

EFM SUBMISSION NO.: 2013EFM037

PRESENTED: 1-23-13

ADOPTED: 1-23-13

BY THE EMERGENCY FINANCIAL MANAGER:

**RESOLUTION TO AUTHORIZE AN INTERJURISDICTIONAL AGREEMENT WITH
GENESEE COUNTY WATER AND WASTE SERVICES**


The Department of Utilities - Water Pollution Control Division, is seeking approval to proceed with an Interjurisdictional Agreement (IJA) and a Companion sewer use ordinance amendment with Genesee County Drain Commission Water and Waste Services (GCWWS). Said Agreement would grant GCWWS the authority to enforce an Ordinance within the City of Flint that would only be applicable to sewer users that discharge into the GCWWS collection system. This class of sewer users is covered by the companion "IJA Sewer User Ordinance"; and

State law requires that all sewage treatment system operators have proper and legal authority to regulate all who discharge into their collection system and treatment plant(s). Without this authority, discharges cannot be properly regulated or monitored for potential hazards or permit violations. Flint has such enforcement authority within the political boundaries of the City and monitors users that discharge into the City's collection system. However, there are a few users within the City boundaries which discharge into the GCWWS collection system. This agreement will grant enforcement authority to GCWWS over these sewer users and their discharges.

IT IS RESOLVED, that the Proper City Officials, upon the Emergency Financial Manager's approval are hereby authorized to do all things necessary to enter into a Interjurisdictional Agreement between the City of Flint and Genesee County Drain Commission, Water and Waste Services to grant them legal authority to enforce the companion "IJA Sewer User Ordinance" on sewer users located within the City of Flint, who discharge into the GCWWS collection system.

Approved as to Form:


Peter Bade, Chief Legal Officer


Michael K. Brown, City Administrator

EFM DISPOSITION:

ENACT ✓ REFER TO COUNCIL _____ FAIL _____


Edward J. Kurtz, Emergency Financial Manager

DATED: 1-23-13

RESOLUTION STAFF REVIEW

DATE: 01/17/2013

Agenda Item No.: _____ Date to EFM: _____

Agenda Item Title: Genesee County WWS – Interjurisdictional Agreement and companion Sewer Use Ordinance Amendment

Submitted By: Robert J. Case, Water Pollution Control Supervisor

Summary of Proposed Action:

Approval to proceed with an Interjurisdictional Agreement with GCWWS which will grant them the legal authority to enforce their Ordinance within the City of Flint. The Agreement and Ordinance amendment only applies to sewer users located within the City of Flint who discharge into the GCWWS sewage system. This class of sewer users is termed "IJA Sewer Users", and the new Ordinance applying only to them is termed the "IJA Sewer User Ordinance".

Background:

State law requires that all sewage treatment system operators have proper legal authority to regulate all who discharge into their collection system and treatment plant, to insure that any discharge that could potentially harm the system or cause a violation of its NPDES permit is prohibited. Flint has such authority over all located within the political boundaries of the City, and nearly all of them discharge into the City's system.

There are a few, however, who discharge into the GCWWS system, rather than the City system, because the City's system does not extend to near to the location of their discharge. This includes Bishop Airport and a portion of the GM engine plant near Bristol Road. GCWWS must be allowed to regulate these discharges, and the City must agree to allow them to do so. Otherwise, GCWWS would be forced to refuse to accept these discharges, and that would be extremely detrimental to these City-based facilities.

Financial Implications (i.e., budget, account information)

There are no known financial implications regarding the Agreement or implementation of the companion Ordinance.

Budgeted Expenditure? Yes No Please explain if no: Not applicable

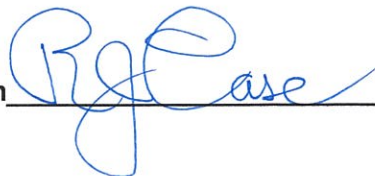
Account No.: Not applicable

Pre-encumbered? Yes No Requisition: Not applicable

Other Implications (i.e., collective bargaining) No effect on Local 1600 or 1799.

Staff Recommendation: Approve.

Staff Person



Approval


Department Head or Auth. Staff

INTERJURISDICTIONAL AGREEMENT
(SEWER USE)

**ENTERED INTO BETWEEN THE COUNTY AGENCY AND THE CITY
OF FLINT.**

THIS AGREEMENT is made and entered into as of the last date of execution hereof (the "effective date") by and between the COUNTY OF GENESEE acting through its COUNTY AGENCY, a Michigan municipal agency established by the Genesee County Board of Commissioners pursuant to Act 342, Public Acts of Michigan of 1939 (the "County Agency"); and the CITY OF FLINT, Genesee County, Michigan, a Michigan Home Rule City ("the City").

WITNESSETH:

WHEREAS,

As authorized by Act 342, the County Agency owns and operates a sewer system for the collection, conveyance, and treatment of wastewater (referred to herein as the "Genesee County Publicly Owned Treatment Works" or "Genesee County POTW").

The Genesee County POTW is the designated "Control Authority" for the Genesee County sewer system as provided by the County's National Pollution Discharge Elimination System Permit ("NPDES Permit") and by applicable state and federal laws, including: the Federal Water Pollution Control Act (also known as the "Clean Water Act"), as amended, 33 USC 1251, et seq.; the General Pretreatment Regulations (40 CFR part 403); Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCLA §§ 324.3101 et seq., as amended ("Water Resources Protection"); and the Michigan industrial pretreatment rules, Michigan Administrative Code, R 323.2301 et seq., as amended.

The Genesee County POTW, in its capacity as the Control Authority and holder of the County's NPDES Permit, is required by state and federal laws and regulations to adopt a sewer use ordinance and to implement and enforce an industrial pretreatment program ("IPP"). Further, the Genesee County POTW is required to have, through its sewer use ordinance, IPP, interjurisdictional agreements ("IJAs") with local governmental units, and sewer use ordinances adopted by local governmental units ("IJA sewer use ordinances"), the same legal authority to independently assess and assure compliance with applicable discharge standards and requirements by all users that discharge to the Genesee County POTW, existing and future, and throughout all areas served by the Genesee County POTW regardless of jurisdictional or political boundaries.

The County Agency has established and organized the Genesee County Water and Waste Services Division ("GCWWSD") to administer, implement and enforce the provisions of Act 342, other applicable state and federal laws and regulations, Genesee County's Sewer Use Ordinance, the County's IPP, IJAs, and IJA sewer use ordinances.

The Genesee County POTW currently provides wastewater treatment service for discharges of wastewater to the Genesee County POTW that originate within the City. The discharges from within the City to the Genesee County POTW are treated at the Anthony Ragnone Treatment Plant. After treatment, the treated effluent is then discharged by the Genesee County POTW pursuant to the County's NPDES Permit.

Act 342 and other state and federal laws require the County Agency and the City to enter into an IJA that governs discharges from within the City to the Genesee County POTW. Also, the Genesee County Sewer Use Ordinance requires that, as a condition to discharge to the Genesee County POTW, the City must adopt an IJA sewer use ordinance (the "City's IJA Sewer Use Ordinance"). The City's IJA Sewer Use Ordinance must expressly designate, empower and authorize the County Agency, acting through the GCWWSO, to act as the agent and representative of the City for purposes of administering and enforcing the City's IJA Sewer Use Ordinance within the City.

The County Agency and the City are entering this Agreement to comply with the requirements of Act 342, the County's Sewer Use Ordinance, and the County's NPDES Permit, and to ensure that the County Agency has the proper legal authority to administer, implement and enforce the City's IJA Sewer Use Ordinance and the County Agency's IPP within the City as required by applicable laws and regulations.

NOW, THEREFORE, the Parties agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following terms are defined to mean as follows:

"Act 342" means the "County Public Improvement Act of 1939", as amended, being MCLA 46.171 et seq., which act authorizes, in pertinent part, the establishment by the County of a system or systems of sewer, or sewage disposal improvements and services and disposal facilities and services within or between cities, villages, townships, charter townships, or any duly authorized and established combinations thereof, within or without the county, and mains, trunks, connecting lines, and disposal facilities therefore.

"Clean Water Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC. 1251, et seq.

"City's IJA Sewer Use Ordinance" means the sewer use ordinance applicable to discharges from within the City to the Genesee County POTW that is required to be adopted by the City as provided by this IJA and by Genesee County's Sewer Use Ordinance. A copy of the City's IJA

Sewer Use Ordinance in the form to be initially adopted by the City is attached to this IJA as Exhibit 1.

“County” means Genesee County, Michigan.

“County Agency” means the public body or official as designated by the Genesee County Board of Commissioners pursuant to the provisions of Public Act 342 of the 1939 Public Acts of Michigan, being MCL 46.171 et seq., as amended (the “County Public Improvement Act”). The County Agency has established and organized the Genesee County Water and Waste Services Division (“GCWWSD”) to administer, implement and enforce the provisions of Act 342, other applicable state and federal laws and regulations, Genesee County’s Sewer Use Ordinance, the County’s IPP, IJAs, and IJA sewer use ordinances. Accordingly, for purposes of this Agreement, “GCWWSD” may also be used to refer to the “County Agency.”

“Discharge” means the introduction of waste, wastewater, effluent or pollutants into the Genesee County POTW, whether intentional or unintentional, and whether directly (such as through an approved sewer connection or other approved discharge point as authorized by the Genesee County Sewer Use Ordinance or the City’s IJA Sewer Use Ordinance) or indirectly (including, but not limited to, sources such as inflow and infiltration).

“GCWWSD” means the Genesee County Water and Waste Services Division (see “County Agency”).

“Genesee County POTW” (Publicly Owned Treatment Works) means the complete sewage disposal, transportation and treatment system of Genesee County, Michigan, as defined by the Clean Water Act, the County Public Improvement Act, and Genesee County’s Sewer Use Ordinance, including any devices, processes and systems used in the storage, treatment, recycling or reclamation of wastewater, sewage or sludge, as well as sewers (including all main, lateral and intercepting sewers), pipes and other conveyances used to collect or convey wastewater or sewage to the treatment works, as now or hereafter added to, extended or improved. The term “Genesee County POTW” shall also include any sewers, pipes, and other conveyances that convey or discharge wastewaters to the Genesee County POTW from any person, provided that nothing in this sentence is intended, nor shall it be construed, to have any effect on the ownership or administration of, or responsibility for, any such sewer, pipe, or other conveyance. References in this Agreement to approvals, determinations, reviews, etc., “by the Genesee County POTW” shall mean by the County Agency, the Genesee County POTW Manager, or their authorized representatives. The term “Genesee County POTW” may also be used to refer to the GCWWSD (acting through the County Agency) as the entity that has jurisdiction over the discharges to, and discharges from, the Genesee County POTW (the “control authority”), as appropriate to the context in which the term is used.

“Genesee County POTW Manager” means the person designated by the County Agency as being responsible to administer the Genesee County POTW’s Industrial Pretreatment Program, and who is charged with certain duties and responsibilities as provided by Genesee County’s Sewer Use Ordinance and the City’s IJA Sewer Use Ordinance. References to “Genesee County POTW Manager” shall include the Genesee County POTW Manager’s authorized representatives.

“Genesee County Sewer Use Ordinance” means Genesee County Ordinance No. 0605, adopted by the Genesee County Board of Commissioners, November 21, 2006, as amended.

“NPDES Permit” means a permit issued pursuant to Section 402 of the Clean Water Act.

“Person” means any individual, partnership, co-partnership, firm, company, association, society, corporation, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents or assigns.

“Premises” means a lot, tract, or parcel of land, or a building or structure, having any connection, directly or indirectly, to the Genesee County POTW, or from which there is a discharge to the Genesee County POTW.

“Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing such pollutants into the Genesee County POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes; process changes; or other means, except for the use of dilution (unless expressly authorized by any applicable pretreatment standard or requirement and the Genesee County POTW Manager).

“Pretreatment Requirement” means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on a Nondomestic User.

“Pretreatment Standard” means any regulation containing pollutant discharge limits promulgated in accordance with Section 307(b) and (c) of the Act or Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCL §§ 324.3101 et seq., including general and specific prohibitive discharge limits and local limits established in the City’s IJA Sewer Use Ordinance pursuant to MAC R 323.2303, and categorical standards.

“Surcharge” means the additional charges made by the Genesee County POTW for the treatment of wastewater containing pollutants in excess of specified concentrations, loadings or other applicable limits, or for other purposes specified by the City’s IJA Sewer Use Ordinance.

“User” means any person who contributes, causes or permits the contribution, introduction or

discharge of wastewater into the Genesee County POTW, whether intentional or unintentional, and whether directly or indirectly.

“User Permit “ means an Industrial User Permit or a General User Permit as provided by the City’s IJA Sewer Use Ordinance.

“Wastewater” means the liquid and water-carried industrial or domestic waste from dwellings, commercial buildings, industrial facilities, and institutions (including, without limitation, contaminated groundwater and landfill leachate), whether treated or untreated, that is contributed, introduced or discharged into the Genesee County POTW. The term includes any water that has in any way been used and degraded or physically or chemically altered.

2. ADOPTION BY THE CITY OF THE CITY’S IJA SEWER USE ORDINANCE

A. As a condition for any User or Premises located within the City to discharge into the Genesee County POTW, the City shall adopt a new sewer use ordinance (the City’s IJA Sewer Use Ordinance) as provided by this Paragraph 2.

B. Except as specifically provided by Section 1.1(D) of Genesee County’s Sewer Use Ordinance, the City’s IJA Sewer Use Ordinance adopted by the City shall be identical to Genesee County’s Sewer Use Ordinance, as amended from time to time.

C. The City shall keep the City’s IJA Sewer Use Ordinance continually up-to-date through amendments by the City as required by Section 1.1(D) of Genesee County’s Sewer Use Ordinance. The County Agency shall notify the City in writing of any amendments made by the County to Genesee County’s Sewer Use Ordinance. Upon receipt of the notice, the City shall consider the adoption of the amendments to the City’s IJA Sewer Use Ordinance as soon as possible, but in no case shall the ordinance amendments become fully effective as City law later than 120 days after the date of receipt by the City of the notice from the County Agency. The City shall notify the Genesee County POTW upon final enactment of all required amendments to the Sewer Use Ordinance and shall send a copy of the ordinance as amended to the County Agency. If the City does not enact such amendments and make them effective within such time period, all discharges from within City to the Genesee County POTW shall immediately cease upon direction of the Genesee County POTW Manager and shall not thereafter recommence discharge without written authorization from the Genesee County POTW Manager; and provided further that if the discharges are not immediately ceased, the County Agency may take such action as it determines necessary to physically block the sewer connections and may bill the City for the costs incurred by the County Agency in taking such action.

D. The City's IJA Ordinance shall apply to all Users or Premises within the City from which there are discharges of wastewater to the Genesee County POTW.

E. The City shall take such steps as required by the Genesee County POTW to ensure that all requirements of the City's IJA Sewer Use Ordinances are met before allowing any connection to be made to the Genesee County POTW.

3. DESIGNATION OF GENESEE COUNTY POTW AS CITY'S AGENT AND REPRESENTATIVE

A. As a condition for any User or Premises located within the City to discharge into the Genesee County POTW, the City hereby designates, authorizes, and empowers the Genesee County POTW as provided by this Paragraph 3.

B. The City designates, authorizes, and empowers the Genesee County POTW to act as the principal agent and representative of the City for purposes of administering and enforcing the City's IJA Sewer Use Ordinance with respect to User or Premises within the City that discharge to the Genesee County POTW. This includes at a minimum the power and authority of the Genesee County POTW to do all of the following, as determined necessary by the Genesee County POTW, consistent with the City's IJA Sewer Use Ordinance, and other applicable laws and regulations:

(1) Identify and locate all possible Users or Premises located within the City that may be discharging to the Genesee County POTW (hereinafter "City Users" and "City Premises" respectively) subject to pretreatment standards or requirements under the City's IJA Sewer Use Ordinance, or other applicable laws and regulations; identify the character and volume of the discharges from those Users or Premises; and notify the Users or Premises of applicable standards or requirements.

(2) Deny or condition discharges from Users and Premises located within the City that discharge to the Genesee County POTW that do not meet the standards and requirements of the City's IJA Sewer Use Ordinance, or other applicable pretreatment standards and requirements, or that would cause the Genesee County POTW to violate its NPDES permit.

(3) Require all Users and Premises located within the City that discharge to the Genesee County POTW to comply with all applicable standards and requirements under the City's IJA Sewer Use Ordinance, or other applicable laws and regulations.

(4) Take random samples, conduct inspections and surveillance activities and monitoring of Users and Premises located within the City that discharge to the Genesee County

POTW, and take such other actions to independently assess and ensure compliance with the City's IJA Sewer Use Ordinance, or other applicable laws and regulations.

(5) Enter the premises of any Users or Premises located within the City from which there is a discharge source to the Genesee County POTW, as authorized by the City's IJA Sewer Use Ordinance.

(6) Immediately and effectively halt or prevent any discharge from within the City to the Genesee County POTW that might present an imminent endangerment to public health or welfare; and also to halt or prevent any discharge from within the City that might endanger the environment, interfere with the operation of the Genesee County POTW or cause the Genesee County POTW to violate its NPDES Permit.

(7) Control discharges to the Genesee County POTW from Users or Premises located within the City through User Permits issued by the Genesee County POTW.

(8) Take enforcement action against any Users or Premises located within the City that discharge to the Genesee County POTW under the City's IJA Sewer Use Ordinance, or other applicable laws and regulations, including the power and authority of the Genesee County POTW to immediately and independently investigate, enforce, and prosecute (administratively or judicially, and civilly or criminally) any violation of the City's IJA Sewer Use Ordinance, or of any notice, order, permit, decision or determination promulgated, issued or made thereunder by the Genesee County POTW, and to otherwise implement the requirements of the City's IJA Sewer Use Ordinance, and other applicable laws and regulations.

In all cases, the Genesee County POTW shall have primary responsibility for matters regarding discharges of wastewater to the Genesee County POTW by Users or Premises regulated under the City's IJA Sewer Use Ordinance, or other applicable laws and regulations; and the Genesee County POTW shall have the ability to act independently of the City regarding such matters and without the City's approval.

C. The City designates and authorizes the Genesee County POTW Manager and the Genesee County POTW Manager's designated representatives as being among the local officials authorized to issue municipal civil infraction notices and citations to City Users or Premises for violations of the City's IJA Sewer Use Ordinance.

D. The City agrees that it will take any other action required by law if and as necessary to effect the provisions of this paragraph.

4. ACCEPTANCE, TREATMENT AND DISPOSAL OF WASTEWATER DISCHARGES

A. The Genesee County POTW will accept, provide treatment, and dispose of wastewater discharges from Users and Premises located within the City to the Genesee County POTW as provided by and consistent with the terms, conditions, and requirements of this Agreement.

B. All discharges from Users and Premises located within the City shall be subject to and fully comply with the requirements of the City's IJA Sewer Use Ordinance, the terms, conditions, and requirements of any applicable User Permits issued by the Genesee County POTW, and applicable state and federal laws and regulations, as amended, modified or revised. All exceedences of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements shall constitute a violation of the City's IJA Sewer Use Ordinance, subject to applicable fines, penalties and other enforcement actions and remedies provided by the Ordinance and other applicable laws and regulations. In no case shall the imposition of a surcharge for a discharge which does not meet the applicable prohibitions, limitations, or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of the City's IJA Sewer Use Ordinance.

C. The failure or refusal by the City to fully and timely comply with any of the terms, conditions, or requirements of this Agreement (including, but not limited to, the City's failure or refusal to adopt or to timely and continually adopt required amendments to the City's IJA Sewer Use Ordinance) shall not prevent the full application of Genesee County's Sewer Use Ordinance and IPP regulations (to the extent that Genesee County's Sewer Use Ordinance and IPP regulations may be lawfully applied) to any discharge from Users and Premises located within the City to the Genesee County POTW or to limit in any way the Genesee County POTW's power, authority and discretion to administer and enforce the Genesee County Sewer Use Ordinance and IPP regulations with respect to such discharges; nor shall such failure or refusal be construed as authorizing the illegal discharge or otherwise excuse a violation of the Genesee County Sewer Use Ordinance. Further, the failure or refusal by the City to fully and timely comply with any of the terms, conditions, or requirements of this Agreement, or the City's IJA Sewer Use Ordinance, as determined by the County Agency, constitutes sufficient cause for the Genesee County POTW to refuse or terminate service to Users and Premises located within the City.

D. Nothing in this Agreement or any other agreement between the County Agency and the City (or between the County Agency or the City and any other person) shall operate or be construed to nullify, conflict with, or prevent (or to enable beyond the authority under applicable laws and regulations) the full application of any provision of Genesee County's Sewer Use

Ordinance and IPP regulations to any discharge from Users and Premises located within the City to the Genesee County POTW, or to limit (or to enable beyond the authority under applicable laws and regulations) in any way the Genesee County POTW's power, authority and discretion to administer and enforce Genesee County's Sewer Use Ordinance and IPP regulations with respect to such discharges.

E. Further, nothing in this Agreement or any other agreement between the County Agency and the City (or between the County Agency or the City and any other person) shall operate or be construed to nullify, conflict with, or prevent the full application of any provision of the City's IJA Sewer Use Ordinance to any discharge from Users and Premises located within the City to the Genesee County POTW or to limit in any way the Genesee County POTW's power, authority and discretion to act as the agent and representative of the City for purposes of administering and enforcing the City's IJA Sewer Use Ordinance within the City with respect to such discharges.

5. RELATIONSHIP OF PARTIES

Nothing under this Agreement and no action taken pursuant hereto shall cause the County and the City to be treated as a partnership, joint venture, association, authority, or other common entity.

6. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives and successors.

7. SAVING CLAUSE

If any part of this Agreement is held by a Court of competent jurisdiction to be illegal or unenforceable or rendered invalid or unenforceable by state or federal law, such event shall not be deemed to affect the validity of any other portion hereof.

8. EFFECTIVE DATE

This Agreement shall become effective on the date that it has been signed by authorized representatives of both the County Agency and the City as set forth below.

9. ENTIRE AGREEMENT

This Agreement constitutes the final, entire and exclusive agreement of the parties with respect to the subject matter addressed, and supersedes all prior communications, understandings and agreements relating to the subject matter, whether oral or written. Nothing in this Agreement shall limit the ability of the Parties to negotiate amendments to this Agreement, provided that except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. Nothing in this Agreement is intended to nor should it be construed to create any rights in any persons or entities that are not a party to this Agreement.

10. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Michigan.

11. CONSTRUCTION

This Agreement has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties. This Agreement therefore shall not be construed against any party to this Agreement on the basis that one party may have drafted all or part of this Agreement.

12. NOTICE

Any notice required or permitted under this Agreement or under state or federal law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested or by overnight mail, addressed as follows:

If to City (to both of the following):

City Clerk's Office, City of Flint
1101 South Saginaw St.
Flint, MI 48502

City Water Pollution Control
G-4652 Beecher Road
Flint, MI 48532

If to County Agency:

Genesee County Drain Commissioner's Office
Attn: POTW Manager
G-4610 Beecher Road
Flint, MI 48532

IN WITNESS WHEREOF, this Agreement is signed and delivered by authority of the County Agency and the City given on the dates set forth below.

COUNTY AGENCY,

a Michigan municipal agency established by the
Genesee County Board of Commissioners pursuant
to Act 342, acting on behalf of the COUNTY OF
GENESEE

By _____
Jeff Wright, Drain Commissioner,
As County Agency

Date _____

THE CITY OF FLINT,

a Michigan Municipal Corporation,

By _____
Edward J. Kurtz
City of Flint Emergency Financial Manager

Date 1-24-13

Michael K. Brown
City Administrator

Date 1-24-13