



City of Flint

Department of Law

TO: Counsel of Record, *Concerned Pastors et al v Khouri et al*
FROM: William Kim, Assistant City Attorney
RE: Force Majeure Notification
DATE: April 2, 2020

Pursuant to ¶134 of the Settlement Agreement in *Concerned Pastors et al v. Khouri et al* (Dkt 147-1, E.D. Mich. Case No. 16-10277, as amended), the City of Flint invokes Section XIV (*Force Majeure*). The Settlement Agreement was entered into, among other reasons, to facilitate the excavation and replacement of lead and galvanized steel service lines in the City. In addition, the parties, specifically the City of Flint and the National Resources Defense Council, have agreed in principle on another amendment to the Settlement Agreement. This agreement-in-principle would extend the completion target dates for service line replacement to June 30, 2020, and includes various other provisions addressing public outreach efforts.

On March 12, 2020, Mayor Sheldon Neeley declared a local State of Emergency, pursuant to MCL §30.410, regarding the threat posed by the COVID-19 pandemic. Mayor Neeley has issued orders cancelling nonessential public meetings, limiting the size of essential public meetings, and temporarily closing City Hall. On Sunday, March 22, 2020, Mayor Neeley asked residents to adhere to a self-imposed shelter in place, and on Monday, March 23, 2020, Governor Whitmer issued Executive Order 2020-21, which “must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life” and prohibits “all public and private gatherings of any number of people occurring among persons not part of a single household.” Most recently, the Mayor Neeley has ordered a nighttime curfew to help combat the spread of COVID-19 in the City.

The service line excavation and replacement process necessarily involves putting workers in close contact with each other and the public, and requires that workers enter private residences. Because it requires face-to-face contact with residents and because workers go door-to-door, the service line replacement program creates an ideal environment for the spread of coronavirus. Additionally, successful completion of the service line replacement program requires voluntary participation of residents. It is unreasonable, unrealistic and unfair to residents to push forward with completion of the program when many may be – and should be – reluctant to let workers into their homes.

Furthermore, Mayor Neeley’s administration has re-tasked staff to deliver water filters, replacement cartridges and water testing kits to residents of the City and has publicized this availability to the public. Mayor Neeley also negotiated with Nestle to increase the availability of bottled water to residents of the City of Flint, including home delivery for the most at-risk.

The City has concluded that it is unfeasible to continue service line replacement without significant risk to residents because of the ongoing Covid-19 pandemic. The City therefore invokes Force Majeure, Section XIV of the Settlement Agreement, specifically in regards to the excavation and replacement of lead and galvanized steel service lines, the agreed-on completion date of June 30, 2020, and the various public outreach and communications activities arising out



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of and related to that date and the need to secure cooperation and consent from the City's residents.

The City wants to be able to complete this project as soon as possible. However, the city also wants to ensure that residents are given appropriate opportunity to participate in the program without undue risk from the spread of coronavirus. At this time, the City is unable to provide any projection as to the length of any delay. Once social distancing restrictions are relaxed, the City intends to resume service line excavation and replacement and will seek agreement with the Parties on appropriate completion and outreach milestones at that time. Thank you in advance for your cooperation and support of the City of Flint in these challenging times.