

EM SUBMISSION NO.: EMA0092015

PRESENTED: 1-16-15

ADOPTED: 1-20-15

BY THE EMERGENCY MANAGER:

RESOLUTION APPROVING AN ESCROW AGREEMENT BETWEEN THE CITY OF FLINT AND THE GENESEE COUNTY LAND BANK

The City of Flint wishes to enter into an Escrow Agreement with the Genesee County Land Bank to provide certain financial assurance for the compost the City of Flint committed to meet its cost share obligation as specified in the Escrow Agreement attached hereto and made a part hereof; and

The City of Flint shall provide for financial assurance in the amount of \$105,000 in the form of an Escrow within seven (7) days of the effective date of this Escrow Agreement; and

The Escrow Agreement shall encompass three agreements: (1) an agreement dated February 5, 2013, between the City of Flint, County of Genesee and the Land Bank; (2) an agreement dated September 3, 2014, between the City of Flint, the Land Bank, and the Michigan Land Bank Fast Track Authority; and, (3) an agreement dated January 2015, between the City and the Genesee County Land Bank Authority.

IT IS RESOLVED that the Emergency Manager hereby approves the Escrow Agreement between the City of Flint and the Genesee County Land Bank, attached hereto and made a part hereof, pursuant to the covenants contained therein. Escrow funds shall be identified by the Emergency Manager.

APPROVED AS TO FORM:

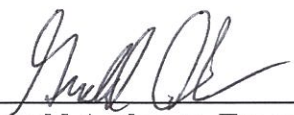


Peter M. Bade, City Attorney

EM DISPOSITION:

ENACT X FAIL _____

DATED 1/20/15



Gerald Ambrose, Emergency Manager

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into this 15th day of January, 2015, by and between City of Flint, whose address is 1101 S. Saginaw St., Flint, MI 48502 (the “City”), and the Genesee County Land Bank Authority (the “Land Bank”), a county land bank fast track authority acting under the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 *et seq*, whose address is 452 S. Saginaw St., Flint, MI 48502.

RECITALS

WHEREAS, the City has an ownership interest in five parcels of real property located in the City of Flint, Genesee County, Michigan, legally described in **Exhibit A** attached hereto and incorporated herein (the “Property”).

WHEREAS, several environmental reports concerning the Property have been prepared since 2009, including:

1. A baseline environmental assessment (“BEA”) conducted in 2012 for each of the five parcels that make up the Property. The BEA identifies contamination in the soil and groundwater consisting of volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”) and metals. The BEA also describes light non-aqueous phase liquids (“LNAPL”), also known as free product, in the subsurface at several locations; and
2. A Phase I environmental site assessment (“ESA”), dated September 25, 2009, and a May 10, 2010 Phase II report, conducted by AKT Peerless (hereinafter “AKT”), as well as a Phase I ESA conducted by Weston Solution, for the Property.

WHEREAS, the City and the United States Environmental Protection Agency (“EPA”) have entered into an Agreement, Order on Consent, and Covenant Not to Sue the City of Flint, MI, attached as **Exhibit B** hereto and incorporated herein.

WHEREAS, prior and existing funding has paid for the current work plans and environmental reports for the Property;

WHEREAS, the prior funding consists of 1.6 million dollars funded by an EPA subgrant from Genesee County to the City and a \$200,000 Michigan Land Bank subgrant from the State of Michigan to the City (hereinafter defined as “the Existing Grants”);

WHEREAS, the City and the County have entered into an agreement whereby the City, through its agent the Land Bank, will complete certain work plan tasks for the Existing Grants.

WHEREAS, a \$1,933,700 grant (hereinafter “New Grant”) has been made to the Land Bank from the EPA. The terms of the New Grant are defined in the Grant Funds Cooperative Agreement between the Land Bank and the EPA, which is attached as Exhibit C but is not incorporated herein.

WHEREAS, the City and the Land Bank desire to enter into an agreement whereby the Land Bank will complete the work outlined in the New Grant Work Plan (hereinafter “the \$1.9 Million Work Plan”) and the work under the Existing Grants.

WHEREAS, the Land Bank is managing the tasks in the Existing Grants and the \$1.9 Million Work Plan (collectively defined hereafter as “the Work”).

WHEREAS, completion of the Work at the Property will fully comply with the Agreement, Order on Consent and Covenant Not to Sue and Cooperative Agreements.

WHEREAS, the Land Bank has selected AKT to serve as environmental consultant to assist the Land Bank in completing the Work, in compliance with this Agreement.

ARTICLE I
AFFIRMATIVE COVENANTS

In furtherance of completion of the City's obligations under the PPA, the City and the Land Bank covenant to do the following:

1.01 Right of Entry. The City grants to the Land Bank and its employees, representatives, officers, contractors, consultants and agents the right to enter the Property to perform the Work.

1.02 Work by Others. The City and its employees, representatives, officers, contractors, consultants and agents shall not alter the portions of the Property in the future where the Work is being performed without the Land Bank's prior written approval, which shall not be unreasonably withheld. If the City violates this provision and the violation results in voiding of any warranty or damage to the Work, the City will be responsible for said damage and all cost toward repairs caused by the violation. All repair and replacement resulting from a violation will be supervised and directed by the Land Bank at the City's expense.

1.03 Observation of On-Site Work. City shall have the right to observe and witness all Work.

1.04 Work Plan. The Work shall not be amended or modified without the prior written consent of the City. Although the City may request means, methods, materials, techniques, sequences, schedules and procedures of performing the Work, such decisions regarding the Work shall rest solely with the Land Bank.

1.05 Term. The term of this Agreement shall commence on the Effective Date and continue until the Existing Grants and the New Grant are closed by EPA or until both such grants expire, whichever occurs first.

1.06 Prohibited Uses. The Land Bank shall not use the Property for any purpose unrelated to the Work without the City's prior written approval.

1.07 Adherence to Project Budget. The Land Bank agrees to keep all expenditures of the Grant Funds within the budget established under the Existing Grants and the New Grant or the budget as amended by the Grantor. The budget shall include the administration of all the Work, and implementation of the Work.

1.08 Contractor Qualifications and Insurance. “Contractor” is defined as AKT and any successor contractor. The Contractor shall carry out the Work consistent with the level of care and skill exercised by similar contractors and subcontractors and suppliers performing comparable services under comparable circumstances. The Contractor or its subcontractor or supplier, as appropriate, shall possess the appropriate license(s), if any is required under applicable state law, from the Contractor’s state licensing board for the past twenty-four (24) months prior to the date of the Work. The Contractor or its subcontractor, as appropriate, shall maintain and keep in full force and effect during the Term the following insurance: (a) general liability insurance endorsed to include contractual liability, with a minimum of \$1,000,000 coverage per accident or claim and \$1,000,000 in aggregate; (b) automobile liability insurance with minimum limits of \$1,000,000; (c) Workers’ Compensation insurance which meets Michigan’s statutory requirements and Employer’s Liability Insurance with minimum limits of \$500,000; (d) pollution/environmental impairment insurance in the amount of at least \$1,000,000 per occurrence; and (e) professional liability insurance in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in aggregate. The above limits as applied to subcontractors may in the sole discretion of the Contractor be reduced or waived but, in such case, the Land Bank and the Contractor shall be fully liable to the City for any losses that occur to the City due to the lack of insurance coverage and insurance proceeds. Prior to commencing any Work on the Property, the Contractor shall provide a certificate of insurance evidencing the insurance

required under this Section. The insurers shall be licensed to do business in the State of Michigan.

1.09 Additional Insured. The Land Bank shall include as a term of its contract with AKT and any successor contractor that the City of Flint and the Land Bank be named and maintained as an additional insured for the insurance in Section 1.08 (except for Workers' Compensation insurance). AKT shall require that its subcontractors do the same.

1.10 Compliance With All Laws. The Land Bank shall perform or cause the Work to be performed (a) in accordance with all applicable state, local and federal laws and regulations, and (b) the Cooperative Agreement, the Brownfield Cleanup Revolving Loan Fund Grant Agreement between the City and Genesee County, the Management Agreement between the City and the Land Bank, and the Brownfield Cleanup Revolving Loan Fund Subgrant Agreement between the City, the Michigan Land Bank Fast Track Authority and the Genesee County Land Bank Authority. The Land Bank and/or its contractor and subcontractors shall take no action that would cause the City to be in violation of the Michigan Department of Environmental Quality Water Resources Division Administrative Order ACO-000225.

1.11 Litigation. The Land Bank shall promptly give notice in writing to the City of any litigation pending or threatened against the Land Bank during the performance of the Work with respect to the Property.

1.12 Completion of Project. The Land Bank shall notify the City in writing when the Work is complete.

1.13 Reporting. The Land Bank shall provide to the City the same quarterly report that it provides to EPA under the grants every quarter after the effective date of this Agreement ("Quarterly Report"). Each Quarterly Report shall contain a summary of the Work completed

for the previous quarter and the estimated Work planned for the upcoming quarter. The Land Bank shall also provide to the City, upon request by the City at any time, an interim report on an issue or issues related to the Work which are specified by the City in the request, provided information is available to the Land Bank to address the request.

ARTICLE II
Claim of Liens

2.01 Claim of Liens. The Land Bank shall hold the City harmless for any and all claims for liens of labor, services, or material furnished to the Land Bank in connection with the performance of the Land Bank's obligations under this Agreement.

ARTICLE III
Miscellaneous

3.01 Successors. This Agreement shall be binding upon the permitted assigns or successors of the Land Bank and the City. This Agreement shall not be assigned or transferred by the Land Bank without the written consent of the City and any purported assignment or transfer without such prior written consent shall be void.

3.02 Notices. Any notice, consent, waiver, request, reports or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given: (a) on the same day if delivered personally, (b) three (3) business days after mailed if delivered by certified or registered mail, return receipt requested, postage prepaid, (c) one (1) business day after dispatched if dispatched by nationally recognized overnight delivery service, or (d) on the same day if sent by telecopier or by electronic mail (email) (subject to obtaining a confirmation receipt or response email), in any event, addressed to the party's address as follows:

To City:
City of Flint
Attn: Mayor Dayne Walling and
Emergency Financial Manager Darnell Earley
1101 South Saginaw Street
Flint, MI 48502

To Land Bank:
Executive Director of the Land Bank
452 South Saginaw Street, Suite #200
Flint, MI 48502

Either party may, upon prior notice of ten (10) calendar days, change its address for all subsequent notices.

3.03 Certain Covenants.

- a) The Land Bank shall complete the Work on the storm sewers for Outfalls #55 and #49 by September 30, 2015 assuming the compost match is delivered by June 1, 2015 and the EPA has extended the Existing \$1.6 million grant and the New Grant is still in effect. This part of the Work is described in (i) Chevy Commons Phase 1 Construction, dated September 30, 2014, as amended; (ii) Storm Sewer Inspection and Pipe Preparation Services, dated November 10, 2014; and (iii) Storm Sewer Rehabilitation Lining Services, dated December 10, 2014, and the Lining Subcontractor proposed Scope of Work and Cured in Place Pipe (“CIPP”) Design Per ASTM F1216.
- b) Within ten (10) days after receipt by the City of a written request from the Land Bank, the City shall remove and relocate the Pump Station currently in the bermed area on the Property and relocate the bermed area and its related infrastructure to a new location that will not interfere with the Work.

- c) The City shall: (i) before March 22, 2015 and provided the City and Genesee County have entered into an escrow agreement (“Escrow Agreement”) under which the City places One Hundred Five Thousand Dollars (\$105,000) into escrow and further provided that the EPA has extended the Existing \$1.6 million grant and the New Grant is still in effect, place \$105,000 into the Fund under the Escrow Agreement; (ii) before March 22, 2015, cause screening equipment to be on the Property ready to be used to screen up to 11,000 cubic yards of on-site compost on the Property as a component of cover (“Compost”); (iii) before May 15, 2015, cause the screening of Compost to begin; and (iv) before June 1, 2015, cause the screening of the Compost to be completed.
- d) The Land Bank may plant trees and vegetation on the Property as part of the Work. The City previously received a grant from the U.S. Department of Agriculture for the planting of trees and vegetation, but that grant and work under that grant are not part of this Agreement. The Land Bank has no role in that grant.

3.04 Relationship. In performing services under this Agreement, the relationship between the City and the Land Bank is that of Property Owner (City of Flint) and independent contractor (Land Bank). The City and the Land Bank by the execution of this Agreement do not change their independent status.

3.05 Entire Agreement. The terms and conditions of this Agreement, all exhibits attached hereto and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement may not be amended or modified without the written consent of the parties hereto.

3.06 Inconsistency. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this Agreement shall control except where federal statutes or regulations are controlling.

3.07 Severability. If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

3.08 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan except where superseded by federal statutes or federal regulations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

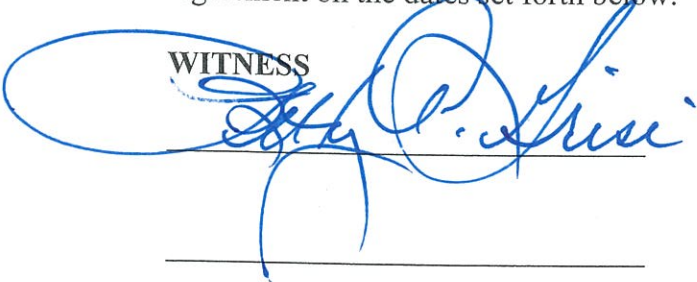
(Signatures provided on following page)

EXECUTION

IN WITNESS WHEREOF, the Land Bank and the City have executed this

Agreement on the dates set forth below.

WITNESS





CITY OF FLINT:



By: Mayor Dayne Walling

Dated: 1/15/15


CITY OF FLINT:



By: Gerald Ambrose
Emergency Manager

Dated: 1/15/15

**GENESEE COUNTY LAND BANK
AUTHORITY:**



By:
Dated: 1/22/15