be in writing and shall be incorporated into this Order.

74. This Order shall constitute final agency action by EPA.


VIII. EFFECTIVE DATE

75. Under SDWA Section 1431, 42 U.S.C. § 300i, this Order shall be effective immediately upon Respondents' receipt of this Order. If modifications are made by the EPA to this Order, such modifications will be effective on the date received by Respondents. This Order shall remain in effect until the provisions identified in the Order have been met in accordance with written EPA approval.

IX. TERMINATION

76. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from the EPA that Respondents have demonstrated, to the satisfaction of the EPA, that the terms of this Order, including any additional tasks determined by EPA to be required under this Order or any continuing obligation or promises, have been satisfactorily completed.

1/21/16
Date



CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
William Jefferson Clinton South Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
CHICAGO, ILLINOIS

IN THE MATTER OF:	:	Proceedings Pursuant To
	:	Section 1431 of the Safe Drinking
City of Flint, Michigan; Michigan	:	Water Act, 42 U.S.C. § 300i
Department of Environmental	:	
Quality; and the State of Michigan,	:	FIRST AMENDMENT TO
	:	EMERGENCY
Respondents.	:	ADMINISTRATIVE ORDER

1. On January 21, 2016, EPA issued an Emergency Administrative Order (“Order”) to the City of Flint, Michigan (“City”), the Michigan Department of Environmental Quality (“MDEQ”), and the State of Michigan (“State”) (“Respondents”) under Safe Drinking Water Act (“SDWA”) Section 1431, 42 U.S.C. § 300i. Consistent with Paragraph 73 of the Order, all provisions of the January 21, 2016 Order are incorporated herein, remain unchanged and in effect, except to the extent specific paragraphs are revised and superseded as follows by this First Amendment to the Order (“First Amendment”).
2. Consistent with Paragraph 75 of the Order, the First Amendment shall be effective on the date received by the Respondents.
3. The City has the responsibility to choose an appropriate source of drinking water. In doing so, the City must ensure that it can comply with the SDWA and National Primary Drinking Water Regulations (“NPDWRs”). The City has stated it intends to switch from the Great Lakes Water Authority (“GLWA”), its current source, to treating raw water from the Karegnondi Water Authority (“KWA”), its proposed new source of drinking water.

4. According to the September 26, 2016 letter from the State to the City, access to water from the GLWA as a primary water source is unlikely to be available to the City as of October 2017. This is because the 72-inch transmission pipe currently providing GLWA water to the City will be in use by the Genesee County Drain Commissioner to serve KWA water to its customers as of October 2017.
5. Progress has been made in protecting public health with the City providing increasingly reliable and safe drinking water to the citizens of Flint. Any change in source water or treatment has the potential to cause corrosion and leaching of lead if the water system and the primacy agency have not appropriately planned for the change. This First Amendment establishes the tasks and timeframes to make a water source switch in compliance with the provisions of the SDWA and the NPDWRs, including State-designated optimal corrosion control treatment and State-established water quality parameters for compliance monitoring. The following provisions apply to any water source identified by the Respondents under Paragraph 60 and any subsequent change in water source made by the Respondents.
6. **Paragraph 60 in the January 21, 2016 Order shall now read:**

60. Respondents shall comply with all requirements of this Paragraph for any new water source.

a. Confirmation of Water Sources

The City shall confirm in writing to EPA its intended new water source and emergency back-up water source within five days of the effective date of the First Amendment. Nothing in this First Amendment prevents the City from identifying a different new water source. The City must notify EPA in writing within five

days if there are any changes in its initial, or any subsequent, new water source designation.

b. Development and Implementation for New Water Source Treatment

i. Pipeline Plan

It is necessary to complete the KWA pipeline connection to the Flint water treatment plant (“WTP”). Respondents shall submit to MDEQ for its review and approval, to EPA for its review, and post to the public website under Paragraph 51, a written plan for completing the KWA pipeline connection to the Flint WTP (“Pipeline Plan”), within twenty-one days of the effective date of this First Amendment. The Pipeline Plan shall specify dates for major milestones, including at a minimum, the following:

- A. Complete engineering drawings;
- B. Submit permit applications and receive approvals;
- C. Request contract bidding and award; and
- D. Develop construction time table, including final completion date.

Upon MDEQ’s written approval of the Pipeline Plan, Respondents shall implement the Pipeline Plan, which must provide for pipeline completion and operation at least three months before the planned distribution date from any new water source.

ii. Water Treatment Plant Modification Plan (“WTPMP”)

Respondents shall submit to MDEQ for its review and approval, to EPA for its review, and post to the public website under Paragraph 51, by February 1, 2017, a

written WTPMP that provides a preliminary evaluation for Flint's treatment of its identified new source water. The WTPMP shall include:

- A. An assessment of the treatment processes for the new source water;
- B. Identification of necessary Flint WTP infrastructure improvements, including the assessment of associated operation and maintenance needs; and
- C. A schedule with completion dates for major milestones, including, at a minimum, the following: (1) identifying, securing and utilizing funding source(s) and (2) implementing the necessary infrastructure upgrades and other identified improvements.

Upon MDEQ's written approval of the WTPMP, Respondents shall implement the WTPMP.

iii. New Source Treatment Plan ("NSTP")

Respondents shall submit to MDEQ for its review and approval, to EPA for its review, and post to the public website under Paragraph 51, as soon as available and no later than the dates set forth below, a written plan to treat the new source water. The NSTP shall address the City's technical, managerial, and financial capacity to operate its PWS in compliance with the SDWA and NPDWRs, including requirements for optimal corrosion control treatment and water quality parameter monitoring. The NSTP shall be developed in consultation with appropriate experts and the public through adequate advanced notice and opportunity for comment. Prior to submittal of the NSTP, Respondents shall develop a corrosion control study for the new source water and submit the study

to MDEQ for its review and approval, and to EPA for its review, by February 1, 2017. The NSTP shall be submitted by March 1, 2017, and shall specify a schedule with completion dates for major milestones, including, at a minimum, the following:

- A. Finalizing necessary standard operating procedures (“SOPs”) for each aspect of the water treatment process for the Flint WTP;
- B. Implementing infrastructure upgrades that were identified under the WTPMP;
- C. Conducting a corrosion control study for the new source water, including the analysis and testing of the impacts on corrosion control treatment under various circumstances to ensure a safe transition; and
- D. Developing and implementing a “performance period,” which shall begin after the completion of the KWA pipeline connection to the Flint WTP, addressed in Paragraph 60(b)(i), and after the completion and implementation of all applicable requirements in Paragraph 60(b)(ii) and (iii). The performance period shall last as long as necessary, but no less than three months, to allow for the demonstration of the adequacy of treatment of the new water source to meet all SDWA and NPDWRs before it can be distributed to consumers.

Upon MDEQ’s written approval of the NSTP, Respondents shall implement the NSTP. After completion of the approved NSTP, and at least five days before the

proposed distribution of the new source water, Respondents shall: (1) certify in accordance with Paragraph 60(c)(iv) that all elements of the NSTP have been implemented and (2) notify the public in accordance with Paragraph 51.

iv. *Use of the Current Water Source*

Respondents must continue to use the current GLWA source to provide drinking water to the City until the City has demonstrated that all requirements of Paragraph 60 are met and EPA has concurred. Respondents shall provide documentation to EPA, and make publicly available under Paragraph 51, within thirty days of the effective date of the First Amendment, that Respondents have made arrangements to have continued access to its current GLWA source water until its transition to a new source water is complete.

c. *Reporting and Notification Requirements*

- i. Respondents shall provide monthly updates regarding schedules and milestones, including amount of funds committed, by whom, and when funds will be available for disbursement under Paragraph 60, on the 1st day of each month on the public website under Paragraph 51. Respondents shall continue to report monthly until all necessary requirements of Paragraph 60 are met.
- ii. If any event occurs, or has occurred, that may delay Respondents' ability to meet any schedule or milestone in Paragraph 60, Respondents shall notify EPA of that event within five days. If Respondents anticipate any reason they may be delayed in meeting any schedule or milestone in Paragraph 60, Respondents shall notify EPA within five days of the date they become aware of that reason for delay. Within 10 days of providing such notice to EPA regarding a delay in

meeting schedules or milestones, Respondents shall provide contingency plans to address each delay to MDEQ for its review and approval and to EPA for its review.

- iii. If at any point the City decides to change its water source specified under Paragraph 60(a), the City shall notify EPA in writing within five days of such decision. All provisions of Paragraph 60 will apply to any change in water source.
- iv. Respondents shall provide to EPA a written certification, as specified under Paragraph 67 of the Order, each time a plan, schedule, or milestone required under Paragraph 60 is fully implemented, until EPA has concurred that all requirements under Paragraph 60 have been fully implemented.

7. Paragraph 66 in the January 21, 2016 Order shall now read:

66. All submittals and inquiries pursuant to this Order shall be addressed to:

Christopher Korleski
Director, Water Division, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd. (W-15J)
Chicago, Illinois 60604
(312) 353-8320
korleski.christopher@epa.gov

11/17/14

Date

Robert A. Kaplan

ROBERT A. KAPLAN
Acting Regional Administrator
Office of the Regional Administrator
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois 60604

EXHIBIT

2



GENESEE COUNTY DRAIN COMMISSIONER'S OFFICE

- DIVISION OF -

WATER & WASTE SERVICES

G-4610 BEECHER ROAD - FLINT, MICHIGAN 48532-2617

PHONE (810) 732-7870 - FAX (810) 732-9773

JEFFREY WRIGHT
COMMISSIONER

*Bryce -
Please take the
lead in reviewing
and responding
W/AB. - [Signature]
[Signature]*

December 22, 2016

Mr. Keith Creigh, Director
Department of Natural Resources
State of Michigan
P.O. Box 30028
Lansing, Michigan 48909

Re: Flint Water Supply

Dear Mr. Creigh:

I write for two reasons:

- 1) To respond to your proposed backup agreement; and,
- 2) To explain GCDC's position in light of recent projected delays in bringing the City's water treatment plant and reservoir online.

We have reviewed your proposed agreement and have revised the proposed agreement to include our requirements to supply water to Flint. The key points are as follows:

- 1) GCDC's responsibilities for water quality will cease at the point of delivery - not point of use.
- 2) We have noted three distinct phrases or terms to the supply agreement.
- 3) We require an escrow account.

From yesterday's meeting, we understand that Flint's treatment facility will not be ready until October 2019. If Flint is not ready to deliver treated KWA water to its residents in October 2017, it must either stay on the GLWA system or reach a supply agreement with GCDC, which the MDEQ and EPA must approve.

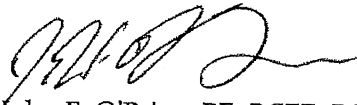
While we believe an agreement can be reached, we understand Flint may wish to stay on the GLWA system. This will, in turn, require the County to also stay on the GLWA system. The City and/or State must then pay the cost for GCDC to also stay on GLWA's system. GCDC estimates the cost to be over \$45 million for the two-year proposal. Another agreement will be required to cover this eventuality.

Page 2
December 22, 2016

It is imperative for Flint to reach agreement for water supply to avoid unnecessary legal problems.

Once you have reviewed this agreement, please contact me at your earliest convenience.

Sincerely,



John F. O'Brien, PE, BCEE, Director
Division of Water & Waste Services

JFO/JMW
Enclosure

cc: Joseph F. Galvin, General Counsel
Larry Steckelberg
Richard Baird

EMERGENCY BACKUP AND ALTERNATIVE WATER SUPPLY AGREEMENT

**EMERGENCY BACKUP AND ALTERNATIVE WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF FLINT AND THE
GENESEE COUNTY DRAIN COMMISSIONER**

THIS EMERGENCY BACKUP AND ALTERNATIVE WATER SUPPLY AGREEMENT ("Agreement") is made as of the ____ day of _____, 2017 ("Effective Date"), by and between the City of Flint, a Michigan home rule city (hereinafter "Flint"), and the Genesee County Drain Commissioner, as County Agency, a public agency created pursuant to the County Public Improvement Act of 1939, as amended (the "Agency").

RECITALS

WHEREAS, Flint is a home rule city and authorized to execute this Agreement by the Flint Charter; and,

WHEREAS, the Board of Commissioners of the County of Genesee has authorized and directed that there be established, pursuant to the provisions of Act 342 of the Michigan Public Acts of 1939, as amended ("Act 342"), a water supply system designated as the Genesee County Water Supply System ("System") consisting of a source of water supply, transmission mains, and all other facilities necessary to supply water to various units of government located within and outside of Genesee County; and,

WHEREAS, the Agency has been designated by the County of Genesee as the County Agency pursuant to Act 342 , to establish, maintain, and operate the System, to supervise and control the operation of that System; and,

WHEREAS, Flint is currently obtains treated water from the Great Lakes Water Authority ("GLWA") to supply to its water customers; and,

WHEREAS, the Agency is constructing a water treatment plant, which is scheduled to be operational no later than October 2017 ("Agency WTP"); and,

WHEREAS, once the Agency WTP is operational, Flint will no longer be able to obtain treated water from GLWA; and,

WHEREAS, Flint seeks to obtain raw water from the Karegnondi Water Authority ("KWA") which Flint will then treat at the Flint Water Treatment Plant ("Flint WTP"), at such time as the United States Environmental Protection Agency ("EPA") and the Michigan Department of Environmental Quality ("MDEQ") allow Flint to produce drinking water at its WTP; and,

WHEREAS, Flint may need an alternative finished water supply between the time Agency's WTP is operational and the time the Flint WTP becomes operational; and,

WHEREAS, Flint plans to build a raw water reservoir that, when constructed, will act as an emergency backup to supply water to Flint if KWA's water supply is interrupted; and,

WHEREAS, Flint's raw water reservoir will not be completed before the date Flint anticipates beginning to use the Flint WTP to treat raw water supplied by KWA, and even when construction is completed, Flint's reservoir will not be large enough to fulfill Flint's legally required emergency back-up needs; and,

WHEREAS, Flint has asked Agency to provide a complete emergency back-up water supply beginning when Flint accepts raw water from the KWA for treatment and thereafter; and,

WHEREAS, the parties have agreed to execute this Agreement to provide Flint with an alternative treated water supply and an emergency backup water supply as needed; and,

WHEREAS, the Agency agrees to deliver water to Flint at Agency's sole expense to the points of delivery described respectively as "Delivery Point I (on attached Exhibit "A") and Delivery Point II (on attached Exhibit "B");

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Flint and the Agency agree as follows:

ARTICLE I

INTRODUCTORY PROVISIONS

Section 1.01. Adoption of Preamble and Recitals. All of the matters stated in the recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein, provided that in cases of conflict, other provisions of this Agreement not in the Recitals shall control.

Section 1.02 Effect on Current Contracts. The parties hereto agree that any prior contracts between Flint and Agency involving Emergency Backup Water Supply that are still in effect are superseded by this Agreement and are void and of no further effect. All other contracts between Flint and Agency remain in full force and effect.

ARTICLE II
WATER TO BE SUPPLIED

Section 2.01. Supply and Payment for Treated Water. The Agency agrees to supply Flint with treated water, and Flint agrees to accept and pay for treated water from the Agency, daily in a maximum volume of 12 MGD at a minimum pressure of 50 lb. psi in the situations and time periods described below:

- A. After the Agency WTP begins providing treated water to Genesee County communities other than Flint and before the Flint WTP can lawfully be operated ("Pre Flint WTP period").

During the pre-Flint WTP, the Agency shall make treated water available to Flint at Delivery Point I within forty-eight (48) hours of the date Agency starts providing treated water from the Agency WTP to Agency's other customers and until such time as Flint can legally operate the Flint WTP. During the first year of the pre-Flint WTP period, Flint will pay to Agency monthly, \$3 per 1000 cubic feet of water delivered. During the next year of the pre-Flint WTP period, Flint shall pay to Agency monthly \$18 per 1000 cubic feet of water delivered. Thereafter, Flint shall pay to Agency monthly \$34 per 1000 cubic feet of water delivered.

B. Flint's WTP can lawfully operate ("Normal period").

During the Normal period, in order to properly maintain the supply line to Flint, the Agency shall make treated water available to Flint at Delivery Point I daily, a minimum volume of one million gallons of treated water. Agency shall make additional treated water, not in excess of the daily maximum, available to Flint at Delivery Point I after receiving 48 hours' notice from Flint of an emergency situation, which is defined as the Flint WTP being unable to treat raw water delivered to it by KWA. During the Normal Period, Flint shall pay Agency monthly \$34 per 1000 cubic feet of water delivered.

The prices in this Section 2.01 shall only apply to purchases made in calendar year 2017. In January of each succeeding calendar year, Agency will notify Flint of prices for that year. The prices charged to Flint will not exceed the prices Agency charges to its other wholesale customers. To ensure that the treated water provided at Delivery Point I meets and continues to meet applicable water quality standards, the Agency shall deliver water to Flint of the same quality it delivers to its other wholesale customers. Flint is responsible for the quality of the water after receiving it at Delivery Point I, including when Flint delivers it to its retail customers. The quantity of water to be supplied per day shall be reviewed as necessary by the parties to ensure that it meets applicable water quality standards.

Flint shall pay Agency within thirty (30) days after mailing of a monthly invoice.

Section 2.02. Supply and Payment for Untreated Water. After the Flint WTP can lawfully operate, and in the event KWA's supply to Flint is interrupted, the Agency agrees to supply Flint with untreated water, and Flint agrees to accept and pay for untreated water from the Agency daily, to, a maximum volume of 12 MGD, at a minimum pressure of 16 psi. Flint shall provide Agency 48 hours' notice that it requires untreated water. Flint shall pay to Agency daily \$.50 per 1000 cubic feet of water delivered. Flint is responsible for the quality of the water after receiving it at Delivery Point II, including when Flint delivers it to its retail customers.

Section 2.03. Term of Agreement. The agreement shall remain in effect until the earlier to occur of completion of Flint's reservoir or five (5) years after the Effective Date. The parties shall attempt, in good faith, to negotiate an extension of the Normal Period terms of this Agreement beginning six (6) months before the Agreement expires.

Section 2.04. Access. The Agency agrees to provide reasonable ingress and egress for Flint's representatives to the Points of Delivery to assist the Agency's employees with the delivery of water to Flint and to assess if the treated water is meeting applicable water quality standards. Flint agrees to provide reasonable access and egress for Agency's representatives to the meter points described on Exhibits A and B.

Section 2.05. Waiver of Claims. Flint hereby affirmatively and expressly waives and agrees never to claim in any forum any right to water in preference to or priority over any other Agency customer in any manner or circumstances, including but not limited to drought conditions or circumstances, acts of God, strikes, lockouts, or other disturbances, acts of public enemy, malfunction of the Agency's system, emergencies or public health and

safety concerns, which would have the effect of altering, extending, or voiding the term of this Agreement or which would allow Flint to continue use of treated water without a written agreement. Specifically, Flint agrees it will have no claim to continued delivery of water from the Agency after expiration of this Agreement.

Section 2.06. Security. To assure Agency that its performance will satisfy state and federal requirements for backup water supply and that Flint will perform its obligations under this Agreement, Flint agrees:

A. **MDEQ Certification.** Flint will obtain from the Director of MDEQ a sworn statement certifying that:

- (1) Agency's currently permitted impoundment of 150 MG at the Agency WTP is sufficient to meet all state and federal requirements for Agency's backup water supply to serve both Agency's retail customers and Flint's retail customers;
- (2) This Agreement is a wholesale water supply agreement and that Agency's performance under it will not in any way impair Agency's ability to provide a fully lawful backup water supply for its retail customers. Further, Agency will not be held liable to Flint or Flint's retail customers for the quality of water beyond the Points of Delivery.

B. **Flint's Non-payment:** For the first year of this Agreement Flint will deposit \$6.4 million in an escrow fund ("Fund") with Chemical Bank to secure payment of its obligations to Agency under the Agreement.

For every year thereafter during the pre-Flint WTP period, Flint will deposit \$12.5 million in the escrow fund. Agency will be authorized to receive payment from the Fund by making written demand upon the escrow agent thirty (30) days after sending a monthly invoice(s), which is not paid by Flint.

ARTICLE III **INDEMNIFICATION**

Section 3.01. Indemnification. In further consideration of the Agency's entry into this Agreement, Flint agrees that to the fullest extent permitted by law, Flint will indemnify, defend, and hold Agency harmless for any losses, claims, causes of action, or other liabilities, including any costs, expenses, and attorney fees incurred by Agency, which arise from the tortious acts or omissions of Flint related to this Agreement, except those arising from Agency's intentional acts. Flint and the Agency enter into this Agreement to further the public health, safety, and welfare within their communities and do not intend to confer any benefit or privilege upon any third party.

ARTICLE IV **DEFAULT AND REMEDIES**

Section 4.01. Flint's Monetary Default. Flint shall be in monetary default if it fails to pay Agency within thirty (30) days after Agency mails its monthly invoice to Flint. Upon Flint's monetary default, Agency shall be entitled to full payment from the Escrow Agent upon giving written notice to the Escrow Agent of Flint's non-payment. If the Escrow Agent fails to pay within ten (10) days after Agency sends written notice of non-payment, Agency

shall have the right to sue Flint and the Escrow Agent for damages in Genesee County Circuit Court and to terminate this Agreement.

Section 4.02. Flint's Non-Monetary Default. Flint shall be deemed in non-monetary default if Flint fails to perform any obligation under this Agreement other than payment under Article II within five (5) days after written notice of default has been sent to Flint, provided that if the nature of the default is such that more than five (5) days are required for a cure, then Flint shall not be in default if Flint begins to cure within five (5) days and thereafter diligently pursues the cure to completion. Agency shall be entitled to terminate this Agreement for any uncured non-monetary default and to receive any earned, but unbilled amounts due it by written demand upon the escrow agent or as damages in Genesee County Circuit Court. Termination and such damages shall be Agency's sole and exclusive remedy.

Section 4.03. Agency's Default. Agency shall be deemed in default if Agency fails to perform any obligation under this Agreement within five (5) days after written notice has been sent to Agency provided that if the nature of the default is such that more than five (5) days are required for a cure, then Agency shall not be in default if Agency begins to cure within five (5) days and thereafter diligently pursues the cure to completion. Flint shall be entitled to terminate this Agreement for any uncured default by Agency as its sole and exclusive remedy.

ARTICLE V
GENERAL PROVISIONS

Section 5.01. Force Majeure. If by reason or force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligations of Flint to make the payments required under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. If the event results in an insurance claim and settlement is authorized, the settlement proceeds shall be in the name of Flint and the Agency, Flint and the Agency shall mutually determine if Flint, the Agency, or both shall be entitled to share in the insurance proceeds. The term "Force Majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of treated water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 5.02. Severability. The parties hereto specifically agree that in case of any one or more of the sections, subsections, provisions, clauses, or words of this

Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstances is held to be, for any reason, invalid, or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clauses or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 5.03. Venue. All amounts due under this Agreement, including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due at the location of the principal administrative officers of the Agency. It is specifically agreed among the parties to this Agreement that Genesee County, State of Michigan is the place of performance of this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provisions hereof, the same shall be brought in the Genesee County Circuit Court.

Section 5.04. Interpretation. For purposes of interpretation of this Agreement, neither Flint nor the Agency shall be deemed to have been the drafter of this Agreement.

Section 5.05. Construction. This Agreement has been prepared and negotiations have occurred in connection with such preparation pursuant to the joint efforts of the

parties hereto. This Agreement therefore shall not be construed against any party to this Agreement.

Section 5.06. Modification. This Agreement shall not be modified, altered, or amended except through a written amendment signed by a duly authorized representative of both Flint and the Agency.

Section 5.07. No Third Party Beneficiaries. This Agreement is not intended to confer upon any person or entity, other than the parties hereto, any rights or remedies of any kind or nature whatsoever.

Section 5.08. Counterparts. This Agreement may be executed in several counterparts each of which shall be deemed one and the same Agreement. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

Section 5.09. Captions and Bylines. The captions and bylines used in this Agreement are for the convenience of reference only and in no way define, limit, or describe the scope of intent of any provision of this Agreement.

Section 5.10. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party, must be in writing and may be given or be served by depositing the same in the United States mail postpaid and certified and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the

manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Flint, to:

The City of Flint
Attention: Mayor
1101 South Saginaw Street
Flint, Michigan 48502

If to Agency, to:

Genesee County Crain Commissioner's -
Division of Water & Waste Services
Attention: Drain Commissioner
G-4610 Beecher Road
Flint, Michigan 48532

The parties hereto shall have the right from time-to-time, and at any time, to change their respective addresses, and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party hereto.

IN WITNESS WHEREOF, the Parties hereto acting when necessary under the authority of their respective governing bodies, have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the date and year first above written, which is the Agreement Date:

AGENCY

By: _____
Jeff Wright, Genesee County Drain Commissioner, County Agency

(OFFICIAL SEAL)

Approved as to Form:

By: _____

FLINT

By: _____
Karen Weaver, Mayor

(OFFICIAL SEAL)

Approved as to Form:

By: _____

EXHIBIT A

Delivery Point I – Finished Water.

Delivery Point I shall be the meter pit at the west side of Kearsley Creek Golf Course and Pierson Road ("Golf Course Pit") as shown on the attached sketch. Flint shall be responsible to calibrate the meter points annually at Delivery Point I. Volumes of water delivered at Delivery Point I shall be measured at Station 2, Meters A and B. Water Quality will be measured at the Golf Course Pit. Flint shall be responsible for maintaining the line from the Golf Course Pit to Station 2, Meters A and B.

EXHIBIT B

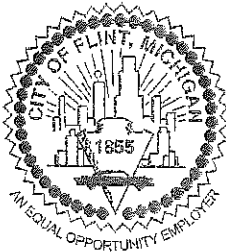
Delivery Point II – Raw Water.

Delivery Point II shall be at the Agency Impoundment as shown on the attached sketch. Volumes of water shall be measured at the KWA meter at Center and Crosby Roads. Water quality shall be measured at the Agency Impoundment. The parties agree that KWA's calibration of that meter is accurate.

DRAFT

EXHIBIT

3



CITY OF FLINT

Statement of Principles

Dr. Karen W. Weaver
Mayor

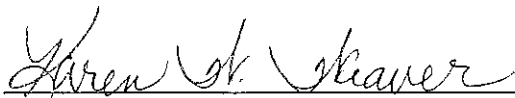
Long Term Water Delivery to the City of Flint

The below represents a statement of the structure for a set of inter-related transactions that will comprise an overall agreement resulting in primary and backup water for the City of Flint and system improvements for all parties. The signatories agree to work in good faith to speedily agree to the necessary legal documents (in the form of an overall master agreement with each individual agreement as an exhibit to that master agreement). They further agree to use their best efforts to secure all authorization or approvals required by the entity's policies, ordinances, and governing law for those agreements from all governing bodies necessary to put these agreements into effect as soon as is practicable.

1. The Great Lakes Water Authority (GLWA) will provide long-term wholesale finished water services to Flint, with pricing for the services that treats Flint similarly to all other GLWA wholesale model contract customers, including access to Water Residential Assistance Program funds to assist low-income customers. GLWA will receive the right that Flint has to purchase raw water through the Karegnondi Water Authority (KWA) and credit Flint in like amount to the debt paid during the contract period.
2. Certain trust arrangements will be put in place for ease of flow of funds from Flint to GLWA and the KWA in normal operation. Additionally, in the event Flint does not fully meet its obligations to the KWA, the Genesee County Drain Commission (GCDC), and GLWA, an alternative trust will come into operation. That trust would receive all Flint customer collections and ensure a flow of funds to meet obligations to the KWA, GCDC, and GLWA. Additionally, Flint will provide a customer security deposit of \$3.75M with GLWA, for no less than two years and no greater than six years (as long as timely payments are made and agreed upon performance objectives met). KWA has a conditional right to access the customer security deposit under certain circumstances.
3. GLWA will provide short-term wholesale finished water services to the GCDC until the GCDC water treatment plant is operational and servicing GCDC's customers, with pricing for the services that treats GCDC similarly to all other GLWA wholesale model contract customers.
4. GLWA and the GCDC will provide one another with reciprocal backup water services. The price for backup water services will be established through an agreed upon detailed pricing methodology in the contract and it will be the same for both parties.
5. The State of Michigan (State), through its Department of Environmental Quality (DEQ), will provide a grant in an amount of \$7.5M to the GCDC for installing a 42-inch transmission main parallel to the existing 72-inch transmission main that currently supplies treated water from the GLWA to GCDC customers and Flint. This will allow GCDC to supply treated water from its new water treatment plant to its customers on or after October 2017. The 72-inch transmission line will be returned to Flint's ownership.
6. The State will provide assistance, in compliance with all existing laws, to GCDC, Flint and the KWA in obtaining refinancing of the 2016 KWA bond issue and in completing the approval process for the GCDC to use its water treatment plant.

7. Flint will build a new supply connection from the end of the GCDC service system north of Flint to the Flint water system to provide a backup water supply. Flint intends to utilize WIIN funding to complete this project.

Signed by:



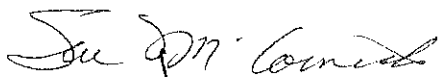
City of Flint

By: Dr. Karen W. Weaver, Mayor



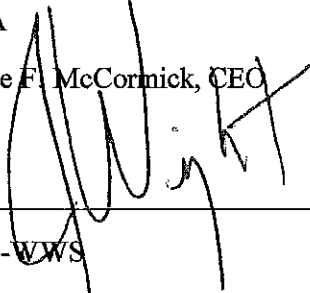
KWA

By: John O'Brien, Deputy CEO



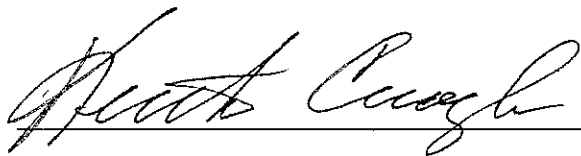
GLWA

By: Sue F. McCormick, CEO



GCDC-WWS

By: Jeffrey Wright, Drain Commissioner



State of Michigan

By: Keith Creagh, Director

EXHIBIT

4



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GRETHUR
DIRECTOR

June 15, 2017

VIA E-MAIL

Mr. Kerry L. Nelson, President
Flint City Council
City Hall
1101 South Saginaw Street
Flint, Michigan 48502

The Honorable Karen Williams Weaver
Mayor of Flint
City Hall
1101 South Saginaw Street
Flint, Michigan 48502

Dear President Nelson and Mayor Weaver:

SUBJECT: Request that the Flint City Council Take Action to Approve the Agreement to Purchase Finished Water from the Great Lakes Water Authority

The information available to the Michigan Department of Environmental Quality (MDEQ) indicates that the Flint City Council has postponed a decision on whether or not to approve the agreement negotiated by Mayor Karen Williams Weaver whereby Flint will enter into a contract with the Great Lakes Water Authority (GLWA) to purchase finished water. The GLWA water currently being used by Flint constitutes a safe and reliable source of drinking water that has proven to be protective of public health. Continued use of that reliable source is important to ensure protection of public health.

Any further delay by the City Council in approving the Mayor's recommendation or a reasonable alternative will create an imminent and substantial endangerment to the public. As a result, if the City Council does not approve the Mayor's recommendation by June 26, 2017, or offer a reasonable alternative proposal to obtain drinking water from some other source that will comply with the United States Environmental Protection Agency's (USEPA) January 21, 2016, Emergency Administrative Order (Order) and the state and federal Safe Drinking Water Acts (SDWA), the MDEQ has requested under MCL §325.1022 of the Michigan SDWA that the Michigan Department of Attorney General (MDAG) take legal action against the City to ensure that Flint maintain a safe and reliable drinking water source.

The City is currently paying \$14,100,000 per year to obtain water from the GLWA through a 72" line that was previously transferred to Genesee County. Due to its decision to transfer the line, Flint will lose use of the 72" line on October 1, 2017, absent approval of the Mayor's recommendation. No other alternate pipeline currently exists to supply GLWA water to Flint.

Building a separate pipeline would cost an estimated \$16,100,000 and would need to be completed by October 1, 2017. Failure to complete such an alternative line could result in a conflict with the delivery of treated water by the Genesee County Drain Commission to its customers and would likely result in litigation and the potential for damage claims against the City.

Mr. Kerry L. Nelson
The Honorable Karen Williams Weaver
Page 2
June 15, 2017

If Flint were able to build a separate pipeline to obtain GLWA water by October 1, 2017, not only will it have to continue to pay \$14,100,000 per year for that water, but it will be obligated to pay \$7,000,000 per year in bond debt associated with the cost of building the Karegnondi Water Authority (KWA) pipeline and at least \$1,100,000 per year for KWA administrative costs and backup water from Genesee County.

Under the USEPA's Order, Flint cannot change water sources without extensive testing and planning that must be approved by the USEPA. Moreover, roughly \$58,800,000 to \$67,900,000 in improvements to the water treatment plant will be required to operate it on a long-term basis. In addition to these costs, such improvements will take approximately 3.5 years to complete.

It should also be noted that the water distribution system in Flint has not been properly maintained or improved for a significant number of years. As a result of that neglect, extensive repairs are currently required. If the approximately \$60,000,000 spent on the water treatment plant is not available for those repairs, Flint will need to find those resources elsewhere or be forced to leave the system in significant disrepair with attendant health and safety risks.

As a result, if the City Council fails to approve the Mayor's recommendation until Flint can obtain USEPA approval to change to any other water source proposed by the City Council and improvements are completed at the water treatment plant, Flint will have to increase water rates significantly or otherwise supplement the water fund to cover the combined GLWA and KWA costs. Even at that higher rate, if collection rates do not improve, it is projected that by June 2018 the City's water fund will not be sustainable. Depletion of the water fund will limit, if not prevent, any further monies from being spent on necessary improvements to the water treatment plant and distribution system.

Because the City does not have qualified staff to operate the water treatment plant or sufficient funding available to make necessary improvements to maintain and operate the water treatment plant and distribution system, any attempt by Flint to switch to a water source that would require operation of the water treatment plant will create a threat to public health. Under MCL §325.1015(1) of the Michigan SDWA, when necessary for the protection of public health, the MDEQ is required to notify the City of a need to make changes in its operations. The MDEQ has determined that the City Council's failure to approve the agreement with the GLWA and continued consideration of other options that may require operation of the water treatment plant places public health at risk.

In addition, under Paragraph 60 of the USEPA's Order, Flint cannot change water sources until it has submitted required plans to the MDEQ demonstrating that the City has the "technical, managerial and financial capacity to operate its PWS in compliance with SDWA and the NPDWRs and that necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition." Flint has not submitted the necessary plans to the MDEQ, and the MDEQ has concluded that the City does not have the necessary technical, managerial, and financial capacity to operate the water

Mr. Kerry L. Nelson
The Honorable Karen Williams Weaver
Page 3
June 15, 2017

treatment plant in compliance with the SDWA or to ensure a safe transition to a new water source. As a result, the MDEQ is notifying the City that it cannot change sources at this time and may not until the technical, managerial, and financial issues outlined in this letter are resolved.

Finally, under Paragraph 61 of the USEPA's Order, the City must demonstrate to the MDEQ and the State that it has the "necessary, capable and qualified personnel" required to ensure that its water treatment plant will comply with the SDWA. The City does not have such personnel at this time. Indeed, the City has recently informed us that their employee with the proper certification license (D-1) to serve as its Limited Treatment System operator-in-charge will resign effective June 23, 2017. If the City returns the water treatment plant to routine service relying upon surface water as its source, the classification of the treatment system would then be a Complete Treatment System, and the operator-in-charge would be required to hold an F-1 certification license. The City does not have an employee with an F-1 license. As a result, Flint cannot make any change to its water source that would require the operation of the water treatment plant until the certification issue is resolved.

As set forth above, any actions by the City Council that delay approval of the agreement with the GLWA, or any failure to establish a reasonable alternative proposal that complies with the USEPA's Order, will endanger public health and violate the SDWA and the USEPA's Order. As a result, we request that the City Council approve that agreement or make its new proposal at its earliest opportunity so the State and the City can continue to cooperatively work together for the benefit of Flint residents.

Please contact us immediately to advise if the City Council intends to approve the Mayor's recommendation or to make a new proposal that will be both reasonable and ensure timely compliance with the USEPA's Order. We look forward to receiving your prompt response to this letter.

Sincerely,



C. Heidi Grether
Director
517-284-6700

cc: Mr. Keith Creagh, Director, Michigan Department of Natural Resources
Mr. Robert Kaplan, Acting Regional Administrator, USEPA, Region 5
Mr. Richard Baird, Governor's Office
Mr. S. Peter Manning, MDAG
Mr. Richard S. Kuhl, MDAG
Ms. Amy Epkey, Environment Deputy Director, MDEQ

EXHIBIT

5

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

June 23, 2017

VIA EMAIL AND US MAIL

City of Flint
ATTN: City Administrator Sylvester Jones
1st Floor, City Hall
1101 South Saginaw Street
Flint, Michigan 48502

City of Flint Department of Law
ATTN: William Y. Kim
1101 S. Saginaw Street
Flint, Michigan 48502
wkim@cityofflint.com

Re: Notice of City of Flint's Violation of Settlement Agreement in
Concerned Pastors v Khouri

Dear Mr. Jones and Mr. Kim:

The information available to us indicates that the City Council has refused to approve the agreement negotiated by Mayor Weaver whereby Flint will enter into a contract with the Great Lakes Water Authority (GLWA) to purchase finished water. Any further delay by the City Council in approving that agreement or attempt to force a change in the water source will create an imminent and substantial endangerment to the public in violation of the United States Environmental Protection Agency's January 21, 2016 Emergency Administrative Order, the Settlement Agreement in *Concerned Pastors v Khouri*, and the state and federal versions of the Safe Drinking Water Act. Each of these violations provide an independent basis upon which the Michigan Department of Environmental Quality and the State of Michigan can act. The bases for our contention are more fully set forth in Director Grether's June 15, 2017 letter to City Council President Nelson and Mayor Weaver.

This letter constitutes written notice of the dispute and intent to file a motion to enforce the Settlement Agreement as required under Section XIII of the

Messrs. Jones and Kim

Page 2

June 23, 2017

Agreement. Please let us know your availability to meet and confer within the next fourteen (14) days regarding this dispute.

Sincerely,



Richard S. Kuhl
Assistant Attorney General
ENRA Division
(517) 373-7540

RSK/kaw

Enclosure: June 15, 2017 letter from Director Grether to City Council President Nelson and Mayor Weaver

cc: C. Heidi Grether, Director, MDEQ
Keith Creagh, Director, MDNR
Richard Baird, Governor's Office
Karen Williams Weaver, Mayor, City of Flint
Kerry L. Nelson, President, Flint City Council
S. Peter Manning, Division Chief, MDAG-ENRA
Eugene Driker, BSDD
Todd Mendel, BSDD
Dimple Chaudhary, NRDC
Sarah Tallman, NRDC
Michael Steinberg, ACLU



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GRETHNER
DIRECTOR

June 15, 2017

VIA E-MAIL

Mr. Kerry L. Nelson, President
Flint City Council
City Hall
1101 South Saginaw Street
Flint, Michigan 48502

The Honorable Karen Williams Weaver
Mayor of Flint
City Hall
1101 South Saginaw Street
Flint, Michigan 48502

Dear President Nelson and Mayor Weaver:

SUBJECT: Request that the Flint City Council Take Action to Approve the Agreement to Purchase Finished Water from the Great Lakes Water Authority

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Any further delay by the City Council in approving the Mayor's recommendation or a reasonable alternative will create an imminent and substantial endangerment to the public. As a result, if the City Council does not approve the Mayor's recommendation by June 26, 2017, or offer a reasonable alternative proposal to obtain drinking water from some other source that will comply with the United States Environmental Protection Agency's (USEPA) January 21, 2016, Emergency Administrative Order (Order) and the state and federal Safe Drinking Water Acts (SDWA), the MDEQ has requested under MCL §325.1022 of the Michigan SDWA that the Michigan Department of Attorney General (MDAG) take legal action against the City to ensure that Flint maintain a safe and reliable drinking water source.

The City is currently paying \$14,100,000 per year to obtain water from the GLWA through a 72" line that was previously transferred to Genesee County. Due to its decision to transfer the line, Flint will lose use of the 72" line on October 1, 2017, absent approval of the Mayor's recommendation. No other alternate pipeline currently exists to supply GLWA water to Flint.

Building a separate pipeline would cost an estimated \$16,100,000 and would need to be completed by October 1, 2017. Failure to complete such an alternative line could result in a conflict with the delivery of treated water by the Genesee County Drain Commission to its customers and would likely result in litigation and the potential for damage claims against the City.

Mr. Kerry L. Nelson
The Honorable Karen Williams Weaver
Page 2
June 15, 2017

If Flint were able to build a separate pipeline to obtain GLWA water by October 1, 2017, not only will it have to continue to pay \$14,100,000 per year for that water, but it will be obligated to pay \$7,000,000 per year in bond debt associated with the cost of building the Karegnondi Water Authority (KWA) pipeline and at least \$1,100,000 per year for KWA administrative costs and backup water from Genesee County.

Under the USEPA's Order, Flint cannot change water sources without extensive testing and planning that must be approved by the USEPA. Moreover, roughly \$58,800,000 to \$67,900,000 in improvements to the water treatment plant will be required to operate it on a long-term basis. In addition to these costs, such improvements will take approximately 3.5 years to complete.

It should also be noted that the water distribution system in Flint has not been properly maintained or improved for a significant number of years. As a result of that neglect, extensive repairs are currently required. If the approximately \$60,000,000 spent on the water treatment plant is not available for those repairs, Flint will need to find those resources elsewhere or be forced to leave the system in significant disrepair with attendant health and safety risks.

As a result, if the City Council fails to approve the Mayor's recommendation until Flint can obtain USEPA approval to change to any other water source proposed by the City Council and improvements are completed at the water treatment plant, Flint will have to increase water rates significantly or otherwise supplement the water fund to cover the combined GLWA and KWA costs. Even at that higher rate, if collection rates do not improve, it is projected that by June 2018 the City's water fund will not be sustainable. Depletion of the water fund will limit, if not prevent, any further monies from being spent on necessary improvements to the water treatment plant and distribution system.

Because the City does not have qualified staff to operate the water treatment plant or sufficient funding available to make necessary improvements to maintain and operate the water treatment plant and distribution system, any attempt by Flint to switch to a water source that would require operation of the water treatment plant will create a threat to public health. Under MCL §325.1015(1) of the Michigan SDWA, when necessary for the protection of public health, the MDEQ is required to notify the City of a need to make changes in its operations. The MDEQ has determined that the City Council's failure to approve the agreement with the GLWA and continued consideration of other options that may require operation of the water treatment plant places public health at risk.

In addition, under Paragraph 60 of the USEPA's Order, Flint cannot change water sources until it has submitted required plans to the MDEQ demonstrating that the City has the "technical, managerial and financial capacity to operate its PWS in compliance with SDWA and the NPDWRs and that necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition." Flint has not submitted the necessary plans to the MDEQ, and the MDEQ has concluded that the City does not have the necessary technical, managerial, and financial capacity to operate the water

Mr. Kerry L. Nelson
The Honorable Karen Williams Weaver
Page 3
June 15, 2017

treatment plant in compliance with the SDWA or to ensure a safe transition to a new water source. As a result, the MDEQ is notifying the City that it cannot change sources at this time and may not until the technical, managerial, and financial issues outlined in this letter are resolved.

Finally, under Paragraph 61 of the USEPA's Order, the City must demonstrate to the MDEQ and the State that it has the "necessary, capable and qualified personnel" required to ensure that its water treatment plant will comply with the SDWA. The City does not have such personnel at this time. Indeed, the City has recently informed us that their employee with the proper certification license (D-1) to serve as its Limited Treatment System operator-in-charge will resign effective June 23, 2017. If the City returns the water treatment plant to routine service relying upon surface water as its source, the classification of the treatment system would then be a Complete Treatment System, and the operator-in-charge would be required to hold an F-1 certification license. The City does not have an employee with an F-1 license. As a result, Flint cannot make any change to its water source that would require the operation of the water treatment plant until the certification issue is resolved.

As set forth above, any actions by the City Council that delay approval of the agreement with the GLWA, or any failure to establish a reasonable alternative proposal that complies with the USEPA's Order, will endanger public health and violate the SDWA and the USEPA's Order. As a result, we request that the City Council approve that agreement or make its new proposal at its earliest opportunity so the State and the City can continue to cooperatively work together for the benefit of Flint residents.

Please contact us immediately to advise if the City Council intends to approve the Mayor's recommendation or to make a new proposal that will be both reasonable and ensure timely compliance with the USEPA's Order. We look forward to receiving your prompt response to this letter.

Sincerely,



C. Heidi Grether
Director
517-284-6700

cc: Mr. Keith Creagh, Director, Michigan Department of Natural Resources
Mr. Robert Kaplan, Acting Regional Administrator, USEPA, Region 5
Mr. Richard Baird, Governor's Office
Mr. S. Peter Manning, MDAG
Mr. Richard S. Kuhl, MDAG
Ms. Amy Epkey, Environment Deputy Director, MDEQ

EXHIBIT

6

RESOLUTION NO.: _____

PRESENTED: _____

ADOPTED: _____

RESOLUTION TO APPROVE MASTER AGREEMENT BETWEEN THE CITY OF FLINT, DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF MICHIGAN, THE GENESEE COUNTY DRAIN COMMISSIONER THE GREAT LAKES WATER AUTHORITY AND THE KAREGNONDI WATER AUTHORITY

BY THE MAYOR:

The City of Flint ("City"), Department of Environmental Quality of the State of Michigan ("DEQ"), the Genesee County Drain Commissioner ("GCDC"), the Great Lakes Water Authority ("GLWA"), and the Karegnondi Water Authority ("KWA") have worked in collaboration for the purposes of effectuating the overall agreement described in the Statement of Principles for Long Term Water Delivery to the City of Flint ("Statement of Principles"), signed by the Parties and dated April 18, 2017 and implemented through the Master Agreement and the exhibits attached thereto and incorporated therein (collectively, referred to as the "Transaction Documents").

WHEREAS, the aforementioned parties have come to a collective agreement to enter into a partnership for the purpose of Flint receiving long term water source from GLWA to provide safe drinking water to the residents of the City, to relieve the City of its debt service payment obligations on the KWA bonds, obtain ownership of the 72-inch pipe and a backup water source in the event of an emergency.

WHEREAS, GLWA and City have agreed to a Water Service Contract ("Water Contract") regarding the long-term service of potable water to the City of Flint. GLWA shall sell and supply water to the City of Flint in accordance with the terms of the Water Contract for a period of thirty years from the effective date of the Water Contract. The Master Agreement along with the following exhibits comprising the Transaction Documents are attached:

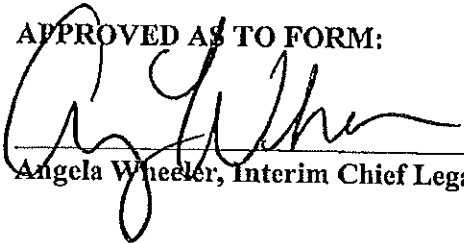
- | | | |
|-----------|---|--|
| Exhibit A | - | GLWA/Flint Water Contract |
| Exhibit B | - | GLWA/GCDC Finished and Backup Water Contract |
| Exhibit C | - | Baseline Trust and All Receipts Trust Agreement |
| Exhibit D | - | KWA/GLWA/Flint Three Party Agreement |
| Exhibit E | - | DEQ/GCDC Grant Agreement (City not a party) |
| Exhibit F | - | Contract for Deed, Quit Claim Deed for 72-inch pipe and Bill of Sale related to 72-inch pipe |
| Exhibit G | - | KWA/Flint Raw Water Contract Amendments (Exhibits to Three Party Agreement) |
| Exhibit H | - | Irrevocable License of Essential Water Mains and Raw Water Rights |

WHEREAS, Mayor Karen Weaver recommends that the Water Contract should be entered into in collaboration with the DEQ, GCDC, GLWA and KWA.

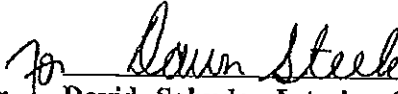
NOW THEREFORE BE IT RESOLVED that the Flint City Council approves the Master Agreement and the Exhibits attached to the Master Agreement to be executed by the City, inclusive of the Water Contract between the City and the GLWA; and

The Mayor and the City Clerk are authorized to execute and deliver the Transaction Documents to be executed by the City and to do all other things necessary to effectuate the execution and delivery of the Transaction Documents in accordance with the provisions of this Resolution.

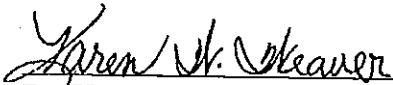
APPROVED AS TO FORM:


Angela Wheeler, Interim Chief Legal Officer

APPROVED AS TO FINANCE:


David Sabuda, Interim Chief Financial Officer

FOR THE CITY OF FLINT:


Dr. Karen W. Weaver, Mayor

APPROVED BY CITY COUNCIL:

Kerry Nelson, City Council President

**RECEIVERSHIP TRANSITION
ADVISORY BOARD:**

Master Agreement

This Master Agreement is made as of _____ June 2017, between and among the City of Flint ("the City"), the Department of Environmental Quality of the State of Michigan ("DEQ"), the Genesee County Drain Commissioner ("GCDC"), the Great Lakes Water Authority ("GLWA"), and the Karegnondi Water Authority ("KWA") (together, the "Parties", or each singly a "Party"), for the purposes of effectuating the overall agreement described in the Statement of Principles for Long Term Water Delivery to the City of Flint ("Statement of Principles"), signed by the Parties and dated 18 April 2017.

- A. **Incorporation.** This Master Agreement fully incorporates the agreements that are Exhibits to this Master Agreement as listed in Paragraph ____, and such Exhibits therefore shall be considered part of this Master Agreement unless clearly stated otherwise in this Master Agreement.
- B. **Third Party Beneficiaries.** The parties acknowledge and agree that all Parties benefit from the interlocking set of transactions that together encompass this Master Agreement, and that all promises by any single Party as part of this Master Agreement (including those made in the Exhibits to this Master Agreement) are made to the benefit of all Parties to this Master Agreement. The Parties acknowledge and agree that each Party, and each of its respective successors and assigns, shall have all the rights of a third-party beneficiary in respect to this Master Agreement and shall be entitled to rely upon and directly enforce its provisions. Such rights vest immediately upon execution of this Master Agreement by all Parties. Nothing in this clause shall be read to allow enforcement of third party beneficiary rights if such enforcement would abridge, impair, or destroy the rights which the promisee of a promise made for the benefit of another person or would otherwise have as a result of such promise. Nothing in this clause shall be read to create a third party beneficiary right or to allow enforcement of third party beneficiary rights by an individual or entity that is not a Party, successor to a Party, or assignee of a Party to this Master Agreement. Notwithstanding anything herein to the contrary, the foregoing provisions of this clause shall only apply to Exhibits A, B, C, and D, and shall not apply to any other Exhibits.
- C. **Amendment.** This Master Agreement may not be amended without the consent of all Parties. Any Parties to agreements that are Exhibits to this Master Agreement, if they wish to amend such as Exhibit, must give no less than 45 days' written notice to all Parties. If requested by any Party, the signatories to the affected Exhibit must meet and confer with the requesting Party regarding a proposed amendment within 15 days of receiving such a request. Amendment of any Exhibit may not be done without the consent of all Parties to this Master Agreement, except that a Party that fails to request an opportunity to meet and confer within 15 days of receiving notice of a proposed amendment shall be deemed to have consented to such amendment. Consent to an amendment by any Party shall not be unreasonably withheld.

Notwithstanding anything herein to the contrary, the foregoing provisions of this clause shall only apply to Exhibits A, B, C, and D, and shall not apply to any other Exhibits.

- D. **Assignment.** This Agreement shall not be assigned, in whole or in part, by any Party without the prior written consent of all of the other Parties provided. Consent to an assignment by any Party shall not be unreasonably withheld. Notwithstanding anything in this Paragraph ____, if an Exhibit to this Master Agreement specifically provides for assignment of such exhibit without consent, nothing in this paragraph shall be read to require consent by any Party to such assignment, and such assignment shall be sufficient to assign all rights under this Master Agreement, including third-party beneficiary rights.
- E. **Terms and Termination.** This Master Agreement shall become effective upon execution by all of the Parties and shall remain in effect until (*insert date*). The Master Agreement may only be terminated prior to the end of the term with the written consent of all Parties.
- F. **Authority to Enter into this Master Agreement.** Each of the Parties hereby represents and warrants that it is duly authorized and empowered to execute, deliver, and perform this Master Agreement and that such action does not conflict with, or violate, any provision of law, regulation, rule, policy, contract, or other instrument to which it is a party or by which it is bound and that this Master Agreement constitutes a valid and binding obligation of it enforceable in accordance with its terms.

The City is a home rule city, organized under Act 279 of 1909, as amended ("Act 279") with full power and authority under Act 279 to own and operate its water supply system, and execute, deliver and perform the agreements contemplated hereby. Each of GLWA and KWA are municipal authorities, organized under Act 233 of 1955, as amended ("Act 233") with full power and authority under Act 233 and Act 94 of 1933, as amended ("Act 94") to own, operate and finance their respective water supply systems, and execute, deliver and perform agreements contemplated hereby. GCDL is a Michigan county agency organized pursuant to Act 342 of 1939, as amended ("Act 342"), to own and operate its water supply system, and execute, deliver and perform the agreements contemplated hereby.

- G. **Counterparts.** This Master Agreement may be executed in counter parts.
- H. **Severability.** If any provision of this Master Agreement or its application to any Party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law. Similarly, if any provision of any Exhibit to this Master Agreement or its application to any signatory or circumstance shall to any extent be invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

I. **Exhibits.** The following are the Exhibits to this Master Agreement (*to be updated as agreements are finalized*):

- Exhibit A - GLWA/Flint Water Contract
- Exhibit B - GLWA/GCDC Finished and Backup Water Contract
- Exhibit C - Baseline Trust and All Receipts Trust Agreement
- Exhibit D - KWA/GLWA/Flint Three Party Agreement
- Exhibit E - DEQ/GCDC Grant Agreement
- Exhibit F - Contract for Deed and Quit Claim Deed for 72-inch pipe and Bill of Sale related to 72-inch pipe
- Exhibit G - KWA/Flint Raw Water Contract Amendments (Exhibits to Three Party Agreement)
- Exhibit H - Irrevocable of Essential Water Mains and Raw Water Rights

(Signatures to Follow on Separate Page)

Agreed to by:

City of Flint

By: Karen Weaver
Its: Mayor

Date

**Department of Environmental Quality
State of Michigan**

By: Heidi C. Grether
Its: Director

Date

**Genesee County Drain Commission –
Division of Water & Waste Services**

By: Jeffrey Wright
Its: Drain Commissioner

Date

Great Lakes Water Authority

By: Sue F. McCormick
Its: CEO

Date

Karegnondi Water Authority

By: Jeffrey Wright
Its: CEO

Date

Exhibit A

APPROVAL COPY

WATER SERVICE CONTRACT
BETWEEN
GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY
AND
CITY OF FLINT

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**WATER SERVICE CONTRACT
BETWEEN
GREAT LAKES WATER AUTHORITY
AND
CITY OF FLINT**

This Water Service Contract ("Contract") is made between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to the provisions of Act 233, Public Acts of Michigan, 1955, as amended, with its principal place of business located at 735 Randolph, Detroit, Michigan 48226 ("GLWA"), and the City of Flint, a Michigan municipal corporation ("Customer"). GLWA and Customer may be referred to individually as "Party" or collectively as the "Parties."

Recitals

The purpose of this Contract is to provide for the long-term service of potable water to Customer; and

On September 9, 2014, the State of Michigan, the Counties of Macomb, Oakland, and Wayne, and the City of Detroit entered into a Memorandum of Understanding ("MOU") regarding the formation of the GLWA; and

Page 4-5 of the MOU states that for the water and sewer systems operated by GLWA, "Each system, as a whole, is assumed to experience revenue requirement increases of not more than 4% for each of the first ten years under Authority management. The rates and percentage increases for different customers may vary in order to meet their specific revenue requirements"; and

Page 3 of the MOU further provides for and GLWA has established a Water Residential Assistance Program ("WRAP") funded annually in "an amount equal to .5% of the base budgeted operating revenues"; and

On June 12, 2015, GLWA and the City of Detroit entered into a Regional Water Supply System Lease (the "Lease") for the purpose of leasing the public water supply system ("System") owned by the City of Detroit which System, under the terms and conditions of the Lease, will be operated and maintained by the GLWA for a minimum term of 40 years; and

Under the terms and conditions of the Lease, all wholesale service functions previously conducted by the City of Detroit are now conducted by GLWA; and

Customer seeks to obtain water services from GLWA, which GLWA is willing and able to provide; and

The Parties have been advised that the Michigan Department of Environmental Quality ("MDEQ") will require Customer to maintain a redundant source of water supply in addition to water supplied by GLWA for use in case of emergency; and

GCDC is willing and able to provide GLWA with a portion of the required redundant source of water supply for Customer; and

As a part of the consideration for this Contract, Customer will be eligible to participate in GLWA's WRAP consistent with the terms of the WRAP as may be amended from time-to-time; and

GLWA and Customer will operate their respective water systems in a manner which benefits all GLWA customers; and

The City of Detroit implemented and GLWA continues a voluntary partnering effort with its wholesale water customers, of which the Technical Advisory Committee is a central part, and which is intended to assist GLWA in data gathering, alternative evaluations and recommendations, achieving full disclosure of charges, identifying true cost of service principles to guide revenue collection, and to provide assistance with a cohesive planning effort for GLWA's water service area;

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

**Article 1.
Definitions**

1.01 The following words and expressions, or pronouns used in their stead, shall be construed as follows:

"Adjusted Prevailing Water Charge" shall have the meaning ascribed in Article 3 herein.

"Allocation Flow Rate" shall mean the value that is established as a result of a breach of Section 5.03 herein and which value shall replace the contractual Maximum Flow Rate in the charge calculation process in the event that Section 5.04(C) herein is applied by GLWA.

"Annual Volume" shall mean the actual volume of water used by Customer for the period of July 1st to June 30th as measured on bills issued from August 1st through July 31st.

"Board" shall mean the GLWA Board of Directors.

"Contract" shall mean each of the various provisions and parts of this document, including all attached Exhibits and any amendments thereto, as may be executed and approved by Customer's governing body and the Board.

"Contract Term" shall have the meaning ascribed in Article 2 herein.

"Customer" shall mean the Party that enters into a contract with GLWA by way of this Contract, whether an authority, city, township, village or other municipal corporation recognized by the State of Michigan.

"Customer Maximum Day Demand" shall mean Customer's recorded water usage on the GLWA Maximum Day. Customer Maximum Day Demand shall, in conjunction with Customer Peak Hour Demand, be a component of its Maximum Flow Rate.

"Customer Peak Hour Demand" shall mean Customer's recorded water usage during the GLWA Peak Hour. Customer Peak Hour Demand, in conjunction with Customer Maximum Day Demand, shall be a component of its Maximum Flow Rate.

"Early Termination Costs" shall have the meaning ascribed in Article 3 herein.

"Filling Schedule" shall have the meaning ascribed in Article 22 herein.

"GCDC" shall mean Genesee County Drain Commissioner, a county agency of Genesee County under the authority granted by Act 342, Public Acts of Michigan, 1939, as amended, including its successors in interest.

"GLWA" shall mean the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to the provisions of Act 233, Public Acts of Michigan, 1955, as amended, governed by its Board of Directors and its day-to-day operations conducted by its Chief Executive Officer, including its successors in interest.

"GLWA Maximum Day" shall mean the maximum reported water production day for the System during any twenty-four hour period as measured from 12:00 a.m. Eastern Standard Time in any given calendar year, as determined by GLWA in reviewing water production and storage reports.

"GLWA Peak Hour" shall mean the hour during the GLWA Maximum Day in which the most water is delivered to the System, measured from top-of-the-hour to top-of-the-hour (e.g. 7:00 a.m. to 8:00 a.m.), and as determined by GLWA in reviewing water production and pumping reports. In calculating the GLWA Peak Hour, the time period from 11:00 PM to 5:00 AM Eastern Standard Time (EST) shall not be considered provided, however, that if Customer has an approved Filling Schedule, the time period specified in the Filling Schedule shall supersede the time period of 11:00 PM to 5:00 AM EST.

"KWA" shall mean the Karegnondi Water Authority, a Michigan municipal authority organized pursuant to Act 233, Public Acts of Michigan, 1955, as amended, including its successors in interest.

"KWA Refunding Bonds" means any bonds issued by KWA pursuant to the KWA Financing Contract (including any future supplement or amendment thereto) to refund, directly or indirectly through a series of refundings, all or any portion of the KWA System Bonds.

"KWA System Bonds" means, collectively, the Series 2014 Bonds and the Series 2016 Bonds.

"New KWA Bonds" means any bonds issued after the Effective Date (as defined in Section 2.01) by KWA for which Customer has agreed or agrees, by contract or otherwise, to pay

all or a portion of the debt service on such bonds. For the avoidance of doubt, "New KWA Bonds" does not include the KWA System Bonds or the KWA Refunding Bonds.

"Maximum Flow Rate" shall mean the aggregate amount of water usage that Customer commits not to exceed, as determined by the Customer Maximum Day Demand and the Customer Peak Hour Demand, collectively.

"Meter Facilities" shall mean a location in which a water meter is housed including, without limitation, meter pits and meter vaults.

"MGD" shall mean million gallons per day.

"Minimum Annual Volume" shall mean fifty percent of Customer's Projected Annual Volume.

"Notices" shall mean all notices, consents, approvals, requests and other communications required to be given under the terms of this Contract.

"Pressure Problem" shall have the meaning ascribed in Article 5 herein.

"Pressure Range" shall have the meaning ascribed in Article 5 herein.

"Projected Annual Volume" shall mean the projected annual water sales to Customer as set forth in Exhibit B.

"Series 2014 Bonds" means the \$220,500,000 original principal amount Water Supply System Bonds (Karegnondi Water Pipeline), Series 2014A, issued by KWA pursuant to the KWA Financing Contract.

"Series 2016 Bonds" means the \$74,370,000 original principal amount Water Supply System Bonds (Karegnondi Water Pipeline), Series 2016, issued by KWA pursuant to the KWA Financing Contract.

"Service Area" shall mean the mutually agreed upon area where Customer is permitted to distribute water received from GLWA under the terms of this Contract which (a) may be entirely within the corporate limits of Customer or may exceed the corporate limits of Customer and (b) which may or may not include the entire geographical area within the Customer's corporate limits.

"System" shall mean the public water works system owned by the City of Detroit and leased, operated and maintained by GLWA and any improvements, additions and/or changes to the System made by GLWA on or after January 1, 2016, which shall be owned, operated and maintained by GLWA.

"Technical Advisory Committee" shall mean the committee consisting of representatives of GLWA, wholesale water customers of GLWA and their respective representatives, and shall include its successor or replacement if altered or discontinued. The Technical

Advisory Committee or its successor shall remain in existence for a minimum term of January 1, 2008 until December 31, 2038 unless the committee determines otherwise.

"Water Distribution Points" shall have the meaning ascribed in Article 4 herein.

Article 2. Contract Term

- 2.01 Term. GLWA shall sell and supply water to Customer from the System in accordance with the terms of this Contract for a period of thirty years from the effective date of this Contract and any ten-year renewal terms (collectively the "Contract Term"), subject to Article 3 herein. The effective date of this Contract shall be the date that this Contract is approved by Customer's governing body or the Board whichever is later ("Effective Date"). This Contract replaces and supersedes any prior water service contracts between the Parties and any prior water service contracts between the City of Detroit and Customer.
- 2.02 Renewal. In addition to the terms of Section 26.01(A), this Contract shall automatically renew at the conclusion of the thirty-year term for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the twenty-fifth year of the thirty-year term stating its intent not to renew this Contract. Thereafter, this Contract shall automatically renew every ten years for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the fifth year of the then current ten-year term stating its intent not to renew this Contract. The automatic renewals of this Contract shall not preclude a review of its terms and the Parties are encouraged to reaffirm or amend its terms as necessary. The Parties may, in writing, mutually agree upon a longer renewal term.
- 2.03 Notification of Renewal. GLWA shall notify Customer of its first Contract renewal option during the twenty-fifth year of the thirty-year term; provided, however, that GLWA's failure to so notify Customer shall not obviate Customer's obligations as set forth in Section 2.02.

Article 3. Early Termination Costs

- 3.01 Early Termination Costs. In addition to any other remedies provided for by law or by the terms of this Contract, Customer shall be liable to GLWA for the payment of any costs incurred by GLWA related to providing water to Customer in the event Customer terminates this Contract before the conclusion of a Contract Term ("Early Termination Costs"), unless Customer terminates this Contract for cause in accordance with Article 10; provided, however, that payment of such Early Termination Costs by Customer shall not entitle Customer to receive water service from GLWA.
- 3.02 Calculation of Costs. Payment of Early Termination Costs will be calculated by applying the Adjusted Prevailing Water Charge to the Minimum Annual Volume requirements for the remainder of the Contract Term. The Adjusted Prevailing Water Charge shall be the charge assessed by GLWA to Customer as of Customer's effective termination date,

adjusted annually to reflect projected inflationary increases utilizing a locally based wholesale price index. The Parties may agree upon another standardized price index. The Board may seek a recommendation from the Technical Advisory Committee on the amount of the Early Termination Costs.

- 3.03 Specifically Constructed Facilities. If GLWA has constructed or the City of Detroit previously constructed facilities specifically for the benefit of Customer, additional costs may be included in the calculation of the Early Termination Costs, provided that any such facilities shall be identified in a written agreement between GLWA and Customer at or near the time of construction. Those facilities, as of the Effective Date, which GLWA considers to have been constructed specifically for the benefit of Customer are indicated on Exhibit A.
- 3.04 Formation of Water Authority. Customer may join with another authority, city, township, village or other municipal corporation recognized by the State of Michigan to form a water authority for the sole purpose of collectively contracting for water service from GLWA. The exercise of this right shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new water service contract by Customer's governing body and the Board.
- 3.05 Customer Annexation or Consolidation. In the event the territory of Customer is annexed or consolidated with another Michigan municipal corporation and if said municipal corporation is a current customer of GLWA, then such an annexation or consolidation shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new or amended water service contract with the annexing or consolidating municipal corporation.

Article 4.

Service Area; License to Use Essential Water Mains

- 4.01 Delivery Location. Water shall be delivered by GLWA to Customer at the location(s) identified in Exhibit A (collectively, the "Water Distribution Points"), and at other locations as may be mutually agreed upon in writing by GLWA and Customer.
- 4.02 Limit of Responsibility. GLWA shall have no responsibility for distributing, operating, repairing, replacing and maintaining any portions of Customer's water supply system downstream of the Water Distribution Points shown in Exhibit A, provided, however, that this Section 4.02 does not prevent the application of the provisions of Section 11.02 herein.
- 4.03 GLWA Responsibility. GLWA owns or leases, and is responsible for operating and maintaining all parts of the System upstream from Customer's Water Distribution Points. Should GLWA fail to maintain the Meter Facilities and/or any GLWA owned or leased equipment within the Meter Facilities, Customer shall provide written notice to GLWA which describes the objectionable condition of the Meter Facility and/or the equipment within, and its intent to take reasonable steps to maintain the condition and charge the reasonable cost of doing so to GLWA. Upon receipt of the notice and subject to Section 11.01, GLWA shall have thirty calendar days to repair the condition specified in the notice, unless the nature of the repair or a force majeure event prevents the repair within the thirty-

day period. If GLWA has not repaired the condition at the conclusion of the thirty-day period and has not provided a written explanation to Customer explaining the reason for the delay (e.g. necessary parts are on order or occurrence of a force majeure event specified in Section 11.01), then Customer may take reasonable steps to maintain the specified condition and charge the reasonable cost of doing so to GLWA.

- A. With reasonable prior written notice to GLWA, and occurring not more than once in any three (3) year period, Customer may at its own expense have an expert acceptable to GLWA inspect and verify the accuracy of GLWA meter(s). GLWA assumes no liability for any disruption of the water supply to Customer associated with such an inspection.

4.04 Extension of Service Area. Customer's distribution of water supplied by GLWA shall be limited to the Service Area stated in Exhibit A. The Parties agree that situations may arise in which Customer desires to extend its Service Area, either temporarily or permanently, beyond its corporate limits. Should such a situation arise, Customer shall provide written notice to GLWA explaining the nature, duration and extent of the requested Service Area extension. GLWA shall have the option, which it may exercise at any time, of requiring a written amendment to this Contract to accommodate the change in Service Area. Should GLWA determine that an immediate amendment is required, the Parties shall, within thirty calendar days of Customer's request, meet to negotiate mutually agreeable terms for the extension of the Service Area. GLWA shall not unreasonably deny a request to extend the Service Area.

4.05 Change or Addition of Water Distribution Points. Water Distribution Points may be added or changed only by the express written agreement of GLWA and Customer and shall be embodied in a written amendment to this Contract.

4.06 Supplier. Except as provided in Article 17 herein, GLWA shall be the sole supplier of public potable water to Customer's Service Area. GLWA may supply such potable water either through the System or it may purchase the potable water from other water utilities, including without limitation the GCDC.

4.07 License of 72 Inch Main. The 72 inch water main extending west from the GLWA Water Distribution Point located at the intersection of Baxter and Potter Roads in Genesee County to the Flint city limits ("72 Inch Main"), as depicted in Exhibit A, shall at all times remain under the ownership or legal control of Customer in order for GLWA to supply potable water in normal and emergency conditions to the Service Area, other GLWA customers, and GCDC and its customers. No later than May 1, 2018, Customer shall operate and maintain in good working condition the 72 Inch Main provided, however, that if Customer thereafter discontinues its use of the Licensed Main (as defined in Section 4.07 B) for delivery of Customer's primary or secondary water source, which discontinuance is otherwise in compliance with the terms of this Contract, then GLWA shall assume responsibility to operate and maintain the Licensed Main in good working condition.

- A. In consideration of the mutual promises and undertakings of this Contract, Customer has granted and hereby grants to GLWA at no additional charge an exclusive, transferrable, non-revocable license, for a term coincident with the term

of this Contract and any renewals thereof, to use the 72 Inch Main to supply potable water GLWA receives from GCDC in normal or emergency conditions to the Service Area and other GLWA customers. GLWA agrees that the license granted herein does not transfer title to the 72 Inch Main to GLWA nor does it confer any rights in GLWA to tap new connections into the 72 Inch Main. Customer may not terminate this license at any time prior to the expiration of this Contract, and any renewals thereof, and its exclusive remedies for breach of this Contract are damages and equitable relief. This license shall survive any sale or other transfer of legal control of the 72 Inch Main until the expiration of this Contract, and any renewals thereof.

- B. In consideration of the mutual promises and undertakings of this Contract, Customer has granted and hereby grants to GLWA at no additional charge an exclusive, transferrable, perpetual, non-revocable license to use that portion of the 72 Inch Main extending approximately 2500 feet west from the GLWA Water Distribution Point located at the intersection of Baxter and Potter Roads in Genesee County to the water transmission main owned by GCDC and supplying its Henderson Road Pump Station (the "Licensed Main"), as depicted on Exhibit A, to supply potable water in normal and emergency conditions to the Service Area, other GLWA customers, and GCDC and its customers. GLWA agrees that the license granted herein does not transfer title to the Licensed Main to GLWA nor does it confer any rights in GLWA to tap new connections into the Licensed Main to serve other GLWA customers without Customer's written approval, which approval shall not be unreasonably withheld. Customer may not terminate this license and its exclusive remedies for breach of this Contract are damages and equitable relief. This license for the Licensed Main shall survive the termination of this Contract and any sale or other transfer of legal control of the 72 Inch Main and/or the Licensed Main.

- 4.08 License of Dort Highway Main. Customer shall complete construction of the Dort Highway potable water main ("Dort Highway Main"), depicted in Exhibit A, as soon as is practicable but in no case later than December 31, 2019. The Dort Highway Main shall at all times remain under the ownership or legal control of Customer in order for GLWA to supply potable water in normal and emergency conditions to the Service Area and other GLWA customers. Customer shall at all times operate and maintain in good working condition the Dort Highway Main.

- A. In consideration of the mutual promises and undertakings of this Contract, Customer grants to GLWA at no additional charge an exclusive, transferrable, non-revocable license for a term coincident with the term of this Contract and any renewals thereof to use the Dort Highway Main to supply potable water GLWA receives from GCDC in normal or emergency conditions to the Service Area and other GLWA customers. GLWA agrees that the license granted herein does not transfer title to the Dort Highway Main to GLWA nor does it confer any rights in GLWA to tap new connections into the Dort Highway Main. Customer may not terminate this license at any time prior to the expiration of this Contract, and any renewals thereof, and its exclusive remedies for breach are damages and equitable

relief. This license shall survive any sale or other transfer of legal control of the Dort Highway Main until the expiration of this Contract, and any renewals thereof.

4.09 Ownership Change. If at any time the 72 Inch Main, the Licensed Main or the Dort Highway Main is sold or legal control thereof is otherwise transferred to any other entity without GLWA's consent, which consent will not be unreasonably withheld, then:

- A. GLWA will have no obligation to provide water to Customer under the terms of this Contract unless and until ownership or legal control is restored to Customer; and
- B. GLWA will have the right, upon written notice to Customer, to terminate this Contract coincident with the change in ownership or legal control; and
- C. GLWA will have no liability whatsoever to Customer or any third party for any claim for damages under any legal theory or cause of action should GLWA cease providing Customer with water as a result of the application of this Section 4.09.

4.10 Raw Water Main. The Parties acknowledge the existence of a raw (non-potable) water main owned by KWA which, as of the Effective Date, extends from the GCDC water treatment plant and terminates at a KWA meter pit in the proximity of Center Road near Pierson Road ("Raw Water Main"), as depicted in Exhibit A. If GLWA desires to connect to the Raw Water Main at a future date, the Parties shall meet and endeavor to determine a mutually agreeable approach on how to utilize such main and assess the costs and charges associated therewith. If the Parties are unable to reach mutual agreement on the matter, then GLWA may connect to the Raw Water Main in its sole and reasonable discretion.

Article 5.

Pressure; Maximum Flow Rate; Minimum Annual Volume

5.01 Pressure Range. GLWA shall use its best efforts to deliver water at the Water Distribution Points at a pressure range ("Pressure Range") adequate to meet the reasonable requirements of Customer. For purposes of evaluating this effort, water pressure shall be determined by reviewing the average hourly pressure measured from top-of-the-hour to top-of-the-hour (e.g. 7:00 a.m. to 8:00 a.m.). The Pressure Range to be provided by GLWA to Customer's Water Distribution Points is specified in Exhibit B. The location at which the water pressure will be measured shall be specified in Exhibit A and identified as point "P". A Pressure Range will not be established for water meters that are not located on a GLWA transmission main, or which are located on a GLWA transmission main and are downstream of and subject to the flow demands of a water meter for another GLWA customer.

5.02 Remedy for Non-Compliance with Pressure Range. If the water pressure at Customer's Water Distribution Points is above or below the Pressure Range, at Customer's request the Parties shall meet within thirty calendar days to discuss the reasons for the non-compliance and, if agreed necessary, develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the meeting, or as otherwise agreed. The

corrective action plan shall include a timetable for resolution of the non-compliance issue(s).

- A. If it is determined that another customer's exceedance of the rates of flow established by that customer's Maximum Flow Rate caused or contributed to GLWA's inability to meet its Pressure Range agreement with Customer, then the corrective action plan shall provide for the resolution of the issue.
- B. If Customer is exceeding the rates of flow established by its Maximum Flow Rate on a day other than the GLWA Maximum Day at the time Customer experiences a variation from the Pressure Range, then GLWA shall be relieved from its obligation to provide water to Customer within the Pressure Range for that period of time during which Customer is exceeding the rates of flow established by its Maximum Flow Rate.

5.03 Maximum Flow Rate. Customer's Maximum Flow Rate is specified in Exhibit B. Customer shall not exceed the Maximum Flow Rate specified in Exhibit B, as measured in million gallons on the GLWA Maximum Day and during the GLWA Peak Hour.

- A. GLWA shall notify all customers in writing on or before October 1 of each calendar year if Customer or any other wholesale customer is alleged to have exceeded its Maximum Flow Rate in a given calendar year. The notice shall state the day and/or hour that Customer or any other wholesale water customer is alleged to have exceeded its Maximum Flow Rate.
- B. If Customer is alleged to be in breach of its obligations under this Section 5.03, the Parties shall endeavor to meet before November 1 of the current calendar year, or as soon as practicable, for the purposes of validating the breach, reviewing and analyzing the causes, and to negotiate a possible remedy pursuant to Sections 5.04 and 5.05 herein.
- C. The Technical Advisory Committee's Analytical Work Group, or its successor shall review any alleged breach of this Section 5.03.
 - i. The Analytical Work Group shall meet once, at a minimum, on or before November 1 of each calendar year to review the alleged breaches, if any, and may thereafter schedule subsequent meetings as necessary to conclude its review.
 - ii. GLWA will seek a recommendation from the Analytical Work Group on (1) an Allocation Flow Rate, if any, and/or (2) concurrence with the remedy tentatively negotiated between Customer and GLWA, if any. Customer and GLWA shall have the right to present any information related to the alleged breach a Party deems necessary to the deliberations.
 - iii. Any recommendation submitted by the Analytical Work Group shall be received by GLWA on or before December 1 of each calendar year.

5.04 Remedy for Non-Compliance with Maximum Flow Rate. GLWA has no obligation to supply to Customer more than the Maximum Flow Rate. If Customer exceeds its Maximum Flow Rate on the GLWA Maximum Day or during the GLWA Peak Hour, GLWA and Customer may, as needed, take one or more of the following actions set forth in this Section 5.04. The applicability of any particular action shall be evaluated by GLWA on a case-by-case basis.

- A. GLWA may require that Customer take all reasonable steps to reduce its consumption to the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation.
- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the charge associated with the new Maximum Flow Rate in the subsequent fiscal year.
- C. For charge-making and cost allocation purposes only, GLWA may recalculate Customer's charge for the current and/or subsequent fiscal years utilizing a revised cost allocation formula as follows:
 - i. GLWA shall, as set forth below, establish an Allocation Flow Rate to replace the contractual Maximum Flow Rate in the charge calculation process.
 - ii. The Allocation Flow Rate shall be applied from no earlier than the first exceedance date forward.
 - iii. The Allocation Flow Rate will be at least equal to the flow rate demonstrated by Customer on the GLWA Maximum Day, and may be higher than the actual flow rate demonstrated by Customer.
 - iv. Pursuant to Section 5.03(C), if GLWA receives a recommendation on the Allocation Flow Rate to be applied from the Analytical Work Group and the recommendation is higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then GLWA shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on the GLWA Maximum Day and no higher than the recommendation provided by the Analytical Work Group.
 - v. If no recommendation on the Allocation Flow Rate to be applied is received by GLWA, or if GLWA receives a recommendation and the recommendation is less than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then GLWA shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on the GLWA Maximum Day and no higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate.

- vi. The Allocation Flow Rate will continue to be applied to each subsequent year's charge calculation process until the Maximum Flow Rate is renegotiated.
- vii. If a charge has been approved for the subsequent fiscal year (July 1st to June 30th) but the charge has not yet been applied, GLWA may modify Customer's charge for that subsequent fiscal year to account for an exceedance of its Maximum Flow Rate.
- viii. If GLWA and/or the City of Detroit has built capital facilities based upon Customer's negotiated Maximum Flow Rate and Customer consistently exceeds its Maximum Flow Rate, then GLWA may re-calculate the amount of Customer's percentage of the capital cost of such facilities.

5.05 Procedure for Non-Compliance with Maximum Flow Rate. In addition to the remedies specified in Section 5.04, if Customer has failed in its obligations under Section 5.03, the Parties shall meet to discuss the reasons for the non-compliance and if agreed necessary, develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed. Any corrective action plan required under this Section 5.05 shall include a timetable for resolution of the non-compliance issue(s).

- A. If the Parties determine that a corrective action plan is not required and an incident of non-compliance occurs in the subsequent calendar year, the Parties shall meet to develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed.
- B. In the event the reason for Customer's non-compliance under Section 5.03 is due to a Customer water main break, fire or meter calibration performed by GLWA, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified in Section 5.04 should apply.

5.06 Minimum Annual Volume. Customer shall purchase from GLWA not less than the Minimum Annual Volume of water specified in Exhibit B. If Customer's Annual Volume is less than the Minimum Annual Volume, Customer shall pay to GLWA an amount computed by applying the current charge to the Minimum Annual Volume less any amounts already billed to the Customer by GLWA.

5.07 Periodic Review. For Customer and System planning purposes and, with regard to the Minimum Annual Volume, enforcement of the provisions of Article 3, a Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume shall be established by mutual agreement for the Contract Term. A contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume shall be established by mutual agreement for the first two years of the Contract Term. Not later than the second year of the Contract Term, GLWA and Customer shall negotiate a contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume for the succeeding three years of the Contract

Term. Not later than the fifth year of the Contract Term, and every five years thereafter, GLWA and Customer shall negotiate a contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume for the succeeding five years of the Contract Term. If the Parties do not negotiate new or revised Maximum Flow Rates, Pressure Ranges, Projected Annual Volumes and Minimum Annual Volumes according to the aforementioned schedule, then the figures established for planning purposes (as shown in italicized type in Exhibit B) shall become contractually binding for the then-current three or five year term.

5.08 Remedy for Excessive Rate(s) of Flow Causing Pressure Problem(s). Customer acknowledges that Customer's rates of flow may cause and/or contribute to GLWA's inability to meet its Pressure Range agreements with Customer and/or GLWA's other customers (hereinafter, "Pressure Problem"). GLWA may review or monitor Customer's daily rates of flow if a Pressure Problem occurs and GLWA's Pressure Range agreement with Customer and/or another customer of GLWA is alleged to have been breached. The approximate rate of flow by individual meter location used to establish the Pressure Range and Maximum Flow Rate is specified in Exhibit B. If a Pressure Problem occurs, the Parties shall meet to discuss the reasons for the Pressure Problem and develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the Pressure Problem, or as otherwise agreed. The corrective action plan may require one or both of the following steps:

- A. GLWA may require that Customer take all reasonable steps to reduce its consumption to the rate of flow established by the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation. In addition, GLWA may require that Customer adjust its rate of flow at individual meters, including the establishment of a not-to-exceed flow rate for individual meters.
- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the charge associated with the new Maximum Flow Rate in the subsequent fiscal year.

If the Parties determine that a corrective action plan is not required and a subsequent Pressure Problem occurs, the Parties shall meet to develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the subsequent Pressure Problem, or as otherwise agreed. Any corrective action plan required under this Section 5.08 shall include a timetable for resolution of the Pressure Problem. In the event the reason for the Pressure Problem is due to a Customer water main break, fire or meter calibration performed by GLWA, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified above in this Section 5.08 should apply. In developing any corrective action plan, the Parties will take into account that Customer may be served by multiple points of connection and will utilize their collaborative best efforts to work towards developing the best solution to minimize capital and operating costs.

- 5.09 GLWA Costs for Corrective Action Plan. If at any time GLWA is required under the terms of this Article 5 to develop and implement a corrective action plan and the plan involves incurring capital costs, GLWA will determine whether the costs will be charged as a System cost or whether the cost will be borne by a specific customer or customers. If GLWA determines that all or part of the costs should be borne by a specific customer or customers, GLWA will seek a recommendation from the Technical Advisory Committee on the assessment of the costs.
- 5.10 Customer Costs for Corrective Action Plan. If at any time Customer is required under the terms of this Article 5 to develop and implement a corrective action plan, Customer shall be so informed in writing and Customer will pay all costs related to the corrective action plan.

Article 6. Technical Advisory Committee

- 6.01 Establishment. The Technical Advisory Committee exists to facilitate a cooperative working partnership between GLWA and its wholesale water customers by facilitating the development of recommendations regarding System planning and supply to GLWA management and the Board. The Technical Advisory Committee shall maintain bylaws that govern the way it conducts its business. In the event of a conflict between the terms of the bylaws adopted by the Technical Advisory Committee and the terms of this Contract, the terms of this Contract shall control.
- 6.02 General Responsibilities. The Technical Advisory Committee shall periodically review and evaluate the charges, charge methodology, and performance of the System. The Technical Advisory Committee shall review and evaluate flow rates, pressures and Annual Volumes for the System at a minimum of every five years to assist GLWA in the System planning effort. The Technical Advisory Committee shall have the opportunity each year to review the Capital Improvement Program as prepared by GLWA, prior to its adoption by GLWA. The Technical Advisory Committee may consider Customer proposals for improving the operation of Customer's water system and/or the System. GLWA will supply the Technical Advisory Committee with information GLWA deems reasonably necessary to accomplish the general responsibilities defined in this Section 6.02.
- 6.03 Annual Report by GLWA. GLWA will present an annual report to the Technical Advisory Committee which shall consist of (1) all instances of non-compliance with the Parties' obligations contained in Article 5 herein, including Customer and GLWA responses thereto; (2) a general report on System operation and maintenance; and (3) a report that lists those contracts, if any, that have been entered into by GLWA and another customer(s) where the terms of the contract(s) invoke the application of Article 14 herein.
- 6.04 Notification of Charges. GLWA shall provide Customer and the Technical Advisory Committee with notice of the proposed charges for each fiscal year as early as possible before the implementation of the charges.
- 6.05 Disclosure of Charge Information by GLWA. Each year, GLWA will disclose to Customer and the Technical Advisory Committee information related to wholesale charges.

- 6.06 Disclosure of Retail Rate Information by Customer. Each year, Customer will disclose to its customers information related to its retail rates and other charges, and information regarding what portion of those costs is related to charges from GLWA and/or other major service providers.
- 6.07 Work Groups. The Technical Advisory Committee may create work groups to address specific issues facing the System. The work groups in existence as of January, 2016, are the Analytical Work Group, the Asset Management and CIP Work Group, the Best Practices Work Group, the Charges Work Group, and the Public Education Work Group. Any reference to a particular work group in this Contract shall include its successor or replacement if altered or discontinued.

Article 7. Charges

- 7.01 Charges. Customer agrees to pay for all water supplied by GLWA from the GLWA System at such charges as GLWA may establish. Charges shall be reasonable in relation to the costs incurred by GLWA for the supply of water and shall conform to Public Act 34 of 1917, Michigan Compiled Laws, Sec. 123.141, et seq., as amended. GLWA shall give written notice of any changes in the charges. Notice shall be made in accordance with Section 5e of Public Act 279 of 1909, Michigan Compiled Laws, Sec. 117.5e, as amended, ("Act 279"). GLWA will also supply Customer with water GLWA receives from GCDC pursuant to the Reciprocal Backup Water Service Contract between GLWA and GCDC, attached as Attachment ___ to the Master Agreement. Customer acknowledges and agrees that monthly service charges from GCDC will be incurred by GLWA pursuant to the Reciprocal Backup Water Service Contract and such service charges will be assessed to Customer on a direct pass through basis from GLWA at the time they are incurred by GLWA (the "Pass-Through Charges"). Customer shall pay the Pass-Through Charges in accordance with Article 12. Customer further acknowledges and agrees that its obligation to pay the Pass-Through Charges shall survive any termination of this Contract.
- 7.02 Notification of Charges. As soon as possible in the charge-making process, GLWA shall provide information on proposed charges and the draft data and information used in the calculation of proposed charges in a format that will enable Customer to assist in the charge-making process. Not less than thirty calendar days prior to the hearing required by Act 279, GLWA shall provide Customer with written notice of a proposed charge and the underlying data used to calculate the charges. GLWA shall meet with Customer to review the charges and the data.
- 7.03 Estimate of Usage. In the event meters fail to correctly measure the quantity of water supplied to Customer for any period of time, GLWA shall provide a reasonable estimate of the quantity of water supplied to Customer for such period provided that there is a reasonable basis for the estimate. Customer and GLWA shall, either through their respective technical representatives and/or the Technical Advisory Committee, seek agreement upon a method to estimate such quantities. In the event the Parties are unable to agree upon a method to estimate such quantities, GLWA's determination of a method shall be conclusive and Customer agrees to accept the estimate established by GLWA.

- 7.04 Charge Methodology. GLWA agrees to provide to Customer an updated description of the methodology for charge-making in the form of the "Rates 101" document produced by the Technical Advisory Committee, as may be periodically updated. Until the updated document is completed, the current "Rates 101" document, entitled *DWSD Rates: Understanding DWSD Wholesale Water Rates*, shall remain in effect. The charge methodology documents referred to in this paragraph and any updates thereto shall be provided to Customer via posting on the GLWA website.

**Article 8.
Meters and Meter Facilities**

- 8.01 Metering Requirement. All water furnished by GLWA to Customer shall be measured by water meters installed in Meter Facilities at Customer's Water Distribution Points unless, in GLWA's determination, it is not feasible to install water meters due to the configuration of Customer's water system.
- 8.02 Existing Distribution Points. Upon the later of May 1, 2018, or the upgrade of the FL-01 Meter Facility by Customer to the satisfaction of GLWA, GLWA shall own, operate and maintain the water meter and Meter Facility for the Water Distribution Point designated in Exhibit A as FL-01. The Parties further agree that Customer shall have access to the FL-01 Meter Facility for all purposes necessary and incident to the operation of Customer's water system. Customer agrees to provide prior notice to GLWA any time it requires access to the FL-01 Meter Facility; the Parties shall mutually agree upon the time and method of such notice.
- 8.03 Customer Maintenance Responsibilities. Customer shall be responsible for maintaining at its Water Distribution Points any and all appurtenances as may be designated as Customer's responsibility in Exhibit A. Should Customer fail to maintain the appurtenances shown in Exhibit A, GLWA may take reasonable steps to maintain the appurtenances and charge the reasonable cost of doing so to Customer. Prior to GLWA taking action to maintain the appurtenances, GLWA shall give Customer thirty days written notice to complete the required maintenance. Notice to Customer shall not be required if, in GLWA's determination, there exists an emergency condition affecting the operation of the System or if the health, safety and welfare of the general public may be jeopardized.
- 8.04 RESERVED.
- 8.05 Meter Repair and Replacement. If GLWA initiates a meter repair or meter replacement, the cost shall be recovered through GLWA's charges as a System cost. If Customer requests a meter replacement for reasons other than malfunction or disrepair, Customer shall pay the cost of the replacement.
- 8.06 Pressure Regulating Facilities. After the effective date of this Contract, all newly installed Customer-owned pressure regulating facilities shall be installed in a facility that is separate from GLWA's Meter Facility; the butterfly valves within the FL-01 Meter Facility are not affected by this Section 8.06.

**Article 9.
Dispute Resolution**

- 9.01 Any and all claims alleging a breach of this Contract may first be submitted to an alternative dispute resolution process. An alternative dispute resolution process may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. Each Party shall be responsible for its own costs and fees (including expert witness fees and attorney fees), unless otherwise agreed to in writing. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. This Article 9 shall not prohibit a Party from seeking relief directly from a court of competent jurisdiction at any time.

**Article 10.
Default Provisions**

- 10.01 In the event either Party commits a material breach of this Contract, the Party alleging the breach shall give written notice of the breach to the other Party within a reasonable time of discovering the breach. The Party in breach shall be given a reasonable time to cure the breach. If the Party in breach fails to cure the breach, the non-breaching Party may declare this Contract in default and pursue all available legal remedies, including termination of this Contract for cause and/or, if the non-breaching Party is GLWA and Customer has filed a petition under Chapter 9 of 11 U.S.C §101 et seq., GLWA shall be entitled, under and subject to the conditions of 11 U.S.C §366, to petition the court for adequate assurances for payment in the form of a security deposit (separate and distinct from the Security Deposit Account contemplated in Section 12.04) of not less than two times the average monthly amount billed under Section 7.01 in the proceeding twelve months. In the event that the Party in breach is showing reasonable progress toward curing the breach, the Party alleging the breach may extend the time for curing the breach.

**Article 11.
Force Majeure, Hold Harmless and Other Events**

- 11.01 Force Majeure. No failure or delay in performance of this Contract, by either Party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a Party, except that no cause or contingency shall relieve Customer of its obligation to make payment for water delivered by GLWA.
- 11.02 GLWA Held Harmless. As a result of Customer's public health emergency arising from the quality of water provided through Customer's water supply system, the Parties do not know the extent of the claims and/or damages which may result from the emergency, nor if the provision of water services by GLWA will abate, improve or otherwise alleviate the emergency. For this reason, to the extent permitted by law, Customer shall indemnify, defend and hold harmless GLWA and the City of Detroit from and against any and all alleged liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses

and other consultants) that may be imposed upon, incurred by or asserted against GLWA and/or the City of Detroit and their respective departments, officers, directors, employees or agents by reason of any of the following alleged to be attributable to the provision of water services under the terms of this Contract:

- A. Any and all alleged injury to persons or damage to property; and
- B. Any alleged failure by Customer or its agents to perform its obligations, either express or implied, under this Contract; and
- C. Any alleged act, error or omission of Customer or its agents with regard to (i) Customer's distribution of water supplied by GLWA downstream of any Water Distribution Point, and (ii) any alteration by Customer or its agents to the water supplied by GLWA downstream of any Water Distribution Point, including without limitation any chemical additions to the water as set forth in Section 17.06.

11.03 GLWA Liability for Breakage to Pipes. Except to the extent that GLWA is the proximate cause, GLWA shall not be held liable or accountable for any bursting, leakage, breakage, damage or accident of any kind that may occur to Customer's water works system, or any damages of any kind or nature, including, but not limited to, injury to persons or damage to property, resulting from or alleged to result from such bursting, leakage, breakage, damage or accident that may occur to water mains or pipes located downstream of the Water Distribution Points specified herein, or located within Customer's distribution system. The terms of this Section 11.03 shall not and shall not be construed to apply to alleged damages or claims of any kind or nature related to, resulting from, or arising out of Customer's public health emergency arising from the quality of water provided through Customer's water supply system, nor shall its terms be used to assign or attempt to assign liability to GLWA for the same.

11.04 Discontinuance of Service. In the event the public health, safety and welfare requires GLWA to discontinue temporarily all or part of the supply of water to Customer, no claims for damages of any kind or nature for such discontinuance shall be made by Customer against GLWA. GLWA will provide notice to Customer of any temporary discontinuance of the water supply.

Article 12.

Timely Payment; Trust Accounts; Security Deposit Account

12.01 Billing and Payment. Bills for water service shall be rendered to Customer on the 20th day of each month. All such bills shall be due and payable on the 30th day of each month immediately following the month in which the bill is rendered except for the month of February, in which case the due date shall be the last day of the month of February. Any portion of the charges that are not paid by the due date shall be subject to a finance charge at a rate of 1.5% per month for each month that they remain unpaid. Any portion of the total bill, plus any finance charges applied to the bill which are not paid by the next billing date, shall be shown on the next bill as arrears.

- 12.02 Dispute. GLWA may disconnect water service if bills are overdue ninety calendar days from the billing date, in addition to any other remedies provided for in this Contract. GLWA shall not terminate water service if there is a good faith dispute concerning the accuracy of billings. If the accuracy of a bill is in dispute, Customer shall have ten (10) business days from the date of the invoice in which to provide written notice to GLWA, KWA and the Trustee under the Baseline and All Receipts Trust Agreement (as defined below), of its dispute with the bill and shall place the disputed amount in an escrow account pending resolution of the dispute. Accrued interest on the escrow account shall belong to the Party that prevails in the resolution of the dispute.
- 12.03 Trust Accounts. The Parties acknowledge and agree that two trusts, the "Baseline Trust" and the "All-Receipts Trust", will be established and managed in accordance with the terms and conditions of Attachment ____ of the Master Agreement. Should there be any conflict between the terms of this Contract and the terms of Attachment ____, the terms of Attachment ____ shall control.
- 12.04 Security Deposit Account. Customer will fund a security deposit account, established and held by GLWA ("Security Deposit Account"), as security for payments due GLWA under this Contract in accordance with the following terms and conditions:
- A. Prior to or concurrent with the execution of this Contract, Customer will provide to GLWA an amount equal to \$3,750,000.00 which GLWA will hold in an interest bearing account. All interest earned on funds in the Security Deposit Account shall accrue and shall be deposited therein and applied as provided in this Section 12.04. All fees related to the Security Deposit Account including, without limitation, the establishment and maintenance thereof, shall be paid by Customer.
 - B. Subject to Section 12.04 (D), GLWA will maintain the Security Deposit Account for a period of no less than 2 years and no greater than 6 years provided that if Customer satisfies the metrics set forth in Section 12.04 (C) (i), (ii) and (iii) at any time after the 2 year period but before the conclusion of the 6th year, then the funds held by GLWA in the Security Deposit Account will be returned to Customer in accordance with this Section 12.04. If at the conclusion of the 6th year Customer has satisfied the metrics in Section 12.04 (C) (i) and (ii), then the funds held by GLWA in the Security Deposit Account will be returned to Customer in accordance with this Section 12.04. Unless modified by Section 12.04 (D), the time period stated herein shall begin to run coincident with the Effective Date.
 - C. The funds held by GLWA in the Security Deposit Account will be returned to Customer in full, plus applicable accrued interest if any in accordance with Section 12.04 (A), if at any time after the initial 2 year period Customer can demonstrate to the reasonable satisfaction of GLWA:
 - i. It has made all payments due under this Contract in full and on time and;
 - ii. It has met all obligations payable from its water and sewer funds, including without limitation Customer's obligations to its bond holders, suppliers,

vendors and employees, and it has performed all such obligations in a timely manner; and

- iii. It has established a collection rate for its water and sewer billings of at least 90% for the preceding 12 month period.

- D. If at any time Customer fails to make full and timely payment and GLWA is required to utilize the proceeds of the Security Deposit Account to cure an event of non- or partial payment as described in Section 12.04 (F), then the period outlined in Section 12.04 (B) shall restart at year zero.
- E. Customer acknowledges and agrees that GLWA may grant KWA certain rights in and to the Security Deposit Account in connection with Customer's obligations to KWA for debt service payable from the Trust Accounts defined below, as described under Section 12.05 (ii) below.
- F. Should GLWA be required to utilize any amount of the funds in the Security Deposit Account, including accrued interest, to cure an event of non- or partial payment by Customer to GLWA, or to KWA for debt service payable from the Trust Accounts defined below, as described under Section 12.05 (ii) below, GLWA may, for each such shortfall, restore this amount by adding to Customer's monthly charges for the subsequent 12 month period an amount equal to 1/12th of the dollars used to cure the event. Customer acknowledges and agrees that in the event of more than one shortfall, GLWA shall be entitled to simultaneously assess multiple charges to restore the shortfall in the Security Deposit Account. In the event that accrued interest is used by GLWA to restore any shortfall, upon the return of the funds in the Security Deposit Account Customer shall only be entitled to that interest remaining, if any, beyond that which was used to restore any shortfall.

- 12.05 Credits to Wholesale Billing Account Resulting from Trust Account Payments. Customer is obligated to make, or cause to be made, payments to GLWA, KWA and GCDC under the terms of trust accounts established pursuant to the terms of Attachment ____ ("Trust Agreement") of the Master Agreement ("Trust Accounts"). If Customer timely and fully pays, directly or via the Trust Accounts, its monthly amounts (i) due to GLWA for water supplied under this Contract, which includes the Pass-Through Charges from GCDC that are assessed on a direct pass through basis from GLWA to Customer pursuant to Section 7.01; however for purposes of this Section, amounts due will be considered timely and fully paid if Customer has deposited funds as provided in Section 12.02 equal to the Pass-Through Charges from GCDC and the balance of the monthly amounts due to GLWA on such bill that is not in dispute, and (ii) due to KWA for KWA Designated Debt Service (as such term is defined in the Trust Agreement), then GLWA shall in the current or subsequent month issue a credit to Customer's wholesale billing account equal to the lesser of (y) the KWA Designated Debt Service paid by or on behalf of Customer through the Trust Agreement or (z) in the event of any bond issue not consented to by GLWA under Section 26.01, when such consent is required, the debt service payment currently scheduled as set forth in the Trust Agreements, all under (ii) above.

12.06 Account Stated. If Customer fails to make timely payment on invoices due as set forth in this Contract, the GLWA shall be entitled to utilize the All Receipts Trust under the conditions set forth in Attachment ____ of the Master Agreement. In addition, GLWA shall be entitled to claim a judgment against Customer for the entire unpaid balance, including any Early Termination Costs, together with late fees, interest, and the costs and reasonable attorney fees required to obtain that judgment. GLWA shall be entitled to file this Contract in a court of proper jurisdiction as evidence of Customer's agreement to pay amounts due and owing in accordance with this Contract.

**Article 13.
Assignment**

13.01 This Contract shall not be assigned, in whole or in part, by either Party without the prior written consent of the other Party provided, however, that GLWA may assign this Contract to the City of Detroit without prior notice to Customer at the conclusion of the Lease term. Consent to an assignment by either Party shall not be unreasonably withheld.

**Article 14.
Ensuring Equality of Contract Terms**

14.01 If GLWA enters into any contract, and any amendments thereto, with a water service customer other than Customer, and the material terms of such other contract are more favorable than the material terms of Customer's Contract, Customer may elect to adopt all of such other material terms. However, if Customer exercises the option provided for in this Article 14, Customer must accept all material terms of the other contract in their entirety and may not select among various terms contained in multiple other contracts by, for example, selecting the Contract Term from one contract and the Early Termination Costs provision of another contract. The terms and conditions of Exhibit B of this Contract are specifically excluded from the application of this Article 14.

**Article 15.
Amendment**

15.01 The Parties may periodically consider it in their best interests to change, modify or extend a term, condition or covenant of this Contract for reasons which may include, but are not limited to, the creation, expansion or closing of industry or other business. Any change, addition, deletion, extension or modification that is mutually agreed upon by GLWA and Customer shall be incorporated in a written amendment to this Contract. Such amendments shall not invalidate this Contract nor relieve or release either Party of any of its respective obligations under this Contract unless so stated in the amendment.

15.02 No amendment to this Contract shall be effective and binding upon the Parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both Parties, and is approved by Customer's governing body and the Board.

**Article 16.
Notices**

- 16.01 Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (collectively, "Notices") required or permitted under this Contract shall be given in writing and mailed by first class mail to the Parties and at the addresses identified in Exhibit B.
- 16.02 All Notices shall be deemed given on the day of post-marked mailing. Any Notice given by a Party hereunder must be signed by an authorized representative of such Party.
- 16.03 Notwithstanding the requirement above as to the use of first-class mail, change of address notices, termination notices, and other Notices of a legal nature, shall be sent by certified first-class mail, postage prepaid, return receipt requested.

**Article 17.
Water Quality**

- 17.01 Contamination. For the protection of the health of all consumers supplied with water from the System, Customer agrees to guard carefully against all forms of contamination. Should contamination occur, the area or areas affected shall immediately be shut off and isolated, and shall remain so until such conditions shall have been abated, and the water declared safe and fit for human consumption by the properly constituted governmental health agencies having jurisdiction of the area affected. Customer shall immediately notify GLWA, and GLWA shall immediately notify Customer, of any emergency or condition that may affect the quality of water in either Party's system.
- 17.02 Blending. Maintaining a daily flow through the Dort Highway Main is necessary to meet water quality regulatory standards in the event emergency backup services are required. Unless otherwise agreed by the Parties and approved by any necessary state and/or federal regulatory body, GLWA may supply to Customer from the Dort Highway Main approximately 5% of Customer's daily flow of potable water produced by GCDC (estimated at 0.5 MGD) in compliance with the requirements of any law, regulation, permit or order of any state and/or federal agency. Customer shall be responsible for installing, operating, maintaining, controlling and monitoring the necessary infrastructure and appurtenances, including but not limited to flow control devices, to ensure compliance with this limit. The remainder of Customer's daily flow of potable water produced by GLWA will be received through the 72 Inch Main. Customer will blend the water received through the Dort Highway Main with that water received through the 72 Inch Main at Customer's water treatment plant prior to its distribution and any required additional treatment as may be required of Customer by state and/or federal law, regulation, permit or order. The provisions on blending in this Section 17.02 are not considered a co-mingling of water sources and do not invoke the provisions of Section 17.03, below.
- 17.03 Co-mingling of Water Sources. Except in cases of emergency, Customer will not permit water from any other source of supply to be mixed or mingled with water from the System without prior written approval from GLWA. In cases of emergency, only such water from sources other than GLWA shall be used as shall meet the requirements of the Michigan

Department of Environmental Quality, and then only in such quantities as shall be necessary to relieve the emergency.

- 17.04 Emergency Connections. During emergencies and notwithstanding the terms of Section 17.02, GLWA may provide and Customer may receive up to 100% of its daily flow of potable water through the Dort Highway Main provided, however, that the emergency backup flow will be in such quantities as GCDC can reasonably deliver to GLWA and Customer has no guarantee from either GCDC or GLWA as to how much flow will be provided. Additionally, during emergencies, Customer's water facilities may be used and connected, at the discretion of GLWA, to water facilities serving other communities for flow in either direction to provide an adequate water supply from the System to Customer and to other areas and other units of government. Customer shall be permitted to immediately make an emergency connection when the connection point to be used has been previously approved for emergency use by GLWA in writing, provided that Customer shall, after making the connection, promptly notify GLWA of such event. When the emergency has been abated, the emergency connection must be severed as soon as practicable. GLWA, or its designee, must approve, in writing, the continuation of any emergency connection that is required for longer than seven calendar days. If an approved emergency connection continues for more than seven calendar days, Customer must provide GLWA with weekly updates on the emergency and a schedule for abatement of the emergency that must be approved by GLWA in writing.
- 17.05 Water Quality. GLWA shall endeavor to remain in compliance with all applicable Michigan and Federal laws, rules and regulations regarding drinking water quality.
- 17.06 Chemical Additions. Customer has advised GLWA that in order to more effectively address its public health emergency, it may inject additional chemical treatments into the water it receives from GLWA. Customer acknowledges that such additional chemical treatments may result in taste, color and/or odor changes to the water provided by GLWA. In order that the public be kept fully informed as to the explanation for any taste, color and/or odor changes and to ensure that GLWA's long established, award winning brand is not diminished in any way, Customer agrees to coordinate with and seek the approval of GLWA regarding its public relations communications on these issues. Furthermore, Customer acknowledges that such additional chemical treatments may change the water chemistry of the water provided by GLWA, and if not made properly by Customer, could have adverse effects on distribution system corrosion control, disinfection by-products formation and water quality in general.

Article 18. Rights-of-Way

- 18.01 Use of Rights-of-Way. Customer shall assist GLWA to obtain permission to use streets, highways, alleys, and/or easements in the local governmental units within Customer's jurisdiction for the purpose of constructing, maintaining, and operating water facilities to adequately service Customer's jurisdiction and other areas. This assistance shall include obtaining the consent of the local governmental units, as provided in Article 7, Section 29, Michigan Constitution of 1963. In the event of such construction, GLWA shall request Customer and local governmental units within Customer's jurisdiction to execute such

separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by GLWA. GLWA shall give Customer notice of any construction work in Customer's jurisdiction. GLWA shall comply with any of Customer's ordinances that apply to the construction. Customer shall inform GLWA of the applicable ordinances. GLWA and Customer shall meet to review the construction and its impact on their respective operations. GLWA shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place. As contemplated by this paragraph, any such water facilities existing on or before December 31, 2015, shall remain under the ownership of the City of Detroit as leased to GLWA, and any new water facilities constructed on or after January 1, 2016, shall be owned by GLWA, and in no case shall either the existing or new water facilities be operated or maintained by any entity other than GLWA or its authorized representatives.

- 18.02 Relocation of Facilities. Should future construction by any city, township, village, or county require relocation of a water transmission main, Meter Facility or other GLWA facility, the cost incurred by GLWA for such relocation, if not reimbursed by the entity requiring the relocation, will be charged in future charges as a common-to-all cost to all System users.
- 18.03 Easements. Subject to the provisions of Section 18.01 and to the extent that Customer has jurisdiction, GLWA shall be granted temporary and permanent easements, and shall be permitted to use the streets, alleys and highways within Customer's legal jurisdiction for the purpose of constructing, operating and maintaining the System, including the relocation of water transmission mains, Meter Facilities or other GLWA facilities. This consent by Customer is given in compliance with Article 7, Sec. 29 of the Michigan Constitution of 1963, provided that GLWA shall provide Customer with a written explanation of the type of easement required and the duration thereof.

Article 19.

Access to Towers and Antennas

- 19.01 Where possible, each Party shall give to the other Party access to towers and antennas under its respective jurisdiction for the purpose of transmitting information recorded in the Meter Facilities. Access shall not be unreasonably denied by either Party.

Article 20.

Relationship to Wastewater Services

- 20.01 Customer and GLWA acknowledge that future growth in the System may place additional burdens on their respective wastewater systems. Customer, if it is also a wastewater disposal services customer of GLWA, understands that any increase in the volume of water it receives from the System is not a guarantee of increased capacity in the wastewater disposal system owned by the City of Detroit and leased by GLWA.

**Article 21.
Construction Standards**

- 21.01 GLWA shall have the right to review and approve Customer's construction plans for Meter Facilities at new Water Distribution Points, water mains sized twenty-four inches and larger, pump stations, reservoirs, water towers, and any other construction that will cross, or be within close proximity to, or have influence upon System infrastructure. GLWA's approval of construction plans shall be timely and shall not be unreasonably withheld.

**Article 22.
Operation of Storage**

- 22.01 Prior to Customer's operation of any new or existing water storage facility, Customer shall seek GLWA's written approval of the filling schedule ("Filling Schedule") of the storage facility. GLWA may periodically require Customer to change or adjust a previously approved Filling Schedule. The Parties shall collaborate on devising a mutually beneficial Filling Schedule. If the Parties are unable to agree upon a Filling Schedule, GLWA's determination of a Filling Schedule shall be final. All Filling Schedules shall be for a period of six consecutive hours. Customer shall at all times abide by the then-current GLWA approved Filling Schedule. GLWA shall act promptly in approving Filling Schedule requests. Nothing in this Article 22 shall prevent Customer from operating its storage facility at any time, provided that any storage operation that falls outside of the approved Filling Schedule shall not be exempt from the terms of Article 5 herein.

**Article 23.
Miscellaneous**

- 23.01 If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 23.02 This Contract, including Exhibits A and B, contains the entire agreement between the Parties and all prior negotiations and agreements are merged into this Contract. Neither Party has made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by either Party by implication or otherwise unless expressly set forth in this Contract.
- 23.03 Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Contract as a whole and not to any particular section or subdivision.
- 23.04 The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.
- 23.05 The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Contract and all actions arising under it shall be governed by, subject to, and construed according to the laws of the State of Michigan.

- 23.06 Pursuant to the terms of its Lease with GLWA, the City of Detroit is an acknowledged third party beneficiary of this Contract and this Contract shall not be construed to benefit any persons other than GLWA, the City of Detroit and Customer.
- 23.07 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, GLWA shall provide a copy to the Customer.
- 23.08 The rights and benefits under this Contract shall inure to the benefit of and be binding upon the respective Parties hereto, their agents, successors, and assigns.
- 23.09 The Recital paragraphs of this Contract and any and all documents, memoranda, reports, exhibits or other written material referred to in this Contract are and shall be fully incorporated by reference herein.
- 23.10 This Contract shall be deemed to be mutually drafted and shall not be construed against either Party.

Article 24.

KWA Board Appointments; Bylaws and Articles of Incorporation

- 24.01 Customer will consult with GLWA and GLWA will recommend and approve of each of Customer's appointments to the KWA Board which selection cannot at any time be modified by Customer without the prior written approval of GLWA. Subsequent to GLWA's approval, Customer will execute a letter to KWA confirming the appointment of each new Board representative.
- 24.02 Customer will consult with GLWA in connection with any proposed amendments to the Articles of Incorporation or Bylaws of KWA, and shall not consent to any such changes without receipt of prior written consent of GLWA.

Article 25.

KWA Raw Water

- 25.01 Raw Water and License. Subject to the KWA Financing Contract, dated August 1, 2013 ("Financing Contract"), and the Raw Water Supply Contract, dated June 28, 2013 ("Raw Water Contract"), Customer has rights to up to 18 MGD raw water capacity, delivery of that raw water and its use. Customer makes an irrevocable grant of an exclusive license of these rights related to the 17.46 MGD of the raw water capacity as provided in this Section 25.01 to the extent of Customer's rights therein, whether now existing or hereafter arising, to use in any way GLWA determines in its sole discretion and otherwise in compliance with the Raw Water Contract. Customer may not terminate this license and Customer's exclusive remedies for breach are damages and equitable relief. This license shall survive the termination of this Contract and any default by Customer under the Raw Water Contract. GLWA shall be entitled to receive delivery of 17.46 MGD and Customer shall retain 0.54 MGD for the term of this Contract and thereafter as provided for herein.

- 25.02 Failure to Pay. If Customer fails to pay all of its debt service obligations then due to KWA and as a result the County of Genesee acquires Customer's rights pursuant to Exhibit B of the Financing Contract, then GLWA shall be relieved of its obligation to provide emergency backup service to Customer, including without limitation that flow from the Dort Highway Main, but in no event will GLWA charges to Customer be reduced, modified or adjusted as a result.
- 25.03 GLWA Right to Purchase Capacity. After Customer fulfills all of its debt service payment obligations to KWA pursuant to the Financing Contract, (a) all of Customer's remaining interest in 17.46 MGD shall transfer to GLWA upon GLWA delivering written notice to KWA of such transfer and (b) GLWA shall have, within 6 months after the date of Customer's fulfillment of its debt service obligation, the exclusive right to purchase the remaining 0.54 MGD for \$3,000,000.
- 25.04 Flint Right to Purchase Capacity. If after the expiration of this Contract, GLWA, in its sole discretion, determines that it no longer wishes to use the rights so licensed, or any portion thereof, then Customer shall have a right of first refusal to purchase said rights prior to GLWA's sale of such rights at a price equal to the then-current aggregate amount of credits granted to Customer for debt service under Section 12.05.

Article 26.
KWA Bonds

26.01 New and Refunding Bonds.

- A. The Parties acknowledge and agree that, subsequent to the Effective Date, KWA will issue KWA Refunding Bonds for the purpose of refunding the outstanding Series 2016 Bonds and may also issue, from time to time, additional series of KWA Refunding Bonds. In the event that Customer shall consent to the issuance of any KWA Refunding Bonds, other than for the purpose of refunding the outstanding Series 2016 Bonds in accordance with the parameters set forth in Exhibit C, that would have the effect of (i) extending the term of the bonds to be refunded, or (ii) increasing any annual debt service obligation of Customer with respect to the bonds to be refunded, such event shall not constitute a breach or default by Customer under this Contract; provided, however, that in such event (y) the monthly credits to Customer's wholesale billing account shall be calculated in accordance with Section 12.05 and (z) if the maturity date of such KWA Refunding Bonds is extended beyond the term of this Contract, the term of this Contract under Article 2 is automatically and without further action extended to the new maturity date. Furthermore, Customer shall provide prior written notice to GLWA of any proposed consent by Customer to any KWA Refunding Bonds.
- B. Customer acknowledges and agrees that, in the event that Customer becomes contractually obligated for the payment of debt service on any New KWA Bonds, it shall not be entitled to any additional credits to its wholesale billing account for its debt service payment obligations under Section 12.05 with respect to such New KWA Bonds, unless consented to in writing by GLWA.

- C. The Parties agree that neither (a) the Financing Contract, nor any amendment thereto, related to the KWA System Bonds and/or KWA Refunding Bonds nor (b) the Raw Water Contract shall be amended by Customer without GLWA's consent in a way that changes the 18 MGD of capacity or adversely impacting GLWA's rights or obligations under this Contract.

26.02 Insurance. While any KWA System Bonds remain outstanding, Customer shall maintain or cause to be maintained insurance (which may include self-insurance) on its facilities with commercially reasonable and available coverage.

26.03 Record Keeping. Customer will keep proper books of record and account in which shall be made full and correct entries of all transactions relating to the KWA System Bonds and any and all amounts payable through the Trust Accounts.

(Signatures appear on next page)

Accordingly, GLWA and Customer, by and through their duly authorized officers and representatives, have executed this Contract.

City of Flint:

By: _____
Karen Weaver
Mayor

Attest: _____
Inez Brown
City Clerk

APPROVED BY
FLINT CITY COUNCIL ON: _____
Date

APPROVED BY
RECEIVERSHIP TRANSITION ADVISORY BOARD: _____
Date

APPROVED AS TO FORM BY
FLINT CITY ATTORNEY ON: _____
Signature Date

Great Lakes Water Authority:

By: _____
Sue F. McCormick
Its: Chief Executive Officer

APPROVED BY
GLWA BOARD OF DIRECTORS ON: _____
Date

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL ON: _____
Signature Date

EXHIBIT A

Service Area Map; Essential Water Mains

This Exhibit contains the following information:

1. The corporate limits of Customer;
2. The agreed upon water Service Area of Customer which (a) may or may not be entirely within the corporate limits of Customer and (b) which may or may not include the entire area within the Customer's corporate limits;
3. The specific location of the Water Distribution Points, including any GLWA approved emergency connections;
4. The designation of appurtenances to be maintained by Customer and those to be maintained by GLWA; and
5. A list of any closed meter locations. The Parties acknowledge and agree that as of the Effective Date there are no closed meter locations.
6. A list of what facilities, if any, have been constructed specifically for the benefit of Customer. The Parties acknowledge and agree that as of the Effective Date there are no such facilities.
7. A list of any retail or commercial accounts of Customer that are outside of Customer's corporate limits.

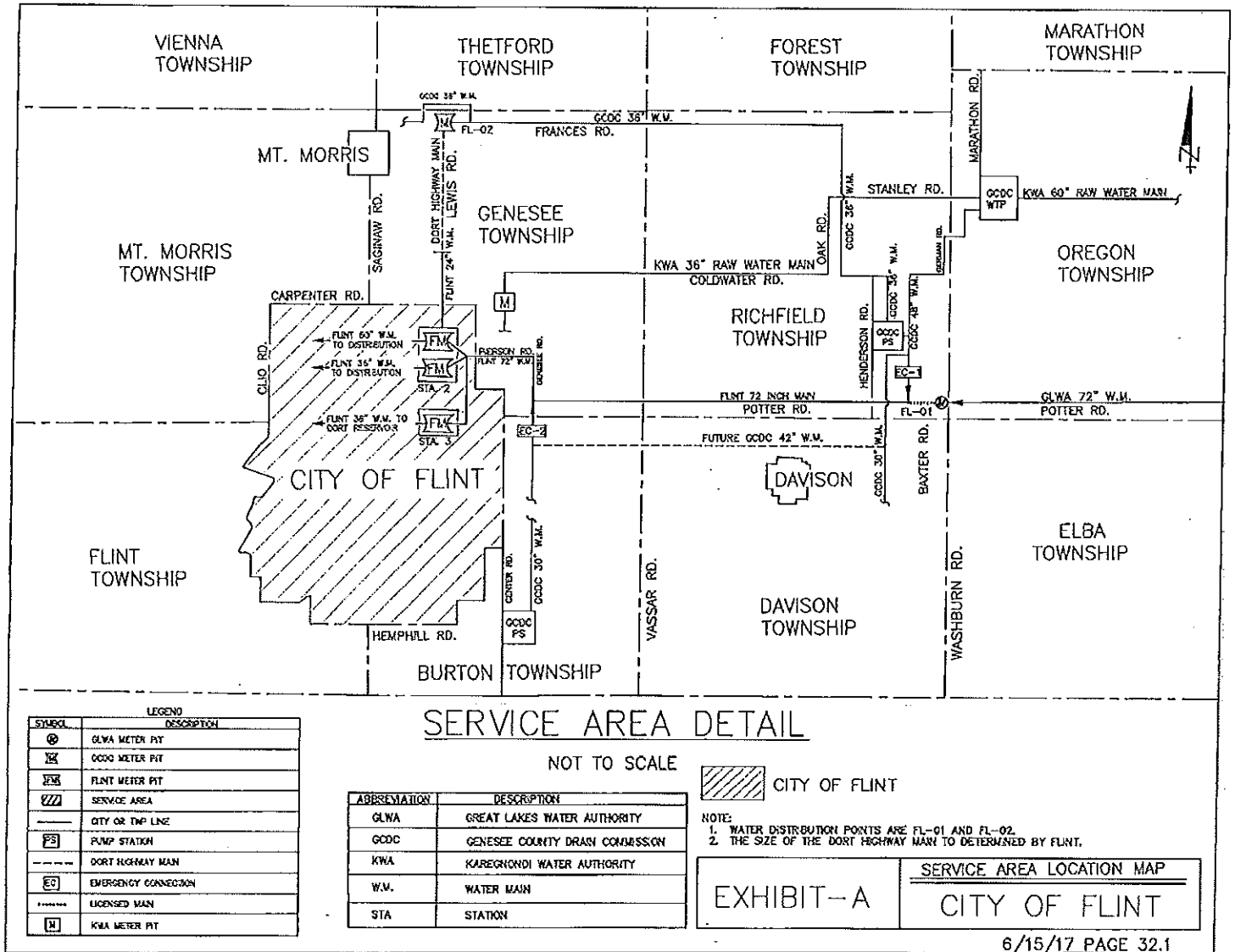


Exhibit A

Customers Located Outside of Service Area:			
1	3148 AUGUSTA ST	47	3275 CHEYENNE AVE
2	3149 AUGUSTA ST	48	3276 CHEYENNE AVE
3	1274 N BALLENGER HWY	49	3280 CHEYENNE AVE
4	2336 S BALLENGER HWY	50	3281 CHEYENNE AVE
5	3168 BRANCH RD	51	3285 CHEYENNE AVE
6	3174 BRANCH RD	52	3286 CHEYENNE AVE
7	3180 BRANCH RD	53	3289 CHEYENNE AVE
8	3186 BRANCH RD	54	3290 CHEYENNE AVE
9	3376 BRANCH RD	55	3298 CHEYENNE AVE
10	3400 BRANCH RD	56	3299 CHEYENNE AVE
11	3418 BRANCH RD	57	3302 CHEYENNE AVE
12	3426 BRANCH RD	58	3307 CHEYENNE AVE
13	3450 BRANCH RD	59	3308 CHEYENNE AVE
14	3492 BRANCH RD	60	3311 CHEYENNE AVE
15	4138 BRANCH RD	61	3312 CHEYENNE AVE
16	2238 W BRISTOL RD PIT5 M#1	62	3316 CHEYENNE AVE
17	2238 W BRISTOL RD PIT5 M#2	63	3317 CHEYENNE AVE
18	3137 BROWN ST	64	3320 CHEYENNE AVE
19	1447 E CARPENTER RD	65	3321 CHEYENNE AVE
20	1459 E CARPENTER RD	66	3325 CHEYENNE AVE
21	2069 E CARPENTER RD	67	3326 CHEYENNE AVE
22	2040 W CARPENTER RD	68	3329 CHEYENNE AVE
23	2138 W CARPENTER RD	69	3330 CHEYENNE AVE
24	2138 W CARPENTER RD LAWN	70	3334 CHEYENNE AVE
25	2138 W CARPENTER RD MTR2	71	3338 CHEYENNE AVE
26	2296 W CARPENTER RD	72	3339 CHEYENNE AVE
27	2432 W CARPENTER RD	73	3340 CHEYENNE AVE
28	2474 W CARPENTER RD	74	3344 CHEYENNE AVE
29	1216 N CENTER RD	75	3347 CHEYENNE AVE
30	1216 N CENTER RD FIRE	76	4101 CLIO RD
31	1220 N CENTER RD WRHSE	77	4113 CLIO RD
32	1234 N CENTER RD	78	4243 CLIO RD
33	3014 N CENTER RD	79	4255 CLIO RD
34	3022 N CENTER RD	80	3176 W COURT ST
35	3030 N CENTER RD	81	3189 W COURT ST
36	3062 N CENTER RD	82	4028 W COURT ST
37	3070 N CENTER RD	83	4032 W COURT ST
38	3080 N CENTER RD 1	84	1026 DECAMP
39	3094 N CENTER RD	85	1038 DECAMP
40	3100 N CENTER RD	86	1025 W DECAMP
41	3102 N CENTER RD	87	5008 N DORT HWY
42	3106 N CENTER RD	88	3009 S DORT HWY
43	3112 N CENTER RD	89	3043 S DORT HWY
44	3267 CHEYENNE AVE	90	3071 S DORT HWY
45	3268 CHEYENNE AVE	91	3255 S DORT HWY
46	3272 CHEYENNE AVE	92	3266 S DORT HWY

Exhibit A

Customers Located Outside of Service Area:			
93	3281 S DORT HWY	139	3303 MENOMINEE AVE
94	3284 S DORT HWY	140	3304 MENOMINEE AVE
95	3360 S DORT HWY	141	3309 MENOMINEE AVE
96	3292 FENTON RD	142	3312 MENOMINEE AVE
97	3342 FENTON RD	143	3313 MENOMINEE AVE
98	2495 FLUSHING RD	144	3316 MENOMINEE AVE
99	2501 FLUSHING RD	145	3317 MENOMINEE AVE
100	2509 FLUSHING RD	146	3321 MENOMINEE AVE
101	3037 FLUSHING RD	147	3322 MENOMINEE AVE
102	3047 FLUSHING RD	148	3326 MENOMINEE AVE
103	3061 FLUSHING RD	149	3330 MENOMINEE AVE
104	3214 FLUSHING RD	150	3331 MENOMINEE AVE
105	3348 FLUSHING RD	151	3334 MENOMINEE AVE
106	2122 E HEMPHILL RD	152	3335 MENOMINEE AVE
107	2130 E HEMPHILL RD	153	3339 MENOMINEE AVE
108	2278 E HEMPHILL RD	154	3343 MENOMINEE AVE
109	2288 E HEMPHILL RD	155	3344 MENOMINEE AVE
110	2306 E HEMPHILL RD	156	3348 MENOMINEE AVE
111	2350 E HEMPHILL RD	157	3349 MENOMINEE AVE
112	2414 E HEMPHILL RD	158	3008 MILLER RD SWR 1
113	1047 W HEMPHILL RD	159	3008 MILLER RD SWR 2
114	1049 W HEMPHILL RD	160	2036 NEDRA
115	1059 W HEMPHILL RD	161	2052 NEDRA
116	3141 HERRICK ST	162	2070 NEDRA
117	3308 HULL AVE	163	2076 NEDRA
118	3314 HULL AVE	164	2080 NEDRA
119	3319 HULL AVE	165	2100 NEDRA
120	3320 HULL AVE	166	2126 NEDRA
121	3342 HULL AVE	167	2226 NEDRA
122	3348 HULL AVE	168	2254 NEDRA
123	3351 HULL AVE	169	3200 ORR ST
124	1526 MEIDA ST	170	2605 W PIERSON RD
125	1530 MEIDA ST	171	3008 W PIERSON RD
126	3268 MENOMINEE AVE	172	3024 W PIERSON RD
127	3271 MENOMINEE AVE	173	3092 W PIERSON RD
128	3272 MENOMINEE AVE	174	3106 W PIERSON RD
129	3276 MENOMINEE AVE	175	2178 RED ARROW RD
130	3277 MENOMINEE AVE	176	3155 RICHFIELD RD
131	3280 MENOMINEE AVE	177	3175 RICHFIELD RD
132	3281 MENOMINEE AVE	178	3217 RICHFIELD RD
133	3285 MENOMINEE AVE	179	3275 RICHFIELD RD
134	3289 MENOMINEE AVE	180	1046 RONALD ST
135	3290 MENOMINEE AVE	181	1050 RONALD ST
136	3295 MENOMINEE AVE	182	1066 RONALD ST
137	3299 MENOMINEE AVE	183	1069 RONALD ST
138	3300 MENOMINEE AVE	184	3275 VAN SLYKE RD

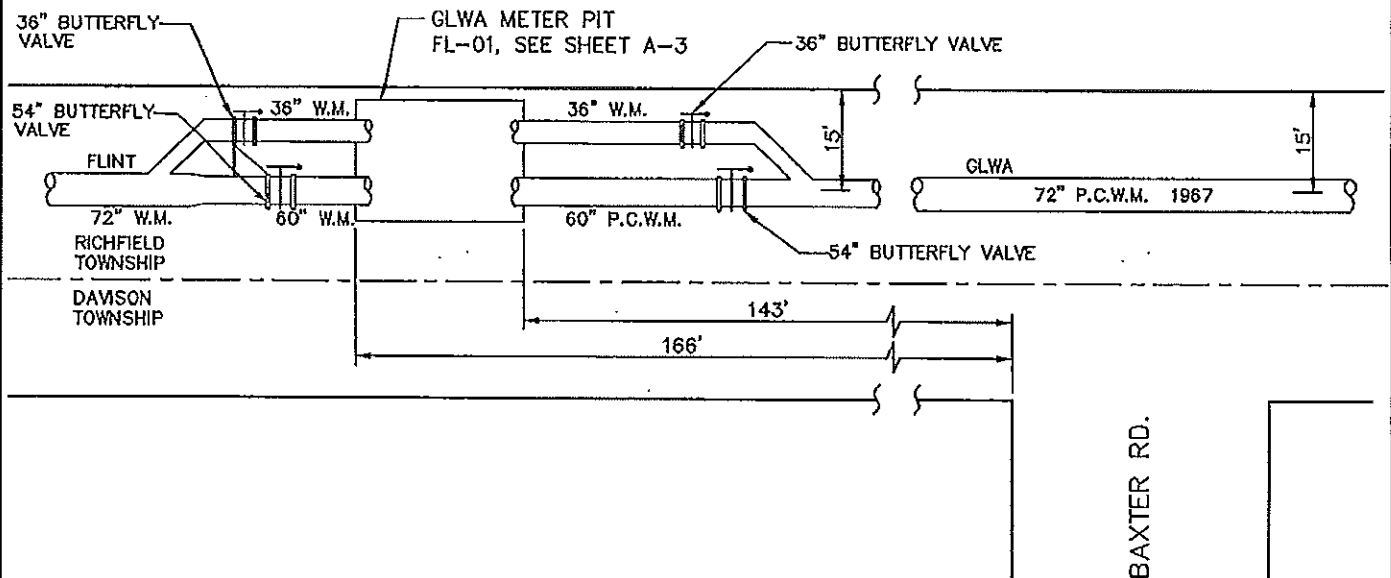
Exhibit A

Customers Located Outside of Service Area:		
185	3293 VAN SLYKE RD	
186	3339 VAN SLYKE RD	
187	3100 VAN SLYKE RD PIT#1 M#1	
188	3100 VAN SLYKE RD PIT#1 M#2	
189	3100 VAN SLYKE RD PIT#2 M#1	
190	3100 VAN SLYKE RD PIT#2 M#2	
191	3100 VAN SLYKE-PRVT SWR #6	
192	3100 VAN SLYKE-PRVT SWR #7	
193	2200 WALTON AVE	
194	3155 WHITNEY AVE	

EXHIBIT-A FL-01 POTTER AND BAXTER CITY OF FLINT



POTTER RD. 66' ROW



SITE PLAN DETAIL
NOT TO SCALE

LEGEND

ABBREVIATION	DESCRIPTION
W.M.	WATER MAIN
P.C.W.M.	PRESTRESSED CONCRETE WATER MAIN
GLWA	GREAT LAKES WATER AUTHORITY
ROW	RIGHT-OF-WAY

LOCATIONS SUBJECT TO
VERIFICATION IN THE FIELD.

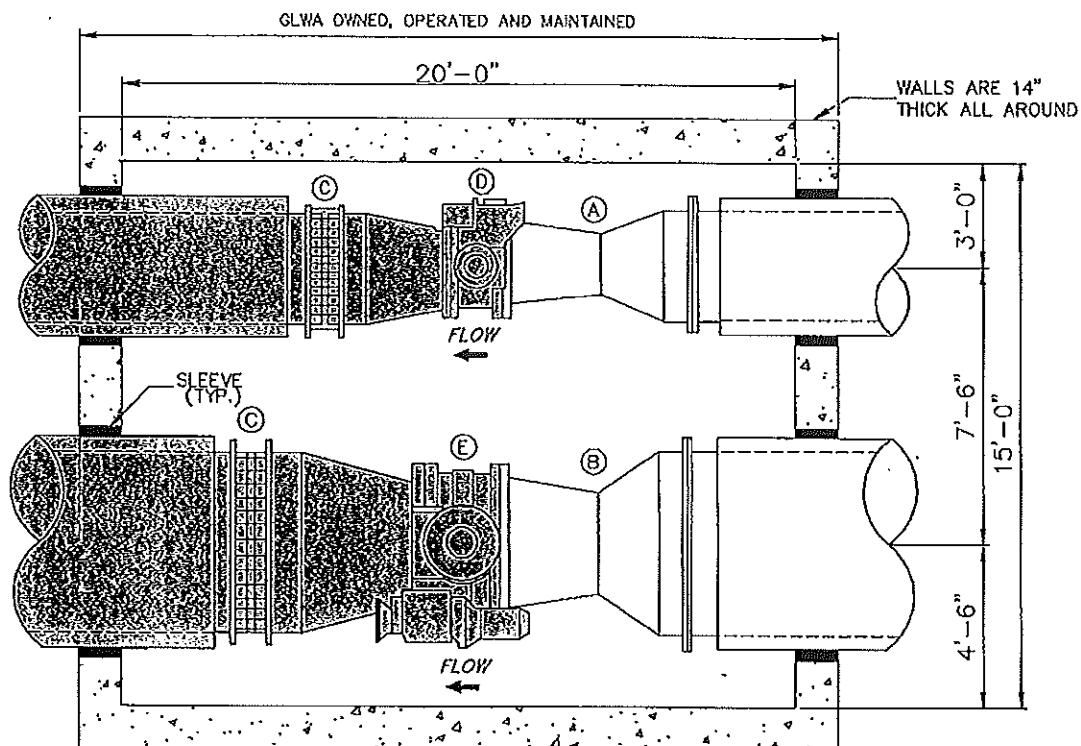
FL
01

EXHIBIT-A

FL-01

POTTER AND BAXTER

CITY OF FLINT



METER PIT DETAIL

NOT TO SCALE

- ☐ GLWA OWNED, OPERATED AND MAINTAINED
☒ FLINT OWNED, OPERATED AND MAINTAINED

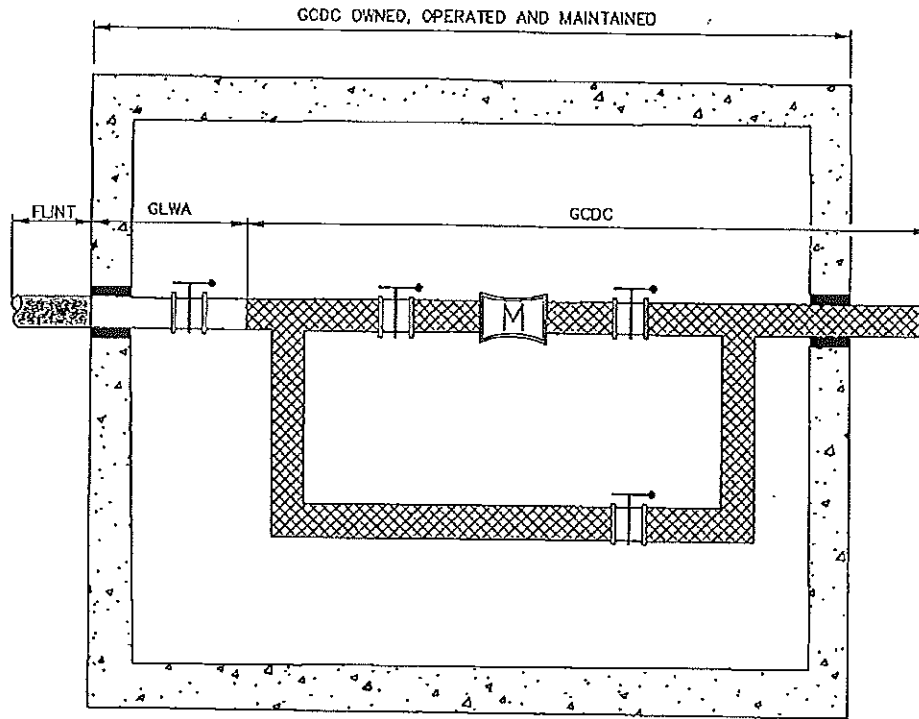
ADDRESS	12261 EAST POTTER ROAD, DAWSON, MI
FEED TO	CITY OF FLINT
FEED FROM	GLWA TRANS. MAIN
TYPE OF METER	TWO - PENN FLOW TUBES
SIZE OF METER	60" X 37.406" X 42" AND 36" X 22" X 30"
TUBE NUMBER	60")626141 36")626142
DATE METER SET	DECEMBER 14, 1967
METER PIT CONST. & SIZE	20'-0" X 15'-0" I.D. REINF. CONC
REMARKS	MANUAL SWITCHOVER

LEGEND			
TAG	QTY	DESCRIPTION	SIZE
A	1	PENN. FLOW TUBE	36" X 22" X 30"
B	1	PENN. FLOW TUBE	60" X 37.406" X 42"
C	2	COUPLING	-
D	1	MOTOR OPERATED BUTTERFLY VALVE	30"
E	1	MOTOR OPERATED BUTTERFLY VALVE	42"

TYPICAL PRESSURE LOSS THRU METER	
METER TYPE	P.S.I. LOSS
VENTURI	1 - 2
MAG	0
TURBINE	4 - 6

FL
01

EXHIBIT-A FL-02



METER PIT DETAIL

NOT TO SCALE

- GLWA OWNED AND OPERATED, TO BE MAINTAINED BY GCDC
- GCDC OWNED, OPERATED AND MAINTAINED
- FLINT OWNED, OPERATED AND MAINTAINED

FEED TO	CITY OF FLINT
FEED FROM	GLWA TRANS. MAIN

FL
02

Exhibit B

EXHIBIT B

Projected Annual Volume and Minimum Annual Volume (Table 1)
Pressure Range and Maximum Flow Rate (Table 2)
Flow Split Assumptions (Table 3)
Addresses for Notice (Table 4)

Table 1 and Table 2 set forth the agreed upon Projected Annual Volumes, Minimum Annual Volumes, Pressure Ranges and Maximum Flow Rates for the term of this Contract provided that figures in bold type face are immediately enforceable pursuant to the terms of Section 5.07 and italicized figures are contained for planning purposes only but will become effective absent the negotiated replacements anticipated in Section 5.07.

The approximate rate of flow by individual meter set forth in Table 3 is the assumption upon which the Pressure Range commitments established in Table 2 have been devised. Should Customer deviate from these assumptions at any meter(s), GLWA may be unable to meet the stated Pressure Range commitments in this Contract or in the contract of another customer of GLWA and Section 5.08 of this Contract may be invoked.

EXHIBIT B

Table 1
Projected Annual Volume and Minimum Annual Volume

Fiscal Year Ending June 30	Projected Annual Volume (Mcf)	Minimum Annual Volume (Mcf)
2018	590,600	295,300
2019	590,600	295,300
2020	590,600	295,300
2021	590,600	295,300
2022	590,600	295,300
2023	590,600	295,300
2024	590,600	295,300
2025	590,600	295,300
2026	590,600	295,300
2027	590,600	295,300
2028	590,600	295,300
2029	590,600	295,300
2030	590,600	295,300
2031	590,600	295,300
2032	590,600	295,300
2033	590,600	295,300
2034	590,600	295,300
2035	590,600	295,300
2036	590,600	295,300
2037	590,600	295,300
2038	590,600	295,300
2039	590,600	295,300
2040	590,600	295,300
2041	590,600	295,300
2042	590,600	295,300
2043	590,600	295,300
2044	590,600	295,300
2045	590,600	295,300
2046	590,600	295,300
2047	590,600	295,300

EXHIBIT B

Table 2
Pressure Range and Maximum Flow Rate

Calendar Year	Pressure Range (psi)		Maximum Flow Rate (mgd)	
	Meter FL-01		<u>Max Day</u>	<u>Peak Hour</u>
	<u>Min</u>	<u>Max</u>		
2017	40	60	15.0	15.0
2018	40	60	15.0	15.0
2019	40	60	15.0	15.0
2020	40	60	15.0	15.0
2021	40	60	15.0	15.0
2022	40	60	15.0	15.0
2023	40	60	15.0	15.0
2024	40	60	15.0	15.0
2025	40	60	15.0	15.0
2026	40	60	15.0	15.0
2027	40	60	15.0	15.0
2028	40	60	15.0	15.0
2029	40	60	15.0	15.0
2030	40	60	15.0	15.0
2031	40	60	15.0	15.0
2032	40	60	15.0	15.0
2033	40	60	15.0	15.0
2034	40	60	15.0	15.0
2035	40	60	15.0	15.0
2036	40	60	15.0	15.0
2037	40	60	15.0	15.0
2038	40	60	15.0	15.0
2039	40	60	15.0	15.0
2040	40	60	15.0	15.0
2041	40	60	15.0	15.0
2042	40	60	15.0	15.0
2043	40	60	15.0	15.0
2044	40	60	15.0	15.0
2045	40	60	15.0	15.0
2046	40	60	15.0	15.0

EXHIBIT B

Table 3
Flow Split Assumptions

Meter	Assumed Flow Split (2017-2018)
FL-01	0 - 100%

Table 4
Addresses for Notice

<p>If to the GLWA:</p> <p>Great Lakes Water Authority 735 Randolph Street, Suite 1901 Detroit, Michigan 48226</p> <p>Attention: General Counsel</p>	<p>If to Customer:</p> <p>Mayor City of Flint 1101 S. Saginaw Street Flint, Michigan, 48502 Attention: City Attorney</p>
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EXHIBIT C

Parameters for Refunding of Series 2016 Bonds

1. Principal amount not to exceed \$79,000,000, the proceeds of which will be used for the purposes of (i) refunding the outstanding Series 2016 Bonds, (ii) to make an additional deposit to the KWA construction fund of not to exceed \$4,000,000 to pay or reimburse the costs of completing the construction of the KWA system, (iii) making a deposit to the debt service reserve account and (iv) paying costs of issuance.
2. Final maturity date not later than November 1, 2045.
3. Interest rate not to exceed the lesser of 8% per annum or such interest rate or rates that would ensure that no annual debt service obligation of Customer, on all outstanding KWA debt, exceed \$7,100,000 in any year; provided, however, that Customer may request of GLWA that Customer exceed that amount; and provided further that if GLWA does not agree and Customer nevertheless wishes to proceed, the monthly credits to Customer's wholesale billing account shall be subject to adjustment in accordance with Section 12.05 of this Contract.
4. Principal of the KWA Refunding Bonds shall not be subject to acceleration prior to maturity.
5. The KWA Refunding Bonds shall be structured on a level debt service basis, within a margin of \$250,000 per year; provided, however, that Customer may request of GLWA that Customer utilize a non-level debt service structure; and provided further that if GLWA does not agree and Customer nevertheless wishes to proceed, the monthly credits to Customer's wholesale billing account shall be subject to adjustment in accordance with Section 12.05 of this Contract.

EXHIBIT

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 24 2017

The Honorable Kate Fields, Councilwoman
City of Flint, Ward 4
1101 South Saginaw Street, Room 310
Flint, Michigan 48502

Dear Councilwoman Fields:

Thank you for your recent communication regarding your concerns with Mayor Weaver's designation of water sources for the City of Flint. U.S. Environmental Protection Agency appreciates hearing your perspective.

Over the past three years, Flint's water system has become among the most heavily monitored water systems in the country, and EPA is pleased with the continuing improvement in the quality of the City's drinking water.

EPA understands that Mayor Weaver's April 19, 2017 letter to EPA indicating that the City would stay on Great Lakes Water Authority (GLWA) water as a primary water source is a recommendation and not a final decision. The final decision will be made in accordance with the Flint City Charter and applicable law, in conjunction with the State.

EPA's January 21, 2016 Administrative Order is intended as an implementable framework by which the City would itself arrive at a source water decision that would result in drinking water quality fully protective of public health. A main goal of the Order is to ensure that any source water switch is accomplished safely, with appropriate planning and testing. From a public health standpoint, the GLWA source has been demonstrated to be a safe and reliable source over a 30-year period. The use of the GLWA source also takes into account: 1) that the City is experienced in safely delivering GLWA water to Flint residents; and 2) that there is not sufficient time to undertake the necessary and adequate corrosion control studies and switch over to a non-GLWA source prior to GLWA's cessation of service to the City in October of 2017.¹

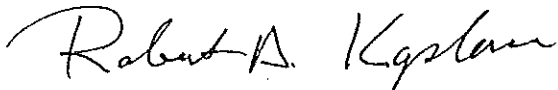
Should the City choose a course different than continuing to purchase water from GLWA, it must show that it would be accomplished safely and with full protection of public health in accordance with the Administrative Order cited above. If another option were selected by the City, the Order requires the City undertake extensive testing, prepare corrosion control plans, and submit that information to EPA for approval. This would need to happen as soon as possible so that EPA has sufficient time to evaluate any new approach, given the scheduled October 2017 cessation of GLWA service to the City.

¹ Please see EPA's February 24, 2017 letter to the City (enclosed).

Regarding public input into the source water designation, the City submitted a revised Public Participation Plan on March 28, 2017. On April 3rd, EPA recommended that the City extend its public comment period from 12 days to 30 days, which did occur. On May 4th, EPA requested additional information about public engagement opportunities and the plan for sharing the results of the public participation efforts with the Flint City Council; the City responded with this additional information on May 19th.² On May 22nd, the City Council voted to extend the public comment period on the source water selection for an additional 30 days.

Thank you for your interest in this important issue. We look forward to continuing the collaboration between EPA and the City of Flint as we seek to further protect and promote public health for all of Flint's citizens.

Sincerely,



Robert A. Kaplan
Acting Regional Administrator

Enclosures

cc: Mr. Eric Mays, Council Member, City of Flint
Ms. Jacqueline Poplar, Council Member, City of Flint
Mr. Wantwaz Davis, Council Member, City of Flint
Mr. Herbert Winfrey, Council Member, City of Flint
Ms. Monica Galloway, Council Member, City of Flint
Ms. Vicki VanBuren, Council Member, City of Flint
Mr. Scott Kincaid, Council Member, City of Flint
Mr. Kerry Nelson, Flint City Council President
Ms. Inez Brown, Flint City Clerk
Ms. Karen Weaver, Mayor, City of Flint
Mr. Sylvester Jones, City Administrator, City of Flint
Mr. David Sabuda, Director of Finance, City of Flint
Mr. Rick Snyder, Governor, State of Michigan
Mr. Richard Baird, Governor's Office
Mr. John Young, Consultant, State of Michigan
Ms. Debbie Stabenow, U.S. Senator, State of Michigan
Mr. Dan Kildee, 5th District Congressman, State of Michigan
Mr. Gary Peters, Senator, U.S. State of Michigan
Mr. Jim Ananich, Senator, State of Michigan
Mr. Sheldon Neeley, Representative, State of Michigan
Mr. Phil Phelps, Representative, State of Michigan

² Please see EPA's May 4, 2017 letter to the City (enclosed).

Mr. Christopher Korleski, U.S. EPA
Mr. Keith Creagh, MDNR
Mr. Bryce Feighner, MDEQ
Mr. Jeff Wright, Genesee County Drain Commissioner