STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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November 14, 2018

***VIA EMAIL AND U.S. MAIL***

William Kim
City of Flint Department of Law
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Re: Notice of City of Flint's Violations of the Settlement Agreement in *Concerned Pastors v Khouri,* Case No. 2:16-cv-10277-DML-SDD

Dear Bill:

In response to your November 5, 2018 letter, I am generally available to schedule a "meet and confer" regarding violations of the Settlement Agreement. But the November 5, 2018 letter either inaccurately characterizes the State Parties' position or is based upon incorrect factual assumptions. So its contention that the State Parties are violating the Settlement Agreement is not supported. Any meeting between the City and State Parties should instead focus on Flint's violation of the Agreement as set forth in my November 1, 2018 letter.

First, the State Parties are not "denying reimbursement for service line replacement (SLR) activities . . . due to the excavation method approved by the City," as you suggest. What my letter states is that the State Parties are only required under the Settlement Agreement to reimburse Flint for excavations that are "several inches" and that the 10-foot open-cut excavations unilaterally mandated by the City do not fit within that limitation. Flint does not dispute the existence of this limiting language or otherwise respond to this point.

Second, you suggest that the State Parties' November 1, 2018 letter is an attempt "to reduce the State's obligation to reimburse the City." That suggestion does not accord with the reality of the Settlement Agreement. The $97,000,000 that the State Parties are potentially required to pay under the Settlement Agreement has already been allocated and is available for Flint's use. Any amount left over is not returned to the State. Instead, any remaining amounts are to be re-purposed for *the City's* use. (Paragraph 26.) Thus, the accusation that the State Parties are trying to pay less than $97,000,000 does not make sense.

Third, Flint's attempt to justify its decision to expend millions of dollars using excavators, instead of hydro-excavation machines, to dig 10-foot open

trenches is unsupported. "Spliced" service lines are not a significant threat to the public health. Especially since Flint has only found seven spliced lines out of the 8,420 excavations conducted this year. Even if they were, Flint's 10-foot excavations fail to uncover any splices at more than 10 feet beyond the curb box. Moreover, even if Flint's 10-foot excavations were justified, the City has still failed to explain why it refuses to use the less-expensive, less-destructive hydro-excavation method to perform the 10-foot excavations—thereby potentially freeing up a larger amount of left-over funds from the $97,000,000 that the City can repurpose for some beneficial use. The City's insistence on this unexplained course of action is troubling.

Fourth, my November 1, 2018 letter does not concede that the State Parties "cannot show the City exceeded the $5,000 per address limit," Rather, the point is that the State Parties have not been able to calculate that average because the City has yet to submit all necessary costs in an orderly manner that would enable the State Parties to make that calculation.

Fifth, we appreciate the City's agreement to prioritize lead and galvanized steel service lines for excavation. But we do not believe it is appropriate to delay planning on how to prioritize excavations until 2019. We are hopeful that the City will agree to expedite discussions on this topic. If not, we intend to proceed with our motion.

Sixth, the assertion that the State Parties have failed to "notify the City of any ongoing concerns" about its reimbursement requests does not accord with the facts. The State Parties have repeatedly expressed—often on multiple occasions in a single day—such concerns to Flint. I suggest you speak with city finance staff and AECOM to confirm that fact. The State's concerns were so significant that it offered to provide state employees to assist Flint in organizing and compiling its reimbursement requests. Earlier this year, Flint declined that offer. As a result, the State has had to expend enormous amount of resources attempting to organize, correct, and fix Flint's cost summaries, which is not something it does for any other City or grantee.

Your contention that the City has three reimbursement requests pending is also incorrect. MDEQ's grant agreements with the City authorize the City to submit one to two reimbursement requests per month. Flint did not choose to do so, instead choosing to hold onto its costs for many months. It then submitted millions of dollars of incomplete reimbursement requests to MDEQ. The three submissions to MDEQ you refer to were actually drafts for the MDEQ to review and correct. Typically, MDEQ would reject reimbursement requests that are not properly documented or organized. Because of Flint's difficulties, however, MDEQ agreed to accept draft submissions, provide comments and corrections back to Flint, and then allow Flint to submit disbursement requests for the revised submissions. None of

the three draft submissions have been finalized. Flint's own actions are the reason the City has not yet received complete reimbursements, so it cannot rely on those actions as a basis for accusing the State Parties of violating the Settlement Agreement.

Please confirm that Flint will take the three actions demanded in my November 1, 2018 letter. Otherwise, we look forward to our meet and confer on these topics.

Sincerely,

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