

City of Flint, Michigan

*Third Floor, City Hall
1101 S. Saginaw Street
Flint, Michigan 48502
www.cityofflint.com*



Meeting Agenda - Final

Monday, June 10, 2019

5:30 PM

Council Chambers

CITY COUNCIL

*Herbert J. Winfrey, President, Ward 6
Monica Galloway, Vice President, Ward 7*

*Eric Mays, Ward 1 Maurice D. Davis, Ward 2
Santino J. Guerra, Ward 3 Kate Fields, Ward 4
Jerri Winfrey-Carter, Ward 5 Allan Griggs, Ward 8
Eva L. Worthing, Ward 9*

Inez M. Brown, City Clerk

CALL TO ORDER**ROLL CALL****PLEDGE OF ALLEGIANCE****PRAYER OR BLESSING****READING OF DISORDERLY PERSONS CITY CODE SUBSECTION**

Any person that persists in disrupting this meeting will be in violation of Flint City Code Section 31-10, Disorderly Conduct, Assault and Battery, and Disorderly Persons, and will be subject to arrest for a misdemeanor. Any person who prevents the peaceful and orderly conduct of any meeting will be given one warning. If they persist in disrupting the meeting, that individual will be subject to arrest. Violators shall be removed from meetings.

REQUEST FOR CHANGES AND/OR ADDITIONS TO AGENDA

Council shall vote to adopt any amended agenda.

PRESENTATION OF MINUTES**PUBLIC HEARINGS****PUBLIC SPEAKING**

Per the amended Rules Governing Meetings of the Council (as adopted by the City Council on Monday, June 12, 2017), three (3) minutes per speaker. Only one speaking opportunity per speaker. Numbered slips will be provided prior to the start of the meeting to those wishing to speak during this agenda item. No additional speakers or slips will be accepted after the meeting begins. Speakers may not allocate or "donate" their allotted time to another person. Council members may not speak during Public Speaking, nor may they make response comments to speakers. Council members may use their five (5) minutes for Final Comments to address any issues that have been addressed by Public Speakers.

PETITIONS AND UNOFFICIAL COMMUNICATIONS

190224 Communication/MDOT Office of Rail/Emergency Notification System (ENS)

Communication dated May 23, 2019, from the Michigan Department of Transportation [MDOT] Office of Rail to City of Flint, re: Explanation of the importance and use of the Emergency Notification System (ENS) sign that is required to be installed at every railroad crossing.

190225 Communication/ACLU Michigan/Moratorium on Placement of Liens on Homes for Unpaid Water Bills

Communication dated May 30, 2019, from the ACLU Michigan to Mayor Weaver, Flint City Council Members and Treasurer Cherry, re: Concern about the approximately 8,000 lien notices that the City of Flint erroneously mailed to residents on April 23, 2019.

190226 Communication/Genesee County Treasurer's Office/2019 Tax Foreclosures

Communication dated May 31, 2019, from the Genesee County Treasurer's Office to City Clerk Inez M. Brown, re: 2019 tax foreclosed property list in the governmental unit that are available for purchase for the minimum bid.

190227 2019 Tax Rate Request/Michigan Department of Treasury/Mass Transportation Authority

Form L-4029 dated May 30, 2019, re: Millage Request Report to the County Board of Commissioners for a Mass Transportation Authority 2019 property tax levy.

COMMUNICATIONS (from Mayor and Other City Officials)

190228 Traffic Engineering/Closure Permits

Sidewalk, Lane and Street Closures permits (20) dated [January] May/June 2019 for requested activities/events, with noted responsibility for the placement of the required traffic control devices, and/or personnel, for the protection of traffic and event participants.

ADDITIONAL COMMUNICATIONS

APPOINTMENTS

APPOINTMENTS (May Be Referred from Special Affairs)

190197 Reappointment/Hurley Board of Managers/Dr. Ronald Stewart/Ward 2

Resolution resolving that the Flint City Council approves the reappointment of Dr. Ronald Stewart (2425 Welch Blvd., Flint, MI 48504 - Ward 2) to a five-year term on the Hurley Board of Hospital Managers, commencing May 15, 2019, and expiring April 30, 2024, as recommended by Mayor Karen W. Weaver.

190198 Reappointment/Hurley Board of Managers/Jason Caya (Ward 5)

Resolution resolving that the Flint City Council approves the reappointment of Jason Caya (119 North Grand Traverse Street, Flint MI 48503 - Ward 5) to serve a five-year term on the Hurley Board of Hospital Managers, commencing May 15, 2019, and expiring April 30, 2024, as requested by Mayor Karen W. Weaver.

RESOLUTIONS

- 190123** Lease Agreement/City of Flint/Zero Mass Water, Inc.
- Resolution resolving that the Flint City Council approves the Lease Agreement between the City of Flint and Zero Mass Water, Inc. [NOTE: Zero Mass Water, Inc. has agreed to produce bottled water, utilizing SOURCE Hydropanels that provide clean, safe, high quality, renewable drinking water. The Hydropanels are to be installed pursuant to the terms of the lease.]
- 190220** Public Hearing/Proposed Drinking Water Revolving Fund Plan Amendment/WIIN Funding/To Include Water Main Segments/Saginaw Street From Court Street North to the Flint River/Court Street From Crapo Street East to Center Road
- Resolution resolving that [a public hearing regarding a 6th amendment to a Drinking Water Revolving Fund Project Plan be held _____ at 5:30 p.m. in City Council Chambers, 1101 S. Saginaw Street, Flint, for comments on] adding two water main segments -- Saginaw Street from Court Street North to the Flint River and Court Street from Crapo Street East to Center Road -- to the project using Water Infrastructure for the Nation (WIIN) funds.

RESOLUTIONS (May Be Referred from Special Affairs)

- 190206** FY2019-2020/Budget Amendment/Transfer of Funds/Repair Vandalism/Grant-Funded Properties/Planning & Development
- Resolution resolving that the appropriate city officials are authorized to do all things necessary to process a budget amendment to move funds from Planning & Development Wages and Fringes Acct. No. 101-371.209-702.000 = \$45,000.00, Acct. No. 101-371.209-719.100 = \$5,000.00, Acct. No. 101-371.209-719.152 = \$2,000.00 and Acct. No. 101-371.209-719.200 = \$3,000.00, and allocate \$55,000.00 to non-wage and fringe items. [NOTE: To avoid repayment, additional general fund dollars are needed to repair recent vandalism to grant-funded properties.]
- 190207** CO#2/Contract/EMAR Construction/Repairs to Three (3) Single-Family Homes/Smith Village
- Resolution resolving that the appropriate city officials are authorized to execute Change Order #2 to increase the EMAR Construction (Phillip Johnson) contract (for three single-family homes in Smith Village), Contract #18-108, by \$10,816.00, for a total revised amount of \$92,049.00, as requested by the Division of Community and Economic Development [Planning & Development General Fund Acct. No. 101-371.209-801.000.] [NOTE: The repair services were procured using Community Development Block Grant (CDBG) Funds, however, the properties suffered vandalism while sitting vacant and must be repaired before they can be sold. Since CDBG funds cannot be used again on the same properties, the money will come from Planning & Development's General Fund.]

190208 Public Hearing/Proposed Annual Action Plan/Federal Fiscal Year 2019-20
CDBG, HOME and ESG Grants

Resolution resolving that the Department of Planning & Development, Division of Community and Economic Development, will hold a public hearing at 5:30 p.m. June 24, 2019, for the purposes of allowing public review of the Proposed Annual Action Plan, and to receive public comment, in City Council Chambers, 1101 South Saginaw Street, Flint.

190209 Transfer of Parcels/City of Flint/Genesee County Land Bank Authority

Resolution resolving that the appropriate city officials authorize the Mayor to process the transfer of property between the City of Flint and Genesee County Land Bank Authority and approve adding Parcel No. 40-12-281-058 to the Brownfield Bond. [NOTE: The City of Flint was awarded \$30,000,000.00 in Choice Neighborhood Funding from the U.S. Department of Housing and Urban Development (HUD). The grant is for the implementation of the Imagine Flint South Flint Community Plan to build mixed-income housing. There are adjacent parcels that need to be transferred for this housing development in order to be assessed on the same tax roll.

190221 Ace-Saginaw Paving Co./Asphalt Paving Materials

Resolution authorizing the Department of Purchases and Supplies to issue purchase orders to Ace-Saginaw Paving Co. for asphalt paving materials, as requested by various departments, in an amount NOT-TO-EXCEED \$424,400.00, pending adoption of the FY20 Budget [Major Street Fund; Local Street Fund; Sewer Fund; Water Fund].

190222 Vermeer Midwest/Stump Grinder and Brush Chipper

Resolution authorizing the Department of Purchases and Supplies to issue a purchase order to Vermeer Midwest for a stump grinder and brush chipper, as requested by the Water Service Center, in an amount NOT-TO-EXCEED \$84,402.73 [Major Street Fund].

190223 Jack Doheny Companies/Sewer Cleaner Vehicles

Resolution authorizing the Department of Purchases and Supplies to issue a purchase order to Jack Doheny Companies for a five-year lease-purchase of four (4) sewer cleaner vehicles, as requested by Fleet Management, in an annual amount NOT-TO-EXCEED \$375,800.00, and an aggregate amount of \$1,879,000.00 [Fleet Management Fund].

LIQUOR LICENSES

INTRODUCTION AND FIRST READING OF ORDINANCES

190210 Amendment/Ordinance/Chapter 31 (General Offenses)/Article I (In

General)/Section 31-41 (Entrance Upon Lands or Premises of Another; Failure to Leave Upon Request)

An ordinance to amend Chapter 31 (General Offenses), Article I (In General) of the Code of the City of Flint by amending Section 31-41 (Entrance Upon Lands or Premises of Another; Failure to Leave Upon Request).

SECOND READING AND ADOPTION OF ORDINANCES

FINAL COUNCIL COMMENTS

ADJOURNMENT

190123

RESOLUTION NO.: _____

PRESENTED: 4-4-19

ADOPTED: _____

RESOLUTION TO APPROVE LEASE AGREEMENT BETWEEN THE CITY OF FLINT AND ZERO MASS WATER MICHIGAN, LLC

BY THE MAYOR:

WHEREAS, Zero Mass Water Michigan. LLC has agreed to produce bottled water, utilizing SOURCE Hydropanels, that provide clean, safe, high quality, renewable drinking water.

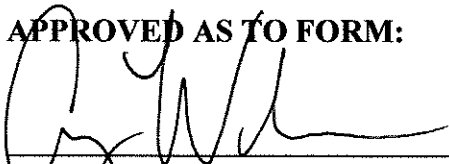
WHEREAS, the Hydropanels are to be installed pursuant to the terms of the lease.

WHEREAS, the City of Flint and Zero Mass Water Michigan, LLC desire to enter into a Lease for the Premises. A copy of the Lease Agreement is attached.

WHEREAS, Mayor, Dr. Karen W. Weaver recommends approving the Lease Agreement between the City of Flint and Zero Mass Water Michigan, LLC.

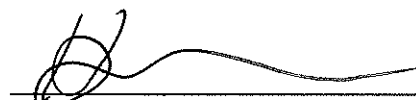
THEREFORE, BE IT RESOLVED that the Flint City Council approves the Lease Agreement between the City of Flint and Zero Mass Water Michigan, LLC.

APPROVED AS TO FORM:



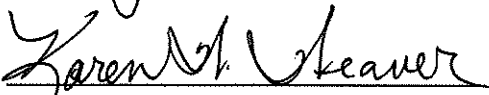
Angela Wheeler, Chief Legal Officer

APPROVED AS TO FINANCE:



Hughey Newsome, Chief Financial Officer

FOR THE CITY OF FLINT:



Dr. Karen W. Weaver, Mayor

APPROVED BY CITY COUNCIL:

Herbert Winfrey, City Council President

City Owned Property with 10+ acres on the parcel

Parcel Number	Owner Name	Dir	House #	Street	acreage
40-34-100-030	CITY OF FLINT	W	3425	BRISTOL RD	566.1
47-34-100-003	CITY OF FLINT	E	0	PIERSON RD	301
40-33-100-004	CITY OF FLINT	W	0	BRISTOL RD	237.5
40-24-401-001	CITY OF FLINT		3201	HAMMERBERG RD	75
40-33-301-014	CITY OF FLINT		0	MAPLE AVE	64.77
41-17-251-002	CITY OF FLINT		2302	BROOKSIDE DR	62.214
47-29-426-001	CITY OF FLINT	E	0	BOULEVARD DR	50.8
40-14-128-002	CITY OF FLINT		2701	NOLEN DR	34.6
40-02-328-001	CITY OF FLINT		2251	FOREST HILL AVE	34.15
40-26-101-001	CITY OF FLINT		0	TORREY RD	33.3
41-04-401-002	CITY OF FLINT	N	0	DEXTER ST	31.469
40-13-176-002	CITY OF FLINT	S	306	STEVENSON ST	28.347
40-13-478-016	CITY OF FLINT		0	CEDAR ST	23.42
46-35-308-001	CITY OF FLINT		0	COOPER AVE	23.14
40-24-201-007	CITY OF FLINT		0	HAMMERBERG RD	17.9
40-14-101-001	CITY OF FLINT	S	0	BALLENGER HWY	15.7
40-24-301-007	CITY OF FLINT	W	0	TWELFTH ST	13.758
40-34-100-029	CITY OF FLINT		0	AIRPARK DR NORTH	13.757
40-35-100-007	CITY OF FLINT		0	TORREY RD	13.2
46-35-280-009	CITY OF FLINT	W	0	STEWART AVE	12.31
41-06-351-030	CITY OF FLINT		2022	NORTH ST	11.25
40-13-251-004	CITY OF FLINT	S	307	STEVENSON ST	10.588
40-27-301-001	CITY OF FLINT	W	0	BRISTOL RD	10.12

LEASE

This Lease Agreement (this "Lease") entered into and made on the ___ day of May, 2019 (the "Effective Date"), between City of Flint, Michigan, a municipality in the state of Michigan, with its principal office located at 1101 S. Saginaw Street, Flint, Michigan ("City") and Zero Mass Water Michigan, LLC, a limited liability company organized and existing under the laws of the state of Arizona, with its principal office located at 6500 E. McDowell Rd., Scottsdale, AZ 85257 ("Zero Mass") (Zero Mass and City are collectively referred to in this Lease as "Parties" and each a "Party").

RECITALS

WHEREAS, City is the sole owner of certain land (the "Premises") which was formerly part of the City of Flint Water Treatment Plant located in Flint, Michigan;

WHEREAS, Zero Mass desires to utilize certain designated portions of the Land (such portions more specifically described in Exhibit A to this Lease and collectively referred to in this Lease as the "Premises") to produce drinking water utilizing SOURCE™ Hydropanels, an innovative technology owned by Zero Mass that is free of infrastructure and provides clean, safe, high quality, renewable drinking water in a variety of applications ("Hydropanels" and each a "Hydropanel").

WHEREAS, the Parties desire to enter into this Lease for the Premises to define their respective rights and obligations in connection with Zero Mass's occupancy of the Premises;

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Demise and Description of Premises/Option for Additional Premises.** City hereby leases to Zero Mass the portion of the Premises comprised of approximately one acre of land, which is more specifically described and depicted in Exhibit A to this Lease ("Parcel #1"). Zero Mass will also have an option and right of first refusal to lease up to nine (9) additional one-acre portions of the Premises, which shall be referred to in this Lease as Parcel #2, Parcel #3, Parcel #4, Parcel #5, Parcel #6, Parcel #7, Parcel #8, Parcel #9, and Parcel #10 (each a "Parcel" and collectively with Parcel #1, the "Parcels"). Parcels #2 through #10 will be selected by Zero Mass from within the areas of the Premises more specifically described and depicted in Exhibit A to this Lease, subject to any local, state, federal or other regulatory compliance obligations by the City (the "Option Areas"). In the event Zero Mass determines it desires to lease any or all of Parcels #2 through Parcel #10 at any time during the Term, it shall provide City with 90-day prior written notice exercising its option to lease any or all of Parcel #2 through Parcel #10, and on or before 90 days after such written notice, City agrees to surrender and lease such Parcels to Zero Mass under the terms set forth in this Lease. In the event City receives an offer to lease any land within the Option Areas, Zero Mass shall have a right of first refusal to lease the Parcels within such Option Areas on the terms contained in this Lease. City shall provide Zero Mass with a written notice of any such third-party offer within 14 business days of City's receipt of the offer. Zero Mass shall have 30 days from receipt of City's notice to exercise its right of first refusal. If Zero Mass exercises its right of first refusal with respect to any such Parcel, City shall surrender and lease such Parcels to Zero Mass under the terms set forth in this Lease within 90 days after Zero Mass exercises its right of first refusal. In the event Zero Mass does not exercise its right of first refusal, City can accept the third-party offer, subject to Ordinance 3865, and if any Parcels are leased to such third party, Zero Mass shall no longer have rights to lease any Parcel so leased. The right of first refusal shall expire five years from the Effective Date. The specific legal description of Parcels #1 through Parcels #10 will be completed by a surveyor engaged by City, and within 30 days of the Effective Date, such surveyor shall assign Parcel Identification Numbers to each Parcel. Zero Mass shall reimburse City for the cost of such survey.

2. **Term.** The term of the Lease shall be five (5) years from the Effective Date (the "Initial Term"), unless terminated sooner in accordance with the provisions of this Lease. After the expiration of the Initial Term and provided that the use of the Premises continues to comply with all city, state, and federal laws, regulations, and ordinances, Zero Mass shall have the right to renew this Lease for one additional five (5)-year term (the "Renewal Term") by providing written notice of such desire to renew no later than ninety (90) days prior to the expiration of the Initial Term. Within 60 days of Zero Mass providing such notice, City shall propose a Monthly Rent amount to be applicable during the Renewal Term, which Monthly Rent amount shall be either (1) equal to the Monthly Rent during the Initial Term, or (2) the fair rental value of the Premises as determined by a mutually agreeable, third-party licensed appraiser, but only if the fair rental value exceeds the Monthly Rent applicable during the Initial Term. Within 10 days of receiving City's proposal for Monthly Rent to be applicable

during the Renewal Term, Zero Mass shall accept or deny the Monthly Rent proposed by the City. If denied, the Parties will make good faith efforts to negotiate a mutually acceptable Monthly Rent to be applicable during the Renewal Term, which Monthly Rent shall in no event be less than the Monthly Rent applicable during the Initial Term. As used herein, "Term" shall refer to the then-current duration during which this Lease is in full force and effect, including the Initial Term and the Renewal Term, if applicable.

3. **Rent**. During the term of this Lease, Zero Mass shall pay to City rent of \$750 per month for each Parcel then currently leased by Zero Mass (the "Monthly Rent"). Monthly Rent shall be payable on the 15th of each month beginning with the month following the Effective Date and for each month thereafter during the Term. Monthly Rent checks shall be made payable to the City of Flint and mailed to the City of Flint Finance Department, 1101 S. Saginaw Street, Flint, Michigan or to such other address as City shall notify Zero Mass of in writing at 6500 E. McDowell Rd., Scottsdale, AZ 85257.

4. **Permitted Use of Premises**. The Premises are to be used for the purpose of installing and operating a large-scale array of Source™ Hydropanels. More specifically, Zero Mass will (1) install and operate a large-scale array of approximately 1000 Hydropanels on unshaded land on the Premises (the "Source™ Field"); (2) dig the requisite trenches and install the requisite piping and storage tanks on the Premises for the purpose of transporting the water produced by the Source Field to its off-taker(s); all of which is graphically depicted in Exhibit B (including the specific location of the Source Field and the trenches and piping, Zero Mass shall restrict its use to such purposes and shall not use or permit the use of the Premises for any other purpose without the prior written consent of City. Zero Mass will demise, relocate, build and/or install fencing on the Premises to demarcate the perimeter of the Source™ Field and related equipment, all of which is also depicted on Exhibit B, subject to City approval and appropriate permitting as establishing by Federal, State and local laws and ordinances.

5. **Restrictions on Use**. Zero Mass shall not keep, use, or sell anything prohibited by any insurance policy covering the Premises or prohibiting by State Federal and local laws and ordinances and shall comply with all requirements of any such insurance policies. Zero Mass shall not use or allow the Premises to be used for any unlawful purpose or use not previously approved by the City.

6. **Utilities**. Zero Mass shall arrange and pay for the pro rata portion of any utilities furnished to the Premises and utilized by Zero Mass for the term of the Lease, including but not limited to electricity, gas, water, or sewer..

7. **Repairs and Maintenance**. Zero Mass shall maintain the Premises and keep them in good repair at its expense. City shall maintain and keep in good repair at its expense all areas of the Land that are outside the Premises then -currently leased by Zero Mass.

8. **Delivery and Surrender of Premises**. City represents that the Premises are in fit condition for use by Zero Mass. Zero Mass shall surrender the Premises at the end of the Term in the same condition as when Zero Mass took possession, allowing for reasonable use and wear, and damage by acts of God, including storms. Before surrender, Zero Mass shall remove all business signs placed on the Premises by Zero Mass and restore the portion of the Premises on which they were placed in the same condition as when received.

9. **Full or Partial Destruction of Premises**. If the Premises are fully or partially damaged or destroyed through no fault of Zero Mass, Zero Mass shall have the right to terminate this Lease. If Zero Mass does not elect to terminate the Lease, City shall be obligated to repair or replace the Premises during a period not to exceed 180 days following the damage or destruction, except for damage by acts of God, including storms. If City is unable to repair or replace the Premises within such 180-day period, Zero Mass may elect to terminate the lease upon the expiration of the 180-day period. During the period City is repairing or replacing any portion of the Premises, rent will be reduced proportionate with the portion of the Premises that are not usable by Zero Mass during such period.

10. **Entry on Premises by City**. City reserves the right to enter on the Premises at commercially reasonable times to inspect them, perform required maintenance and repairs, or to make additions, alterations, or modifications to any part of the Land, and Zero Mass shall permit City to do so. City may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with making alterations, additions, or repairs that are necessary in the reasonable business judgment of City, all without incurring liability to Zero Mass for disturbance of quiet enjoyment of the Premises.

11. **Signs, Awnings, and Marquees Installed by Zero Mass.** Zero Mass shall not construct or place signs, awnings, marquees, or other structures without the prior, express, and written consent of City. If Zero Mass fails to remove such signs, displays, advertisements, or decorations within thirty (30) days after receiving written notice from City to remove them, City reserves the right to enter the Premises and remove them at the expense of Zero Mass.

12. **Liability/Indemnification.** Neither Party shall be responsible for any losses, damages, or claims arising out of this Lease or Zero Mass's occupation of the Premises. To the extent such losses, damages, or claims are caused by (A) the negligence or willful misconduct of the other Party, or (B) the breach of this Lease by the other Party, and to the extent permitted by law, each Party shall indemnify the other Party for any losses, claims, or damages caused by its own negligence, willful misconduct, or breach of this Lease.

13. **Liability Insurance.** Zero Mass shall maintain the following insurance policies: (A) commercial general liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with Zero Mass's occupancy of the Premises, containing minimum liability protection of One Million Dollars (\$1,000,000.00) combined single limit per occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate ; (B) worker's compensation insurance and employer's liability insurance as required by law; and (3) insurance against fire and such other risks including, but not limited to, a standard "All Risk" policy of property insurance protecting against all risk of physical loss or damage, including without limitation, sprinkler leakage coverage in amounts not less than the actual replacement cost, covering all of Zero Mass's equipment, furnishings, and all items of personal property. City shall maintain insurance covering the Premises in the amount deemed necessary by the City.

14. **Assignment, Sublease or License.** Neither Party shall assign or sublease the Premises, or any right or privilege connected with the Premises, or allow any other person except agents and employees of Zero Mass to occupy the Premises or any part of the Premises without first obtaining the written consent of City, which shall not be unreasonably withheld. . Any unauthorized assignment, sublease, or license to occupy by Zero Mass shall be void and of no force and effect.

15. **Termination.** Any party claiming a default of any provision of this Lease shall provide written notice to the defaulting Party, providing sufficient information to fully advise the defaulting Party of the nature and circumstances of the claimed default. The defaulting party shall then have 30 days from such written notice to cure the claimed default. If the default is not cured within 30 days, the non-defaulting Party may terminate this Lease. In the event either party determines in its reasonable discretion that the Source™ Field is not in compliance with all local, state, and federal regulations, or in any way poses a risk to public health and safety, such Party may terminate this Agreement with 60 days' written notice may terminate this Agreement.

16. **Applicable Law.** This Agreement and all related disputes shall be governed by and interpreted in accordance with the laws of the State of Michigan.

17. **Arbitration.** Zero Mass agrees that for all claims, disputes, and other matters arising out of or relating to this agreement, Zero Mass must request the City's consent to arbitrate within 60 days from the date Zero Mass knows or should have known the facts giving rise to the claim, dispute or question.

(a) Notice of a request for arbitration must be submitted in writing by certified mail or personal service upon the City Attorney.

(b) Within 60 days from the date a request for arbitration is received by the City, the City shall inform Zero Mass whether it agrees to arbitrate. If the City does not consent, Zero Mass may proceed with an action in a court of competent jurisdiction within the State of Michigan. If the City does consent, then within 30 days of the consent each party shall submit to the other the name of one person to serve as an arbitrator. The two arbitrators together shall then select a third person, the three together shall then serve as a panel in all proceedings. Any unanimous decision of the three arbitrators shall be a final binding decision. The City's failure to respond to a timely, conforming request for arbitration is deemed consent to arbitration.

- (c) The costs of the arbitration shall be split and borne equally between the parties and such costs are not subject to shifting by the arbitrator.
- (d) This provision shall survive the expiration or termination of this Agreement in perpetuity.
- (e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR ANY LOSS OF PROFITS, LOSS, OR INTERRUPTION OF BUSINESS, OR LOSS OF USE OR DATA, IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. **Force Majeure.** Subject to section 17(B) below, neither Party to this Lease shall be in breach of this Lease or responsible for damages caused by delay or failure to perform in full or in part its obligations under this Lease, provided that there is due diligence in attempted performance under the circumstances and that such delay or failure is due to one of the following events of force majeure: fire, earthquake, unusually severe weather, strikes, government sanctioned embargo, flood, act of God, war, terrorism, act (or delay in acting) of any public authority or sovereign government (including government delays in issuing required permits), civil disorder, delay or destruction caused by public carrier, curtailment of transportation facilities or any other similar circumstance substantially beyond the control of the Party to be charged, and which cannot be reasonably forecast or prevented. If the force majeure event continues for a period of six (6) months, then either Party shall have the right to cancel this Lease upon ten (10) days written notice to the other; and (B) Each party agrees to notify the other promptly upon discovery of an event of force majeure, as described above, which may cause a failure or delay in performance under this Lease.

19. **Waivers.** Waiver by City of any breach of any covenant or duty of Zero Mass under this Lease is not a waiver of a breach of any other covenant or duty of Zero Mass, or of any subsequent breach of the same covenant or duty.

20. **Entire Agreement.** This Lease shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent incorporated in this Lease.

21. **Modification of Agreement.** Any modification of this Lease or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a writing signed by each Party or an authorized representative of each Party.

22. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder will be in writing and will be deemed to have been given and received: (A) when delivered by hand (with written confirmation of receipt); (B) when received by the addressee if sent by a nationally recognized overnight courier (return receipt requested); or (C) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as is specified in a notice given in accordance with this Section 23):

CITY: City Attorney

ZERO MASS:

Law Department

6500 E. McDowell Rd.

1101 S. Saginaw Street

Scottsdale, AZ 85257

Flint, MI 48502

Attn: General Counsel

23. **Severability.** Each section, subsection, term and provision of this Lease, and any portion thereof, shall be considered severable. If any applicable and binding law imposes mandatory, nonwaivable terms or conditions that conflict with a provision of this Lease, the terms or conditions required by such law shall govern to the extent of the inconsistency and supersede the conflicting provision of this Lease.

24. **Whole Agreement:** This Agreement and the documents cited herein embody the entire agreement between the parties. Any additions, deletions or modifications hereto must be in writing and signed by both parties. This Agreement may be executed by facsimile and in counterparts, all of which, taken together, shall constitute a single agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective on the date stated on the first page above.

ZERO MASS WATER MICHIGAN, LLC

CITY OF FLINT

By:

By:

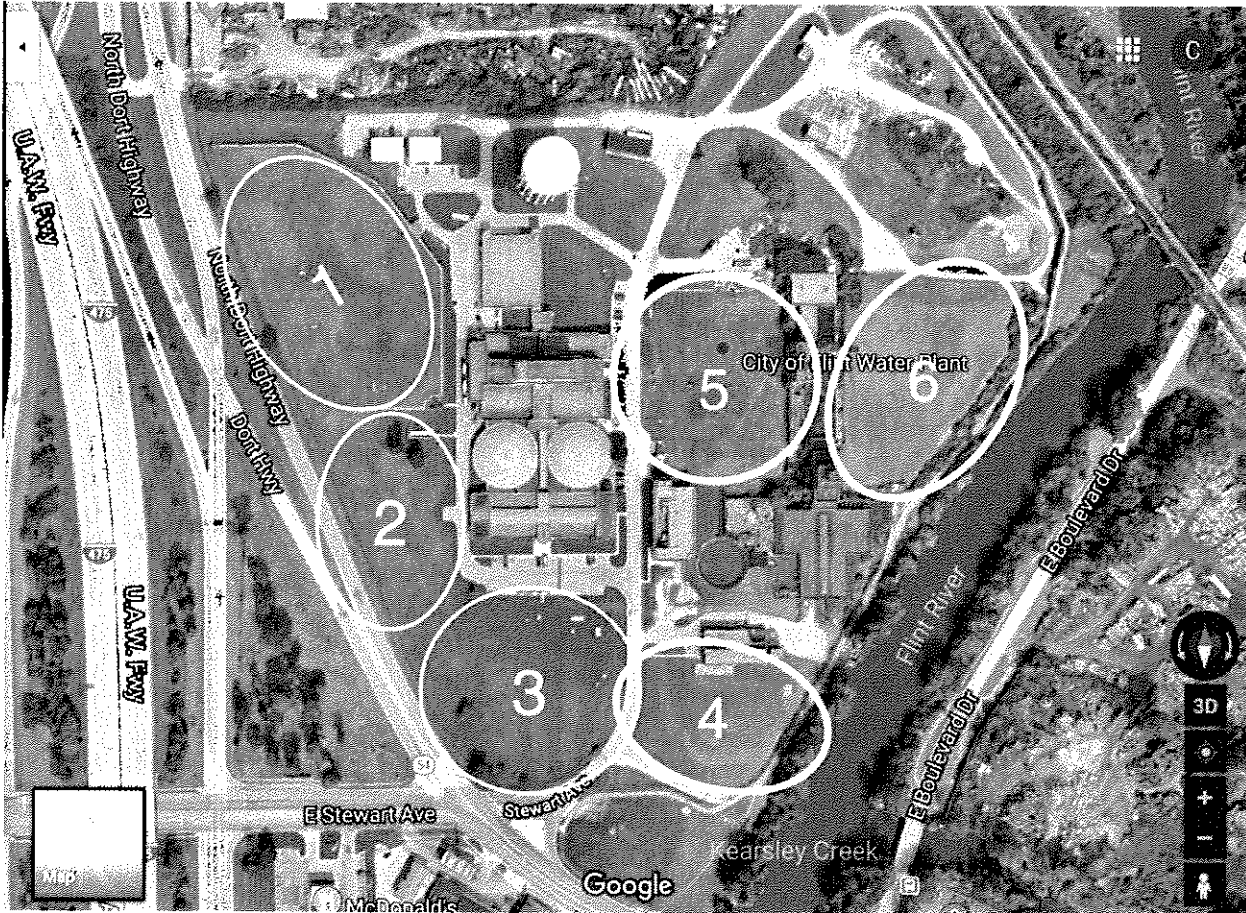
Its:

Its: Mayor

Approved as to form:

Angela Wheeler, City Attorney

EXHIBIT A
DESCRIPTION OF PREMISES



- Areas 1 through 5 are located at the City of Flint Water Treatment Plant located at 4500 Dort Hwy, Flint, MI 48506.
- Parcel #1 is a one-acre parcel located with Area 5.
- Parcels #2 through #10 will be located within Areas 1 through 6. The specific legal description of Parcels #1 through Parcels #10 will be completed by a surveyor engaged by City, and the surveyor shall assign Parcel Identification Numbers to each Parcel.

EXHIBIT B
DRAWINGS/PLANS FOR SOURCE FIELD

[see attachment]

19-8083

190220

SUBMISSION NO.: _____

PRESENTED: 6-5-19

ADOPTED: _____

RESOLUTION SETTING A PUBLIC HEARING DATE TO AMEND THE WIIN FUNDING PROJECT PLAN

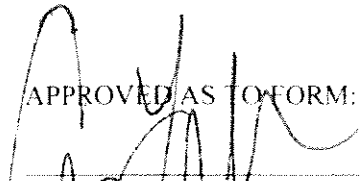
BY THE MAYOR:

The City of Flint wants to amend the DWRP (Drinking Water Revolving Fund Project) (WIIN Funded) specifically Project #6 Water Main Replacement.


A public hearing was scheduled to be held on _____, to hear from the public regarding the addition and funding of the following water main segments: Saginaw Street from Court Street north to the Flint River; and Court Street from Crapo Street east to Center Road to the DWRP project plan, specifically project #6 water main replacement and to complete this work in conjunction with these road rehabilitation projects.

Specifically, these projects have multiple funding sources for the road reconstruction and in an effort to fully leverage all of the funding sources (including WIIN) the City of Flint would like to amend the list of water main segments included in project #6 of the DWRP plan to include the Saginaw St. and Court St. water mains.

IT IS RESOLVED, that the Proper City Officials are now authorized to do all things necessary to hold a public hearing to amend the Drinking Water Revolving Fund Project (Project #6).

APPROVED AS TO FORM:


Angela Wheeler, City Attorney



Steve Branch
City Administrator

190210

ORDINANCE NO. _____

An Ordinance to amend the Flint City Code of Ordinances by amending Chapter 31, General Offenses.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF FLINT:

Sec. 1. An Ordinance to amend the Flint City Code of Ordinances by amending Chapter 31, General Offenses, Article I, In General, by amending and renumbering the Section 31-41, Entrance Upon Lands or Premises of Another; Failure to Leave Upon Request, which shall read in its entirety as follows:

§31-41. ENTRANCE UPON LANDS OR PREMISES OF ANOTHER; FAILURE TO LEAVE UPON REQUEST.

NO PERSON SHALL DO ANY OF THE FOLLOWING:

(A) Willfully enter upon the lands or premises of another without lawful authority OR IF CONTRARY TO THE EXPRESS WISH OF THE after being forbidden to enter by the owner, lessee, managing agent or person in control or charge of the building or premises; OR

(B) ENTER OR Remain UPON THE LANDS OR PREMISES OF ANOTHER without lawful authority after being notified to depart by the owner, occupant, or the agent or servant of either; or

(C) Enter or remain without lawful authority on fenced or posted farm property of another person without the consent of the owner or his or her lessee or

agent. This subsection does not apply to a person who is in the process of attempting, by the most direct route, to contact the owner or his or her lessee or agent to request consent.

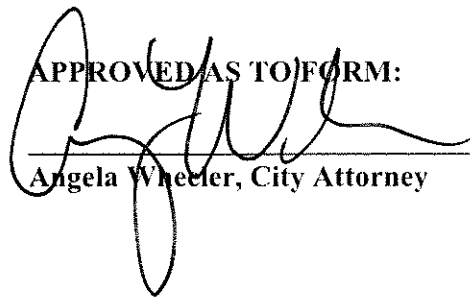
Sec. 2 This Ordinance shall become effective this ____ day of _____, 2019, A.D.

Adopted this ____ day of _____, 2019, A.D.

Karen W. Weaver, Mayor

Inez M. Brown, City Clerk

APPROVED AS TO FORM:



Angela Wheeler, City Attorney