

DRAFT

WATER SERVICE CONTRACT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

CITY OF FLINT

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**WATER SERVICE CONTRACT
BETWEEN
GREAT LAKES WATER AUTHORITY
AND
CITY OF FLINT**

This Water Service Contract (“Contract”) is made between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to the provisions of Act 233, Public Acts of Michigan, 1955, as amended, with its principal place of business located at 735 Randolph, Detroit, Michigan 48226 (“GLWA”), and the City of Flint, a Michigan municipal corporation (“Customer”). GLWA and Customer may be referred to individually as “Party” or collectively as the “Parties.”

Recitals

The purpose of this Contract is to provide for the long-term service of potable water to Customer; and

On September 9, 2014, the State of Michigan, the Counties of Macomb, Oakland, and Wayne, and the City of Detroit entered into a Memorandum of Understanding (“MOU”) regarding the formation of the GLWA; and

Page 4-5 of the MOU states that for the water and sewer systems operated by GLWA, “Each system, as a whole, is assumed to experience revenue requirement increases of not more than 4% for each of the first ten years under Authority management. The rates and percentage increases for different customers may vary in order to meet their specific revenue requirements”; and

Page 3 of the MOU further provides for and GLWA has established a Water Residential Assistance Program (“WRAP”) funded annually in “an amount equal to .5% of the base budgeted operating revenues”; and

On June 12, 2015, GLWA and the City of Detroit entered into a Regional Water Supply System Lease (the “Lease”) for the purpose of leasing the public water supply system (“System”) owned by the City of Detroit which System, under the terms and conditions of the Lease, will be operated and maintained by the GLWA for a minimum term of 40 years; and

Under the terms and conditions of the Lease, all wholesale service functions previously conducted by the City of Detroit are now conducted by GLWA; and

Customer seeks to obtain water services from GLWA, which GLWA is willing and able to provide; and

The Parties have been advised that the Michigan Department of Environmental Quality (“MDEQ”) will require Customer to maintain a redundant source of water supply in addition to water supplied by GLWA for use in case of emergency; and

GCDC is willing and able to provide GLWA with a portion of the required redundant source of water supply for Customer; and

As a part of the consideration for this Contract, Customer will be eligible to participate in GLWA's WRAP consistent with the terms of the WRAP as may be amended from time-to-time; and

GLWA and Customer will operate their respective water systems in a manner which benefits all GLWA customers; and

The City of Detroit implemented and GLWA continues a voluntary partnering effort with its wholesale water customers, of which the Technical Advisory Committee is a central part, and which is intended to assist GLWA in data gathering, alternative evaluations and recommendations, achieving full disclosure of charges, identifying true cost of service principles to guide revenue collection, and to provide assistance with a cohesive planning effort for GLWA's water service area;

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

**Article 1.
Definitions**

1.01 The following words and expressions, or pronouns used in their stead, shall be construed as follows:

"Adjusted Prevailing Water Charge" shall have the meaning ascribed in Article 3 herein.

"Allocation Flow Rate" shall mean the value that is established as a result of a breach of Section 5.03 herein and which value shall replace the contractual Maximum Flow Rate in the charge calculation process in the event that Section 5.04(C) herein is applied by GLWA.

"Annual Volume" shall mean the actual volume of water used by Customer for the period of July 1st to June 30th as measured on bills issued from August 1st through July 31st.

"Board" shall mean the GLWA Board of Directors.

"Contract" shall mean each of the various provisions and parts of this document, including all attached Exhibits and any amendments thereto, as may be executed and approved by Customer's governing body and the Board.

"Contract Term" shall have the meaning ascribed in Article 2 herein.

"Customer" shall mean the Party that enters into a contract with GLWA by way of this Contract, whether an authority, city, township, village or other municipal corporation recognized by the State of Michigan.

“Customer Maximum Day Demand” shall mean Customer’s recorded water usage on the GLWA Maximum Day. Customer Maximum Day Demand shall, in conjunction with Customer Peak Hour Demand, be a component of its Maximum Flow Rate.

“Customer Peak Hour Demand” shall mean Customer’s recorded water usage during the GLWA Peak Hour. Customer Peak Hour Demand, in conjunction with Customer Maximum Day Demand, shall be a component of its Maximum Flow Rate.

“Early Termination Costs” shall have the meaning ascribed in Article 3 herein.

“Filling Schedule” shall have the meaning ascribed in Article 22 herein.

“GCDC” shall mean Genesee County Drain Commissioner, a county agency of Genesee County under the authority granted by Act 342, Public Acts of Michigan, 1939, as amended, including its successors in interest.

“GLWA” shall mean the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to the provisions of Act 233, Public Acts of Michigan, 1955, as amended, governed by its Board of Directors and its day-to-day operations conducted by its Chief Executive Officer, including its successors in interest.

“GLWA Maximum Day” shall mean the maximum reported water production day for the System during any twenty-four hour period as measured from 12:00 a.m. Eastern Standard Time in any given calendar year, as determined by GLWA in reviewing water production and storage reports.

“GLWA Peak Hour” shall mean the hour during the GLWA Maximum Day in which the most water is delivered to the System, measured from top-of-the-hour to top-of-the-hour (e.g. 7:00 a.m. to 8:00 a.m.), and as determined by GLWA in reviewing water production and pumping reports. In calculating the GLWA Peak Hour, the time period from 11:00 PM to 5:00 AM Eastern Standard Time (EST) shall not be considered provided, however, that if Customer has an approved Filling Schedule, the time period specified in the Filling Schedule shall supersede the time period of 11:00 PM to 5:00 AM EST.

“KWA” shall mean the Karegnondi Water Authority, a Michigan municipal authority organized pursuant to Act 233, Public Acts of Michigan, 1955, as amended, including its successors in interest.

“Maximum Flow Rate” shall mean the aggregate amount of water usage that Customer commits not to exceed, as determined by the Customer Maximum Day Demand and the Customer Peak Hour Demand, collectively.

“Meter Facilities” shall mean a location in which a water meter is housed including, without limitation, meter pits and meter vaults.

“MGD” shall mean million gallons per day.

“Minimum Annual Volume” shall mean fifty percent of Customer’s Projected Annual Volume.

“Notices” shall mean all notices, consents, approvals, requests and other communications required to be given under the terms of this Contract.

“Pressure Problem” shall have the meaning ascribed in Article 5 herein.

“Pressure Range” shall have the meaning ascribed in Article 5 herein.

“Projected Annual Volume” shall mean the projected annual water sales to Customer as set forth in Exhibit B.

“Service Area” shall mean the mutually agreed upon area where Customer is permitted to distribute water received from GLWA under the terms of this Contract which (a) may be entirely within the corporate limits of Customer or may exceed the corporate limits of Customer and (b) which may or may not include the entire geographical area within the Customer’s corporate limits.

“System” shall mean the public water works system owned by the City of Detroit and leased, operated and maintained by GLWA and any improvements, additions and/or changes to the System made by GLWA on or after January 1, 2016, which shall be owned, operated and maintained by GLWA.

“Technical Advisory Committee” shall mean the committee consisting of representatives of GLWA, wholesale water customers of GLWA and their respective representatives, and shall include its successor or replacement if altered or discontinued. The Technical Advisory Committee or its successor shall remain in existence for a minimum term of January 1, 2008 until December 31, 2038 unless the committee determines otherwise.

“Water Distribution Points” shall have the meaning ascribed in Article 4 herein.

Article 2. Contract Term

- 2.01 Term. GLWA shall sell and supply water to Customer from the System in accordance with the terms of this Contract for a period of thirty years from the effective date of this Contract and any ten-year renewal terms (collectively the “Contract Term”), subject to Article 3 herein. The effective date of this Contract shall be the date that this Contract is approved by Customer’s governing body or the Board whichever is later (“Effective Date”). This Contract replaces and supersedes any prior water service contracts between the Parties and any prior water service contracts between the City of Detroit and Customer.
- 2.02 Renewal. This Contract shall automatically renew at the conclusion of the thirty-year term for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the twenty-fifth year of the thirty-year term stating its intent not to renew this Contract. Thereafter, this Contract shall automatically renew every ten years for an additional ten-year term, unless a Party

provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the fifth year of the then current ten-year term stating its intent not to renew this Contract. The automatic renewals of this Contract shall not preclude a review of its terms and the Parties are encouraged to reaffirm or amend its terms as necessary. The Parties may, in writing, mutually agree upon a longer renewal term.

- 2.03 Notification of Renewal. GLWA shall notify Customer of its first Contract renewal option during the twenty-fifth year of the thirty-year term; provided, however, that GLWA's failure to so notify Customer shall not obviate Customer's obligations as set forth in Section 2.02.

Article 3. Early Termination Costs

- 3.01 Early Termination Costs. In addition to any other remedies provided for by law or by the terms of this Contract, Customer shall be liable to GLWA for the payment of any costs incurred by GLWA related to providing water to Customer in the event Customer terminates this Contract before the conclusion of a Contract Term ("Early Termination Costs"), unless Customer terminates this Contract for cause in accordance with Article 10; provided, however, that payment of such Early Termination Costs by Customer shall not entitle Customer to receive water service from GLWA.
- 3.02 Calculation of Costs. Payment of Early Termination Costs will be calculated by applying the Adjusted Prevailing Water Charge to the Minimum Annual Volume requirements for the remainder of the Contract Term. The Adjusted Prevailing Water Charge shall be the charge assessed by GLWA to Customer as of Customer's effective termination date, adjusted annually to reflect projected inflationary increases utilizing a locally based wholesale price index. The Parties may agree upon another standardized price index. The Board may seek a recommendation from the Technical Advisory Committee on the amount of the Early Termination Costs.
- 3.03 Specifically Constructed Facilities. If GLWA has constructed or the City of Detroit previously constructed facilities specifically for the benefit of Customer, additional costs may be included in the calculation of the Early Termination Costs, provided that any such facilities shall be identified in a written agreement between GLWA and Customer at or near the time of construction. Those facilities, as of the Effective Date, which GLWA considers to have been constructed specifically for the benefit of Customer are indicated on Exhibit A.
- 3.04 Formation of Water Authority. Customer may join with another authority, city, township, village or other municipal corporation recognized by the State of Michigan to form a water authority for the sole purpose of collectively contracting for water service from GLWA. The exercise of this right shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new water service contract by Customer's governing body and the Board.
- 3.05 Customer Annexation or Consolidation. In the event the territory of Customer is annexed or consolidated with another Michigan municipal corporation and if said municipal

corporation is a current customer of GLWA, then such an annexation or consolidation shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new or amended water service contract with the annexing or consolidating municipal corporation.

Article 4.

Service Area; License to Use Essential Water Mains

- 4.01 Delivery Location. Water shall be delivered by GLWA to Customer at the location(s) identified in Exhibit A (collectively, the "Water Distribution Points"), and at other locations as may be mutually agreed upon in writing by GLWA and Customer.
- 4.02 Limit of Responsibility. GLWA shall have no responsibility for distributing, operating, repairing, replacing and maintaining any portions of Customer's water supply system downstream of the Water Distribution Points shown in Exhibit A, provided, however, that this Section 4.02 does not prevent the application of the provisions of Section 11.02 herein.
- 4.03 GLWA Responsibility. GLWA owns or leases, and is responsible for operating and maintaining all parts of the System upstream from Customer's Water Distribution Points. Should GLWA fail to maintain the Meter Facilities and/or any GLWA owned or leased equipment within the Meter Facilities, Customer shall provide written notice to GLWA which describes the objectionable condition of the Meter Facility and/or the equipment within, and its intent to take reasonable steps to maintain the condition and charge the reasonable cost of doing so to GLWA. Upon receipt of the notice and subject to Section 11.01, GLWA shall have thirty calendar days to repair the condition specified in the notice, unless a force majeure event prevents the repair within the thirty-day period. If GLWA has not repaired the condition at the conclusion of the thirty-day period and has not provided a written explanation to Customer explaining the reason for the delay (e.g. necessary parts are on order or occurrence of a force majeure event specified in Section 11.01), then Customer may take reasonable steps to maintain the specified condition and charge the reasonable cost of doing so to GLWA.
- A. With reasonable prior written notice to GLWA, and occurring not more than once in any three (3) year period, Customer may at its own expense have an expert acceptable to GLWA inspect and verify the accuracy of GLWA meter(s). GLWA assumes no liability for any disruption of the water supply to Customer associated with such an inspection.
- 4.04 Extension of Service Area. Customer's distribution of water supplied by GLWA shall be limited to the Service Area stated in Exhibit A. The Parties agree that situations may arise in which Customer desires to extend its Service Area, either temporarily or permanently, beyond its corporate limits. Should such a situation arise, Customer shall provide written notice to GLWA explaining the nature, duration and extent of the requested Service Area extension. GLWA shall have the option, which it may exercise at any time, of requiring a written amendment to this Contract to accommodate the change in Service Area. Should GLWA determine that an immediate amendment is required, the Parties shall, within thirty calendar days of Customer's request, meet to negotiate mutually agreeable terms for the

extension of the Service Area. GLWA shall not unreasonably deny a request to extend the Service Area.

- 4.05 Change or Addition of Water Distribution Points. Water Distribution Points may be added or changed only by the express written agreement of GLWA and Customer and shall be embodied in a written amendment to this Contract.
- 4.06 Supplier. Except as provided in Article 17 herein, GLWA shall be the sole supplier of public potable water to Customer's Service Area. GLWA may supply such potable water either through the System or it may purchase the potable water from other water utilities, including without limitation the GCDC.
- 4.07 License of 72 Inch Transmission Main. The 72 inch water transmission main extending west from the GLWA Water Distribution Point located at the intersection of Baxter and Potter Roads in Genesee County to the Flint city limits ("72 Inch Main"), as depicted in Exhibit A, shall at all times remain under the ownership or legal control of Customer in order for GLWA to supply potable water in normal and emergency conditions to the Service Area, other GLWA customers, and GCDC and its customers. Customer shall at all times operate and maintain in good working condition the 72 Inch Main.
- A. In consideration of the mutual promises and undertakings of this Contract, Customer has granted and hereby grants to GLWA at no additional charge an exclusive, transferrable, non-revocable license, for a term coincident with the term of this Contract and any renewals thereof, to use the 72 Inch Main to supply potable water GLWA receives from GCDC in normal or emergency conditions to the Service Area and other GLWA customers. GLWA agrees that the license granted herein does not transfer title to the 72 Inch Main to GLWA. Customer may not terminate this license at any time prior to the expiration of this Contract, and any renewals thereof, and its exclusive remedies for breach of this Contract are damages and equitable relief. This license shall survive any sale or other transfer of legal control of the 72 Inch Main until the expiration of this Contract, and any renewals thereof.
- B. In consideration of the mutual promises and undertakings of this Contract, Customer has granted and hereby grants to GLWA at no additional charge an exclusive, transferrable, perpetual, non-revocable license to use that portion of the 72 Inch Main extending approximately 2500 feet west from the GLWA Water Distribution Point located at the intersection of Baxter and Potter Roads in Genesee County to the water transmission main owned by GCDC and supplying its Henderson Road Pump Station (the "Licensed Main"), as depicted on Exhibit A, to supply potable water in normal and emergency conditions to the Service Area, other GLWA customers, and GCDC and its customers. GLWA agrees that the license granted herein does not transfer title to the Licensed Main to GLWA nor does it confer any rights in GLWA to tap new connections into the Licensed Main to serve other GLWA customers without Customer's written approval, which approval shall not be unreasonably withheld. Customer may not terminate this license and its exclusive remedies for breach of this Contract are damages and equitable relief. This license for the Licensed Main shall survive the termination of this Contract

and any sale or other transfer of legal control of the 72 Inch Main and/or the Licensed Main.

4.08 License of Dort Highway Distribution Main. Customer shall complete construction of the Dort Highway potable water distribution main ("Dort Highway Main"), depicted in Exhibit A, as soon as is practicable but in no case later than December 31, 2019. The Dort Highway Main shall at all times remain under the ownership or legal control of Customer in order for GLWA to supply potable water in normal and emergency conditions to the Service Area and other GLWA customers. Customer shall at all times operate and maintain in good working condition the Dort Highway Main.

A. In consideration of the mutual promises and undertakings of this Contract, Customer grants to GLWA at no additional charge an exclusive, transferrable, non-revocable license for a term coincident with the term of this Contract and any renewals thereof to use the Dort Highway Main to supply potable water GLWA receives from GCDC in normal or emergency conditions to the Service Area and other GLWA customers. GLWA agrees that the license granted herein does not transfer title to the Dort Highway Main to GLWA. Customer may not terminate this license at any time prior to the expiration of this Contract, and any renewals thereof, and its exclusive remedies for breach are damages and equitable relief. This license shall survive any sale or other transfer of legal control of the Dort Highway Main until the expiration of this Contract, and any renewals thereof.

4.09 Ownership Change. If at any time the 72 Inch Main, the Licensed Main or the Dort Highway Main is sold or legal control thereof is otherwise transferred to any other entity without GLWA's consent, which consent will not be unreasonably withheld, then:

- A. GLWA will have no obligation to provide water to Customer under the terms of this Contract unless and until ownership or legal control is restored to Customer; and
- B. GLWA will have the right, upon written notice to Customer, to terminate this Contract coincident with the change in ownership or legal control; and
- C. GLWA will have no liability whatsoever to Customer or any third party for any claim for damages under any legal theory or cause of action should GLWA cease providing Customer with water as a result of the application of this Section 4.09.

4.10 Raw Water Main. The Parties acknowledge the existence of a raw (non-potable) water main owned by KWA that terminates at a meter pit at Center Road near Pierson Road which, as of the Effective Date, extends from the GCDC water treatment plant to the Flint city limits ("Raw Water Main"), as depicted in Exhibit A. If GLWA desires to connect to the Raw Water Main at a future date, the Parties shall meet and endeavor to determine a mutually agreeable approach on how to utilize such main and assess the costs and charges associated therewith. If the Parties are unable to reach mutual agreement on the matter, then GLWA may connect to the Raw Water Main in its sole and reasonable discretion.

Article 5.
Pressure; Maximum Flow Rate; Minimum Annual Volume

- 5.01 Pressure Range. GLWA shall use its best efforts to deliver water at the Water Distribution Points at a pressure range ("Pressure Range") adequate to meet the reasonable requirements of Customer. For purposes of evaluating this effort, water pressure shall be determined by reviewing the average hourly pressure measured from top-of-the-hour to top-of-the-hour (e.g. 7:00 a.m. to 8:00 a.m.). The Pressure Range to be provided by GLWA to Customer's Water Distribution Points is specified in Exhibit B. The location at which the water pressure will be measured shall be specified in Exhibit A and identified as point "P". A Pressure Range will not be established for water meters that are not located on a GLWA transmission main, or which are located on a GLWA transmission main and are downstream of and subject to the flow demands of a water meter for another GLWA customer.
- 5.02 Remedy for Non-Compliance with Pressure Range. If the water pressure at Customer's Water Distribution Points is above or below the Pressure Range, at Customer's request the Parties shall meet within thirty calendar days to discuss the reasons for the non-compliance and, if agreed necessary, develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the meeting, or as otherwise agreed. The corrective action plan shall include a timetable for resolution of the non-compliance issue(s).
- A. If it is determined that another customer's exceedance of the rates of flow established by that customer's Maximum Flow Rate caused or contributed to GLWA's inability to meet its Pressure Range agreement with Customer, then the corrective action plan shall provide for the resolution of the issue.
- B. If Customer is exceeding the rates of flow established by its Maximum Flow Rate on a day other than the GLWA Maximum Day at the time Customer experiences a variation from the Pressure Range, then GLWA shall be relieved from its obligation to provide water to Customer within the Pressure Range for that period of time during which Customer is exceeding the rates of flow established by its Maximum Flow Rate.
- 5.03 Maximum Flow Rate. Customer's Maximum Flow Rate is specified in Exhibit B. Customer shall not exceed the Maximum Flow Rate specified in Exhibit B, as measured in million gallons on the GLWA Maximum Day and during the GLWA Peak Hour.
- A. GLWA shall notify all customers in writing on or before October 1 of each calendar year if Customer or any other wholesale customer is alleged to have exceeded its Maximum Flow Rate in a given calendar year. The notice shall state the day and/or hour that Customer or any other wholesale water customer is alleged to have exceeded its Maximum Flow Rate.
- B. If Customer is alleged to be in breach of its obligations under this Section 5.03, the Parties shall endeavor to meet before November 1 of the current calendar year, or as soon as practicable, for the purposes of validating the breach, reviewing and

analyzing the causes, and to negotiate a possible remedy pursuant to Sections 5.04 and 5.05 herein.

- C. The Technical Advisory Committee's Analytical Work Group, or its successor shall review any alleged breach of this Section 5.03.
 - i. The Analytical Work Group shall meet once, at a minimum, on or before November 1 of each calendar year to review the alleged breaches, if any, and may thereafter schedule subsequent meetings as necessary to conclude its review.
 - ii. GLWA will seek a recommendation from the Analytical Work Group on (1) an Allocation Flow Rate, if any, and/or (2) concurrence with the remedy tentatively negotiated between Customer and GLWA, if any. Customer and GLWA shall have the right to present any information related to the alleged breach a Party deems necessary to the deliberations.
 - iii. Any recommendation submitted by the Analytical Work Group shall be received by GLWA on or before December 1 of each calendar year.

5.04 Remedy for Non-Compliance with Maximum Flow Rate. GLWA has no obligation to supply to Customer more than the Maximum Flow Rate. If Customer exceeds its Maximum Flow Rate on the GLWA Maximum Day or during the GLWA Peak Hour, GLWA and Customer may, as needed, take one or more of the following actions set forth in this Section 5.04. The applicability of any particular action shall be evaluated by GLWA on a case-by-case basis.

- A. GLWA may require that Customer take all reasonable steps to reduce its consumption to the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation.
- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the charge associated with the new Maximum Flow Rate in the subsequent fiscal year.
- C. For charge-making and cost allocation purposes only, GLWA may recalculate Customer's charge for the current and/or subsequent fiscal years utilizing a revised cost allocation formula as follows:
 - i. GLWA shall, as set forth below, establish an Allocation Flow Rate to replace the contractual Maximum Flow Rate in the charge calculation process.
 - ii. The Allocation Flow Rate shall be applied from no earlier than the first exceedance date forward.

- iii. The Allocation Flow Rate will be at least equal to the flow rate demonstrated by Customer on the GLWA Maximum Day, and may be higher than the actual flow rate demonstrated by Customer.
- iv. Pursuant to Section 5.03(C), if GLWA receives a recommendation on the Allocation Flow Rate to be applied from the Analytical Work Group and the recommendation is higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then GLWA shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on the GLWA Maximum Day and no higher than the recommendation provided by the Analytical Work Group.
- v. If no recommendation on the Allocation Flow Rate to be applied is received by GLWA, or if GLWA receives a recommendation and the recommendation is less than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then GLWA shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on the GLWA Maximum Day and no higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate.
- vi. The Allocation Flow Rate will continue to be applied to each subsequent year's charge calculation process until the Maximum Flow Rate is renegotiated.
- vii. If a charge has been approved for the subsequent fiscal year (July 1st to June 30th) but the charge has not yet been applied, GLWA may modify Customer's charge for that subsequent fiscal year to account for an exceedance of its Maximum Flow Rate.
- viii. If GLWA and/or the City of Detroit has built capital facilities based upon Customer's negotiated Maximum Flow Rate and Customer consistently exceeds its Maximum Flow Rate, then GLWA may re-calculate the amount of Customer's percentage of the capital cost of such facilities.

5.05 Procedure for Non-Compliance with Maximum Flow Rate. In addition to the remedies specified in Section 5.04, if Customer has failed in its obligations under Section 5.03, the Parties shall meet to discuss the reasons for the non-compliance and if agreed necessary, develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed. Any corrective action plan required under this Section 5.05 shall include a timetable for resolution of the non-compliance issue(s).

- A. If the Parties determine that a corrective action plan is not required and an incident of non-compliance occurs in the subsequent calendar year, the Parties shall meet to develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed.

B. In the event the reason for Customer's non-compliance under Section 5.03 is due to a Customer water main break, fire or meter calibration performed by GLWA, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified in Section 5.04 should apply.

5.06 Minimum Annual Volume. Customer shall purchase from GLWA not less than the Minimum Annual Volume of water specified in Exhibit B. If Customer's Annual Volume is less than the Minimum Annual Volume, Customer shall pay to GLWA an amount computed by applying the current charge to the Minimum Annual Volume less any amounts already billed to the Customer by GLWA.

5.07 Periodic Review. For Customer and System planning purposes and, with regard to the Minimum Annual Volume, enforcement of the provisions of Article 3, a Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume shall be established by mutual agreement for the Contract Term. A contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume shall be established by mutual agreement for the first two years of the Contract Term. Not later than the second year of the Contract Term, GLWA and Customer shall negotiate a contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume for the succeeding three years of the Contract Term. Not later than the fifth year of the Contract Term, and every five years thereafter, GLWA and Customer shall negotiate a contractually binding Maximum Flow Rate, Pressure Range, Projected Annual Volume and Minimum Annual Volume for the succeeding five years of the Contract Term. If the Parties do not negotiate new or revised Maximum Flow Rates, Pressure Ranges, Projected Annual Volumes and Minimum Annual Volumes according to the aforementioned schedule, then the figures established for planning purposes (as shown in italicized type in Exhibit B) shall become contractually binding for the then-current three or five year term.

5.08 Remedy for Excessive Rate(s) of Flow Causing Pressure Problem(s). Customer acknowledges that Customer's rates of flow may cause and/or contribute to GLWA's inability to meet its Pressure Range agreements with Customer and/or GLWA's other customers (hereinafter, "Pressure Problem"). GLWA may review or monitor Customer's daily rates of flow if a Pressure Problem occurs and GLWA's Pressure Range agreement with Customer and/or another customer of GLWA is alleged to have been breached. The approximate rate of flow by individual meter location used to establish the Pressure Range and Maximum Flow Rate is specified in Exhibit B. If a Pressure Problem occurs, the Parties shall meet to discuss the reasons for the Pressure Problem and develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the Pressure Problem, or as otherwise agreed. The corrective action plan may require one or both of the following steps:

A. GLWA may require that Customer take all reasonable steps to reduce its consumption to the rate of flow established by the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation. In

addition, GLWA may require that Customer adjust its rate of flow at individual meters, including the establishment of a not-to-exceed flow rate for individual meters.

- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the charge associated with the new Maximum Flow Rate in the subsequent fiscal year.

If the Parties determine that a corrective action plan is not required and a subsequent Pressure Problem occurs, the Parties shall meet to develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the subsequent Pressure Problem, or as otherwise agreed. Any corrective action plan required under this Section 5.08 shall include a timetable for resolution of the Pressure Problem. In the event the reason for the Pressure Problem is due to a Customer water main break, fire or meter calibration performed by GLWA, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified above in this Section 5.08 should apply. In developing any corrective action plan, the Parties will take into account that Customer may be served by multiple points of connection and will utilize their collaborative best efforts to work towards developing the best solution to minimize capital and operating costs.

- 5.09 GLWA Costs for Corrective Action Plan. If at any time GLWA is required under the terms of this Article 5 to develop and implement a corrective action plan and the plan involves incurring capital costs, GLWA will determine whether the costs will be charged as a System cost or whether the cost will be borne by a specific customer or customers. If GLWA determines that all or part of the costs should be borne by a specific customer or customers, GLWA will seek a recommendation from the Technical Advisory Committee on the assessment of the costs.
- 5.10 Customer Costs for Corrective Action Plan. If at any time Customer is required under the terms of this Article 5 to develop and implement a corrective action plan, Customer shall be so informed in writing and Customer will pay all costs related to the corrective action plan.

Article 6. Technical Advisory Committee

- 6.01 Establishment. The Technical Advisory Committee exists to facilitate a cooperative working partnership between GLWA and its wholesale water customers by facilitating the development of recommendations regarding System planning and supply to GLWA management and the Board. The Technical Advisory Committee shall maintain bylaws that govern the way it conducts its business. In the event of a conflict between the terms of the bylaws adopted by the Technical Advisory Committee and the terms of this Contract, the terms of this Contract shall control.
- 6.02 General Responsibilities. The Technical Advisory Committee shall periodically review and evaluate the charges, charge methodology, and performance of the System. The Technical Advisory Committee shall review and evaluate flow rates, pressures and Annual

Volumes for the System at a minimum of every five years to assist GLWA in the System planning effort. The Technical Advisory Committee shall have the opportunity each year to review the Capital Improvement Program as prepared by GLWA, prior to its adoption by GLWA. The Technical Advisory Committee may consider Customer proposals for improving the operation of Customer's water system and/or the System. GLWA will supply the Technical Advisory Committee with information GLWA deems reasonably necessary to accomplish the general responsibilities defined in this Section 6.02.

- 6.03 Annual Report by GLWA. GLWA will present an annual report to the Technical Advisory Committee which shall consist of (1) all instances of non-compliance with the Parties' obligations contained in Article 5 herein, including Customer and GLWA responses thereto; (2) a general report on System operation and maintenance; and (3) a report that lists those contracts, if any, that have been entered into by GLWA and another customer(s) where the terms of the contract(s) invoke the application of Article 14 herein.
- 6.04 Notification of Charges. GLWA shall provide Customer and the Technical Advisory Committee with notice of the proposed charges for each fiscal year as early as possible before the implementation of the charges.
- 6.05 Disclosure of Charge Information by GLWA. Each year, GLWA will disclose to Customer and the Technical Advisory Committee information related to wholesale charges.
- 6.06 Disclosure of Retail Rate Information by Customer. Each year, Customer will disclose to its customers information related to its retail rates and other charges, and information regarding what portion of those costs is related to charges from GLWA and/or other major service providers.
- 6.07 Work Groups. The Technical Advisory Committee may create work groups to address specific issues facing the System. The work groups in existence as of January, 2016, are the Analytical Work Group, the Asset Management and CIP Work Group, the Best Practices Work Group, the Charges Work Group, and the Public Education Work Group. Any reference to a particular work group in this Contract shall include its successor or replacement if altered or discontinued.

Article 7. Charges

- 7.01 Charges. Customer agrees to pay for all water supplied by GLWA from the GLWA System at such charges as GLWA may establish. Charges shall be reasonable in relation to the costs incurred by GLWA for the supply of water and shall conform to Public Act 34 of 1917, Michigan Compiled Laws, Sec. 123.141, et seq., as amended. GLWA shall give written notice of any changes in the charges. Notice shall be made in accordance with Section 5e of Public Act 279 of 1909, Michigan Compiled Laws, Sec. 117.5e, as amended, ("Act 279"). GLWA will also supply Customer with water GLWA receives from GCDC pursuant to the Reciprocal Backup Water Service Contract between GLWA and GCDC, attached as Attachment X to the Master Agreement. Customer acknowledges and agrees that, pursuant to such contract, monthly service charges from GCDC will be incurred by GLWA and such service charges will be assessed to Customer on a direct pass through

basis from GLWA at the time they are incurred by GLWA (the “Pass-Through Charges”). Customer shall pay the Pass-Through Charges in accordance with Article 12. Customer further acknowledges and agrees that its obligation to pay the Pass-Through Charges shall survive any termination of this Contract.

- 7.02 Notification of Charges. As soon as possible in the charge-making process, GLWA shall provide information on proposed charges and the draft data and information used in the calculation of proposed charges in a format that will enable Customer to assist in the charge-making process. Not less than thirty calendar days prior to the hearing required by Act 279, GLWA shall provide Customer with written notice of a proposed charge and the underlying data used to calculate the charges. GLWA shall meet with Customer to review the charges and the data.
- 7.03 Estimate of Usage. In the event meters fail to correctly measure the quantity of water supplied to Customer for any period of time, GLWA shall provide a reasonable estimate of the quantity of water supplied to Customer for such period provided that there is a reasonable basis for the estimate. Customer and GLWA shall, either through their respective technical representatives and/or the Technical Advisory Committee, seek agreement upon a method to estimate such quantities. In the event the Parties are unable to agree upon a method to estimate such quantities, GLWA’s determination of a method shall be conclusive and Customer agrees to accept the estimate established by GLWA. GLWA.
- 7.04 Charge Methodology. GLWA agrees to provide to Customer an updated description of the methodology for charge-making in the form of the “Rates 101” document produced by the Technical Advisory Committee, as may be periodically updated. Until the updated document is completed, the current “Rates 101” document, entitled *DWSD Rates: Understanding DWSD Wholesale Water Rates*, shall remain in effect. The charge methodology documents referred to in this paragraph and any updates thereto shall be provided to Customer via posting on the GLWA website.

Article 8. Meters and Meter Facilities

- 8.01 Metering Requirement. All water furnished by GLWA to Customer shall be measured by water meters installed in Meter Facilities at Customer’s Water Distribution Points unless, in GLWA’s determination, it is not feasible to install water meters due to the configuration of Customer’s water system.
- 8.02 Existing Distribution Points. Except as provided in Section 8.04, as of January 1, 2016, GLWA shall own or lease, and operate and maintain all water meters and Meter Facilities for all existing Water Distribution Points, unless specifically indicated otherwise in Exhibit A.
- 8.03 Customer Maintenance Responsibilities. Customer shall be responsible for maintaining at its Water Distribution Points any and all appurtenances as may be designated as Customer’s responsibility in Exhibit A. Should Customer fail to maintain the appurtenances shown in Exhibit A, GLWA may take reasonable steps to maintain the appurtenances and charge the

reasonable cost of doing so to Customer. Prior to GLWA taking action to maintain the appurtenances, GLWA shall give Customer thirty days written notice to complete the required maintenance. Notice to Customer shall not be required if, in GLWA's determination, there exists an emergency condition affecting the operation of the System or if the health, safety and welfare of the general public may be jeopardized.

- 8.04 New Distribution Points. For any new Water Distribution Points that may be constructed or installed on or after January 1, 2016, Customer shall furnish at Customer's expense, a water meter and Meter Facility that meets GLWA's specifications. Thereafter, GLWA shall furnish any replacement water meters for new Water Distribution Points and the expense shall be recovered through GLWA's charges as a System cost. As provided in this paragraph, GLWA shall own, operate and maintain all water meters and Meter Facilities after construction, installation or replacement, unless specifically indicated otherwise in Exhibit A.
- 8.05 Meter Repair and Replacement. If GLWA initiates a meter repair or meter replacement, the cost shall be recovered through GLWA's charges as a System cost. If Customer requests a meter replacement for reasons other than malfunction or disrepair, Customer shall pay the cost of the replacement.
- 8.06 Pressure Regulating Facilities. After the effective date of this Contract, all newly installed Customer-owned pressure regulating facilities shall be installed in a facility that is separate from GLWA's Meter Facility.

Article 9. Dispute Resolution

- 9.01 Any and all claims alleging a breach of this Contract may first be submitted to an alternative dispute resolution process. An alternative dispute resolution process may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. Each Party shall be responsible for its own costs and fees (including expert witness fees and attorney fees), unless otherwise agreed to in writing. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. This Article 9 shall not prohibit a Party from seeking relief directly from a court of competent jurisdiction at any time.

Article 10. Default Provisions

- 10.01 In the event either Party commits a material breach of this Contract, the Party alleging the breach shall give written notice of the breach to the other Party within a reasonable time of discovering the breach. The Party in breach shall be given a reasonable time to cure the breach. If the Party in breach fails to cure the breach, the non-breaching Party may declare this Contract in default and pursue all available legal remedies, including termination of this Contract for cause and/or, if the non-breaching Party is GLWA, GLWA shall be entitled, under and subject to the conditions of 11 USC 366, adequate assurances for payment in the form of a security deposit (separate and distinct from the Security Deposit Account contemplated in Section 12.04) of not less than two times of the average monthly amount billed under Section 7.01 in the proceeding twelve months. In the event that the

Party in breach is showing reasonable progress toward curing the breach, the Party alleging the breach may extend the time for curing the breach.

Article 11.

Force Majeure, Hold Harmless and Other Events

- 11.01 **Force Majeure.** No failure or delay in performance of this Contract, by either Party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a Party, except that no cause or contingency shall relieve Customer of its obligation to make payment for water delivered by GLWA.
- 11.02 **GLWA Held Harmless.** As a result of Customer's public health emergency arising from the quality of water provided through Customer's water supply system, the Parties do not know the extent of the claims and/or damages which may result from the emergency, nor if the provision of water services by GLWA will abate, improve or otherwise alleviate the emergency. For this reason, to the extent permitted by law, Customer shall indemnify, defend and hold harmless GLWA and the City of Detroit from and against any and all alleged liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by or asserted against GLWA and/or the City of Detroit and their respective departments, officers, directors, employees or agents by reason of any of the following alleged to be attributable to the provision of water services under the terms of this Contract:
- A. Any and all alleged injury to persons or damage to property; and
 - B. Any alleged failure by Customer or its agents to perform its obligations, either express or implied, under this Contract; and
 - C. Any alleged act, error or omission of Customer or its agents with regard to (i) Customer's distribution of water supplied by GLWA downstream of any Water Distribution Point, and (ii) any alteration by Customer or its agents to the water supplied by GLWA downstream of any Water Distribution Point, including without limitation any chemical additions to the water as set forth in Section 17.06.
- 11.03 **GLWA Liability for Breakage to Pipes.** Except to the extent that GLWA is the proximate cause, GLWA shall not be held liable or accountable for any bursting, leakage, breakage, damage or accident of any kind that may occur to Customer's water works system, or any damages of any kind or nature, including, but not limited to, injury to persons or damage to property, resulting from or alleged to result from such bursting, leakage, breakage, damage or accident that may occur to water mains or pipes located downstream of the Water Distribution Points specified herein, or located within Customer's distribution system. The terms of this Section 11.03 shall not and shall be construed to apply to alleged damages or claims of any kind or nature related to, resulting from, or arising out of

Customer's public health emergency arising from the quality of water provided through Customer's water supply system, nor shall its terms be used to assign or attempt to assign liability to GLWA for the same.

- 11.03 Discontinuance of Service. In the event the public health, safety and welfare requires GLWA to discontinue temporarily all or part of the supply of water to Customer, no claims for damages of any kind or nature for such discontinuance shall be made by Customer against GLWA. GLWA will provide notice to Customer of any temporary discontinuance of the water supply.

Article 12.

Timely Payment; Trust Accounts; Security Deposit Account

- 12.01 Billing and Payment. Bills for water service shall be rendered to Customer on a monthly basis. All such bills shall be due and payable within thirty calendar days from the date shown on the bill. Any portion of the charges that are not paid by the due date shall be subject to a finance charge at a rate of 1.5% per month for each month that they remain unpaid. Any portion of the total bill, plus any finance charges applied to the bill which are not paid by the next billing date, shall be shown on the next bill as arrears.
- 12.02 Dispute. GLWA may disconnect water service if bills are overdue ninety calendar days from the billing date, in addition to any other remedies provided for in this Contract. GLWA shall not terminate water service if there is a good faith dispute concerning the accuracy of billings. If the accuracy of a bill is in dispute, Customer shall have ten (10) business days from the date of the invoice in which to provide written notice to GLWA of its dispute with the bill and shall place the disputed amount in an escrow account pending resolution of the dispute. Accrued interest on the escrow account shall belong to the Party that prevails in the resolution of the dispute.
- 12.03 Trust Accounts. The Parties acknowledge and agree that two trusts, the "Baseline Trust" and the "All-Receipts Trust", will be established and managed in accordance with the terms and conditions of Attachment X of the Master Agreement. Should there be any conflict between the terms of this Contract and the terms of Attachment X, the terms of Attachment X shall control.
- 12.04 Security Deposit Account. Customer will fund a security deposit account, established and held by GLWA ("Security Deposit Account"), as security for payments due GLWA under this Contract in accordance with the following terms and conditions:
- A. Prior to or concurrent with the execution of this Contract, Customer will provide to GLWA an amount equal to \$3,750,000.00 which GLWA will hold in an interest bearing account. All interest in the Security Deposit Account shall accrue to Customer unless the terms of Section 12.04 (E) are invoked.
 - B. GLWA will maintain the Security Deposit Account for a period of no less than 2 years and until such time as Customer satisfies each metric set forth in Section 12.04 (C). Unless modified by Section 12.04 (C) (iv), the time period stated herein shall begin to run coincident with the Effective Date.

C. The funds held by GLWA in the Security Deposit Account will be returned to Customer in full, plus applicable accrued interest if any in accordance with Section 12.04 (A), if at any time after the initial 2 year period Customer can demonstrate to the reasonable satisfaction of GLWA:

- i. It has made all payments under this Contract in full and on time and had no defaults under this Contract;
- ii. It has met all obligations payable from its water and sewer funds and made all of those payments in a timely manner; and
- iii. It has established a collection rate for its water and sewer billings of at least 90% for the preceding 12 month period.
- iv. If at any time Customer fails to make full and timely payment and GLWA is required to utilize the proceeds of the Security Deposit Account to cure an event of non- or partial payment as described in Section 12.04 (E), then the period outlined in Section 12.04 (B) shall restart at year zero.

D. Customer acknowledges and agrees that GLWA may grant KWA certain rights in and to the Security Deposit Account in connection with Customer's obligations to KWA for debt service payable from the Trust Accounts defined below, as described under Section 12.05 (ii) below.

E. Should GLWA be required to utilize any amount of the funds in the Security Deposit Account to cure an event of non- or partial payment by Customer to GLWA, or to KWA for debt service payable from the Trust Accounts defined below, as described under Section 12.05 (ii) below, GLWA may, for each such shortfall, restore this amount by adding to Customer's monthly charges for the subsequent 12 month period an amount equal to 1/12th of the dollars used to cure the event. Customer acknowledges and agrees that in the event of more than one shortfall, GLWA shall be entitled to simultaneously assess multiple charges to restore the shortfall in the Security Deposit Account.

12.05 Credits to Wholesale Billing Account Resulting from Trust Account Payments. Customer is obligated to make, or cause to be made, payments to GLWA, KWA and GCDC under the terms of trust accounts established pursuant to the terms of Attachment X ("Trust Agreements") of the Master Agreement ("Trust Accounts"). If Customer timely and fully pays, directly or via the Trust Accounts, its monthly amounts (i) due to GLWA for water supplied under this Contract, which includes the monthly service charges from GCDC that are assessed on a direct pass through basis from GLWA to Customer pursuant to Section 7.01, and (ii) due to KWA for debt service under the terms of Attachment X of the Master Agreement, then GLWA shall in the subsequent month issue a credit to Customer's wholesale billing account equal to the debt service payment obligation paid by Customer under (ii) above.

- 12.06 Account Stated. If Customer fails to make timely payment on invoices due as set forth in this Contract, the GLWA shall be entitled to utilize the All Receipts Trust under the conditions set forth in [Attachment X] of the Master Agreement. In addition, GLWA shall be entitled to claim a judgment against Customer for the entire unpaid balance, including any Early Termination Costs, together with late fees, interest, and the costs and reasonable attorney fees required to obtain that judgment. GLWA shall be entitled to file this Contract in a court of proper jurisdiction as evidence of Customer's agreement to pay amounts due and owing in accordance with this Contract.

**Article 13.
Assignment**

- 13.01 This Contract shall not be assigned, in whole or in part, by either Party without the prior written consent of the other Party provided, however, that GLWA may assign this Contract to the City of Detroit without prior notice to Customer at the conclusion of the Lease term. Consent to an assignment by either Party shall not be unreasonably withheld.

**Article 14.
Ensuring Equality of Contract Terms**

- 14.01 If GLWA enters into any contract, and any amendments thereto, with a water service customer other than Customer, and the material terms of such other contract are more favorable than the material terms of Customer's Contract, Customer may elect to adopt all of such other material terms. However, if Customer exercises the option provided for in this Article 14, Customer must accept all material terms of the other contract in their entirety and may not select among various terms contained in multiple other contracts by, for example, selecting the Contract Term from one contract and the Early Termination Costs provision of another contract. The terms and conditions of Exhibit B of this Contract are specifically excluded from the application of this Article 14.

**Article 15.
Amendment**

- 15.01 The Parties may periodically consider it in their best interests to change, modify or extend a term, condition or covenant of this Contract for reasons which may include, but are not limited to, the creation, expansion or closing of industry or other business. Any change, addition, deletion, extension or modification that is mutually agreed upon by GLWA and Customer shall be incorporated in a written amendment to this Contract. Such amendments shall not invalidate this Contract nor relieve or release either Party of any of its respective obligations under this Contract unless so stated in the amendment.
- 15.02 No amendment to this Contract shall be effective and binding upon the Parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both Parties, and is approved by Customer's governing body and the Board.

**Article 16.
Notices**

- 16.01 Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (collectively, "Notices") required or permitted under this Contract shall be given in writing and mailed by first class mail to the Parties and at the addresses identified in Exhibit B.
- 16.02 All Notices shall be deemed given on the day of post-marked mailing. Any Notice given by a Party hereunder must be signed by an authorized representative of such Party.
- 16.03 Notwithstanding the requirement above as to the use of first-class mail, change of address notices, termination notices, and other Notices of a legal nature, shall be sent by certified first-class mail, postage prepaid, return receipt requested.

Article 17.
Water Quality

- 17.01 Contamination. For the protection of the health of all consumers supplied with water from the System, Customer agrees to guard carefully against all forms of contamination. Should contamination occur, the area or areas affected shall immediately be shut off and isolated, and shall remain so until such conditions shall have been abated, and the water declared safe and fit for human consumption by the properly constituted governmental health agencies having jurisdiction of the area affected. Customer shall immediately notify GLWA, and GLWA shall immediately notify Customer, of any emergency or condition that may affect the quality of water in either Party's system.
- 17.02 Blending. Maintaining a daily flow through the Dort Highway Main is necessary to meet water quality regulatory standards in the event emergency backup services are required. Unless otherwise agreed by the Parties and approved by any necessary state and/or federal regulatory body, GLWA may supply to Customer from the Dort Highway Main approximately 5% of Customer's daily flow of potable water produced by GCDC (estimated at 0.5 MGD) in compliance with the requirements of any law, regulation, permit or order of any state and/or federal agency. Customer shall be responsible for installing, operating, maintaining, controlling and monitoring the necessary infrastructure and appurtenances, including but not limited to flow control devices, to ensure compliance with this limit. The remainder of Customer's daily flow of potable water produced by GLWA will be received through the 72 Inch Main. Customer will blend the water received through the Dort Highway Main with that water received through the 72 Inch Main at Customer's water treatment plant prior to its distribution and any required additional treatment as may be required of Customer by state and/or federal law, regulation, permit or order. The provisions on blending in this Section 17.02 are not considered a co-mingling of water sources and do not invoke the provisions of Section 17.03, below.
- 17.03 Co-mingling of Water Sources. Except in cases of emergency, Customer will not permit water from any other source of supply to be mixed or mingled with water from the System without prior written approval from GLWA. In cases of emergency, only such water from sources other than GLWA shall be used as shall meet the requirements of the Michigan Department of Environmental Quality, and then only in such quantities as shall be necessary to relieve the emergency.

- 17.04 Emergency Connections. During emergencies and notwithstanding the terms of Section 17.02, GLWA may provide and Customer may receive up to 100% of its daily flow of potable water through the Dort Highway Main provided, however, that the emergency backup flow will be in such quantities as GCDC can reasonably deliver to GLWA and Customer has no guarantee from either GCDC or GLWA as to how much flow will be provided. Additionally, during emergencies, Customer's water facilities may be used and connected, at the discretion of GLWA, to water facilities serving other communities for flow in either direction to provide an adequate water supply from the System to Customer and to other areas and other units of government. Customer shall be permitted to immediately make an emergency connection when the connection point to be used has been previously approved for emergency use by GLWA in writing, provided that Customer shall, after making the connection, promptly notify GLWA of such event. When the emergency has been abated, the emergency connection must be severed as soon as practicable. GLWA, or its designee, must approve, in writing, the continuation of any emergency connection that is required for longer than seven calendar days. If an approved emergency connection continues for more than seven calendar days, Customer must provide GLWA with weekly updates on the emergency and a schedule for abatement of the emergency that must be approved by GLWA in writing.
- 17.05 Water Quality. GLWA shall endeavor to remain in compliance with all applicable Michigan and Federal laws, rules and regulations regarding drinking water quality.
- 17.06 Chemical Additions. Customer has advised GLWA that in order to more effectively address its public health emergency, it may inject additional chemical treatments into the water it receives from GLWA. Customer acknowledges that such additional chemical treatments may result in taste, color and/or odor changes to the water provided by GLWA. In order that the public be kept fully informed as to the explanation for any taste, color and/or odor changes and to ensure that GLWA's long established, award winning brand is not diminished in any way, Customer agrees to coordinate with and seek the approval of GLWA regarding its public relations communications on these issues.

Article 18.

Rights-of-Way

- 18.01 Use of Rights-of-Way. Customer shall assist GLWA to obtain permission to use streets, highways, alleys, and/or easements in the local governmental units within Customer's jurisdiction for the purpose of constructing, maintaining, and operating water facilities to adequately service Customer's jurisdiction and other areas. This assistance shall include obtaining the consent of the local governmental units, as provided in Article 7, Section 29, Michigan Constitution of 1963. In the event of such construction, GLWA shall request Customer and local governmental units within Customer's jurisdiction to execute such separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by GLWA. GLWA shall give Customer notice of any construction work in Customer's jurisdiction. GLWA shall comply with any of Customer's ordinances that apply to the construction. Customer shall inform GLWA of the applicable ordinances. GLWA and Customer shall meet to review the construction and its impact on their respective operations. GLWA shall restore all existing structures and/or improvements

laying in the right-of-way of construction to as good a condition as before the construction took place. As contemplated by this paragraph, any such water facilities existing on or before December 31, 2015, shall remain under the ownership of the City of Detroit as leased to GLWA, and any new water facilities constructed on or after January 1, 2016, shall be owned by GLWA, and in no case shall either the existing or new water facilities be operated or maintained by any entity other than GLWA or its authorized representatives.

- 18.02 Relocation of Facilities. Should future construction by any city, township, village, or county require relocation of a water transmission main, Meter Facility or other GLWA facility, the cost incurred by GLWA for such relocation, if not reimbursed by the entity requiring the relocation, will be charged in future charges as a common-to-all cost to all System users.
- 18.03 Easements. Subject to the provisions of Section 18.01 and to the extent that Customer has jurisdiction, GLWA shall be granted temporary and permanent easements, and shall be permitted to use the streets, alleys and highways within Customer's legal jurisdiction for the purpose of constructing, operating and maintaining the System, including the relocation of water transmission mains, Meter Facilities or other GLWA facilities. This consent by Customer is given in compliance with Article 7, Sec. 29 of the Michigan Constitution of 1963, provided that GLWA shall provide Customer with a written explanation of the type of easement required and the duration thereof.

Article 19. Access to Towers and Antennas

- 19.01 Where possible, each Party shall give to the other Party access to towers and antennas under its respective jurisdiction for the purpose of transmitting information recorded in the Meter Facilities. Access shall not be unreasonably denied by either Party.

Article 20. Relationship to Wastewater Services

- 20.01 Customer and GLWA acknowledge that future growth in the System may place additional burdens on their respective wastewater systems. Customer, if it is also a wastewater disposal services customer of GLWA, understands that any increase in the volume of water it receives from the System is not a guarantee of increased capacity in the wastewater disposal system owned by the City of Detroit and leased by GLWA.

Article 21. Construction Standards

- 21.01 GLWA shall have the right to review and approve Customer's construction plans for Meter Facilities at new Water Distribution Points, water mains sized twenty-four inches and larger, pump stations, reservoirs, water towers, and any other construction that will cross, or be within close proximity to, or have influence upon System infrastructure. GLWA's approval of construction plans shall be timely and shall not be unreasonably withheld.

Article 22.
Operation of Storage

- 22.01 Prior to Customer's operation of any new or existing water storage facility, Customer shall seek GLWA's written approval of the filling schedule ("Filling Schedule") of the storage facility. GLWA may periodically require Customer to change or adjust a previously approved Filling Schedule. The Parties shall collaborate on devising a mutually beneficial Filling Schedule. If the Parties are unable to agree upon a Filling Schedule, GLWA's determination of a Filling Schedule shall be final. All Filling Schedules shall be for a period of six consecutive hours. Customer shall at all times abide by the then-current GLWA approved Filling Schedule. GLWA shall act promptly in approving Filling Schedule requests. Nothing in this Article 22 shall prevent Customer from operating its storage facility at any time, provided that any storage operation that falls outside of the approved Filling Schedule shall not be exempt from the terms of Article 5 herein.

Article 23.
Miscellaneous

- 23.01 If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 23.02 This Contract, including Exhibits A and B, contains the entire agreement between the Parties and all prior negotiations and agreements are merged into this Contract. Neither Party has made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by either Party by implication or otherwise unless expressly set forth in this Contract.
- 23.03 Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Contract as a whole and not to any particular section or subdivision.
- 23.04 The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.
- 23.05 The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Contract and all actions arising under it shall be governed by, subject to, and construed according to the laws of the State of Michigan.
- 23.06 Pursuant to the terms of its Lease with GLWA, the City of Detroit is an acknowledged third party beneficiary of this Contract and this Contract shall not be construed to benefit any persons other than GLWA, the City of Detroit and Customer.

- 23.07 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, GLWA shall provide a copy to the Customer.
- 23.08 The rights and benefits under this Contract shall inure to the benefit of and be binding upon the respective Parties hereto, their agents, successors, and assigns.
- 23.09 The Recital paragraphs of this Contract and any and all documents, memoranda, reports, exhibits or other written material referred to in this Contract are and shall be fully incorporated by reference herein.
- 23.10 This Contract shall be deemed to be mutually drafted and shall not be construed against either Party.

Article 24.

KWA Board Appointments; Bylaws and Articles of Incorporation

- 24.01 Customer will consult with GLWA and GLWA will recommend and approve of each of Customer's appointments to the KWA Board which selection cannot at any time be modified by Customer without the prior written approval of GLWA. Subsequent to GLWA's approval, Customer will execute a letter to KWA confirming the appointment of each new Board representative.
- 24.02 Customer will consult with GLWA in connection with any proposed amendments to the Articles of Incorporation or Bylaws of KWA, and shall not consent to any such changes without receipt of prior written consent of GLWA.

Article 25.

KWA Raw Water Rights

- 25.01 Raw Water Capacity Rights. Customer's raw water capacity rights established by the Raw Water Supply Contract, dated June 28, 2013 and effective October 1, 2013, between Customer and KWA ("Raw Water Contract"), are fixed at 18 MGD as of the Effective Date of this Contract. Of the 18 MGD total, GLWA shall be entitled to 17.46 MGD and Customer shall retain 0.54 MGD for the term of this Contract and thereafter as provided for herein.
- 25.02 Right to Purchase. At the conclusion of Customer's debt service payment obligation to KWA referenced in Section 12.05, GLWA has the first right to purchase Flint's 0.54 MGD of the KWA raw water capacity rights for \$3,000,000. The remaining 17.46 MGD of the KWA raw water capacity rights will automatically transfer to GLWA without further action of the Parties.
- 25.03 Failure to Pay. If Customer fails to pay its debt service obligation to KWA and as a result the County of Genesee acquires Customer's raw water capacity pursuant to Exhibit B of the Act 233 Karegnondi Water Authority Financing Contract dated August 1, 2013, as amended, between KWA, Customer and the County of Genesee, then GLWA shall be relieved of its obligation to provide emergency backup service to Customer, including

without limitation that flow from the Dort Highway Main, but in no event will GLWA charges to Customer be reduced, modified or adjusted as a result.

- 25.04 License. In consideration of the mutual promises and undertakings of this Contract, Customer grants to GLWA at no additional charge an exclusive, transferrable, perpetual, non-revocable license to utilize 17.46 MGD of Customer's raw water capacity to use in any way GLWA determines in its sole discretion and otherwise in compliance with the Raw Water Contract. Customer may not terminate this license and its exclusive remedies for breach are damages and equitable relief. This license shall survive the termination of this Contract and any termination of the Raw Water Contract. If after the termination of this Contract, GLWA, in its sole discretion, determines that it no longer wishes to use the raw water capacity so licensed, or any portion thereof, then Customer shall have a right of first refusal to purchase said capacity prior to GLWA's sale of that capacity at a price equal to the then-current aggregate amount of payments made by Flint to KWA for debt service under Section 12.05.

Article 26. KWA Bonds

- 26.01 New and Refunding Bonds. Customer acknowledges its continuing obligation to support the issuance and/or refunding of bonds related to the KWA system which were or may be issued pursuant to the Karegnondi Water Authority Financing Contract dated as of August 1, 2013 by and among the KWA, Customer and Genesee County, as amended, and bonds related to the KWA system for which Customer is contractually obligated to pay debt service in accordance with the Raw Water Supply Contract effective, October 1, 2013 between the KWA and Customer, as amended, including, without limitation, the refunding of the 2016 KWA bonds on or before March 1, 2018 (collectively referred to as the "Bonds"). Customer shall not consent to any issuance, amendment or refunding which increases or extends any annual payment obligation of Customer to KWA related to debt service under Section 12.05(ii) of this Contract, without receipt of the prior written consent of GLWA. Customer's continuing obligation includes, without limitation, signing all documents required by the bond underwriter and KWA and, when asked by them, using commercially reasonable efforts to provide them all information and documents within Customer's control necessary to effectuate the purposes of the financing transaction. Customer's continuing obligation also includes taking all actions within its control necessary to maintain the exclusion of the interest on KWA bonds from adjusted gross income for federal income purposes under the Internal Revenue Code of 1986, as amended, including but not limited to actions relating to the rebate of arbitrage earnings, if applicable, and the expenditure and investment of KWA bond proceeds and moneys deemed to be KWA bond proceeds; and providing and acting on continuing disclosure obligations related to any financings and/or refunding of any bonds related to the KWA system.
- 26.02 Insurance. While any KWA bonds remain outstanding, Customer shall maintain or cause to be maintained insurance (which may include self-insurance) on its facilities with commercially reasonable and available coverage.

26.03 Record Keeping. Customer will keep proper books of record and account in which shall be made full and correct entries of all transactions relating to the KWA bonds and any and all amounts payable through the Trust Accounts.

(Signatures appear on next page)

DRAFT

Accordingly, GLWA and Customer, by and through their duly authorized officers and representatives, have executed this Contract.

City of Flint:

By: _____
Karen Weaver
Mayor

By: _____
Inez Brown
City Clerk

APPROVED BY
FLINT CITY COUNCIL ON: _____
Date

APPROVED BY
RECEIVERSHIP TRANSITION ADVISORY BOARD: _____
Date

APPROVED AS TO FORM BY
FLINT CITY ATTORNEY ON:

Signature Date

Great Lakes Water Authority:

By: _____
Sue F. McCormick
Its: Chief Executive Officer

APPROVED BY
GLWA BOARD OF DIRECTORS ON: _____
Date

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL ON:

Signature Date

EXHIBIT A

Customer's Water Distribution Points

This Exhibit contains the following information:

1. The corporate limits of Customer;
2. The agreed upon water Service Area of Customer which (a) may or may not be entirely within the corporate limits of Customer and (b) which may or may not include the entire area within the Customer's corporate limits;
3. The specific location of the Water Distribution Points, including any GLWA approved emergency connections;
4. The designation of appurtenances to be maintained by Customer and those to be maintained by GLWA; and
5. A list of any closed meter locations.

EXHIBIT B

Projected Annual Volume and Minimum Annual Volume (Table 1)
Pressure Range and Maximum Flow Rate (Table 2)
Flow Split Assumptions (Table 3)
Addresses for Notice (Table 4)

Table 1 and Table 2 set forth the agreed upon Projected Annual Volumes, Minimum Annual Volumes, Pressure Ranges and Maximum Flow Rates for the term of this Contract provided that figures in bold type face are immediately enforceable pursuant to the terms of Section 5.07 and italicized figures are contained for planning purposes only but will become effective absent the negotiated replacements anticipated in Section 5.07.

The approximate rate of flow by individual meter set forth in Table 3 is the assumption upon which the Pressure Range commitments established in Table 2 have been devised. Should Customer deviate from these assumptions at any meter(s), GLWA may be unable to meet the stated Pressure Range commitments in this Contract or in the contract of another customer of GLWA and Section 5.08 of this Contract may be invoked.

EXHIBIT B

Table 1
Projected Annual Volume and Minimum Annual Volume

Fiscal Year Ending June 30	Projected Annual Volume (Mcf)	Minimum Annual Volume (Mcf)
2018	590,600	295,300
2019	590,600	295,300
2020	590,600	295,300
2021	590,600	295,300
2022	590,600	295,300
2023	590,600	295,300
2024	590,600	295,300
2025	590,600	295,300
2026	590,600	295,300
2027	590,600	295,300
2028	590,600	295,300
2029	590,600	295,300
2030	590,600	295,300
2031	590,600	295,300
2032	590,600	295,300
2033	590,600	295,300
2034	590,600	295,300
2035	590,600	295,300
2036	590,600	295,300
2037	590,600	295,300
2038	590,600	295,300
2039	590,600	295,300
2040	590,600	295,300
2041	590,600	295,300
2042	590,600	295,300
2043	590,600	295,300
2044	590,600	295,300
2045	590,600	295,300
2046	590,600	295,300
2047	590,600	295,300

EXHIBIT B

Table 2
Pressure Range and Maximum Flow Rate

Calendar Year	Pressure Range (psi)		Maximum Flow Rate (mgd)	
	Meter FL-01			
	<u>Min</u>	<u>Max</u>	<u>Max Day</u>	<u>Peak Hour</u>
2017	40	60	15.0	15.0
2018	40	60	15.0	15.0
2019	40	60	15.0	15.0
2020	40	60	15.0	15.0
2021	40	60	15.0	15.0
2022	40	60	15.0	15.0
2023	40	60	15.0	15.0
2024	40	60	15.0	15.0
2025	40	60	15.0	15.0
2026	40	60	15.0	15.0
2027	40	60	15.0	15.0
2028	40	60	15.0	15.0
2029	40	60	15.0	15.0
2030	40	60	15.0	15.0
2031	40	60	15.0	15.0
2032	40	60	15.0	15.0
2033	40	60	15.0	15.0
2034	40	60	15.0	15.0
2035	40	60	15.0	15.0
2036	40	60	15.0	15.0
2037	40	60	15.0	15.0
2038	40	60	15.0	15.0
2039	40	60	15.0	15.0
2040	40	60	15.0	15.0
2041	40	60	15.0	15.0
2042	40	60	15.0	15.0
2043	40	60	15.0	15.0
2044	40	60	15.0	15.0
2045	40	60	15.0	15.0
2046	40	60	15.0	15.0

Commented [LK1]:

Chandan and Grant: Please rename as FL-01

EXHIBIT B

Table 3
Flow Split Assumptions

Meter	Assumed Flow Split (2017-2018)
FL-01	0 - 100%

Table 4
Addresses for Notice

If to the GLWA:	If to Customer:
Great Lakes Water Authority 735 Randolph Street Detroit, Michigan 48226 Attention: General Counsel	Mayor City of Flint 1101 S. Saginaw Street Flint, Michigan, 48502 Attention: City Attorney