

**City of Swartz Creek
AGENDA**

**Regular Council Meeting, Monday September 26, 2011 7:00 P.M.
City Hall Building, 8083 Civic Drive Swartz Creek, Michigan 48473**

1. **CALL TO ORDER:**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **MOTION TO APPROVE MINUTES:**
 - 4A. Regular Council Meeting of September 12, 2011 MOTION Pg. 7, 9-13
5. **APPROVE AGENDA**
 - 5A. Proposed / Amended Agenda MOTION Pg. 7
6. **REPORTS & COMMUNICATIONS:**
 - 6A. [City Manager's Report](#) (Agenda Item) MOTION Pg. 7, 2-6
 - 6B. Monthly Fire Report Pg. 14-30
 - 6C. Springbrook Colony Agreement (Agenda Item) Pg. 31-42
 - 6D. FANG Correspondence Pg. 43-44
 - 6E. Clayton Library Invoice Pg. 45
 - 6F. Park Board Minutes Pg. 46-48
 - 6G. WWS Karegnondi Draft Documents Pg. 49-117
 - 6H. Legislative Updates Pg. 118-119
 - 6I. Springbrook Colony Agreement Exhibit Drawings (Agenda Item) CD
7. **MEETING OPENED TO THE PUBLIC:**
 - 7A. General Public Comments
8. **COUNCIL BUSINESS:**
 - 8A. Springbrook-Heritage SAD Districts DISC. Pg. 3
 - 8B. Springbrook Colony Revised Water-Sewer Agreement RESO. Pg. 8, 31-42
9. **MEETING OPENED TO THE PUBLIC:**
 - 9A. General Public Comments
10. **REMARKS BY COUNCILMEMBERS:**
11. **ADJOURNMENT:** MOTION

City of Swartz Creek
CITY MANAGER'S REPORT
 Regular Council Meeting of Monday September 26, 2011 7:00 P.M.

TO: Honorable Mayor, Mayor Pro-Tem & Council Members
FROM: PAUL BUECHE // City Manager
DATE: 23-September-2011

OLD / ROUTINE BUSINESS – REVISITED ISSUES / PROJECTS

- ✓ **MAJOR STREET FUND, TRAFFIC IMPROVEMENTS** (See Individual Category)
 - ☐ **2011-2014 T.I.P. APPLICATION** (Status)

Here is a schedule of City projects that are funded or in the queue (shaded).

TABLE #1 2011-2014 TIP, ALL PROJECTS, FUNDED & QUEUE (shaded)

Project	Year	Grant	City Match	P.E.	C.E.	Total
Miller Between Elms & Tallmadge	2011	\$338,997	\$168,819*	\$27,684	\$59,160	\$594,660
Bristol Road @ GM-SPO	2013	\$54,912	\$13,728	\$8,000	\$16,000	\$92,640
Miller Between Tallmadge & Dye	Unfunded	\$951,602	\$237,901	\$76,000	\$120,000	\$1,385,503
Miller Between Seymour & Elms	Unfunded	\$1,635,357	\$408,839	\$100,000	\$160,000	\$2,304,196

*Includes Developer Contribution of ±\$54,000

- ✓ **COUNTY WWS ISSUES PENDING** (See Individual Category)

- ☐ **KAREGNONDI WATER AUTHORITY** (Status)

Included with tonight's packet are draft documents, consisting of: 1) raw water supply contract; 2) Draft DWSD Contract and 3) Resolution of support for WWS to enter into a raw water agreement with the Karegnondi Authority. At this point, nothing is needed from the City.

- ☐ **SEWER I&I PENALTIES, REHABILITATION** (Status)

We approved Phase IV of the sewer rehabilitation project (Winshall Drive) at the meeting of July 25th, the cost being \$82,492.50. I'll keep the Council informed on progress.

- ☐ **SEWER USE ORDINANCE – INDUSTRIAL PRE-TREATMENT** (Status)

Pending effective date.

- ✓ **MARATHON REDEVELOPMENT PROJECT** (Status)

We are out to RFP bids for proposals. Here is an approximate time line:

RFP Issued	September 8, 2011
Pre-Bid Meeting	September 29, 2011 @ 4:00 p.m.
RFP Response Deadline	November 1, 2011 @ 4:00 p.m.
Presentations by Invitation:	To Be Announced
Council Selection:	November-December, 2011
Purchase Agreement:	December-January, 2011-2012
Planning Commission Site Plan:	January-February, 2012
Final Site Plan Approval, Develop Agreement Approval:	February-March, 2012
Commence Construction:	Spring, 2012

✓ **PERSONNEL & POLICIES & PROCEDURES** (*Status*)

As you may have noticed from tonight's agenda, things are eerily quiet. Back when we used to build things, this time of year was always swamped with contractor's trying to get work in before the weather declined. We are winding down construction on the SAD's and have finished up the Miller Elms project, both of which were huge draws on time this summer. Having said this, this item and several others here are cleanup matters that I will try and finish before year's end.

✓ **SALE OF CITY PROPERTY 5129 MORRISH ROAD** (*Status*)

Pending a report back to the Council with recommendation on the structure as well as the house the City owns at Morrish & Fortino.

✓ **LABOR CONTRACTS** (*Status*)

As a short re-cap, all our labor contracts are frozen. The POLC agreement has been frozen since January 2009, AFSCME since July 2008, the Supervisor's since July 2007 and the City Manager's since December 2004. We have two other "at will" classifications, which are without agreements, being our part time police officers and our building inspector. The part time police have been frozen since March 2004 with a change in November 2009 to allow time and a half on holidays. The building inspector is part time and has remained unchanged since October 2006 when the position was established to replace the full time assessor / building inspector. Contracted positions are the assessor and trade inspector's, being electrical, plumbing and mechanical. With Adam leaving we have a problem with Zoning Administration, Code Enforcement, and to a lesser degree, DDA, Planning Commission and CDBG administration. I am currently working on a solution to this.

All our union contracts expire on June 30, 2012. As we all know, there are significant changes to labor law that will impact these contracts. I suspect the unions will be approaching the City prior to years end with requests to begin negotiations. I'll keep the Council posted

✓ **FIRE DEPARTMENT: 2011 BUDGET & COST RECOVERY** (*Status*)

The 2011 Budget was adopted at the meeting of November 22, minus CIP contributions. As indicated, we are looking at long term solutions to all public safety. The cost recovery issue plays into this, however, it is in a state of flux based on the introduction of legislation that may prohibit such ordinances. The legislation has been stalled in committee. On the cost recovery, we'll watch it for a while to see where it heads. Regarding the agreement, the Fire Board has proposed some changes to the contract. I have met with the Township on the agreement and it appears we are making progress. The contract expired April 1st; however, there is a roll-over clause that allows continuation. I hope to have a draft for Council review soon. Additionally, we have a capital request to replace a grass fire rig. I'll add it to the list of items that need resolve with the Township.

✓ **NEIGHBORHOOD STABILIZATION PROGRAM** (*Status*)

Pending.

✓ **SPRINGBROOK EAST & HERITAGE ASSOCIATION S.A.D.** (*Discussion*)

As the Council is aware, we were set to go with a finance model that split the funding for the SAD's equally between 101, 226, 590 and 591. We have gone back and looked at

the distribution of the debt between funds and have some recommendations I'd like to discuss tonight. I've set this for a short discussion.

Here is an updated schedule:

- June 27th Meeting:** Heritage & Springbrook Resolutions Directing Staff to Prepare Reports & Documents
Heritage & Springbrook Resolutions to Accept Findings, Reports, Boundaries & Documents, Place Findings in Clerks Office, Set Public Hearing for July 11, 2011 7:00 PM.
- June 28th:** Public Hearing Notices Mailed to Property Owners, Ad Scheduled in Newspaper
- July 11th Meeting:** Public Hearing.
Heritage & Springbrook Resolutions Approving Profiles, Plans & Specifications, Formal Establishment of Special Assessment District, Direct Assessor to Prepare Special Assessment Tax Roll and Report to Council.
Heritage & Springbrook Special Assessment District Roll Received by Council, Resolution of Acceptance, Order of Filing With Clerks Office, Order of Availability for Public Inspection, Set Public Hearing for July 25, 2011 7:00 PM.
- July 12th:** Public Hearing Notices Mailed to Property Owners, Ad Scheduled in Newspaper
- July 25th Meeting:** Public Hearing.
Council Confirms Special Assessment Roll, Order Roll Placed on File, Directs Assessor to Post the Assessment Roll, and Directs Treasurer to Collect As Specified.
City Clerk must attach warrant to the Special Assessment roll within 10 days.
Resolute & Sign Construction Contract
- Aug 29th - Oct 1st:** Construction
- September 26th Mtg:** Approve Financing Model
- Late October:** Final Expense Reconciliations, Determine Per Unit Cost Adjustments (cannot Exceed Maximum Amount Approved).
- November:** Invoice Property Owners,
- April 2, 2012:** Payment Due Monday April 2, 2012.
- June, 2012:** Year One of Five Year Cycle for Assessment Against Tax Roll
- June, 2016:** Last (5th) Installment Due

As we discussed before, we are looking at using these time and material prices to perform other repairs. There are two areas on Major Streets that are very distressed, Fairchild at Miller and Winston at Miller. We are also going to look at some repairs to the Public Safety Lot.

- ✓ **SIGN ORDINANCE** (*Status*)
Adam tells me that the date on this was extended to 2012 when we adopted our Appendix A. Either way, I'll have Mr. Zettel drop this into the Planning Commission for some idea gathering. The Council needs to voice their desires, if any, on the elevated sign sunset issue. I would prefer that everyone is headed in the same direction on this (if that's possible), rather than pulling in different directions, as a matter of efficiency. Let me know if you have thoughts so we can guide the Planning Commission.
- ✓ **SHARED SERVICES INITIATIVE** (*Status*)
Both Mundy Township (6-1) and Flint Township (5-2) passed resolutions committing up to \$25k each to apply for a 50-50 grant with the MML's EVIP Program. The three units are gathering the required documents and will be submitting them as a package. If the grant is denied (possible due to limited funding), the next step would be to negotiate a

price with either Plante-Moran or another of the MML recommended firms and return to each unit with a recommendation. I'll keep the Council informed on progress.

- ✓ **SCHOOL PERFORMING ARTS CENTER** (*Status*)
Pending.

NEW BUSINESS / PROJECTED ISSUES & PROJECTS

- ✓ **SPRINGBROOK COLONY WATER-SEWER AGREEMENT** (*Resolution*)
As the Council may recall, on March 28th we approved a transfer agreement for water and sanitary sewer in Springbrook Colony. DEQ has driven this as the water system is looped into the public system which under their rules, require municipal ownership. Springbrook's attorneys wanted changes to the agreement, which were approved by the staff and Mr. Figura. Attached is the new agreement, substantially close to the old one (also included). I have a resolution to rescind the old one and pass this revised one.
- ✓ **FEES & DELINQUENTS** (*Information*)
Included with tonight's packet is a copy of last week's Park Board Minutes. The Board has some recommendations for fee changes. We will be discussing these at the next meeting. On another note, we are looking at all of our delinquent debts (parking fines, CCIF, etc.) and discussing the feasibility of utilizing a collection agency. If anyone has thoughts on this, shout 'em out. We'll be back in the near future with a list and recommendation.
- ✓ **2010-2011 FISCAL YEAR AUDIT** (*Information*)
Field work on the audit has been completed. We are looking at the first meeting in November for Council presentation. I'll have some preliminary account balances at the next meeting. On another issue, we are under a state mandate to submit the new "Citizens Guide" and the "Dashboard", by October 1st. As you may recall, we have had some light discussion on this and I have provided templates to look at in past meetings. It had been my hope to review these documents with the Council before submittal, however, much of the requirements were late received from the state and needed to wait until final reconciliation of the 2010-2011 FY close, leaving us little time. As of writing, the submittals will not be ready until later this week... on the deadline. I'll provide copies at the next meeting, along with a bit of discussion on what these documents might be seeking to accomplish.
- ✓ **STREET RE-STRIPING & SYMBOLS** (*Information*)
As the Council is aware, *some* of the streets need re-striping as well as replacement of the cold plastic symbols (bicycle lane markings). We have been looking at this and will have a recommendation at the next meeting. It may be best to wait until the spring and do everything.

Council Questions, Inquiries, Requests and Comments

- ❑ *Traffic Lights, Bristol-Miller, GM-SPO.* Pending the direction that GM takes. New traffic counts as to warrants would need to be taken.
- ❑ *Deteriorated Retaining Walls & Planters at City Buildings.* The wall along the north side of the building has been repaired. We are looking at options on some of the other repairs around the site.
- ❑ *Youth Programs in Park.* Looking into this. This item is something that might best be suited for the City's School Liaison Officer. The matter has been referred to the Police Department for review and recommendation.
- ❑ *Veterans Park Memorial, Street Signs.* Pricing has been presented to the committee. They are in the process of evaluating it.
- ❑ *Deteriorated Consumers' Light Poles, Winchester Village.* One has been removed. I believe there is another there that probably also needs removal. We're working on this one.
- ❑ *Kroger Ingress-Egress Striping & Turn Arrows.* Pending
- ❑ *Relocate – Remove Drop Boxes, Kroger & Morrish Road Real Estate Office.* Pending.
- ❑ *Wheel Chairs Within Bicycle Lanes.* They are allowed under the Motor Vehicle Code.
- ❑ *Deteriorated Building, Morrish at CNA Crossing.* Pending.

**City of Swartz Creek
RESOLUTIONS**

Regular Council Meeting, Monday September 12, 2011 7:00 P.M.

Resolution No. 110926-4A MINUTES – SEPTEMBER 12, 2011

Motion by Councilmember: _____

I Move the Swartz Creek City Council approve the Minutes of the Regular Council Meeting held September 12, 2011 to be circulated and placed on file.

Second by Councilmember: _____

Voting For: _____

Voting Against: _____

Resolution No. 110926-5A AGENDA APPROVAL

Motion by Councilmember: _____

I Move the Swartz Creek City Council approve the Agenda as presented / printed / amended for the Regular Council Meeting of September 26, 2011, to be circulated and placed on file.

Second by Councilmember: _____

Voting For: _____

Voting Against: _____

Resolution No. 110926-6A CITY MANAGER’S REPORT

Motion by Councilmember: _____

I Move the Swartz Creek City Council approve the City Manager’s Report of September 26, 2011, to be circulated and placed on file.

Second by Councilmember: _____

Voting For: _____

Voting Against: _____

SPRINGBROOK COLONY WATER-SEWER TRANSFER AGREEMENT

Motion by Councilmember: _____

WHEREAS, the City approved an agreement with the Springbrook Colony Association on March 28, 2011, that authorizes the transfer of the associations' water and sewer system to the City's public system, as follows:

Utility Transfer Agreement, Springbrook Colony Condominium Association, Water & Sanitary Sewer

Resolution No. 110328-07

(Carried)

*Motion by Councilmember Porath
Second by Councilmember Hurt*

I Move the City of Swartz Creek enter into an agreement with the Springbrook Colony Condominium Association for the permanent transfer of the Associations water and sanitary sewer systems to the City, terms as set forth in the agreement, a copy of which is attached hereto, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City.

Discussion Ensued.

*YES: Abrams, Binder, Hicks, Hurt, Krueger, Porath.
NO: Shumaker. Motion Declared Carried.*

And, WHEREAS, counsel for the association has requested changes, such changes negotiated and approved by the City Attorney and the staff.

NOW, THEREFORE, I Move the City rescind Resolution #110328-07 and enter into a revised agreement with the Springbrook Colony Condominium Association for the permanent transfer of the Associations water and sanitary sewer systems to the City, terms as set forth in the revised agreement, a copy of which is attached hereto, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City.

Second by Councilmember: _____

Voting For: _____

Voting Against: _____

City of Swartz Creek
Regular Council Meeting Minutes
Of the Meeting Held
Monday September 12, 2011 7:00 P.M.

CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 9/12/2011

The meeting was called to order at 7:00 p.m. by Mayor Abrams in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

Councilmembers Present: Abrams, Hicks, Hurt, Krueger, Porath, Shumaker.

Councilmembers Absent: Binder.

Staff Present: City Manager Paul Bueche, DPW Director Tom Svrcek, City Clerk Juanita Aguilar.

Others Present: Boots Abrams, Bob Plumb, Tommy Butler, Lou Fleury from Rowe, Rick Ballreich, Jim Florence.

Resolution No. 110912-01

(Carried)

Motion by Councilmember Hurt
Second by Councilmember Hicks

I Move the Swartz Creek City Council hereby excuse the absence of Councilmember Binder due to illness.

YES: Hicks, Hurt, Krueger, Porath, Shumaker, Abrams.

NO: None. Motion Declared Carried.

APPROVAL OF MINUTES

Resolution No. 110912-02

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the Swartz Creek City Council hereby approve the corrected Minutes of the Regular Council Meeting, held August 22, 2011, to be circulated and placed on file.

YES: Hicks, Hurt, Krueger, Porath, Shumaker, Abrams.

NO: None. Motion Declared Carried.

APPROVAL OF AGENDA

Resolution No. 110912-03

(Carried)

Motion by Mayor Pro-Tem Krueger
Second by Councilmember Hurt

I Move the Swartz Creek City Council approves the Agenda, as printed for the Regular Council Meeting of September 12, 2011, to be circulated and placed on file.

YES: Hurt, Krueger, Porath, Shumaker, Abrams, Hicks.
NO: None. Motion Declared Carried.

REPORTS AND COMMUNICATIONS:

City Manager's Report

Resolution No. 110912-04

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager's Report of September 12, 2011, to be circulated and placed on file.

YES: Krueger, Porath, Shumaker, Abrams, Hicks, Hurt.
NO: None. Motion Declared Carried.

Discussion Took Place.

All other reports and communications were accepted and placed on file.

MEETING OPENED TO THE PUBLIC:

None.

Council Business

Utility Billing Cycle Change

(Carried)

Resolution No. 110912-05

Motion by Councilmember Hicks
Second by Mayor Pro-Tem Krueger

I Move the City of Swartz Creek authorize a change in the utility billing cycle, in accordance with the following table:

Current Billing Cycle		New Billing Cycle	
October 21 -- Jan 20	Due Feb 1	Dec 21 - March 20	Due April 1
Jan 21 - April 20	Due May 1st	March 21 - June 20	Due July 1
April 21 - July 20	Due August 1st	June 21 - Sept 20	Due October 1
July 21 - October 20	Due Nov 1st	Sept 21 - Dec 20	Due January 1

And further, direct the staff to make the necessary and appropriate adjustments to the City's financial accounting system, along with adequate notice of change to customers.

Discussion Took Place.

YES: Porath, Shumaker, Abrams, Hicks, Hurt, Krueger.

NO: None. Motion Declared Carried.

Street Usage Permit, Annual School Homecoming Football Parade

Resolution No. 110912-06

(Carried)

Motion by Councilmember Hurt
Second by Mayor Pro-Tem Krueger

I Move the City of Swartz Creek approve the application of the Swartz Creek Student Council to conduct their annual High School Homecoming Parade on Friday, October 7, 2011, from 4:30 pm to 6:30 pm. Parade route as follows:

Civic Drive Eastbound to Fortino
Fortino Eastbound to Morrish
Morrish Southbound to Miller
Miller Westbound to Fairchild
Fairchild Southbound to Ingalls
Ingalls Westbound into the south lot of Swartz Creek High

Under the direction and control of the office of the Chief of Police and in accordance with the stipulations and conditions set forth in the permit and application.

YES: Shumaker, Abrams, Hicks, Hurt, Krueger, Porath.

NO: None. Motion Declared Carried.

Traffic Improvement Program, Trail Funding

Resolution No. 110912-07

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

WHEREAS, the City has designed a non-motorized trail system and has applied for and been approved for funding through the County's Traffic Improvement Program for the construction of a portion of the trail system; and

WHEREAS, such grants are federal and stipulate local match on construction, design and engineering costs, such costs typically being 30% of the entire project; and

WHEREAS, the construction of non-motorized trail systems have been funded within the County wherein all costs have been paid for with grants, however, attempts by the City to obtain secondary match funding grants have been unsuccessful, leaving the City in the position to fund the match or lose the grant; and

WHEREAS, the funding for Major Streets has been reduced with greater amounts required for local match, leaving the City in the position of having insufficient match funds to maintain a reasonable repair schedule for its major street system; and

WHEREAS, the City finds that Major Street funds are better utilized towards repairing existing streets than investment in new infrastructure such as a non-motorized trail.

NOW, THEREFORE, I Move the City of Swartz Creek direct the staff to file the necessary documents for the withdrawal of its application for funding for a non-motorized trail, stipulating the reasoning that such grants would need to be at, or very near 100% before the City could participate.

Discussion Took Place.

YES: Abrams, Hicks, Hurt, Krueger, Porath, Shumaker.

NO: None.

Springbrook & Heritage SAD's, Vacant Lots

(Discussion)

City Manager Paul Bueche discussed the taxes owed on vacant lots in Springbrook East and Heritage. Mr. Bueche has offered to consider taking over these vacant properties if the taxes are paid through the end of the year. The City would then try to sell the lots in the future.

MEETING OPENED TO THE PUBLIC:

Tommy Butler of 40 Somerset verified that the utility billing changes being made were for the water and sewer. Mr. Butler stated the road in front of Family Farm and Home is much improved and he was very impressed. Mr. Butler asked about the location for the land sale office and was told that had not yet been determined.

REMARKS BY COUNCILMEMBERS:

Councilmember Porath stated the biggest real estate office in the City closed this past week and commented on the sign at that location.

Councilmember Shumaker stated the intersection at Miller and Elms looks very nice, the traffic markings show up, and so far it appears to be working well. Mr. Shumaker asked about the striping at the two Kroger entrances and exits and was told it is being worked on. Mr. Shumaker commented that he observed the Police Chief, City Manager and DPW Director out picking up signs at the intersections recently.

Councilmember Hicks commented on the boxes for clothing and shoes in front of Kroger and asked if they could be relocated out back.

Mayor Pro-Tem Krueger said they had a very nice firemen's memorial service on Saturday with attendance by the public that was significantly larger than in previous years. A large focus of the service was for the events of September 11th. Mayor Pro-Tem Krueger asked if joggers were permitted in the bike lanes and it was determined foot traffic should be on the sidewalks.

Mayor Richard Abrams asked if the performing arts center has a public review. Mayor Abrams also asked about the payment from Clayton Township for the fire department and was informed the City still has not yet received the payment. Mayor Abrams stated the icons or symbols and arrows on the bike paths need replacing. Mayor Abrams questioned if wheelchairs were permitted on the bike paths and City Manager Bueche was going to check on it.

Adjournment

Resolution No. 110912-08

(Carried)

Motion by Councilmember Hurt
Second by Mayor Pro-Tem Krueger

I Move the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 8:07 p.m.

YES: Unanimous Voice Vote.
NO: None. Motion Declared Carried.

Richard Abrams, Mayor

Juanita Aguilar, City Clerk

DATE: SEPTEMBER 19, 2011
TIME: 7:00 PM
LOCATION: STATION 1
SUBJECT: SWARTZ CREEK AREA FIRE AUTHORITY AGENDA



- I. CALL TO ORDER
 - A. PLEDGE OF ALLEGIANCE
 - B. ROLL CALL
 - C. ADDITIONS/CHANGES/DELETIONS AND AGENDA APPROVAL:
 - D. SPECIAL PRESENTATIONS/ANNOUNCEMENTS:

- II. APPROVAL OF MINUTES
 - A. AUGUST 15, 2011 MEETING:

- III. CORRESPONDENCE:
 - A. AUGUST INCIDENT SUMMARY REPORT:

- IV. PROFESSIONAL SERVICE REPORTS:
 - A. AUGUST FINANCIAL REPORT:

- V. COMMITTEE REPORTS:
 - A. BY-LAWS COMMITTEE - Chairman Rick Clolinger, Richard Derby, Bill Cavanaugh and Brent Cole:

 - B. HEALTH AND SAFETY COMMITTEE: Chairman Greg Childers (Members Chief Cole, Assistant Chief Merriam, Captain Tabit, Lieut. Jones & Sgt. VanArsdale)

 - C. PERSONNEL COMMITTEE: Chairman Ray Thornton, Richard Derby and David Hurt.

 - D. FIRE AGREEMENT COMPLIANCY COMMITTEE: Chairman Dave Hurt, Richard Derby, Ray Thornton and Attorney Bill Cavanaugh.

- VI. OLD BUSINESS:
 - A. APPARATUS UPDATE from Battalion Chief Jack King-
 - 1. Apparatus status report attached
 - 2. Recent tire replacement done.

 - B. 2011 PROPOSED BUDGET APPROVAL STATUS:
 - Swartz Creek approved their portion in November 2010.*
 - Clayton Township:*

C. STATUS REPORT OF FEMA GRANT:

1. Turn out gear has been received.
2. There is \$591.00 left over from all the equipment purchased. Chief Cole will be ordering enough 800 portable batteries (since this is allowed if the purchases of equipment do not exceed \$5,000.00 and are related to what was already purchased). Cost per battery when ordering 7 is \$88.07 each. Total would be \$616.49 + shipping. Minus the \$591.00 grant amount left over, cost to the SCAFD would be \$25.49 + \$14.00 shipping for a total of \$39.49. A payment request for \$591.00 has been submitted to FEMA before proceeded with ordering.

D. THERMAL IMAGERS: Captain Tabit has been directed to order them. Grant funding amount of \$4,620.00 was received from ABATE of Michigan - Region 20 (Biking For Burns). The Hundred Club of Flint will reimburse \$3,000.00 from the canceled check. The Swartz Creek Area Firefighters have funding of \$1,979.00 available when needed. The balance of \$7,111.00 will be taken from line item 4976. Delivery is expect within 5-6 weeks.

E. GRASS 27 SKID UNIT REPLACEMENT: Attached are comments and a recommendation from Captain Tabit.

Chief Cole requests permission to contact the City of Swartz Creek and Charter Township of Clayton to request approval to purchase the Danko Emergency Equipment custom skid unit (Brushwacker XL) for a total \$14,142.00 including shipping.

F. 2012 BUDGET:

G. STATION 2 LIEUTENANT POSITION:

VII. NEW BUSINESS:

A. MEMBERS FOR PLACEMENT ON PROBATION: none

B. MEMBERS ELIGIBLE TO COME OFF PROBATION:

1. Leah Farnsworth, hired September 20, 2010, is assigned to station 1. Leah has completed the requirements of his probationary status.

Chief Cole recommends placement of Leah Farnsworth on regular status with the Swartz Creek Area Fire Department.

C. MEMBERS RESIGNING/TERMINATING:

1. Firefighter Ann Samida, submitted her resignation (attached) effective September 5, 2011, to take a job as a Phoenix Fire/Medic. Ann was originally hired May 17, 2004. Ann was assigned to station 2.

Chief Cole recommends accepting Ann Samida's resignation effective September 5, 2011.

D. MEMBERS ELIGIBLE FOR REINSTATEMENT: none

E.

F.

VIII. GENERAL INFORMATION:

- A. MUNICIPAL BILLINGS for August
- B. AUGUST BILLS LIST
- C. Flowers fund balance \$35.00
- D. Organizational Chart effective September 13, 2011.
- E. Thank you card from Frances Homer
- F. Station Open Houses are scheduled for October 2, from 1PM to 4PM
- G.
- H.

IX. OPEN TO THE PUBLIC:

- X. COMMENTS OF FIRE DEPARTMENT PERSONNEL (THROUGH THE CHIEF AND/OR HIS DESIGNATE:
- XI. CHAIN OF COMMAND APPEAL TO THE FIRE AUTHORITY:
- XII. COMMENTS FROM FIRE AUTHORITY MEMBERS:
- XIII. MEETING ADJOURNMENT:

REGULAR MEETING

AUGUST 15, 2011

SWARTZ CREEK AREA FIRE DEPARTMENT

The regular meeting of the Swartz Creek Area Fire Board was held at Station #1, August 15, 2011. Chairman, Mike Messer, called the meeting to order at 8:00p.m.

I. CALL TO ORDER:

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Board Members Present:

- Chairman, Mike Messer
- Clayton Representative, Greg Childers
- City Representative, Ray Thornton
- Clayton Representative, Richard Derby
- City Representative, Dave Hurt

Board Members Absent:

- City Representative, Rick Clolinger
- Clayton Representative, Norvel Johnson

Staff Present:

- Fire Chief, Brent Cole
- Assistant Chief Eric Merriam
- Acct./Clerical, Kim Borse

Staff Absent:

- Attorney, Bill Cavanaugh

Others Present:

- Batt. Chief Jack King,
- Captain Steve Tabit
- Captain Dave Plumb
- Sgt. James Barr II
- Firefighter Karen Merriam
- Katie Merriam, Clayton Twp.
- David Dorr, Douglass Safety

C. AGENDA: ADDITIONS/CHANGES/DELETIONS:

- **Resolution 081511-01**

Motion by Dave Hurt

Second by Rick Derby

The SCAFD Board does hereby approve the change to VII. I. and the addition of VII.J. to the agenda.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

- **Resolution 081511-02**

Motion by Dave Hurt

Second by Ray Thornton

The SCAFD Board does hereby approve the agenda, as amended.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

D. SPECIAL PRESENTATION: NONE

II. APPROVAL OF MINUTES

A. JULY 18, 2011 BOARD MEETING

- **Resolution 0718011-03**

Motion by Dave Hurt

Second by Greg Childers

The SCAFD Board does hereby approve the minutes of the July 20, 2011 board meeting, as presented.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

III. CORRESPONDENCE:

A. JULY INCIDENT SUMMARY REPORT:

- **Resolution 081511-04**

Motion by Rick Derby

Second by Dave Hurt

The SCAFD Board does hereby accept the July 2011 Incident Summary, as presented

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

IV. PROFESSIONAL SERVICE REPORTS:

A. JULY FINANCIAL STATEMENT:

- **Resolution 081511-05**

Motion by Dave Hurt
Second by Rick Derby

The SCAFD Board does hereby approve the July 2011 financial statement, as presented

YES: Childers, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

V. COMMITTEE REPORTS:

- A. BY-LAWS COMMITTEE MEETING: NONE
- B. HEALTH & SAFETY COMMITTEE: NONE
- C. PERSONNEL COMMITTEE:
- D. FIRE AGREEMENT COMPLIANCY COMMITTEE:

VI. OLD BUSINESS

A. APPARATUS UPDATE:

- 1. Monthly report from Batt. Chief King

B. 2011 BUDGET UPDATE:

- 1. City: Approved
- 2. Township: No report.

C. FEMA GRANT STATUS:

The turn out gear has been ordered.

VII. NEW BUSINESS

A. MEMBER(S) TO BE PLACED ON PROBATION: R. Fitzpatrick

- **Resolution 081511-06**

Motion by Dave Hurt
Second by Rick Derby

The SCAFD Board does hereby place Robert Fitzpatrick on 1 year probationary with the Swartz Creek Area Fire Department, pending the results of his background check and physical.

YES: Childers, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

B. MEMBER TO COME OFF PROBATION: C. Thornton

- **Resolution 081511-07**

Motion by Ray Thornton
Second by Dave Hurt

The SCAFD Board does hereby place Chad "Joe" Thornton on regular status with the Swartz Creek Area Fire Department.

YES: Childers, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

C. MEMBERS RESIGNING/TERMINATING: R. Tesner, A. Davis

- **Resolution 081511-08**

Motion by Dave Hurt
Second by Rick Derby

The SCAFD Board does hereby accept, with regret, the resignation of Lt. Rich Tesner, effective 08/15/2011.

YES: Childers, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

- **Resolution 081511-09**

Motion by Dave Hurt
Second by Rick Derby

The SCAFD Board does hereby accept, with regret, the resignation of Firefighter Anthony Davis, effective 08/31/2011.

YES: Childers, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

D. MEMBERS ELIGIBLE FOR REINSTATEMENT: NONE

E. THERMAL IMAGING CAMERA PURCHASES:

- **Resolution 081511-10**

Motion by Dave Hurt
Second by Ray Thornton

The SCAFD Board does hereby approve the purchase of two ISG Elite Thermal Imager packages from Douglass Safety in the amount of \$16,710.00. Grants totaling \$9,599.00 will be used towards this purchase.

YES: Childers, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

F. GRASS 27 SKID UNIT REPLACEMENT:

Apollo: \$13,912.00 installation at their facility
RKO: \$16,050.00 delivered

Time Emergency: \$13,167.00 delivered
\$13,727.00 with bigger motor

Danko: \$14,142.00 delivered

• **Resolution 081511-11**

Motion by Ray Thornton

Second by Dave Hurt

The SCAFD Board does hereby approve the opening of bids for Grass 27 skid unit replacement.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

• **Resolution 081511-12**

Motion by Dave Hurt

Second by Greg Thornton

The SCAFD Board does hereby direct the Chief to analyze the bids and submit a report at the next regular board meeting.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

G. **DESKTOP COMPUTER PURCHASE:**

• **Resolution 081511-13**

Motion by Dave Hurt

Second by Rick Derby

The SCAFD Board does hereby grant the Chief permission to spend up to \$1,250.00 plus shipping on the purchase of two desktop computers.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

H. **2012 BUDGET:**

• **Resolution 081511-14**

Motion by Dave Hurt

Second by Rick Derby

The SCAFD Board does hereby accept the 2012 SCAFD Budget and directs Staff to forward it to the municipalities.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

I. **PURCHASE OF REPLACEMENT TIRES:**

• **Resolution 081511-15**

Motion by Dave Hurt

Second by Ray Thornton

The SCAFD Board does hereby approve the purchase of 8 tires including installation from Jerry's Tire in the amount of \$3546.22.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

J. **POSTING OF STATION 2 LIEUTENANT'S POSITION:**

• **Resolution 081511-16**

Motion by Dave Hurt

Second by Rick Derby

The SCAFD Board does hereby approve the posting of the Station 2 Lieutenant' position.

YES: Childers, Derby, Hurt, Thornton, Messer

NO: None Motion declared carried

VIII. GENERAL INFORMATION

A. MUNICIPAL BILLINGS

B. JULY BILLS LIST

C. FLOWERS FUND BALANCE IS \$35.00

D. GENESEE COUNTY FALEN FIREFIGHTER MEMORIAL TRIBUTE IS 09/10/11 AT 11AM

E. GAINES TWP THANK YOU

F. ORGANIZATIONAL CHART

G. CHIEF COLE ON VACATION FROM 08/16-08/28.

IX. OPEN TO THE PUBLIC: NONE

X. COMMENTS OF FIRE DEPARTMENT PERSONNEL, THROUGH THE CHIEF: NONE

XI. CHAIN OF COMMAND APPEAL TO THE FIRE BOARD: NONE

XII. COMMENTS OF THE FIREBOARD:

Derby: Congratulations to Thornton.
Welcome to Fitzpatrick
Sad to see Lt. Tesner and FF Davis leave
Good work on budget

Hurt: Pass.

SWARTZ CREEK AREA FIRE DEPARTMENT BOARD MEETING

AUGUST 15, 2011

Thornton: Concurs with Derby
Childers: Thanks to Lt. Tesner and FF Davis for their time.
Messer: Echoes sentiments

XIII. ADJOURNMENT OF MEETING:

Meeting adjourned at 8:45 p.m. The next regular meeting will be 09/19/11 at Station 1 at 7:00 pm

*MIKE MESSER
CHAIRMAN
SWARTZ CREEK AREA FIRE BOARD*

*KIM BORSE
ACCT/CLERICAL SPECIALIST
SWARTZ CREEK AREA FIRE DEPT.*

SWARTZ CREEK AREA FIRE DEPARTMENT
Income/Expense Report
For the Eight Months Ending August 31, 2011

	Description	Current Mth	Y-T-D	Budget	Remain.Budget	% Budget
Revenues						
3582	OPERATING CONTRIBU	3,782.46	198,643.37	212,562.00	13,918.63	(0.93)
3583	EQUIPMENT CONTRIBU	0.00	39,234.00	52,312.00	13,078.00	(0.75)
3628	MISC. INCOME (SUNDR	0.00	14.00	0.00	(14.00)	0.00
3630	GRANT INCOME	0.00	38,806.00	0.00	(38,806.00)	0.00
3664	INVESTMENT INCOME	0.00	62.01	120.00	57.99	(0.52)
3673	SALE OF FIXED ASSETS	0.00	0.00	0.00	0.00	0.00
	Total Revenues	3,782.46	276,759.38	264,994.00	(11,765.38)	(1.04)
Expenses						
4703	SOCIAL SECURITY	678.97	10,540.54	10,800.00	259.46	0.98
4704	STAFF SALARIES	3,155.52	24,413.45	42,500.00	18,086.55	0.57
4705	MAIN/TRAIN-SALARIES	901.00	6,369.00	10,900.00	4,531.00	0.58
4706	OFFICER SALARIES	1,250.00	8,120.00	15,000.00	6,880.00	0.54
4707	FIREFIGHTERS SALARY	3,568.91	31,813.83	60,000.00	28,186.17	0.53
4708	DEFERRED COMPENSA	255.00	1,645.00	2,500.00	855.00	0.66
4709	MEDICAL-FIREFIGHTER	0.00	3,267.84	4,500.00	1,232.16	0.73
4727	OFFICE SUPPLIES	112.03	1,253.39	1,000.00	(253.39)	1.25
4728	BUILDING SUPPLIES	22.13	216.22	700.00	483.78	0.31
4740	OPERATING SUPPLIES	0.00	0.00	0.00	0.00	0.00
4741	EQUIPMENT SUPPLIES	250.35	4,329.20	8,000.00	3,670.80	0.54
4801	CONTRACT SERVICES	95.00	4,465.00	5,800.00	1,335.00	0.77
4820	80th Anniversary	0.00	0.00	0.00	0.00	0.00
4850	COMMUNICATIONS	414.98	2,417.72	3,420.00	1,002.28	0.71
4910	INSURANCE	0.00	19,343.00	26,000.00	6,657.00	0.74
4920	UTILITIES	843.92	9,489.84	17,000.00	7,510.16	0.56
4960	EDUCATION & TRAININ	0.00	1,521.14	4,562.00	3,040.86	0.33
4970	OFFICE EQUIPMENT	0.00	160.90	240.00	79.10	0.67
4976	FIRE EQUIPMENT	1,850.00	37,038.00	25,600.00	(11,438.00)	1.45
4978	FIRE EQUIP.-MAINT/REP	1,905.94	8,306.12	24,072.00	15,765.88	0.35
4979	FIRE EQUIPMENT-UPGR	0.00	6,235.00	0.00	(6,235.00)	0.00
4981	APPARATUS	0.00	0.00	0.00	0.00	0.00
4982	Loose Equip. New Apparat	0.00	0.00	0.00	0.00	0.00
4983	Misc. Upgrades	0.00	0.00	0.00	0.00	0.00
4984	COMPUTER EQUIPMENT	449.95	449.95	1,800.00	1,350.05	0.25
4988	COMPUTER SOFTWARE/	0.00	300.00	600.00	300.00	0.50
4999	RESERVE	0.00	0.00	0.00	0.00	0.00
	Total Expenses	15,753.70	181,695.14	264,994.00	83,298.86	0.69
	Net Income/(<Loss>	(11,971.24)	95,064.24	0.00		
3400	FUND BALANCE-Beginni	0.00	84,126.45	0.00		
	Fund Balance-End of Year	(11,971.24)	179,190.69	0.00		

AS OF: September 14, 2011
TO: Swartz Creek Area Fire Authority
RECORDED BY: Fire Chief Brent Cole
SUBJECT: Current Apparatus Readiness Status

Unit	Type	Assignment	Status
11	98 Pumper	Station 1	In service. Aug. 16: Requested tires replaced.
12	91 Pumper	Station 1	In service. Aug. 16: Requested tires replaced.
16	91 Squad	Station 1	In service.
17	79 Grass Rig	Station 1	In service.
21	99 Pumper	Station 2	In service.
23	92 Tanker	Station 2	In service. Aug. 17: Requested tires replaced.
26	93 Squad	Station 2	In service.
27	79 Grass Rig	Station 2	In service.

Chief Brent Cole

From: scafd4105@comcast.net
Sent: Thursday, September 01, 2011 23:05
To: Cole, Chief; Tabit, Steve
Subject: skid info

Chief

Below are my comments and recommendations regarding the replacement skid unit for 27. Please contact AC Merriam for his input.

None of the vendors matched all the requirements. Given that, I believe we should consider deviation, however not in the major components of the unit (tank pump and engine). Poly tanks have a lifetime warranty. Honda engines are proven and have a good history with us and they can be serviced locally. Waterous pumps have been around forever and we should have no problems getting parts in the future. In the past we have had problems getting service on proprietary units if the company goes out of business.

RKO \$16,050

RKO's unit looks the best out of all the proposals; however their quote is the highest. They obviously take pride in the appearance of their units. They are a government contractor, which should indicate that they make a solid product.

RKO did not meet the requirements for the engine, they quoted a Koehler.

Apollo \$13,912

Apollo's quote did not include and prints, photos or diagrams for their proposed unit. They did include photos of all the pieces they intend on assembling at their facility. They do indicate that they will install the unit at their facility and it is included in the quote. I'm not clear on if we will have to take the unit back to them when it needs to be transferred to another chassis in the future.

Apollo did not meet the engine requirement; they quoted a Briggs and Stratton.

Time Emergency \$13,727

Time Emergency did not provide any prints, photos, or diagrams for their proposed unit. Based on the manufacturer of the pump, I believe they are quoting a CET unit that is available on line.

Time Emergency did not meet the pump requirement; they quoted a CET pump (proprietary model).

Danko \$14,142 Recommended purchase

Danko is the only vendor that met all of the major component requirements and submitted a very comprehensive proposal.. They are not the low bid but the bottom three quotes are all within \$400.00 of each other and the highest quote is over by \$2000.00. Their proposal clearly lists all exceptions and they are minor. They include:

Stainless steel parts will not be painted.

No intake pressure gauge.

Tank to pump plumbing is 2" rather than 2 ½". That should be sufficient for a 150gpm pump.

The engine will not have a recoil back up.

The Danko proposal includes photos of a similar unit and a preliminary blueprint of our proposed unit along with countless references; something none of the other vendors did.

I believe the Danko Brushwaker XL proposal met our requirements to the best of their abilities and will suit our needs at a reasonable expense.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1392 / Virus Database: 1520/3880 - Release Date: 09/06/11

To Chief Brent Cole and The Swartz Creek Area Fire Dept,

I would like to turn in my resignation effective today 9-5-2011. I will be going to AZ to take a job as a Phoenix Fire/Medic. It is a job that has come up before for me and is just too good to turn down again.

I am very grateful for the time I have served here at the SCAFD and for the knowledge I have gained from so many of you.

Leaving Station 1 and the people there was very hard for me, I cannot say the same about leaving Station 2 and most of the people and attitude there.

I do not understand how it is possible for three different individuals to earn firefighter of the year here that have told numerous other firefighters here not to attend fire dept events, that we are not needed at fire prevention (yet that had attended prior prevention to even us getting paid), that our ideas were not needed or useless (then they were used at a later date by that same person), people that cut down and belittle other firefighters (sometimes right in front of them), Accuse people of stealing. These are NOT individuals that are deserving of anything, let alone firefighter of the year. Most of the time you cannot even talk to them & they would not and will not give you the time of day. Do you look at that when choosing them? Do you listen to what your people are saying? Or do we (the non-click) not matter?

Numerous people have quit over the years due to these so-called "**FIREFIGHTER OF THE YEAR**" choices. Others are moving away from the dept.

Yet we have others that are truly deserving of the award and because they miss a truck check by a day or two they are over looked? Because they are not in the right click, they are overlooked? It is truly a broke system and sadly, no longer, an award worth earning.

When it's hard to come to work, it is time to move on. Yet, helping on MDA this past weekend brought back all the memories of why I love this dept. The laughing, the talking, and the joy I remember. It was a blast when we used to get called for tornado watches and we'd BBQ at the station. That is a memory that I will take. All the help, laughter & good times, I will take. Unfortunately, the memories of Brandon's funeral I will also take, for it weren't for many of you, I don't know how I would have made it through. One of the happiest days of my life was when Brandon asked if he could join the dept with me. We had just left a PI call, and he & I rushed back up to catch chief before he left. Isn't it funny how things sometimes work out.

Thank you all that have helped me move on...

Ann Marie SCAFD FF #19

SWARTZ CREEK AREA FIRE DEPARTMENT
 8100 B CIVIC DRIVE
 SWARTZ CREEK, MI 48473

INVOICE

Invoice Number: 091412
 Invoice Date: Sep 14, 2011
 Page: 1
 Duplicate

Voice: 810/635-2300
 Fax: 810/635-7461

Bill To:
 CLAYTON TOWNSHIP
 2011 MORRISH ROAD
 SWARTZ CREEK, MI 48473

Ship to:
 CLAYTON TOWNSHIP
 2011 MORRISH ROAD
 SWARTZ CREEK, MI 48473

Customer ID	Customer PO	Payment Terms	
CLAY01		Due at end of Month	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Courier		9/30/11

Quantity	Item	Description	Unit Price	Amount
118.38	FIRE02	FIRE SERVICE 08/2011	12.38	1,466.02
Subtotal				1,466.02
Sales Tax				
Total Invoice Amount				1,466.02
Payment/Credit Applied				
TOTAL				1,466.02

Check/Credit Memo No

1466.02

1466.00

SWARTZ CREEK AREA FIRE DEPARTMENT
 8100 B CIVIC DRIVE
 SWARTZ CREEK, MI 48473

INVOICE

Invoice Number: 091411
 Invoice Date: Sep 14, 2011
 Page: 1
 Duplicate

Voice: 810/635-2300
 Fax: 810/635-7461

Bill To:
 CITY OF SWARTZ CREEK
 8083 CIVIC DRIVE
 SWARTZ CREEK, MI 48473

Ship to:
 CITY OF SWARTZ CREEK
 8083 CIVIC DRIVE
 SWARTZ CREEK, MI 48473

Customer ID	Customer PO	Payment Terms	
CITY01		Due at end of Month	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Courier		9/30/11

Quantity	Item	Description	Unit Price	Amount
118.38	FIRE02	FIRE SERVICE 08/2011	12.40	1,468.48
Subtotal				1,468.48
Sales Tax				
Total Invoice Amount				1,468.48
Payment/Credit Applied				
TOTAL				1,468.48

Check/Credit Memo No

1468.48

1468.40

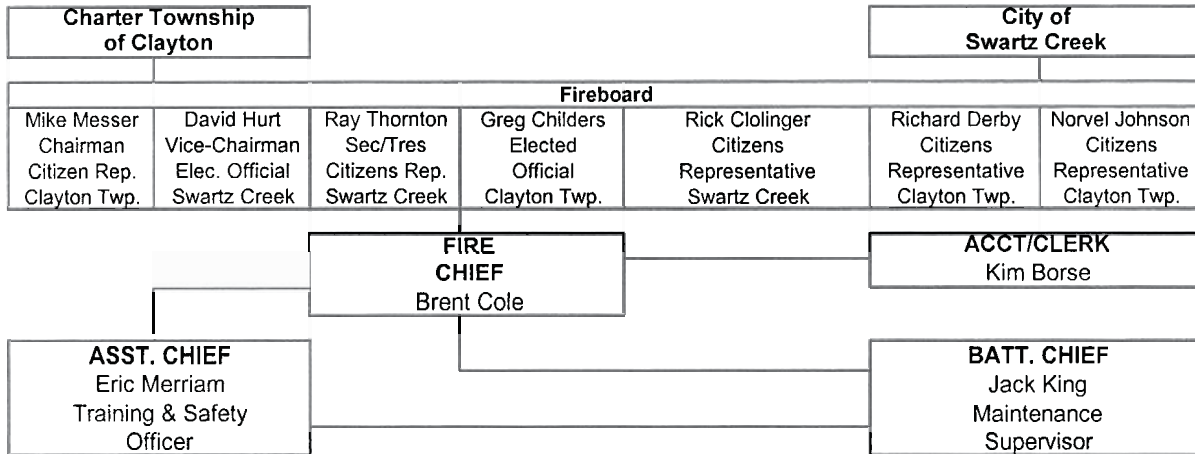
**SWARTZ CREEK AREA FIRE DEPARTMENT
BILLS PAID LIST**

					31-Aug-11
DATE:	CHECKS	PAYEE:	AMT	ACCT	TRANSACTION DESCRIPTION
8/8/2011	15806	CHARTER	\$63.64	4850	PHONE STA 2
8/8/2011	15807	CLAYTON TWP	\$40.51	4920	SEWER-STA 2
8/8/2011	15808	SCAFA	\$385.00	22024	ASSOC. DUES
8/8/2011	15809	FRIEND OF THE COURT	\$34.03	22026	FOC
8/8/2011	15810	GILL ROYS	\$1.79	4728	KEYS
			\$41.84	4741	EQUIPMENT SUPPLIES
8/8/2011	15811	ICMA	\$358.27	22023	DF COMP EE PORTION
			\$255.00	4708	DF COMP ER PORTION
8/8/2011	15812	LTM AUTO TRUCK TRAILER	\$1,330.00	4978	PUMP MAINTAINENCE
8/8/2011	15813	STATE OF MICHIGAN	\$307.69	22022	07/11 STATE TAX
8/8/2011	15814	SUBURBAN AUTO	\$73.56	4741	EQUIPMENT SUPPLIES
8/8/2011	15815	VALLEY PETROLEUM	\$114.84	4741	FUEL
8/15/2011	15816	COMCAST	\$199.75	4850	PHONE/INTERNET STA 1
8/15/2011	15817	CONSUMERS ENERGY	\$177.42	4920	UTILITIES STA 2
8/15/2011	15818	ICMA	\$70.00	22023	DF COMP EE PORTION
8/15/2011	15819	P&W PAGING	\$155.00	4978	PAGER/RADIO REPAIR
			\$11.25	4727	SHIPPING
8/15/2011	15820	SOUTHEAST EQUIPMENT	\$150.00	4978	AIR QUALITY TEST
8/15/2011	15821	VISA	\$449.95	4984	COMPUTER
			\$27.15	4727	POSTAGE
			\$87.95	4850	DOMAIN NAME (9 YEARS)
			\$9.83	4941	WASHER FLUID
			\$365.94	4978	LIGHT BAR
8/29/2011	15822	CHARTER	\$63.64	4850	PHONE STA 2
8/29/2011	15823	CITY OF SWARTZ CREEK	\$625.99	4920	UTILITIES STA 1
8/29/2011	15824	DOUGLASS SAFETY	\$1,850.00	4976	BOOTS
			\$73.63	4727	SHIPPING
8/29/2011	15825	LOWES	\$10.28	4741	EQUIPMENT SUPPLIES
			\$20.34	4728	BUILDING SUPPLIES
			(\$307.69)	22022	07/11 STATE TAX
			\$1,986.16	22021	08/11 SOC SEC
			\$298.86	22022	08/11 STATE TAX PAYABLE
			\$5,348.47	1002	08/10 PAYROLL
			\$1,073.61	1002	08/24 PAYROLL
		TOTAL	\$15,753.70		

VOID CHECKS:

Swartz Creek Area Fire Department

Organization Chart



STATION 1				STATION 2			
Capt. Steve Tabit - Quarter Master				Capt. Dave Plumb - Asst. Qtrmstr, Coordinator, Run % Monitor			
Lt. Mike Treiger - Fire Prevention & Station 1 Assignments				Lt. Dave Jones - Vehicle Inspections & Station 2 Assignments			
Lt. Brendt Cole - Medical & Rehab Supplies				Vacant - Uniforms			
	Leave Expires	Dir.Res.Start	Off Prob.		Leave Expires	Dir.Res.Start	Off Prob.
FF Rod Armstrong				SGT James Barr II			
FF Greg Baker				FF James Bowers			
FF Rick Castano				FF Anthony Davis		01/18/05	
<i>FF Leah Farnsworth</i>			09/20/11	FF Lori McKerracher	10/1/2011	05/31/01	
<i>FF Robert Fitzpatrick</i>			08/15/12	FF Tim McKnight			
FF Tiffany Forbes	10/16/2011			FF Dan Merriam			
FF Chad Thornton				FF Karen Merriam			
FF Daniel Hill				FF Mark Merriam			
FF Jeffrey Jarrad	Unknown			FF Bill Samida			
FF Jeffrey Kelley				FF Steve Webster			
FF Todd Kimbrue				FF Joe Yambrick		7/20/09	
FF Dale Link							
FF Scott Martin							
FF Walter Melen							
FF Brian Scott							
SGT Kevin VanArsdale		04/15/04					
FS Bob Plumb							
RO Valerie Dow							
On personal leave/Medical=			2	On personal leave/Medical=			1
Suspended=			0	Suspended=			0
Non-Probationary Total =			11	Non- Probationary =			10
Probationary Total =			2	Probationary =			0
Firefighter Subtotal =			15	Firefighter Subtotal =			11
Radio Operators =			1	Radio Operators =			0
Support =			1	Support =			0
Station Personnel Total =			17	Station Personnel Total =			11

(1) probation to be extended due to medical leave

Total Officers =	8
Total Firefighters=	26
Support	1
Radio Operators =	1
Total =	36

Name in italics = probationary status

Font = Suspension

Font = Leave of absence or sick leave

Effective: 9/13/2011

Officers (Excluding Sergeants) =	8
Active non-probationary =	21
Active probationary =	2
Active Radio Operators =	1
Support	1
Suspended=	0
Medical or extended leave =	3
Total dept. force =	36



Swartz Creek Fire Department:

As we enter the 10th anniversary of 9/11 we are reminded of the men and women who put their lives in jeopardy as they serve this nation in any capacity.

I would like to express to you my deep and sincere appreciation to everyone in the Fire Department for your dedication to protect the lives and property of people in this area.

May God bless, keep and protect you
A Swartz Creek resident
Frances M. Horner

Every good gift and every perfect gift is from above...

REVISED DRAFT

Prepared by
Richard J. Figura, Esq.
September 6, 2011

UTILITY TRANSFER AND DEDICATION AGREEMENT Between CITY OF SWARTZ CREEK And SPRINGBROOK COLONY ASSOCIATION

This agreement is made this 26th day of September, 2011, by and between the City of Swartz Creek, a Michigan Municipal Corporation, with principal offices at 8083 Civic Drive, Swartz Creek Michigan 48473 ("City") and Springbrook Colony Association, a Michigan nonprofit corporation, with principal offices at 5454 Gateway Centre, Suite B, Flint, Michigan 48507 ("Association").

WHEREAS, Springbrook Colony Condominium ("Springbrook"), a site condominium project, was established in 1986 and work on the development of same commenced in 1986; and

WHEREAS, the Master Deed for Springbrook was initially recorded with the Genesee County Register of Deeds on September 18, 1986, at Liber 1551 Pages 3661-3699 (Genesee County Condominium Subdivision Plan #60); and

WHEREAS, the Master Deed provided for the establishment of the Association and the Association's Bylaws (the Master Deed, the Association's Bylaws, and their amendments, are collectively referred to herein as the "Condominium Documents"); and

WHEREAS, the Association is the owner of certain sanitary sewer and water lines that run through Springbrook; and

WHEREAS, the Association desires to transfer the ownership of said sanitary sewer system and water system ("the Utility Systems") to the City; and

WHEREAS, the City is willing to take over the ownership and operation of the Utility Systems under the terms and conditions set forth in this agreement, the primary reason being the repeated demands from the Michigan Department of Environmental Quality (DEQ).

NOW, THEREFORE, it is hereby agreed by and through the City and the Association, acting through their duly authorized representatives, as follows:

1. **Composition of the Utility Systems.**

The Utility Systems consist of that sanitary sewer system and water system currently existing in Springbrook (excluding the leads to individual units) as more particularly described and depicted in Exhibit "A" hereto.

REVISED DRAFT

Prepared by
Richard J. Figura, Esq.
September 6, 2011

2. Transfer, Dedication and Acceptance of the Utility Systems.

The Association hereby conveys, transfers and grants to the City and dedicates to the public the Utility Systems up to the point of their connection to the water and sewer leads at each unit in Springbrook as depicted on Exhibit "A"; and the City agrees to accept said grant of dedication and conveyance and to assume ownership and operation of the Utility Systems as described in Exhibit "A;" provided, however, that if such dedication requires an amendment to the condominium master deed to be effective, the City shall be under no obligation to accept such dedication unless it is provided with evidence that such amendment has been completed. Otherwise, the dedication by the Association shall be accomplished in the manner required by law and shall be in a form approved by the City's legal counsel. The City's acceptance of the dedication by the Association shall be by city council resolution.

3. Repairs and Indemnification of City.

The City shall be responsible for the cost of maintenance and repairs to the Utility Systems. Any other damage caused by maintenance and repairs, including, but not limited to streets, curbs, gutters, drainage structures, sidewalks, driveways, lawns, gardens, etc., shall be the responsibility of the Association. The Association agrees to hold the City harmless for any damage related to the repair and maintenance of the Utility Systems. In that regard, the Association shall assign to the City the easements it may have, if any, for the maintenance, repair and/or replacement of the Utility Systems or any component thereof and shall, as may be necessary, grant to the City easements for maintenance, repair and/or replacement of the Utility Systems. The easement shall have a width of ten (10) feet for the water lines and shall extend five (5) feet on either side of the center of said water lines. The easement shall have a width of twenty (20) feet for the sewer lines and shall extend ten (10) feet on either side of the center of said sewer lines.

4. Term.

The transfer of the water and sewer system from the Association to the City, and the terms of this agreement, are in perpetuity.

5. Notices.

Whenever it is necessary or required by law or by this agreement that notice be given by one party to this agreement to the other party, unless otherwise specifically authorized in writing, such notice shall be personally delivered or sent by first class mail, postage prepaid, to the following:

To the City:

Mr. Paul Bueche,
City Manager
City of Swartz Creek

REVISED DRAFT

Prepared by
Richard J. Figura, Esq.
September 6, 2011

8083 Civic Drive
Swartz Creek, MI 48473

With a copy to:

Richard J. Figura, Esq.
SIMEN, FIGURA & PARKER, P.L.C.
5206 Gateway Centre
Flint, MI 48507

To the Association:

Larry Carter
Resident Agent
5454 gateway Center, Suite A
Flint, Michigan 48507

With a copy to:

D. Douglas Alexander, Esq.
ALEXANDER, ZELMANSKI, DANNER & FIORITTO, PLLC
44670 Ann Arbor Road, Suite 170
Plymouth, MI 48170

6. Resident agent and officers of the Association.

The Association shall advise the City annually by January 15 of the names and addresses of its resident agent and its officers.

7. Entire Agreement.

This agreement constitutes the entire agreement between the parties and shall be deemed to supersede and cancel any other agreements between them relating to the transactions herein contemplated. None of the prior and contemporaneous negotiations, preliminary drafts, or prior versions of this contract leading up to its execution and not set forth herein shall be used by any of the parties to construe or affect the validity of this contract.

8. Amendments.

This agreement may be amended or modified only by a document in writing executed by both the City and the Association.

9. Assignment.

REVISED DRAFT

Prepared by
Richard J. Figura, Esq.
September 6, 2011

Any assignment of this agreement by either party to another person or entity shall not be effective against the other party unless such other party approves such assignment in writing.

10. **Applicable Law.**

This Agreement shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Michigan.

11. **Severability.**

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF SWARTZ CREEK

Richard B. Abrams, Mayor

Juanita Aguilar, City Clerk

SPRINGBROOK CONDOMINIUM ASSOCIATION OF SWARTZ CREEK

Shirley Oliver, President

Betty Long, Secretary

REVISED DRAFT

Prepared by
Richard J. Figura, Esq.
September 6, 2011

EXHIBIT “A”

Map, Water & Sewer Systems
Depiction of Private-Public

**Utility Transfer Agreement, Springbrook Colony Condominium Association,
Water & Sanitary Sewer**

Resolution No. 110328-07

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the City of Swartz Creek enter into an agreement with the Springbrook Colony Condominium Association for the permanent transfer of the Associations water and sanitary sewer systems to the City, terms as set forth in the agreement, a copy of which is attached hereto, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City.

Discussion Ensued.

YES: Abrams, Binder, Hicks, Hurt, Krueger, Porath.

NO: Shumaker. Motion Declared Carried.

✓ **SPRINGBROOK COLONY UTILITY TRANSFER AGREEMENT** (*Resolution*)

As the Council is aware from previous discussions, the MI-DEQ has chased us for years on the water and sewer systems in Springbrook Colony subdivision. Their concern is primarily the water. The system in Springbrook is looped into the public system creating public use water that runs through a private system and back into a public system. This was permissible years ago when the systems was constructed, but at a later point, prohibited. Included with tonight's agenda is a very short agreement that transfers the system to the City. Basically, we are responsible for the maintenance and repair, but nothing else that may be damaged in the process (streets, sidewalks, storm sewers, etc.).

UTILITY TRANSFER AGREEMENT
Between
CITY OF SWARTZ CREEK
And
SPRINGBROOK COLONY ASSOCIATION

This agreement is made this 28th Day of March, 2011, by and between the City of Swartz Creek, a Michigan Municipal Corporation, with principal offices at 8083 Civic Drive, Swartz Creek Michigan 48473 (“City”) and Springbrook Colony West Condominium Association, a Michigan Non-Profit Corporation, with principal offices at P.O. Box 51, Swartz Creek Michigan 48473 (“Association”)

WHEREAS, Springbrook Colony Condominium (“Springbrook”), a site condominium project, was established in 1985 and work on the development of same commenced in 1986; and

WHEREAS, the Master Deed for Springbrook West was recorded with the Genesee County Register of Deeds on August 15, 1986 at Liber Page 3661-3672; and

WHEREAS, the Master Deed provided for the establishment of the Association and the Association’s Bylaws (the Master Deed and the Association’s Bylaws are collectively referred to herein as the “Condominium Documents”); and

WHEREAS, the Association is the owner of certain sanitary sewer and water lines that run through the streets of Springbrook; and

WHEREAS, the Association desires to transfer the ownership of said sanitary sewer system and water system (“the Utility Systems”) to the City; and

WHEREAS, the City is willing to take over the ownership and operation of the Utility Systems under the terms and conditions set forth in this agreement, the primarily reason being the repeated demands from the Michigan Department of Environmental Quality (DEQ).

NOW, THEREFORE, it is hereby agreed by and through the City and the Association, acting through their duly authorized representatives, as follows:

1. Composition of the Utility Systems.

The Utility Systems consist of that sanitary sewer system and water system currently existing in Springbrook as more particularly described and depicted in Exhibit “A” hereto.

2. Conveyance, Dedication and Acceptance of the Utility Systems.

The Association hereby conveys, grants and dedicates to the City the Utility Systems up to the point of their connection to the water and sewer leads at each lot or site in Springbrook as depicted in (*color*) on Exhibit “A”; and the City agrees to accept said grant of dedication and

conveyance and to assume ownership and operation of the Utility Systems as described in Exhibit "A".

3. Repairs and Indemnification of City.

The City shall be responsible for the cost of maintenance and repairs related to the water and sanitary sewer systems only. Any other damage caused by maintenance and repairs, including, but not limited to streets, curbs, gutters, drainage structures, sidewalks, driveways, lawns, gardens, etc., shall be the responsibility of the Association. The Association agrees to hold the City harmless for any damage related to the repair and maintenance of the water and sanitary sewer systems.

4. Term.

The transfer of the water and sewer system from the Association to the City, and the terms of this agreement, are in perpetuity.

5. Notices.

Whenever it is necessary or required by law or by this agreement that notice be given by one party to this agreement to the other party, unless otherwise specifically authorized in writing, such notice shall be personally delivered or sent by first class mail, postage prepaid, to the following:

To the City:

Mr. Paul Bueche,
City Manager
City of Swartz Creek
8083 Civic Drive
Swartz Creek, MI 48473

With a copy to:

Richard J. Figura, Esq.
SIMEN, FIGURA & PARKER, P.L.C.
5206 Gateway Centre
Flint, MI 48507

To the Association:

Shirley Oliver
Association President
P.O. Box 51
Swartz Creek, Michigan 48473

With a copy to:

Piper Realty
C/O Larry Carter, Property Manager
5454 gateway Center, Suite A
Flint, Michigan 48507

6. Resident agent and officers of the Association.

The Association shall advise the City annually by January 15 of the names and addresses of its resident agent and its officers.

7. Entire Agreement.

This agreement constitutes the entire agreement between the parties and shall be deemed to supersede and cancel any other agreements between them relating to the transactions herein contemplated. None of the prior and contemporaneous negotiations, preliminary drafts, or prior versions of this contract leading up to its execution and not set forth herein shall be used by any of the parties to construe or affect the validity of this contract.

8. Amendments.

This agreement may be amended or modified only by a document in writing executed by both the City and the Association.

9. Assignment.

Any assignment of this agreement by either party to another person or entity shall not be effective against the other party unless such other party approves such assignment in writing.

10. Applicable Law.

This Agreement shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Michigan.

11. Severability.

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF SWARTZ CREEK

Richard B. Abrams, Mayor

Juanita Aguilar, City Clerk

**SPRINGBROOK CONDOMINIUM
ASSOCIATION OF SWARTZ CREEK**

Shirley Oliver, President

Betty Long, Secretary

EXHIBIT “A”

Map, Water & Sewer Systems
Depiction of Private-Public

September 13, 2011

An Open Letter to Genesee County Municipalities:

I would like to start by introducing myself, D/F/Lt. Patrick Richard. I am the new Section Commander of the Flint Area Narcotics Group (FANG). I have over 26 years of law enforcement experience, the last 23 ½ years with the Michigan State Police. I have held various positions of leadership within the MSP, with my last 5 ½ years assigned as the Ionia Post Commander. The former FANG commander, F/Lt. Mitch Krugielki, has taken a lateral transfer to the Caro post and is now the Post Commander of the Caro, Bad Axe and Sandusky posts.

If you are receiving this letter it is because your municipality is no longer a participating member of FANG. The FANG General Board has requested that I contact each former FANG participant and ensure that each municipality is aware of the benefits and potential cost savings of “pooling local resources” on behalf of the citizens of Genesee County.

FANG was formed in the mid 1980’s as an answer to community needs to address the growing issue of drugs in our communities and target those responsible for drug trafficking. Since its inception, FANG has been a reliable, dependent resource for citizens and law enforcement, not only for drug enforcement, but also to assist with violent and property crime investigations (i.e.: Home Invasions, Larcenies, etc.) when requested by our local law enforcement partners within the county.

Whether your municipality is a participant or not, if you reside in Genesee County you and the citizens of your municipality enjoy the hard work and successes of FANG. The hard work and successes are a direct result from the municipalities that currently provide FANG with financial support and/or by supplying an officer that is assigned to work at FANG.

Since January of this year, FANG has been called upon to respond to 5 methamphetamine labs in Genesee County. Of significance is that these methamphetamine labs have come at a time when the Drug Enforcement Administration (DEA) has mandated that they will no longer encumber the cost associated with methamphetamine labs, hazardous materials clean up, and disposal.

For those that are current FANG members, this cost has become a tangible benefit if your community has suffered a methamphetamine lab. To put it simply, if you are a member of FANG, and FANG responds to a methamphetamine lab in your area, the cost at present is not incurred by your municipality. FANG pays the bill for the clean up of the lab at no additional cost to the municipality.

This year in at least one instance, a “non-member” municipality had the misfortune of identifying a methamphetamine lab in its community. While FANG methamphetamine lab officers did respond, along with the Michigan State Police Methamphetamine Team, it was only after the municipality agreed to incur and subsequently paid the associated cost of the hazardous material clean up and removal. In this example, the cost of this clean up and removal was over and above the cost of the former member fees.

The purpose of this letter is to remind you that should you and/or your Board of Elected Officials or Chief of Police wish to revisit your participation as a FANG member, the FANG Board members would look forward to adding your resources to the fight against drugs and violent crime. I have included a Dues Calculation Worksheet to show what your municipality’s dues would be.

If you have any questions or would like to meet with me to discuss this further, please do not hesitate to contact me.

Sincerely,

D/F/Lt. Patrick D. Richard
Section Commander

BASE DUES CALCULATION WORKSHEET
9/13/2011

	PERCENT	BASE DUES	SEV VALUE	SEV FACTOR	POP
CITY OF BURTON	6.228%	\$26,339.04	573,952,420	0.061859	29,999
CITY OF CLIO	0.444%	\$1,936.55	42,199,200	0.004548	2,646
CITY OF DAVISON	1.039%	\$4,388.33	95,625,900	0.010306	5,173
CITY OF FENTON	4.234%	\$17,707.48	385,862,703	0.041587	11,746
CITY OF FLINT	12.336%	\$47,146.42	1,027,365,000	0.110727	102,434
CITY OF FLUSHING	1.943%	\$8,444.26	184,008,300	0.019832	8,389
CITY OF GRAND BLANC	2.337%	\$9,764.04	212,767,700	0.022932	8,276
CITY OF LINDEN	1.063%	\$4,491.36	97,871,000	0.010548	3,991
CITY OF MONTROSE	0.267%	\$1,168.40	25,460,600	0.002744	1,657
CITY OF MT. MORRIS	0.350%	\$1,524.61	33,222,600	0.003581	3,086
CITY OF SWARTZ CREEK	1.844%	\$7,025.65	153,095,600	0.0165	5,758
GAINES VILLAGE	0.055%	\$251.98	5,490,800	0.000592	380
GOODRICH	0.557%	\$2,446.52	53,312,000	0.005746	1,860
LENNON	0.023%	\$107.55	2,343,600	0.000253	82
OTISVILLE VILLAGE	0.135%	\$622.99	13,575,600	0.001463	864
OTTER LAKE	0.018%	\$82.94	1,807,300	0.000195	69
ARGENTINE TWP	2.420%	\$10,276.44	223,933,300	0.024135	6,913
ATLAS TWP	2.485%	\$10,861.23	236,676,400	0.025508	6,133
CLAYTON TWP.	2.135%	\$9,799.78	213,546,400	0.023016	7,499
DAVISON TWP.	5.244%	\$23,522.66	512,581,009	0.055245	19,575
FENTON TWP	7.195%	\$32,577.62	709,897,000	0.076511	15,552
FLINT TWP.	9.623%	\$40,827.70	889,674,200	0.095887	31,929
FLUSHING TWP.	2.662%	\$12,031.15	262,170,000	0.028256	10,640
FOREST TWP.	1.017%	\$4,729.28	103,055,500	0.011107	3,769
GAINES TWP	1.879%	\$8,134.90	177,267,220	0.019105	6,440
GENESEE TWP.	3.380%	\$14,542.74	316,899,983	0.034155	21,581
GRAND BLANC TWP.	11.641%	\$49,909.74	1,087,580,300	0.117217	37,508
MONTROSE TWP.	1.267%	\$5,890.08	128,350,400	0.013833	6,224
MT. MORRIS TWP.	3.404%	\$15,008.49	327,049,200	0.035249	21,501
MUNDY TWP.	5.054%	\$21,729.34	473,502,834	0.051033	15,082
RICHFIELD TWP.	2.393%	\$9,763.79	212,762,200	0.022931	8,730
THETFORD TWP.	1.736%	\$7,140.16	155,590,800	0.016769	7,049
VIENNA TWP	3.596%	\$15,596.79	339,868,700	0.03663	13,255
	100.000%	\$425,790.00	9,278,365,769	1	425,790

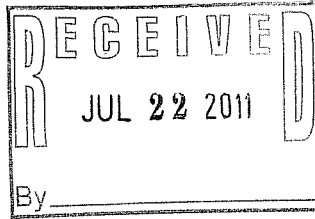
TAKE SEV OF MUNICIPALITY
DIVIDE IT BY TOTAL SEV OF
ALL MUNICIPALITIES
(THIS GIVES SEV FACTOR & %)

TO GET BASE DUES, MULITPLY
SEV FACTOR BY TOTAL POPULATION



SWARTZ CREEK CITY HALL
 8083 CIVIC DR
 SWARTZ CREEK, MI 48473

(810) 635-4464



INVOICE

CUST #:000029
 INVOICE #:1100004995
 SERVICE DATE:07/01/2011
 INVOICE DATE:07/15/2011
 DUE DATE:08/14/2011

CLAYTON TOWNSHIP
 2011 S. MORRISH RD
 SWARTZ CREEK MI 48473

PROPERTY ADDRESS

QTY	DESCRIPTION	Office Use	UNIT PRICE	AMOUNT
1.000	LIBRARY CONTRIBUTION ANNUAL CONTRIB 7/15/11		1,250.0000	1,250.00
<p><i>Township Board did not budget for this for 2011.</i></p>				
TOTAL INVOICE:				1,250.00

It appears that Clayton Township will no longer contribute to the Library

SWARTZ CREEK CITY HALL
 8083 CIVIC DR
 SWARTZ CREEK, MI 48473

(810) 635-4464

CUST #:000029
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CLAYTON TOWNSHIP
 2011 S. MORRISH RD
 SWARTZ CREEK MI 48473

PROPERTY ADDRESS



CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
PARK AND RECREATION ADVISORY BOARD
MINUTES OF REGULAR MEETING
SEPTEMBER 14, 2011

Meeting called to order at 6:00 PM.

ROLL CALL:

Members Present: James Florence, Rae Lynn Hicks, Rick Henry, Korene Kelly, Ron Schultz.
Members Absent: Rod Gardner, Mike Shumaker, Roy Thornton, Dave Plumb.
Staff Present: Director of Public Services Svrcek, Juanita Aguilar, City Clerk.
Other Present: None.

AGENDA:

Motion by Member Henry, second by Member Schultz, the agenda be approved. Motion carried. Member Kelly explained to the Board that they should be looking for a new member on the Board as she has been informed she has lung cancer. By consensus of the Board, this matter will be reviewed when there is a need and not at this time.

APPROVAL OF MINUTES:

Motion by Member Schultz, second by Member Florence, approve the Minutes of April 13, 2011, as presented. Motion carried.

MEETING OPEN TO THE PUBLIC: No comments.

COMMUNICATIONS TO BOARD/REPORT BY DPS SVRCEK:

DPS Svrcek handed out a form to be filled out by members for information update of name/address/phone/and e-mail address.

DPS Svrcek spoke on the playscape equipment update including that of tire swings with the current need to find tires that are not steel-belted. Member Schultz suggested tire swing be modified so very young children won't fall through.

DPS Svrcek noted there was very little vandalism at Elms Road Park this summer. Although at Winshall Park there was damage to the restroom with the use of M-80 fireworks in the toilet. The cost of repair will be about \$1,100 for a new toilet because the current style is no longer being made.

Board discussion on the possibility of having electrical hand dryers installed in park restroom.

DPS Svrcek informed the Board that the Eagle Scout's project has not been started and he has not heard from the Scout recently.

Member Henry got an e-mail and was informed the War Memorial will be part of the Genesee County Master Gardener tour. He also stated the last statute is scheduled to be unveiled on Memorial Day, and that there is still 35' left of bricks to be sold.

DPS Svrcek stated the City will be donating brown paint to the Women's Club for the Holland pavilion project.

OLD BUSINESS:

Christmas With Fire Department

Chairperson Hicks explained the Fire Chief Cole will be holding a meeting to coordinate the Christmas festivities on September 22, at 6:30 PM. Invited to this meeting will be the City, Fire Department, DVA, Friends of the Library. Member Henry volunteered to attend this meeting on behalf of the Park Advisory Board. Member Florence will inform the Senior Center of the meeting.

Movies in the Park

It was noted this was a successful endeavor, with a few postponements or cancellations due to weather. It was noted the mosquitoes were bad this year.

Chairperson Hicks asked if a little stage could be built in Winshall Park as she noticed children using the amphitheater for playing.

MINUTES OF SWARTZ CREEK PARK AND RECREATION ADVISORY BOARD
SEPTEMBER 14, 2011 – PAGE TWO OF THREE

Member Henry suggested building a playscape using earth mover tires to build tears, as he had observed this in another community. Member Henry also noted the War Memorial Committee is only selling bricks for fund raising, and suggested a group supporting the park programs could take over their annual rummage sale during Hometown Days. Last year they made \$5,300 from rummage sale donations and left over items were donated to three Churches, Salvation Army, books to the Friends of the Library, and the balance of the clothes were purchased for \$150. Storage was donated by the storage unit across the expressway. Chairperson Hicks thought the Women's Club may consider such a project.

NEW BUSINESS:

Office Staff Comments

City Clerk Aguilar informed the Board that she had contacted different cities to determine what they charged and how they handled park reservations. She informed the Board there has been some problems with people cancelling after they have paid for the reservation and demanded return of their money. She also stated there have been a problem of people calling in for a reservation but never coming to the office to fill out the reservation or paying the reservation fee. She asked what recommendations would the Park Board give the City Council as to how to handle cancellations of park reservations.

Motion by Member Kelly, second by Member Schultz, the Park and Recreation Advisory Board recommend that no reservation will be made until form is filled out and funds received for reservation. Motion carried.

Motion by Member Henry, second by Member Kelly, the Park and Recreation Advisory Board recommend upon cancellation of reservation, one-half of reservation fee will be returned if ~~cancellation is made within 30 days.~~ Motion carried. (Amended later in meeting)

Motion by Member Kelly, second by Member Florence, the Park and Recreation Advisory Board recommend reservations to be made for Friday, Saturday, Sunday, and Holidays, weekdays will be on a first come/first serve basis. Motion carried.

Motion by Member Kelly, second by Member Henry, to remove "if cancellation is made within 30 days.) Motion carried.

Revised Motion now read: The Park and Recreation Advisory Board recommend upon cancellation of reservation that one-half of reservation fee will be returned.

Discussion on raising the fee for non-residential reservations.

Motion by Member Henry, second by Member Kelly, the Park and Recreation Advisory Board recommend the reservation fees be as follows:

Elms Road Park:

Pavilion #1:	Res-\$35	Non Res-\$70
Pavilion #2:	Res-\$75	Non Res-\$120
Pavilion #3	Res-\$35	Non Res-\$70
Pavilion #4	Res-\$75	Non Res-\$120

Winshall Park

Pavilion #1	Res-\$35	Non Res-\$70
Pavilion #2	Res-\$35	Non Res-\$70
Pavilion #3	Res-\$35	Non Res-\$70

Motion carried. Vote: Yes-4, No-1

The Board discussed having a refundable deposit. Problem of patrons in violation of rules, such as parking on grass by pavilion, dogs running loose, and not picking up after the dogs.

MINUTES OF SWARTZ CREEK PARK AND RECREATION ADVISORY BOARD
SEPTEMBER 14, 2011 – PAGE THREE OF THREE

City Clerk Aguilar stated the above recommendations will be presented to City Council and if required, new reservation forms will be created.

NEXT MEETING DATE:

The next meeting will be held on the 2nd Wednesday in November, November 9, 2011, at 6:00 PM

ADJOURNMENT:

Motion by Member Schultz, second by Member Florence, to adjourn. Motion carried.

Meeting adjourned at 7:15 PM.

Respectfully submitted,

Korene D. Kelly, Secretary
Swartz Creek Park and Recreation Advisory Board

RAW WATER SUPPLY CONTRACT

**RAW WATER SUPPLY CONTRACT PURSUANT TO ACT 233 OF THE
MICHIGAN PUBLIC ACTS OF 1955, AS AMENDED, BETWEEN THE
KAREGNONDI WATER AUTHORITY, THE SELLER AND _____, THE BUYER**

This RAW WATER SUPPLY CONTRACT (the "Contract") made and entered into as of the ____ day of _____, 20____ (the "Contract Date"), by and between the KAREGNONDI WATER AUTHORITY (hereinafter the "Authority"), and the _____ (hereinafter the "Buyer"), a municipal corporation of the State of Michigan located in _____ County, Michigan.

RECITALS

WHEREAS, Act 233 of 1955 authorizes the Authority to enter into a contract or contracts that provide for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a Water supply system; and

WHEREAS, the Authority and Buyer, over the life of this Contract, desire to engage in a long-term partnership effort for mutual benefit for the Buyer's present and future needs from the Authority; and

WHEREAS, it is the goal of the Authority and Buyer to generate economic benefit for the Authority District from the sale of Water; and

WHEREAS, it is the mutual desire of the Authority and Buyer to provide for capacity in the System and the use, sale, conveyance, transfer and transportation of agreed quantities of Water from the Authority to the Buyer for public water supply purposes; and

WHEREAS, to achieve the respective goals of the Authority and Buyer and to achieve efficient use of resources, it is necessary for the Authority and Buyer to enter into a long-term contractual relationship, thus enabling for the planning, construction, financing and operation of System infrastructure; and

WHEREAS, the Authority and Buyer desire to have a long-term partnership for delivery of capacity in the System and the sale and use of the Water, to work together on a sustained basis to generate economic development benefits for the Authority District and to provide a Water supply for the Members of the Authority; and

WHEREAS, the Members will be committed through individual participation contracts to take or pay for Water to be made available by the Authority under this Contract to Buyer, which reasonably conform to the collective and individual needs of the Buyer and those Members who execute participation contracts; and

WHEREAS, a partnering approach requires an agreement between the Authority and Buyer that provides for proportional benefits for each party and that avoids disproportionate benefits for one party at the expense of the other party; and

WHEREAS, direct and continuing benefits to the Authority District will be derived from certain increases of those items included in the Annual Requirement, Water Transmission Fee, and Other Fees over the life of this Contract; and

WHEREAS, it is the mutual desire of the parties to promote goodwill with, and economic development for, the citizens, businesses, towns and cities located within the Authority District; and

WHEREAS, the Authority and Buyer have determined that it is necessary to issue bonds to construct the System; as such, as a condition of entry into the Authority and this Contract, the Buyer may pledge its full faith and credit as security for the bonds; and

WHEREAS, the consistent supply of Water must be protected for the present and for the future needs of the Members; and

WHEREAS, the Authority hereby warrants and confirms that the Authority is enabled to enter into this Contract pursuant to Act 233; and

WHEREAS, the Buyer hereby warrants and confirms that the Buyer is enabled to enter into this Contract pursuant to Act 233, and that this Contract has been duly authorized, approved and executed and is the binding legal obligation of the Buyer; and

WHEREAS, both the Authority and Buyer acknowledge that the dependability of the quantity of Water being made available hereunder may be subject to change due to imposition or amendments of State or federal law or other actions not within the control of the Authority, provided that the Authority and Buyer represents that it will not authorize, seek to authorize, or support any actions that would reduce the ability to reliably to make Water available under the terms of this Contract; and

WHEREAS, the Authority's ability to fulfill its obligations hereunder will be confirmed and reinforced by individual participation contracts between the Authority and one or more of the Members from time to time, such that when any obligation or duty by the Authority under this Contract is due or timely, the Authority will always be in a position to meet its obligations hereunder; and

WHEREAS, the Authority agrees to construct and operate the facilities at the Point of Delivery of the Authority's Water distribution System to the Authority's standards and specifications at the sole expense of the Buyer; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Authority and Buyer agree to support implementation and development of the necessary infrastructure to deliver Water pursuant to this Contract; and, the Authority hereby confirms that the contracted Water will be delivered from the Authority's System according to the terms of this Contract, and use its best efforts to issue its Bonds and to acquire, construct and complete the System facilities upon and subject to the terms and conditions agreed to by the parties, to wit:

ARTICLE I

INTRODUCTORY PROVISIONS; DEFINITIONS

Section 1.01. Adoption of Preamble and Recitals. All of the matters stated in the preamble and recitals of this Contract are true and correct and are hereby incorporated into the body of this Contract as through fully set forth in their entirety herein, provided that in cases of conflict, provisions of this Contract other than matters stated in the preamble and recitals shall control over matters stated in the preamble and recitals.

Section 1.02. Definitions. The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

- (1) "Act 233" means Act 233 of the Michigan Public Acts of 1955, as amended, being codified at MCL 124.281, et seq.
- (2) "Annual Requirement" means the monthly readiness to serve charge, which includes the fixed costs of operating the System. Costs that are included in the Annual Requirement are those costs that typically do not fluctuate with the amount of water being delivered.

Common examples include, but are not limited to, building costs, laboratory costs, insurance costs, utility costs, legal costs, and non-mechanical asset costs. Reserve funds may be included in the Annual Requirement at the sole discretion of the Chief Executive Officer. The Chief Executive Officer shall have the sole determination as to whether a cost qualifies as an expenditure that shall be included in the Annual Requirement.

- (3) **“Authority Board”** means the governing body of the Authority, as set forth in Article VII of the Articles of Incorporation of the Authority.
- (4) **“Authority District”** means the territory lying within the Constituent Municipalities of the Authority, which currently include the County of Genesee, Michigan; the County of Lapeer, Michigan; the County of Sanilac, Michigan; the City of Flint, located in the County of Genesee, Michigan; the City of Lapeer, located in the County of Lapeer, Michigan. In addition, the Authority District shall automatically include the jurisdictional boundaries of any future municipality that is deemed a Constituent Municipality by an amendment to the Articles of Incorporation.
- (5) **“Bond Resolution”** means any resolution of the Authority or Authority Board, which authorizes the issuance of any Bonds.
- (6) **“Capacity Fee”** means the monthly fee paid by the Buyer to the Authority pursuant to Article III of this Contract for the limited rights to capacity. The Capacity Fee shall be billed to the Buyer monthly on the Capital Expenditure Invoice. All interest earned on the Capacity Fee shall be transferred to the reserve fund for debt service and shall not be returned to the general operations fund. The aggregate Capacity Fee payable by all Buyers shall be sufficient to enable the Authority to pay the principal of, redemption premium, if any, and interest on the Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses and charges of each paying agent/registrar for paying the principal of and interest on the Bonds, for authenticating, registering and transferring Bonds on the registration books of the Authority maintained with the paying agent/registrar, and all annual disclosure fees. Additionally, the Capacity Fee shall include the proportionate amount of any reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution and the proportionate amount of any contingency fund, if so required by the Authority. If the Bond Resolution so requires, the Capacity Fee shall allow for an amount sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the Authority. The Capacity Fee shall terminate upon redemption of the bonds issued for the implementation and construction of the System.
- (7) **“Capital Expenditure Invoice”** means the invoice sent by the Authority to the Buyer which includes the Capacity Fee, the Debt Fund fee, and any other fees.
- (8) **“Debt Fund”** means a fund established by the Authority Board for the repayment of any new debt that is not being paid by the Capacity Fee, which is negotiated between the Buyer and the Authority. Any Debt Fund fee shall be billed to the Buyer monthly on its Capital Expenditure Invoice.
- (9) **“Fiscal Year”** means the period beginning on October 1st of each calendar year and ending on September 30th of the following calendar year.
- (10) **“Members”** means the following parties participating in the Authority: the County of Genesee, a municipal corporation of the State of Michigan; the County of Lapeer, a municipal corporation of the State of Michigan; the County of Sanilac, a municipal

corporation of the State of Michigan; the City of Flint, a municipal corporation of the State of Michigan located in the County of Genesee, Michigan; and the City of Lapeer, a municipal corporation of the State of Michigan located in the County of Lapeer, Michigan. In addition, the term Members shall also include any future municipality that is deemed a Constituent Municipality by an amendment to the Articles of Incorporation.

- (11) **“Permit”** means the LARGE QUANTITY WATER WITHDRAWAL PERMIT, PERMIT NUMBER 2009-001, dated August 28, 2009, or any other future permit or renewal issued to the Authority by the State or other entity with jurisdiction, which authorizes the withdrawal of large quantity of water from Lake Huron.
- (12) **“Point of Delivery”** means the point in Michigan designated by the parties where Water from System will be delivered to the Buyer as more fully set forth in Exhibit A.
- (13) **“Point of Withdrawal”** means the point in Lake Huron designated by the Authority where Water is to be extracted for delivery to the Buyer as more fully set forth in Exhibit A.
- (14) **“Purchaser(s)”** means a purchaser of Water from the Authority or the Members that is not a political subdivision, public corporation, public agency, or other public entity that has entered into a Capacity Contract and as such shall not have a seat or vote on the Authority Board as set forth in Article VII of the Articles of Incorporation.
- (15) **“Rental Fee”** means the amount determined by the Authority Board to be paid to the Authority by the Buyer for exceeding the amount of capacity purchased by the Buyer during each month of the Fiscal Year. The Authority will in turn reimburse the Members who have not exceeded their monthly capacity purchased during the particular month their pro rata share of the amount paid by the Buyer to the Authority as more fully set forth in Exhibit B.
- (16) **“Service District”** means the geographical area that receives treated water from the municipalities of the County of Genesee, Michigan; the County of Lapeer, Michigan; the County of Sanilac, Michigan; the City of Flint, located in the County of Genesee, Michigan; and the City of Lapeer, located in the County of Lapeer, Michigan. The Service District shall never extend beyond the watershed as set forth in the Permit.
- (17) **“State”** means the State of Michigan.
- (18) **“System”** means the long-range Water supply system authorized by this Contract, together with all improvements, enlargements, extensions and additions which, pursuant to this Contract, are deemed necessary and feasible by the Authority to provide Water supply as contracted herein to the Buyer from the point of withdrawal to the Point of Delivery; and, all future new facilities, which are acquired or constructed with proceeds from the sale of any Bonds or revenues from the System; and, any water supply facilities which are deliberately and specifically, at the option of the Authority, made a part of the System by resolution of the Authority Board, and all repairs to or replacements of the System. The System is owned exclusively by the Authority and shall remain with the Authority. In the event that the Authority is dissolved the System shall be disposed of in a manner consistent with Article V of the Articles of Incorporation. Said term does not include any proceeds from the issuance of General Obligation Bonds, Revenue Bonds, Capital Improvement Bonds, or any other bonds authorized by law.
- (19) **“System Development Bonds”** means all bonds issued by the Authority to construct the System, whether in one or more series or issues, and the interest thereon, and hereafter issued to acquire, construct, and complete the System and any sums to pay or restore any amounts required to be deposited in any special or reserve funds specified to be established and/or maintained by the provisions of the Bond Resolution.

- (20) **“System Improvement Bonds”** means all bonds issued by the Authority to subsequently improve, extend, operate or maintain the System, any bonds issued to refund any bonds or to refund any such refunding bonds, and any bonds issued for any other purpose as authorized by statute or the Articles of Incorporation.
- (21) **“Unit”** means One (1) Million Gallons Per Day, U.S. Standard Liquid Measure.
- (22) **“Untreated Water”** means water that is used for the following uses or any other use approved by the Authority Board:
1. Industrial use: Power plants or wherever water is used for cooling.
 2. Municipal use or domestic use, including, but not limited to public safety uses and sewage treatment uses.
 3. Irrigation.
 4. Agricultural use.
 5. Bottling, including but not limited to, bottled water and beverages.
 6. Power generation facilities.
- (23) **“Volume for Exempt Purposes”** means volume purchased in the System by the Buyer that is dedicated for the delivery of Water for exempt purposes, which includes, but is not limited to, Water for non-contact cooling and other similar Water use that is exempt from the total amount to be withdrawn pursuant to the Permit. Volume for Exempt Purposes is not considered capacity and therefore is not used to calculate representatives of the Authority Board pursuant to Article VII of the Articles of Incorporation or voting rights pursuant to Article IX of the Articles of Incorporation.
- (24) **“Water”** means all raw water contracted herein for sale and delivery by the Authority to the Buyer, which raw water the Authority and the Buyer have determined to be available pursuant to the terms of this Contract to satisfy the requirements of this Contract.
- (25) **“Water Transmission Fee”** means all costs that are not included in the Annual Requirement, the Capacity Fee, the Debt Fund fee, the Rental Fee, charges for Volume for Exempt Purposes, or any other fees established by the Authority Board or this Contract. Costs that are included in the Water Transmission Fee are those cost that typically fluctuate with the amount of water being delivered. Examples of costs that typically fluctuate with the amount of water being delivered include, but are not limited to, cost of utilities to operate pumps and similar costs. Reserve funds may be included in the Water Transmission Fee at the sole discretion of the Chief Executive Officer. The Chief Executive Officer shall have the sole determination as to whether a cost qualifies as an expenditure that shall be included in the Water Transmission Fee.

ARTICLE II CONSTRUCTION AND ISSUANCE OF BONDS

Section 2.01. Consulting and Construction Engineers. The Authority and Buyer agree that the Authority will choose the Consulting and Construction Engineers to implement the construction of the System and may change Consulting and Construction Engineers at the option of the Authority.

Section 2.02. Water for customers. It is the mutual desire of the Authority and Buyer to promote goodwill and economic development in Michigan by the Authority providing to the Buyer Water that the Buyer may offer for sale to its customers desiring to purchase treated water. Except as expressly set forth in this Contract or for non-contact cooling, irrigation, public safety, or other related agricultural uses as determined by the Authority Board, the Buyer shall be responsible for the treatment of the Water prior to the sale of water to its customers as required by any State or federal statute.

Section 2.03. System Development. The Authority and Buyer hereby expressly agree that this Contract authorizes the development of a System to deliver Water from the Authority to the Buyer over the term of this Contract. The Buyer further agrees that several municipalities and governmental agencies have fronted money to form the Authority, prepare various documents, obtain permits, engineering costs, and other miscellaneous costs. As a result, the municipalities and governmental agencies that have fronted money shall be reimbursed for the municipality's or governmental agency's actual out-of-pocket costs. The out-of-pocket costs do not include salaries, mileage, or meals paid to staff members. Out-of-pocket expenses include any item that was invoiced to a municipality or governmental agency that was paid by the municipality or governmental agency or which was required to be paid as a condition to obtain a document or permit. These invoices include, but are not limited to, permit fees, attorney fees, consultant fees, financial advisor fees, bond counsel fees, engineering fees, and other similar costs or fees.

Section 2.04. Construction of the System. The Authority agrees to use its best efforts to issue System Development Bonds, payable from and secured by the Capacity Fee payments made under this Contract and any other lawful sources. Allocated portions of the System Development Bond issues may be used to fund any other approved use as determined by the Authority's Bond Counsel.

Section 2.05 Enhancement and Expansion of the System. It is anticipated that the enhancement and expansion of the System will be in incremental, finite projects and that each such project will be financed by the Authority through the issuance of one or more series or issues of System Improvement Bonds. Also, on its own initiative or at the request of the Buyer, the Authority may refund any Bonds that were issued to extend, enlarge, repair, renovate, equip, operate, maintain and otherwise improve the System and any System facilities. The Authority agrees that such improvements for the System will be made in accordance with generally accepted engineering practices. It is anticipated that such improvements will be financed by the Authority through the issuance of one or more series or issues of System Improvement Bonds payable from and secured by the payments made under this Contract and any other lawful sources.

Section 2.06. Implementation of the System Development. The Authority shall be responsible and shall use all lawful means to implement and construct the System provided for in this Contract. Property and easements owned or held by the Buyer shall be made available to the Authority for the implementation and construction of the System upon written request of the Authority. If the Authority uses property or easements that are owned or held by the Buyer, the Authority shall ensure that upon completion of the System, the property is returned to the same condition, or an improved condition, which it was prior to construction. Property and easements acquired by the Authority shall be of sufficient size and width to allow for future construction and maintenance of the System. The Authority will maintain property in good condition and in accordance with local laws and ordinances.

Section 2.07. Financing of the Infrastructure. The Authority and Buyer expect to use bond financing and any other lawful sources for construction of the System and any other approved use for the financing and constructing the Authority's facilities. The Authority through its Financial Advisor shall establish appropriate custodial and/or trust accounts to hold the debt service and the proceeds from bond sales and shall also establish an investment policy defining the Authority's rights to and the Authority's requirements and restrictions related to the investment of the proceeds from bond sales. Further, the custody and/or trust agreement and also the related investment policy shall comply with appropriate State of Michigan statutes and audit requirements and will be reviewed and approved by the Authority's legal counsel. The Authority may pledge revenues from this Contract to secure financing of the System, in addition to the Capacity Fees, the Members of the Authority may pledge the full faith and credit of their respective municipality toward any bonds issued by the Authority at the request of the Authority. The title of the System shall be solely in the name of the Authority. The Buyer expressly agrees that it shall not have any claim to any portion of the physical infrastructure of the System. The Buyer pursuant to this Contract shall only have rights to capacity and the amount of Water purchased.

ARTICLE III
CAPACITY

Section 3.01. Capacity. The Buyer agrees that the total current Permit allows for Eighty-Five (85) Units of capacity and that the Authority cannot guarantee that any Units other than those purchased by Buyer will be available for purchase by the Buyer in the future. All Units shall be sold on a first come, first served basis. A Unit of capacity is considered sold when this Contract has been executed by the Buyer and the Authority and when the Authority has received the one-time fee as set forth in Section 3.04 of this Contract for said Unit(s) purchased. The actual capacity of the System will be established by the Authority Board based on the actual capacity sold prior to May 1, 2011.

Section 3.02. Volume for Exempt Purposes. Additional volume above the eighty-five (85) Units of capacity as set forth in the Permit maybe available to Buyer for exempt purposes including, but not limited to, non-contact cooling and other similar Water use that is exempt from the total amount to be withdrawn pursuant to the Permit. The Authority does not guarantee or warrant that any volume will be available for exempt purposes or that any other agency regulating the withdrawal of Water for exempt purposes will approve Buyer's request. The Buyer agrees that all Volume for Exempt Purposes is subject to the terms and conditions of this Contract, but is not considered capacity pursuant to this Contract or the Articles of Incorporation. **The Buyer further agrees and acknowledges that because the purchase of Volume for Exempt Purposes is not considered capacity, the Buyer is not entitled to any additional representatives to the Authority Board pursuant to Article VII of the Articles of Incorporation or additional voting rights pursuant to Article IX of the Articles of Incorporation for the purchase of Volume for Exempt Purposes.**

Section 3.03. Purchase of Capacity. Capacity is available to the Buyer in increments of 1/10th of one (1) Unit. The Buyer has agreed to purchase capacity as more set forth in Exhibit C.

Section 3.04. Cost of Units. The Buyer shall pay to the Authority within thirty (30) days of the execution of this Contract a one-time fee of not less than thirty-two thousand three hundred dollars (\$32,300.00) per Unit.

Additionally, the Buyer shall pay to the Authority not less than thirty-two thousand three hundred dollars (\$32,300.00) per Unit purchased per year until such time as the final System Development Bonds are sold based upon the actual cost of construction and all associated costs. Said payments shall be made in monthly installments.

After the final System Development Bonds have been sold to pay for the construction and related costs of the System, the Buyer shall pay to the Authority an estimated payment not to exceed of three hundred fifty-five thousand three hundred dollars (\$355,300.00) per Unit per year for capacity rights or per Unit per year for Volume for Exempt Purposes in the form of a certified bank check or wire transfer. Said payments shall be made in monthly installments until such time as the System Development Bonds are paid in full. The actual payment amount will be ultimately determined by the total amount of the System Development Bonds sold to fund the construction and related costs of the System and the total number of Units sold. See Exhibit D. If the financial advisor determines after the System is designed and the estimated costs are confirmed that the anticipated cost per Unit will exceed three hundred fifty-five thousand three hundred dollars (\$355,300.00) per Unit per year for capacity rights or per Unit per year for Volume for Exempt Purposes, the Buyer shall have the right to cancel this Contract pursuant to Section 7.04 of this Contract.

Section 3.05. Availability of Capacity. To ensure that the Buyer does not exceed its actual capacity purchased, the Buyer agrees that if the Buyer's actual use exceeds ninety percent (90%) of its purchased capacity, measured over a thirty (30) day average and using the peek averages, the Buyer shall evaluate and submit to the Chief Executive Officer for the Chief Executive Officer's recommendation to the Authority Board which of the six (6) following options available to Buyer the Buyer will implement if the Buyer's actual use exceeds its purchased capacity:

(1) Buyer may request the Authority Board to apply for a new permit or modification to its existing Permit to allow for the withdrawal of additional volume by the Authority. All costs associated with the application for a new permit or a modification to the Authority's Permit shall be paid by the Buyer, including, but not limited to, all administrative costs, fees, attorney fees, and lobbyist fees. The Authority Board has the sole discretion as to whether it will grant or reject the request by the Buyer. If the Authority's Permit is not modified to allow the additional withdrawal, Buyer shall have no claim or recourse against the Authority. If the Authority is granted a new permit or a modification to its existing Permit, the Authority Board in its reasonable discretion shall establish the cost of the additional Units that will be made available to the Buyer and the amount of time the Buyer will have to pay for the additional Units; or

(2) Buyer may purchase additional capacity from the Authority, if there is available capacity in the System and the Authority Board is willing to sell the available capacity. The Authority Board in its reasonable discretion shall establish the cost of the additional Units that will be made available to the Buyer and the amount of time the Buyer will have to pay for the additional Units; or

(3) Buyer may rent capacity from another political subdivision, public corporation, public agency or other public entity that has entered into a capacity contract with the Authority. The Authority Board in its reasonable discretion shall establish the Rental Fee of the additional Units that will be made available to the Buyer beyond the Units purchased by the Buyer. If the Buyer is not a Member, the Authority Board shall further approve any rental agreement or contract before it is entered by the Buyer and another political subdivision, public corporation, public agency or other public entity that has entered into a capacity contract with the Authority to ensure that the rental agreement will not impair the security for or rating on outstanding Bonds; or

(4) Buyer may purchase capacity from another political subdivision, public corporation, public agency or other public entity that has entered into a capacity contract with the Authority. The purchase of capacity by the Buyer from another political subdivision, public corporation, public agency or other public entity shall require a majority vote of the Authority Board and a majority vote of the Incorporators. Approval by the Authority Board and Incorporators shall not be unreasonably withheld. Prior to any such sale being completed, the Authority shall have received conclusive evidence, satisfactory to the Authority in its sole discretion, that the sale will not impair the security for or rating on outstanding Bonds. The Authority Board in its reasonable discretion shall establish the cost of the additional Units to be purchased by the Buyer to ensure that the sale will not impair the security for or rating on outstanding Bonds. If the Buyer purchases capacity and such purchase does not conform to this Section, the Authority shall in no way be obligated to recognize the purchase of capacity and the Authority shall not be obligated to provide capacity to the Buyer; or

(5) Buyer may provide a detailed plan to the Chief Executive Officer for the Chief Executive Officer's recommendation to the Authority Board for its approval. The detailed plan shall set forth how the Buyer intends reduce or limit its need for capacity and a proposed schedule of when the reduction or limitation will be adhered to. The Authority Board shall have the sole discretion as to whether the detailed plan submitted by the Buyer is reasonable and acceptable. The Buyer shall have no recourse against the Authority Board if the Authority Board deems the detailed plan as insufficient; or

(6) The Buyer may provide the Authority Board with any other solution not set forth herein. The Authority Board shall have the sole discretion as to whether the solution submitted by the Buyer is reasonable and acceptable. The Buyer shall have no recourse against the Authority Board if the Authority Board deems the solution as insufficient.

Section 3.06. Obligation to Pay. The Buyer, in addition to the Annual Requirement, Water Transmission Fee, Debt Fund fee, Rental Fee, fee for Volume for Exempt Purposes, and any other fee charged by the Authority that is deemed necessary and proper, shall timely pay the Capacity Fee to the Authority. The Buyer agrees that if it fails to timely submit the Capacity Fee to the Authority, the Authority is authorized to pursue all remedies available to the Authority whether in law or in equity.

Section 3.07. Requests to Reduce Capacity/Buyout by Authority. In the event Buyer determines that it does not require the capacity it purchased, the Authority, at its sole discretion, shall determine whether to reduce the capacity Buyer purchased. The Authority shall not be obligated to reduce the capacity or refund the Buyer for the capacity or portion thereof that has been purchased by the Buyer. The Authority's decision shall be final and not subject to judicial review. If the Authority agrees to reduce the capacity purchased by the Buyer and assume the Buyer's payments for the unwanted capacity, the Buyer shall not be entitled to any refund for capacity Units purchased by the Authority.

Section 3.08. New purchaser of Capacity. Exhibit D attached hereto and incorporated by reference herein set forth the procedure of how a new purchaser may acquire capacity.

Section 3.09. Reporting Requirements. The Buyer shall annually report to the Authority the amount of water used for the following purposes:

- (a) The amount of Water sold to power plants for non-contact cooling purposes.
- (b) The amount of Water that was treated and used for potable purposes.
- (c) The amount of Water used by the Buyer for public safety uses and sewage treatment uses.
- (d) The amount of Water used for irrigation and other agricultural uses.
- (e) The amount of Water sold for bottling, including but not limited to, bottled water and beverages.

ARTICLE IV OPERATING REQUIREMENTS

Section 4.01. Property Ownership/Rights/Taxes. Pursuant to Act 233, the Authority holds appropriation rights to use and sell the Water which this Contract provides that the Authority will sell to Buyer. The Authority will hold all fee interests, water rights and rights to storage of Water necessary to satisfy the terms of this Contract for Water supply and the Authority shall take measures to protect and defend such appropriations to ensure Water can be delivered pursuant to this Contract. The Authority warrants that during the term of this Contract, and any extensions thereto, it will take all lawful measures required to secure, protect and defend its rights to Water and its obligations to deliver Water to the Buyer in the amounts specified and according to the terms of this Contract. Further, the Authority will use its best efforts to secure any license, authorization, approval or permit required in order to provide Water to the Buyer pursuant to the terms of this Contract. The Authority shall have the right of eminent domain within the Authority District. Pursuant to Section 4 of Act 233, the Authority is a municipal authority and a public body corporate. As such, the Buyer expressly agrees that any and all property titled in the name of the Authority is exempt from taxation pursuant to MCL § 211.7m. The Buyer will hold contract rights as set forth in this Contract to the amounts of Water specified and defined herein to be delivered to the Point of Delivery pursuant to the terms and conditions of this Contract.

Section 4.02. Water Sales. The Authority agrees to deliver Water to the Buyer for all water supply purposes in accordance with the limitations set forth in Section 4.03.

Section 4.03. Water Supply Limitation. Delivery of Water to the Buyer is subject to Section 7.01 of this Contract, the amount of Water purchased by the Buyer pursuant to this Contract and is subject to and limited by available System supply, System deliverability, capacity purchased, the amount of Volume for Exempt Purposes that the Buyer purchased, the Permit, and the terms of this Contract; provided that such delivery shall not be unreasonably withheld. The Authority will use its best efforts to furnish and remain in position to furnish sufficient Water for the Buyer in accordance with this Contract, provided however, that the Authority's obligation shall be limited to the Permit and the amount of Water available from the respective

sources, which sources are hereby available to the System for fulfillment of the Authority's obligation to deliver Water from the System to the Buyer under this Contract; provided that the maximum rate of delivery shall be consistent with the capacity limitations and provisions of this Contract relating to the quantities to be delivered to Buyer and the availability from the source.

Section 4.04. Quantity. Subject to Section 7.01 of this Contract and the Permit, the Authority agrees to deliver Water under this Contract to the Buyer at the Point or Points of Delivery as set forth in Exhibit A; and the Buyer agrees to take the Water at its Point of Delivery.

Section 4.05. Minimum Amounts. Subject to Section 7.01 of this Contract and the Permit, for the purpose of calculating the minimum amount of each Annual Requirement and the Water Transmission Fee for which the Buyer is unconditionally liable, without offset or counterclaim except as provided herein, the Buyer, during each Fiscal Year, shall be deemed to have taken and used the volume of Water from the System as determined by the metering equipment installed by the Authority pursuant to Section 4.08 of this Contract. Notwithstanding the foregoing, the Authority and Buyer agree that any obligation of the Authority to supply any Water pursuant to the terms of this Contract, and any liability of Buyer to pay for any such Water associate with the volume provided is contingent upon full compliance with the provisions of Section 4.01 of this Contract except as herein provided.

Section 4.06. Resale. The resale of Untreated Water is restricted to the Incorporating Municipalities and the Authority. If the Buyer is not an Incorporating Municipality or the Authority, the Buyer shall sell or convey Water to its customers in the Buyer's Service District upon the Water being treated to conform to all applicable State and federal statutes. However, in no case shall the Buyer transmit water, whether treated or untreated beyond the watershed that is set forth in the Permit. If the Buyer is an Incorporating Municipality or the Authority, the Untreated Water may only be transmitted and discharged beyond the watershed that is set forth in the Permit, if authorized by law or approved by the State or other entity with jurisdiction to authorize such a request. All costs associated with obtaining the approval to transmit Water beyond the watershed shall be paid by the potential Purchaser. The Buyer shall have no recourse against the Authority Board if the State or other entity with jurisdiction deems the request to transmit and/or discharge beyond the watershed set forth in the Permit as insufficient.

Section 4.07. Points of Delivery.

(a) The Authority agrees to deliver Water contracted for by the Buyer at the Point of Delivery as shown in Exhibit A attached hereto. The permanent delivery and metering facilities delineated in Exhibit A hereof shall be constructed by the Authority and paid for from the proceeds of the System Development Bonds. The operation and maintenance shall be thereafter performed by the Authority. The cost of the operation and maintenance of the metering facilities shall be included in the Annual Requirement or the Water Transmission Fee as determined in the sole discretion of the Chief Executive Officer and billed to the Buyer. Pipelines and pumping facilities to deliver Water from the System to the Point of Delivery shall be constructed by the Authority as part of the System. If requested by the Authority, the Buyer shall provide any necessary easements or fee ownership for land in its jurisdictional boundaries or to use its power of eminent domain within Michigan on behalf of the Authority, if necessary, to obtain easements or fee ownership for land to enable construction and operation by the Authority of pipeline and other facilities required for delivery of Water to the Point of Delivery.

(b) Any additional Point of Delivery requested by the Buyer shall be subject to approval by the Authority, which approval shall not be unreasonably withheld. Unless otherwise mutually agreed, the Authority shall be responsible for the design to the specifications, contracting, and construction of the facilities. The Buyer shall be responsible for the acquisition of any rights-of-way for any additional or future Point of Delivery for Water from the System and the actual cost of the additional Point of Delivery facilities. The Authority shall send a detailed invoice to the Buyer for the cost of the Point of Delivery facilities, which shall be paid by the Buyer within thirty (30) days of receipt. Upon completion of the Point of Delivery facilities, the operation and maintenance shall be thereafter performed by the Authority. The cost of the

operation and maintenance of the Point of Delivery facilities shall be included in the Annual Requirement or the Water Transmission Fee as determined in the sole discretion of the Chief Executive Officer and billed to the Buyer.

Section 4.08. Metering Equipment.

(a) The Authority shall furnish, install, operate, and maintain the necessary equipment and devices of standard type required for measuring the quantity of Water delivered by the Authority under this Contract from the System to the Buyer through the Point(s) of Delivery. Such meters and other equipment so installed shall remain the property of the Authority. The Authority shall inspect, calibrate, and adjust its meters at least bi-annually as necessary to maintain accurate measurements of the quantity of Water being delivered. The Buyer shall have access to the metering equipment at all reasonable times as set forth by the Authority for the limited purpose of inspecting, examining, and reading the meters. However, the calibration and adjustment thereof shall be done only by employees or agents of the Authority. Either party may witness such reading, calibration and adjustment of meters. All readings of meters will be entered upon proper books of record maintained by the Authority. The Buyer may have access to view the record books during the Authority's normal business hours at any reasonable time.

(b) The Buyer may request, in writing, that the Authority calibrate any meter or meters in the presence of the Buyer. The Authority will make up to one (1) such calibration in any Fiscal Year at no charge to the Buyer. All requested calibrations by the Buyer in excess of one (1) will be made at the expense of the Buyer, except when the accuracy of the meter is beyond the limits of commercial accuracy in which case the Authority shall bear such expense. If, for any reason, any meter is out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of commercial accuracy [which unless otherwise agreed to shall be considered to be plus or minus five percent (5%±)], registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of three (3) months.

(c) The Buyer may, at its option and its own expense and subject to space limitations of the metering facilities, install and operate a meter (a check meter) to check any meter installed by the Authority, but the measurement for the purpose of this Contract shall be solely by the meter(s) installed and monitored by the Authority, except as otherwise agreed.

(d) If either party at any time observes a significant variation between the delivery meter or meters and the check meter or meters, if any such check meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the same meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours notice of the time of all tests of meters so that the other party may conveniently have a representative present.

(e) If for any reason any meters are out of repair so that the amount of Water delivered cannot be ascertained or computed from the reading thereof, the Water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of Water delivered during such period may be estimated:

(i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation,

(ii) by estimating the quantity, based on deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately, or

(iii) by using corresponding downstream meters installed by the Buyer or its customers to measure treated water received into respective portions of the Buyers system.

Section 4.09. Unit of Measurement. The Authority shall designate the unit of measurement to be used in calculating the Water metered and delivered to the Buyer. However, for billing purposes, the Buyer may designate that the Water be billed in either 1,000 gallons, U.S. Standard Liquid Measure or 100 cubic feet, Cubic Measure. The Buyer shall notify the Authority in writing of the unit of measurement to be used for billing the Water delivered from the System to the Buyer.

Section 4.10. Access.

(a) The Authority agrees to provide reasonable ingress and egress for the Buyer's employees and agents to all System premises to make such inspections and tests authorized by this Contract. In addition to the ingress and egress, the Authority, in its reasonable discretion, shall provide to the Buyer a point for electronic access to the meters. The Buyer shall be responsible for the cost of the installation and setup of any electronic access point provided for the use by the Buyer.

(b) The Authority agrees to provide reasonable ingress and egress for the Buyer's employees and agents to the Point of Delivery under the control of Authority to read meters owned or maintained by the Buyer and to make such inspections and tests authorized by this Contract.

(c) Under the provisions of paragraphs (a) and (b) preceding, both parties shall have reasonable access to all referenced facilities and premises to install, operate, inspect, test and maintain appropriate communication equipment, especially any equipment necessary for data acquisition.

(d) The Authority shall conduct a vulnerability assessment and prepare plans intended to minimize threats to its infrastructure including its Supervisory Control and Data Acquisition (commonly known as SCADA) system. These security plans may affect the reasonable access as set forth in 4.10(a), (b), and (c) of this Contract as the security plans are deemed confidential information that is exempt from the Freedom of Information Act, Act 442 of the Michigan Public Acts of 1976, as amended, MCL § 15.243, Part 2 by HR 3348 Section 1433 part 5, 6.

Section 4.11. Availability of Water.

(a) Subject to Section 7.01 of this contract and the Permit, quantities of Water will be made available to the Buyer pursuant to the capacity purchased by the Buyer, the amount of Volume for Exempt Purposes purchased by Buyer, and the availability of Water.

(b) Based on working conditions and the protocol described in Exhibit E to this Contract, the Authority may limit, restrict, or increase certain deliveries of Water as stated in Exhibit E.

(c) The Authority shall deliver all Water requested by the Buyer regardless of the amount of capacity purchased so long as the Authority remains in compliance with the Permit. The Buyer hereby expressly agrees that if the amount of Water delivered exceeds the capacity purchased by the Buyer, an implied rental agreement for the Water exists with the Authority and the Buyer shall pay to the Authority a reasonable Rental Fee for the Units being used that exceeds the Units purchased by the Buyer. This implied rental agreement shall remain in full force and effect until such time as the Buyer reduces its Water usage to the amount of capacity purchased. However, if the Buyer exceeds its capacity for two (2) consecutive months, the Buyer shall pursuant to Section 3.05 of this Contract evaluate which of the six options available to Buyer the Buyer will implement upon the approval of the Authority Board. If the System cannot deliver enough Water for both the capacity purchased by Buyer and the amount of Volume Purchased for Exempt Purposes, the Authority shall provide Water for the capacity purchased, but may limit, restrict, or deny the delivery of Water for the exempt purposes.

Section 4.12. Compliance with Permit. Prior to any Water being delivered to the Buyer, the Buyer shall provide to the Permit holder the necessary documents to demonstrate that the Buyer is in compliance with the Permit. These documents shall include a Water Conservation Plan acceptable to the Authority Board.

ARTICLE V
FISCAL

Section 5.01. Annual Requirement. Subject to the terms and provisions of this Contract, the Authority will provide and pay for the cost of the acquisition, construction and improvement of the System facilities, by issuing Bonds in amounts that will be sufficient to accomplish such purposes. It is acknowledged and agreed that the Annual Requirement payments to be made by the Buyer under this Contract shall be in addition to any Capacity Fee payments, Water Transmission Fee payments, Debt Fund payments, fee for Volume for Exempt Purposes, or other payments. The Capacity Fee and Debt Fund fee shall be invoiced on the Capital Expenditure Invoice sent to the Buyer by the Authority. The Annual Requirement, Water Transmission Fee, and other payments shall appear as itemized items on the monthly bill sent to the Buyer from the Authority. Because the construction period will precede the actual delivery of Water from the Authority to Buyer, the Buyer shall be responsible for its Capacity Fee and its share of the Authority's Annual Requirement during the period of construction. All funds received by the Buyer for the Capacity Fee, Water Transmission Fee, Annual Requirement fee, Debt Fund fee, and the fee for Volume for Exempt Purposes shall be under the sole control of the Authority Board.

(a) From time to time as necessary to account for costs involved in providing services as set forth in this Contract, including the Water Transmission Fee, the Authority shall cause a special cost allocation study to be prepared by a professional who is qualified to conduct water system cost of service studies, which study shall be submitted to the Buyer for review and comment prior to acceptance or approval by the Authority.

(b) The Authority shall fix, and from time to time to revise Annual Requirement and Water Transmission Fee, which shall at all times be not less than an amount sufficient to pay or provide for the Buyer's share of the following components:

(1) **“Operation and Maintenance”** equal to the Operation and Maintenance Expenses of the System; and

(2) **“Fixed Costs”** related to operation of the System. Examples of such costs are those expenses that typically do not fluctuate with the volume of Water being delivered, including, but not limited to, employee compensation, insurance, and the administrative and planning expenses of the Authority; and

(3) **“Operational and Maintenance Reserve”** in an amount established by the Authority Board which is sufficient for the Operation and Maintenance Expenses of the System and for capital improvements, provided that any such reserve shall be maintained at all times and may be used as a source of funds for Operation and Maintenance Expenses, and for emergency expenses. The Operation and Maintenance Reserve shall be initially funded incrementally over the first five (5) years beginning on the Contract Date; and

(4) **“Reserve for Replacement”** in an amount deemed necessary by the Authority Board in its sole discretion to cover the annual loss of value of the equipment and facilities used during the Fiscal Year.

Section 5.02. Water Transmission Fee. The Buyer shall pay the Water Transmission Fee, which shall be based on the amount of Water delivered to the Buyer as measured at the Point of Delivery by the meters installed by the Authority. The Authority shall fix, and from time to time revise the Water Transmission Fee, which shall at all times be not less than an amount sufficient to allow the Authority to cover all costs regardless of any fluctuation in the volume of Water delivered.

Section 5.03. Other Fees. The Buyer, in addition to the Capacity Fee, Annual Requirement, Debt Fund fee, fee for Volume for Exempt Purposes, and Water Transmission Fee, shall pay the cost of any other fee deemed necessary and proper by the Authority Board.

Section 5.04. Annual Budget. The annual budget is an estimate of the revenues and expenditures for the Authority for the Fiscal Year. Each annual budget for the Authority shall provide for amounts sufficient to pay the estimated Capacity Fee, Annual Requirement, Water Transmission Fee, Debt Fund fee, fee for Volume for Exempt Purposes, and other fees. The budgeted amount for revenue owed by the Buyer shall be prepared by the Authority based on all contracts with the Buyer, the Members, and Purchasers taking into account the estimated expenses of the Authority for Bond payments, the Annual Requirement, the Water Transmission Fee, the Debt Fund fee, fee for Volume for Exempt Purposes, and any additional fees determined by the Authority Board to be necessary to ensure that the Authority is able to fulfill its obligations pursuant to this Contract and any other Authority commitments. Each year after the initial budget of the Authority is approved by the Authority Board, the annual budget of the Authority shall be established using the following procedure:

Not less than one hundred fifty (150) days prior to the commencement of each Fiscal Year, the Buyer shall provide the Authority Board with a good faith estimate of the volume of Water to be purchased in the next Fiscal Year, including Water purchased for exempt purposes. Not less than one hundred twenty (120) days prior to the commencement of each Fiscal Year, the Authority shall furnish to Buyer a preliminary estimate of cost for the Buyer's Capacity Fee, Annual Requirement, Water Transmission Fee based upon the Buyer's good faith estimate, Debt Fund fee, fee for Volume for Exempt Purposes, and any other fee that is determined by the Authority Board to be necessary and proper for the next ensuing Fiscal Year. Not less than sixty (60) days before the commencement of each Fiscal Year, the Authority shall cause to be prepared as herein provided a preliminary budget for the Authority for the next ensuing Fiscal Year. A copy of such preliminary budget shall be filed with the Buyer and each Member for review before action by the Authority. The Buyer may submit comments about the preliminary budget directly to the Authority. The Authority may adopt the preliminary budget or make such amendments thereto, as the Authority may deem proper. The budget thus approved by the Authority shall be the annual budget for the next ensuing Fiscal Year.

The annual budget may be amended by the Authority at any time to transfer funds from one account or fund to another account or fund so long as such transfer will not increase the total budget. The amount for any account or fund, or the amount for any purpose, in the Annual Budget may be increased through formal action by the Authority even though such action might cause the total amount of the Annual Budget to be exceeded, and that amount billed to the Buyer; provided that such action shall be taken only in the event of an emergency, special circumstances, or if the projected amount of Water to be purchased by Buyer from the Authority will be exceeded, which shall be clearly stated in a resolution at the time such action is taken by the Authority.

Section 5.05. Payments by Buyer.

(a) For Water to be provided to the Buyer under this Contract, the Buyer agrees to pay, at the time and in the manner provided in this Section 5.05, its share of the Annual Requirement, Water Transmission Fee, Debt Fund fee, fee for Volume for Exempt Purposes, and any other fee in monthly installments.

(b) Payment of the various components of the Annual Requirement by the Buyer shall be based on the best estimate provided by the Authority at the beginning of each Fiscal Year, provided that the Buyer shall begin making monthly payments as provided herein. Except as provided herein, the Annual Requirement payments shall be based on the Annual Budget, which may be changed by the Authority from time to time to ensure that such monthly payments shall be sufficient to cover the costs of services that do not fluctuate with the amount of Water delivered to the Buyer. In addition to the Annual Requirement, the Buyer shall monthly pay to the Authority its Capacity Fee, Water Transmission Fee, Debt Fund fee, fee for Volume for Exempt Purposes, and any other fee deemed necessary and proper by the Authority Board, if applicable.

Section 5.06. Fiscal Policy. In estimating the Operations and Maintenance Expense portion of the budget, the Authority is specifically authorized, in its discretion, to include in such estimate of costs reasonable contributions to reserve funds and to assume that there will not be any additional Water delivered during the Fiscal Year.

Upon receipt during any Fiscal Year of an amount sufficient to meet the then current Annual Budget of the Authority for the remainder of the then current Fiscal Year, the Authority shall deposit subsequent revenues received into appropriate reserve or contingency accounts. In the event of an unexpected shortfall in revenues the Authority may withdraw from the reserves or adjust the Annual Budget of the System, the Authority shall make a settle-up of all System costs and all payment made by the Buyer. Any over recovery or under recovery shall be carried forward to the next Fiscal Year so that the Buyer will be required to pay only actual costs for the Annual Requirement and Water Transmission Fee.

Section 5.07. Prompt Payment/Disputed Bills. The Buyer hereby agrees that unless otherwise specified it will make payments required by this Contract to the Authority within fifteen (15) calendar days after the date a bill for service is received by the Buyer. If the Buyer, at any time, disputes the amount to be paid by it to the Authority, the Buyer shall nevertheless promptly make such payment or payments; but, if it is subsequently determined by agreement or court decision that such disputed payments should have been less, or more, the Authority shall promptly revise and reallocate the charges in such manner that the Buyer will recover its overpayment or the Authority will recover the amount due it. All amounts due and owing to the Authority by the Buyer, or due and owing to the Buyer by the Authority, shall, if not paid when due, bear interest per annum at the maximum rate allowed by law from the date when due until paid.

Section 5.08. Delinquent Bills. The Buyer specifically agrees to make all payments required by this Contract without offset or counterclaim. Nevertheless, if the Buyer shall become delinquent and remain delinquent in any payments due hereunder for a period of thirty (30) days, the Authority may give written notice of its intent to discontinue the services of the System to the Buyer. If after sixty (60) days, the Buyer remains delinquent in such payments, the Authority may disconnect service to the delinquent Buyer; and, if so disconnected, the Authority is not obligated to resume such service while the Buyer is so delinquent. The Buyer, even if disconnected from service, shall still be obligated to promptly pay the Capacity Fee or Debt Fund fee to the Authority as more specifically set forth in this Contract. The Authority shall pursue all legal remedies against the delinquent Buyer to enforce and protect the rights of the Authority and the holders of any bonds issued by the Authority. Nothing contained in this Contract shall prevent or constrain the Buyer from protesting or challenging any such threat of, or actual service discontinuance in any proper forum or court of law. The Authority may authorize the use of available System reserves as a source of funds to help offset said delinquent payments to the extent permitted by the Bond Resolution.

Section 5.09. Annual Audit. The Authority shall cause to be conducted an Annual Audit of all financial matters related to the System and to this Contract. For the Annual Audit, the Authority shall use an independent accounting firm with a national reputation or substantial experience in auditing large water utilities, licensed to conduct business in the State. In addition to the ordinary financial audit of the enterprise, the audit shall address the financial requirements of this Contract including the settle-up provisions for System costs and payments made under this Contract. The audit shall certify that the revenues and expenses of the Authority are accurate based upon the information available to the auditor at the time the audit was conducted. At least five (5) copies of the completed audit shall be provided to the Buyer.

Section 5.10. Unconditional Obligation to Make Payments. Recognizing the fact that the Buyer urgently requires the facilities and services of the System, and that such facilities and services are essential and necessary for actual use and for standby purposes, and recognizing the fact that the Authority will use the Capacity Fee payments and any other lawful sources received from Buyer to pay and secure the System Development Bonds, it is hereby agreed that after the Authority issues the System Development Bonds to construct the System, the Buyer shall be unconditionally obligated to pay, without offset or counterclaim, its share of the Capacity Fee, Annual Requirement, Water Transmission Fee, Debt Fund fee, fee for Volume for Exempt Purposes, and any other fee determined to be necessary and proper by the Authority Board, as provided and determined in this Contract. This covenant by Buyer shall be for the benefit of, and enforceable by, the holders of all Bonds issued by the Authority as well as the Authority.

Section 5.11. Use of Funds and System. Except for the Water Transmission Fee component and additional Water sales as defined in this Contract, the Authority covenants and agrees that neither the proceeds from the sale of the Bonds, nor the monies paid to the Authority pursuant to this Contract, nor any earnings from the investment of any of the foregoing, will be used for any purposes, except those directly

relating to the System, and the Bonds as provided in this Contract; provided that the Authority may rebate any excess arbitrage earnings from such investment earning to the United States of America in order to prevent any Bonds from becoming "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986 (the "Code") or any amendments thereto in effect on the date of issue of such Bonds. The Authority covenants and agrees that it will not use, or permit the use of, the System in any manner that would cause the interest on any of the Bonds to be or become subject to federal income taxation under the Code or any amendments thereto in effect on the date of issue of such Bonds, if the Bonds are issued on a tax-exempt basis, or which otherwise would jeopardize the payment of tax credits from the United States Treasury if the Bonds are issued as tax-credit bonds.

ARTICLE VI MISCELLANEOUS PROVISIONS AND SPECIAL CONDITIONS

Section 6.01. Operation and Maintenance of System. The Authority will continuously operate and maintain the System in an efficient manner. The Authority may enter into an operating agreement for operation and maintenance of the System with another political subdivision, public corporation, public agency or other public entity, including the Buyer.

Section 6.02. System Schedule. It is the intent of the parties that the System will be constructed and placed in operation as soon as practicable, and the Authority agrees to proceed diligently with the design immediately after the Contract Date, and construction of the System, subject to the terms and conditions in this Contract. In connection therewith, the Buyer agrees to promptly provide any funds to the Authority required by the provisions hereof. The schedule for the construction of the System shall conform to the requirements of the Program Schedule contained in Exhibit F.

Section 6.03. Permits, Financing and Applicable Laws. It is understood that any obligations on the part of the Authority to acquire, construct, and complete the System facilities and to provide Water from the System facilities to the Buyer shall be: (i) conditioned upon the Authority's ability to obtain all necessary permits, material, labor, and equipment, with the costs of the foregoing to be capitalized as part of the costs of the System; (ii) conditioned upon the ability of the Authority to finance the cost of the System facilities through the actual sale of Bonds; and (iii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State, and any regulatory body having jurisdiction thereof.

Section 6.04. Title to Water; Indemnification. Title to all Water supplied to the Buyer shall be in the Authority from the point of collection up to first shut off valve located on the Buyer's side of the meters at the Point(s) of Delivery, at which point title shall pass to the Buyer. The Authority and Buyer agree to save and hold each other harmless, to the extent authorized by law, from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said Water while title remains in such party. Both the Authority and Buyer agree to be responsible for their own respective negligent acts.

Section 6.05. Waiver of Claims. The Buyer hereby affirmatively and expressly waive and agrees never to claim in any forum any and all rights to Water, preference or priority in any manner or circumstances, including but not limited to drought conditions or circumstances, acts of God, strikes, lockouts or other disturbances, acts of public enemy, malfunction of the System, emergencies or public health and safety concerns, which would have the effect of altering, extending or voiding the term of this Contract, increasing the quantities of Water made available under this Contract or which would allow the Buyer to continue use of Water without a written agreement. Specifically, the Buyer will have no claim to continue the use of Water from the Authority after expiration of this Contract, other than those rights that may arise from express provisions in this Contract.

Section 6.06. Buyer Payment Obligations. The Buyer shall raise money to pay the Capacity Fee, the Annual Requirement, Water Transmission Fee, the Debt Fund fee, fee for Volume for Exempt Purposes, and any other fee, if any, required under this Contract through the levy of taxes, water system revenues collected from its customers, or from any other lawful source.

Section 6.07. Operating Expenses. The Buyer represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of the Buyer's waterworks system and that all such payments will be made from the revenues of the Buyer's waterworks system or any other lawful source. The Buyer represents and has determined that the Water supply to be obtained from the Authority, including the System facilities, is absolutely necessary and essential to the present and future operation of the Buyer's water system and that the System is the best long-term source of supply of Water therefor, and accordingly, all payments required by this Contract to be made by the Buyer shall constitute reasonable and necessary operating expenses of the Authority's System with the effect that the obligation to make such payments from revenues of Buyer's system shall have priority over any obligation to make any payments from such revenues (whether of principal, interest, or otherwise) with respect to all bonds or other obligations heretofore or hereafter issued by the Authority.

Section 6.08. Insurance. The Authority agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self insurance, on the System for purposes and in amounts which, as determined by the Authority, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the Authority shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the Authority's legal counsel, be liable under the Michigan Governmental Tort Liability Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities.

Section 6.09. Long-Term Capacity. The System may include extra capacity in pipelines and certain other facilities according to provisions of this Contract, consistent with the incremental long-term supply of Water provided herein. The Buyer agrees that it is in the best interest of both the Authority and the buyer to plan, acquire and construct all phases of the System with reasonable excess or extra capacity in anticipation of planned sales of Water to the Buyer.

ARTICLE VII **GENERAL PROVISIONS**

Section 7.01. Force Majeure. Except for the Capacity Fee and Debt Fund fee, if by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of the Buyer to make the payments required under this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. If the event results in an insurance claim and settlement being authorized, the settlement proceeds shall be in the name of the Authority and the name of the Buyer. The Authority and Buyer shall mutually determine if the Authority, the Buyer, or both shall be entitled to a share of the insurance proceeds. The term "**Force Majeure**" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of Water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 7.02. Term of Contract. The Buyer agrees that this Contract shall expire forth (40) years from the Contract Date. Upon expiration of this Contract, the Buyer acknowledges and agrees that the Authority is under no obligation to continue to provide services of any type or kind, including the delivery of Water to Buyer. At the end of the forty (40) year term of this Contract all physical assets of the System shall be revert to the Authority even if the parties hereto enter into an extension pursuant to Section 7.03 of this Contract. If this Contract expires on its terms, the Buyer shall further be liable for any outstanding payments in which Buyer has agreed to pay the Authority with regard to any debt or bonds issued by the Authority until the debt or bonds have matured or are redeemed. Except for financing contracts in respect of Bonds that may be issued by the Authority from time to time, this Contract and its attachments constitute the sole agreement between the parties hereto with respect to the System.

Section 7.03. Contract Extension or Renewal. The term of this Contract and the expiration date thereof may be extended or renewed by mutual agreement of the Buyer, the Authority Board, and the Incorporating Board. Any such extension of this Contract or any renewal thereof shall require renegotiation and mutual agreement by Buyer, the Authority Board, and the Incorporating Board as to the terms and conditions of any extension or renewal. Recognizing the long-term nature of Water supply planning and Water resource development, the Buyer covenants to give notice to the Authority in the thirty-fifth (35) year of the Contract whether it will be willing to commence negotiations concerning the extension or renewal of this Contract or if it will be allowing the Contract to expire on its terms.

Section 7.04. Option to Cancel.

The Buyer shall have the right to cancel this Contract under the following conditions:

(a) If the Authority fails obtain all necessary licenses, permits and other authorizations legally necessary to make Water available to the Point of Delivery pursuant to this Contract, with the exception of its portion of the Capacity Fee until such time as the Buyer sells, with the approval of the Authority pursuant to Article III of this Contract, its capacity in the System to a political subdivision, public corporation, public agency or other public entity. Additionally, the Buyer shall be irrevocably responsible for the payment of the Debt Fund payment, if any System Improvement Bonds have been issued pledging the Debt Fund payment by the Buyer to the Authority.

(b) If the financial advisor determines after the System is designed and the estimated costs are confirmed that the anticipated cost per Unit will exceed three hundred fifty-five thousand three hundred dollars (\$355,300.00) per Unit per year for capacity rights or per Unit per year for Volume for Exempt Purposes.

(c) If the Buyer cancels this Contract for any reason, the Buyer waives any and all claims to its purchased capacity, Water, or any other rights pursuant to this Contract.

The Authority shall have the right to cancel this Contract under the following conditions:

(a) If the Authority determines that it will not construct the System.

(b) If the Incorporating Municipalities agree to dissolve the Authority before construction begins or bonds are issued.

(c) Any other reason determined necessary and proper by the Authority Board.

Section 7.05. Modification. No change, amendment or modification of this Contract shall be made or be effective which will affect adversely the prompt payment when due of all monies required to be paid by the Buyer under this Contract and no such change, amendment or modification shall be made or be effective which would cause a violation of any provisions of any Bond Resolution.

Section 7.06. Representative(s) to Vote. Pursuant to Article VII of the Articles of Incorporation, only the Incorporating Municipalities, political subdivisions, public corporations, public agencies, and other public entities that have entered into Capacity Contracts on the basis of percentage of capacity are entitled to serve and vote on the Authority Board. However, for determined voting rights, the purchase of Volume for Exempt Purposes such as non-contact cooling shall not be used to calculate capacity purchased by the Buyer when determining additional representatives to serve on the Authority Board or additional voting rights pursuant to Article IX of the Articles of Incorporation. The Incorporating Municipalities, political subdivisions, public corporations, public agencies, and other public entities shall select their representative or representatives by Resolution or other acceptable method to the Authority Board that shall be certified and forwarded to the Authority Board prior the representative(s) serving on the Authority Board to cast their votes at any meeting of the Authority Board. If the Incorporating Municipality, political subdivision, public corporation, public agency, or other public entity appoints more than one (1) representative to cast its votes, the Resolution shall indicate how many votes each representative is entitled to vote. For example, if a municipality has five (5) votes, it may appoint one (1) representative to cast all five (5) votes. In the alternative, the municipality may appoint three (3) representatives. In that case, representative number 1 may be authorized to vote two (2) votes, representative number 2 may be authorized to vote two (2) votes, and the final representative may be authorized to vote one (1) vote.

Section 7.07. State or Federal Laws, Rules, Orders, or Regulations. This Contract is subject to all applicable Federal laws, the laws of the State and any applicable permits, ordinances, rules, orders and regulations of any local, State or federal governmental authority having or asserting jurisdiction; but, nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 7.08. Remedies Upon Default. It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party hereto and shall be cumulative. However, recognizing that the Authority's undertaking to provide and maintain the services of the System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the Authority agrees, in the event of any default on its part, that the Buyer shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of the Buyer's obligations hereunder could not be adequately compensated in money damages alone, the Buyer agrees in the event of any default on its part that the Authority shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies which may also be available to the Authority, including, but not limited to, those expressly set forth in this Contract. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the Authority to receive the Capacity Fee, Annual Requirement, Water Transmission Fee, the Debt Fund fee, fee for Volume for Exempt Purposes, and any other fee authorized by the Authority Board, which are the unconditional and irrevocable obligation of the Buyer, and shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstance.

Section 7.09. Lien. Pursuant to the provisions of MCL § 141.108, the Buyer hereby grants the Authority a lien by approval, execution and delivery of this Contract by the Buyer, made a statutory lien, upon the contractual revenues payable hereunder to be pledged to or used for the payment of the principal of and interest on the Bonds, to and in favor of the holders of such bonds and the interest thereon, and each of such holders, which liens shall be a first lien upon such net revenues, provided that such lien shall at all times be secondary to a lien established with respect to revenue bonds issued by the Buyer.

Section 7.10. Freedom of Information Act Requests. The Buyer agrees that if it receives a request for any documents that it has received from the Authority, including Freedom of Information Act requests, the Buyer shall forward a copy of the request to the Chief Executive Officer of the Authority. The Chief Executive

Officer of the Authority shall, with the assistance of the Authority's legal counsel, determine if the request is for documents that are exempt from disclosure by any law or regulation. If the Chief Executive Officer determines that any of the requested documents are exempt, the Buyer shall not release the documents to the requesting party. Additionally, the Authority shall indemnify and hold harmless the Buyer in any litigation that is filed by the requesting party to compel the release of the documents that the Chief Executive Officer and the Authority's legal counsel have determined are exempt from disclosure. If the Authority is required to indemnify and hold harmless the Buyer in any litigation that is filed by the requesting party to compel the release of the documents that the Chief Executive Officer and the Authority's legal counsel have determined are exempt from disclosure, the Buyer agrees that the Authority Board shall determine if the Buyer's legal counsel or one appointed by the Authority shall defend the pending litigation, unless the pending litigation is covered by insurance and the insurance company will be defending the pending litigation.

Section 7.11. Benefit Equal to Fee. The Buyer acknowledges that the fees established by the Authority hereunder are necessary to provide the new water transmission capacity which is the subject of this Contract, and the Buyer agrees that by connecting to the System it will receive a real, present and substantial benefit in an amount equal to the fees charged. The Buyer waives any claim it may have against the Authority in connection with or arising out of the fees paid under this Contract, including specifically any claim that the Buyer may have under Article IX, Section 31 of the Michigan Constitution.

Section 7.12. No upstream liability for Bolt claim against Buyer. The Buyer reserves the right to resell Water purchased under this Contract to retail customers pursuant to a schedule of rates and charges to be adopted by the Buyer in its sole discretion, provided that the Buyer shall set such rates and charges in conformance with relevant law. The Buyer shall hold harmless the Authority, and any and all of its past present and future members, officials, employees, representatives, agents and consultants, from any and all losses, demands, claims, actions, causes of action, assessments, suits, judgments, damages, liabilities, penalties, costs and expenses (including without limitation the fees and expenses of attorneys and other consultants) which are asserted against, or are imposed upon or incurred by Authority or an above-listed person and which result from, relate to, or arise out of a claim alleging in principal part that Buyer's rates and charges payable by its customers are established, charged or collected in violation of law.

Section 7.13. Exhibits. The following Exhibits attached hereto are incorporated by reference herein:

- Exhibit A – Point of Delivery
- Exhibit B – Rental Fee
- Exhibit C – Capacity Purchased
- Exhibit D – How Capacity and the Payment thereof shall be Calculated
- Exhibit E – Dependability – Operating Conditions
- Exhibit F – Construction Schedule

Section 7.14. Severability. The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 7.15. Mediation. As a condition precedent to the filing of a lawsuit, except as otherwise provided in this Section, all parties to this Contract agree to submit any dispute to mandatory but non-binding mediation. Each Party to such mediation shall bear their respective cost of participation and all common costs for facilitating the mediation effort shall be shared equally. Mediation must be completed within sixty

(60) days after the dispute is submitted to mediation. Notwithstanding other provisions in this Section, the parties agree that in the event of an emergency evidenced by a written declaration approved by the respective governing body of the party seeking to avoid mediation and when injunctive relief is needed immediately, mediation shall not be required. The parties hereto express agree that there is no provision, clause, sentence or word in this Contract that impedes the rights of the bond holders of any bonds issued by the Authority.

Section 7.16. Venue. All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due at the location of the principal administrative offices of the Authority. It is specifically agreed among the parties to this Contract that Sanilac County, State of Michigan is the place of performance of this Contract. In the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in the Sanilac County Circuit Court.

Section 7.17. Assignability and Successor Interest. The Capacity Fee and any Debt Fund fee shall be assigned by the Buyer to a successor if the Buyer ceases to exist, subject to the requirements set forth in Section 3.07 of this Contract. The remainder of this Contract may be assigned, or the contract rights may otherwise be transferred from the Buyer to a duly formed successor agency, or to some or all of its Members, provided that no assignment shall affect the credit or security for, or the rating on, any bonds issued by the Authority for the System and obligations of the Buyer set forth in this Contract shall not be affected by any such assignment or transfer. This Contract may be assigned or the contract rights may otherwise be transferred from the Authority to a duly formed successor agency or entity, or to the State, provided that no obligations of the Authority set forth in this Contract shall be affected by any such assignment or transfer. If either party desires to make such transfer or assignment, they shall first provide thirty (30) days written notice to the other party to provide opportunity for comments.

Section 7.18. Interpretation. For purposes of interpretation of this Contract, neither the Buyer or the Members nor the Authority shall be deemed to have been the drafter of this Contract.

Section 7.19. Construction. This Contract has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the parties hereto. This Contract therefore shall not be construed against any party to this Contract.

Section 7.20. Modification. This Contract shall not be modified, altered, or amended except through a written amendment signed by the Buyer, the Authority Board, and the Incorporating Board.

Section 7.21. No Third Party Beneficiaries. This Contract is not intended to confer upon any person or entity, other than the parties hereto, any rights or remedies of any kind or nature whatsoever.

Section 7.22. Counterparts. This Contract may be executed in several counterparts each of which shall be deemed one and the same Contract. It shall be binding upon and inure to the benefit of the parties to it and their respective successors and assigns.

Section 7.23. Captions and Bylines. The captions and bylines used in this Contract are for the convenience of reference only and in no way define, limit or describe the scope of intent of any provision of this Contract.

Section 7.24. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified.

Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Buyer, to:

If to Authority, to:

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party hereto.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Contract Date.

THE AUTHORITY BOARD

By: _____
Dayne Walling, Chairman of the Authority

ATTEST:

_____, Secretary of the Authority

(OFFICIAL SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: _____
Kevin Kilby, General Counsel for the Authority

BUYER

By: _____,
_____, Chairperson/Mayor

ATTEST:

_____, Clerk/Secretary

(OFFICIAL SEAL)

APPROVED AS TO FORM:

By: _____,
_____, General Counsel for the Buyer

EXHIBITS

- Exhibit A – Point of Delivery
- Exhibit B – Rental Fee
- Exhibit C – Capacity/Volume for Exempt Purposes Purchased
- Exhibit D – How Capacity and the Payment thereof shall be Calculated
- Exhibit E – Dependability – Operating Conditions
- Exhibit F – Construction Schedule

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EXHIBIT A
POINT(S) OF WITHDRAWAL AND DELIVERY

Section 1. Exhibit part of Contract and controls in conflict. This Exhibit A is an integral part of the Contract and is applicable to the Authority and Buyer as if fully set forth in the body of the Contract. If any provision of this Exhibit A conflicts with the general provisions in the Contract, the provisions of this Exhibit A shall control.

Section 2. Point or Points of Withdrawal.

(a) The Point of Withdrawal to be utilized by the Authority for withdrawal of Water from the System is defined as:

A general site map of the Point of Withdrawal is set forth in attachment 1 to this Exhibit A. An engineer hired by the Authority pursuant to the Contract shall prepare a preliminary design plan for the construction of all necessary components. The actual design of the Point of Withdrawal and location of the Point of Withdrawal shall be subject to change as required by any studies or permits obtained by the Authority.

(b) Depending on an analysis of costs and other considerations, there may be one or two Points of Withdrawal utilized by the Authority for the extraction of Water from Lake Huron. A general site map of all possible Points of Withdrawal is set forth in attachment 2 to this Exhibit A. An engineer hired by the Authority pursuant to the Contract shall prepare an analysis of costs and preliminary design plans for the construction of all necessary components. The actual design of the Point of Withdrawal and location of the Point or Points of Withdrawal shall be subject to change as required by environmental Studies and Permits obtained pursuant to provisions of Exhibit E.

Section 3. Point or Points of Delivery.

The primary Point of Delivery shall be located _____ The actual location of the primary Point of Delivery shall be subject to change as required by environmental requirements imposed by the State of Michigan.

A secondary Point of Delivery may be located _____ The actual location of the primary Point of Delivery shall be subject to change as required by environmental requirements imposed by the State of Michigan.

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EXHIBIT B
RENTAL FEE

Section 1. Exhibit part of Contract and controls in conflict. This Exhibit B is an integral part of the Contract and is applicable to the Authority and Buyer as if fully set forth in the body of the Contract. If any provision of this Exhibit B conflicts with the general provisions in the Contract, the provisions of this Exhibit B shall control.

Section 2. Establishment of Rental Fee. The Authority Board shall establish the Rental Fee for Units that are used in excess of capacity purchased by Buyer. The establishment of the Rental Fee by the Authority Board shall be final and not subject arbitration, mediation, or review by any court or other judicial body.

Section 3. How Rental Fee Units are Calculated. The capacity purchased by the Buyer shall be measured over a thirty (30) day average and using the peak averages. Therefore, if Buyer has purchased ten (10) units, the Buyer is entitled to 300,000,000 million gallons of water for the month.

Section 4. When Buyer is Subject to Rental Fees. If the Buyer has purchased ten (10) Units, and Buyer has used any capacity in excess of ten (10) Units, the Buyer is subject to Rental Fees.

Section 5. Example. Buyer has purchased ten (10) Units of capacity for a total of 300,000,000 Units during the thirty (30) day average. Buyer, however, used 301,000,000 Units during the thirty (30) day average. Buyer therefore used one (1) Unit more than it purchased for that period. If the Authority Board determines that the Rental Fee is \$30,000 per Unit per month, the Buyer would be required to pay to the Authority \$30,000 for the thirty (30) days it exceeded its capacity purchased. The Authority in turn would pro rata pay the \$30,000 to the other buyers of capacity that did not exceed their capacity purchased for the same month as set forth below:

ORIGINAL CAPACITY PURCHASED

	Muni. No. 1	Muni. No. 2	Muni. No. 3	Total
Units	41	24	5	70
Total Units	70	70	70	70
Total % Capacity	58.6	34.3	7.1	100

Muni No. 1 exceeded its capacity by one (1) Unit and therefore has paid \$30,000 to the Authority. The Authority would distribute the \$30,000 as follows:

	Muni. No. 1	Muni. No. 2	Muni. No. 3
Total % Capacity	0	24/29	5/29
Multiplier	0	30,000	30,000
Total Distributed	0	24,827	5,173

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EXHIBIT C
CAPACITY/VOLUME FOR EXEMPT PURPOSES PURCHASED

Section 1. Exhibit part of Contract and controls in conflict. This Exhibit C is an integral part of the Contract and is applicable to the Authority and Buyer as if fully set forth in the body of the Contract. If any provision of this Exhibit C conflicts with the general provisions in the Contract, the provisions of this Exhibit C shall control.

Section 2. Capacity to be made available. Subject to Article III of this Contract, Water will be made available pursuant to the terms of the limitations set forth in this Contract and the amount of capacity purchased by the Buyer as more specifically set forth in the schedule set forth in this Exhibit C.

Section 3. Capacity made available after construction. Subject to the terms and conditions of Studies and Permits, the total capacity of Water made available after the construction of the System is completed will be determined by the Authority Board, upon recommendation of the Chief Executive Officer, no later than the October 2011 Board meeting. Said decision will be based on the amount of capacity that is contracted for prior to August 1, 2011, and the future needs of the Buyer and Members.

Section 4. Capacity Purchased. The Buyer hereby agrees to purchase capacity rights to _____ Units, which represents ____% of the total capacity of the System.

Section 5. Purchase of Volume for Exempt Purposes. The Buyer hereby agrees to purchase _____ Units of Volume for Exempt Purposes or other purposes exempt from the total Units allowed to be withdrawn pursuant to the Permit.

Section 6. Cost of Capacity Units During Construction. The Buyer shall pay to the Authority Thirty-Two Thousand Three Hundred Dollars and Zero Cents (\$32,300.00) per Unit purchased per year until such time as the final System Development Bonds are sold. Said payments shall be made in monthly installments.

Section 7. Cost of Capacity Units After Construction. The actual cost per Unit of capacity after construction will be determined by the total amount of the System Development Bonds sold to fund the construction and related costs of the System and the total number of Units sold. The Buyer agrees that it will pay to the Authority in monthly installments a total of _____ (\$_____) per month until such time as the System Development Bonds are redeemed. The Buyer further agrees that the total of _____ (\$_____) shall be increased if the Buyer obtains additional capacity pursuant to Article III, Section 3.05 of this Contract.

Section 8. Cost of Volume for Exempt Purposes After Construction. The actual cost per Unit of Volume for Exempt Purposes after construction will be determined by the total amount of the System Development Bonds sold to fund the construction and related costs of the System and the total number of Units sold. The Buyer agrees that it will pay to the Authority in monthly installments a total of _____ (\$_____) per month until such time as the System Development Bonds are redeemed.

Section 9. Capacity rights at the expiration of this Contract. The Authority and Buyer hereby agree that the physical assets of the System shall remain with the Authority at the expiration of this Contract. Additionally, pursuant to Section 7.02 of this Contract, the Authority is not obligated to provide any services or obligations to the Buyer if this Contract expires on its terms. If the Buyer desires to continue to receive Water from the Authority at the conclusion of this Contract, the Buyer and the Authority will need to either extend or renew this Contract pursuant to Section 7.03 of this Contract. Forty (40) years after the Contract Date, the Authority shall issue to the Buyer capacity share(s), which shall be equal to the amount of capacity purchased by the Buyer pursuant to this Contract, not including the purchase of Volume for Exempt Purposes. Subject to the Articles of Incorporation and By-Laws, the Buyer at the expiration of this Contract may retain its capacity share(s), sell its capacity share(s), or rent its capacity share(s). Volume for Exempt Purposes shall be restricted to the Buyer subject to the approval of the agency that governs withdraw of Volume for Exempt Purposes.

Section 10. Amendment to this Exhibit. Subject to Article VII, Section 7.19, this Exhibit may be amended from time-to-time by the Buyer, the Authority Board, and the Incorporating Board.

Buyer:

Authority Board:

Its:

Its:

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EXHIBIT D
HOW CAPACITY AND THE PAYMENT THEREOF SHALL BE CALCULATED

Section 1. Exhibit part of Contract and controls in conflict. This Exhibit D is an integral part of the Contract and is applicable to the Authority and Buyer as if fully set forth in the body of the Contract. If any provision of this Exhibit D conflicts with the general provisions in the Contract, the provisions of this Exhibit D shall control.

Section 2. Permit capacity available. The current Permit authorizes 85 Units of withdrawal per day.

Section 3. Capacity of System. The actual capacity of the System will depend upon the number of Units that are initially sold. The Chief Executive Officer, shall after May 1, 2011, calculate how many Units are sold. At the meeting where the Chief Executive Officer presents to the Authority Board how many Units have been sold, the Authority Board shall, pursuant to Article XIII and the Chief Executive Officer's recommendation, determine the actual capacity of the System to be built. Once the Authority Board has determined the actual capacity of the System to be built, the Chief Executive Officer, pursuant to Article XX shall supervise and administer the construction and operation of the System.

Section 4. Example.

If there are seventy (70) Units of capacity sold by May 1, 2011, and the Authority Board determines that the System shall be built to transmit eighty-five (85) Units of capacity, then the cost per Unit shall be calculated as follows:

Step 1. Determine the Number of Units Purchased.

Municipality Number 1 has purchased forty (40) Units.
 Municipality Number 2 has purchased twenty-five (25) Units.
 Municipality Number 3 has purchased five (5) Units.
 TOTAL UNITS PURCHASED.....seventy (70) Units.

Step 2. Determine the percentage of the total capacity purchased by each municipality.

	Muni. No. 1	Muni. No. 2	Muni. No. 3	Total
Units	41	24	5	70
Total Units	70	70	70	70
Total % Capacity	58.6	34.3	7.1	100

Step 3. Determine the percentage of capacity purchased by the municipalities based on an 85 Unit System.

The percentage of capacity purchased by the municipalities based on an eighty-five (85) Unit System is calculated by multiplying 85 and the percentage in Step 2 above. For example:

	Muni. No. 1	Muni. No. 2	Muni. No. 3	TOTAL
	85 x 58.60%	85 x 34.30%	85 x 7.10%	
NEW				
TOTAL UNITS:	49.80	29.20	6.00	85 UNITS

Step 4. Calculate the total owed by each municipality.

The total amount owed by each municipality shall be calculated by taking the total Units purchased in Step 3 and multiply that number by the cost per Unit (currently estimated at \$323,000). For Example:

Muni. No. 1	Muni. No. 2	Muni. No. 3
323,000	323,000	323,000
<u>x 49.80</u>	<u>x 29.20</u>	<u>x 6.00</u>
16,085,400	9,431,600	1,938,000

Using the above example, Municipality No. 1 would owe \$16,085,400.00 per year for the Units of capacity it purchased; Municipality No. 2 would owe \$9,431,600.00 per year for the Units of capacity it purchased; and Municipality No. 3 would owe \$1,938,000.00 per year for the Units of capacity it purchased.

When calculating the total number of Units purchased pursuant to Article III, Section 3.05, Municipality No. 1 would have 49.80 Units available; Municipality No. 2 would have 29.20 Units available; and Municipality No. 3 would have 6.00 Units available.

Section 5. Additional Units requested by a Member or New Purchaser. If a Member, Buyer, or new Purchaser requests additional Units, the Units may be made available from the current Members or Purchasers. There is no guarantee that any Units will be available. If, however, a current Member, Buyer, or Purchaser is willing to make additional Units available to the requesting party, the following procedures shall be implemented:

Step 1. Request to Purchase Units. The Buyer, Member, or new Purchaser shall file a written request to purchase Units with the Authority. The written request shall contain the following information:

- (1) The name, address and contact information of the potential purchaser.
- (2) The purpose of the Units requested. This shall include if the Water supplied shall be used for Untreated or Treated purpose.
- (3) The estimate of the number of Units to be purchased.
- (4) An affirmative statement that the Water will be used within the watershed as set forth in the Permit.
- (5) The payment of any fee as determined by the Authority Board.

Step 2. Authority determination. The Authority after receiving the request set forth in Step 1 above, shall determine if any Member, Buyer, or Purchaser has additional capacity it is willing to sell. If the Authority is notified by a Member, Buyer, or Purchaser that Units are available for sale, the Authority shall thereafter fix a price for the Units to be sold to ensure that the sale will not impair the security for or rating on outstanding Bonds, fix a price to repay the holder of the Units, and notify the potential purchaser of the availability of Units and the cost per Unit.

Step 3. Confirmation of Sale. The potential purchaser shall notify the Authority that it will complete the transaction as originally set forth in Step 1 above, modify the number of Units requested in Step 1, or decline the purchase of Units.

Step 4. Allocation of Payment from Sale. The allocation of payment shall be applied to the Member(s), Buyer(s), or Purchaser(s) that are selling the Units using the same formula described in Section 4 of this Exhibit D. The following example describes how the payment would be allocated according to the formula among the three municipalities that sell twelve (12) Units to a purchaser after the municipalities have paid on the Units for the prior fifteen (15) years:

	Muni. No. 1	Muni. No. 2	Muni. No. 3
Units Purchased	<u>49.80</u>	<u>29.20</u>	<u>6.00</u>
Cost Per Year	\$16,085,400	\$9,431,600	\$1,938,000

Each municipality has paid \$323,000 per Unit per year over the last fifteen (15) years. If the potential purchaser would have bought the twelve (12) Units when the municipalities did, the potential purchaser would have spent a total of \$58,140,000 over the last fifteen (15) years. That total amount is divided by the number of units sold to equal \$4,854,000 per Unit.

If each municipality is selling the potential purchaser four (4) Units, then each municipality shall receive \$19,380,000 for the Units sold. The potential purchaser shall thereafter assume the municipality's payments for the twelve (12) total Units. This is more fully demonstrated below:

	Muni. No. 1	Muni. No. 2	Muni. No. 3
Units Purchased	<u>49.80</u>	<u>29.20</u>	<u>6.00</u>
Cost Per Year	\$16,085,400	\$9,431,600	\$1,938,000
Units Sold	4.00	4.00	4.00
Total Units Retained	45.80	25.20	2.00
New Cost per Yr.	\$14,793,400	\$8,138,600	\$646,000
Reimbursement by New Purchaser Pd to Muni	\$19,380,000	\$19,380,000	\$19,380,000

New purchaser's cost per year is in the amount established by the Authority Board. If the cost per Unit is established at \$323,000 per Unit per year, then the new purchaser will pay \$3,876,000 per year for the twelve (12) Units purchased.

Step 5. Vote. The Board shall determine the reallocation of Board member votes based on the new capacity ownership by each purchaser of capacity; however, the Buyer shall not be entitled to vote with regard to the purchase of Volume for Exempt Purposes and other similar Water use that is exempt from the total amount to be withdrawn pursuant to the Permit.

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EXHIBIT E
OPERATING CONDITIONS

Section 1. Exhibit part of Contract and controls in conflict. This Exhibit E is an integral part of the Contract and is applicable to the Authority and Buyer as if fully set forth in the body of the Contract. If any provision of this Exhibit E conflicts with the general provisions in the Contract, the provisions of this Exhibit E shall control.

Section 2. Water delivery subject to environmental studies, permits, licenses, other authorizations and approvals.

(a) The Authority's obligation to deliver the total amount of Water made available under the terms of the Contract shall be subject to terms and conditions that may be imposed as a result of environmental studies, permits, licenses, other authorizations and approvals ("Studies and Permits") necessary and required by any federal, State or local authority related to the design and construction of the System or any System components. Such Studies and Permits include, but are not limited to, environmental assessments and draft and final environmental impact statements as required by the Clean Water Act and permits for withdrawal and pipeline construction, impact, protection and mitigation of endangered species habitat, and permits to appropriate Water. The Buyer shall cooperate, at the request of the Authority, in obtaining any Studies and Permits relating to the System development and use of Water.

(b) The Authority shall pursue construction within a five (5) year period beginning immediately after the Contract Date of this Contract.

(c) The Buyer recognizes that the Authority has undertaken various Studies and Permits, including, but not limited to, obtaining a bulk water withdraw permit issued by the State and a feasibility study to determine if the Authority is economically feasible. Additionally, various costs have been incurred to create the Authority. The Buyer shall pay the Authority all costs and expenses associated with the aforementioned items, including the costs and expenses of attorneys, engineers, consultants and staff utilized in creating the Authority and the costs of pursuing all Studies and Permits.

Section 3. General plan for development of System. The Authority and Buyer contemplate, subject to the results, terms and conditions of the Studies and Permits set forth in Section 2 above, that the development of the System may occur over a five (5) year period beginning in July 2011. The various phases of construction are set forth in Exhibit F.

Section 4. Water availability from the Point of Withdrawal.

(a) Subject to the terms, conditions or limitations set forth in Studies and Permits obtained pursuant to Section 2 above, the annual dependable total of water being made available upon completion of the System is estimated to be June 2016.

(b) The Authority shall divert Water at the Point of Withdrawal with a capacity of no greater than eighty-five (85) Units, not including Volume for Exempt Purposes, unless a modified Permit has been issued by the State or an agency with jurisdiction to issue such a modified Permit. A pipeline or pipelines shall carry the Water from the Point of Withdrawal to the Point(s) of Delivery. The Authority will coordinate on the design, construction, operation and maintenance of the pipeline or pipelines with the Buyer's construction of the Point(s) of Delivery. A portion of the Buyer's Annual Requirement shall be used to pay the costs of such design, construction, operation and maintenance of the Point of Withdrawal, pipeline or pipelines, and easements.

Section 5 Terms, conditions and limitation on Water availability.

(a) In addition to the dependable amounts of Water after construction, the Authority may make additional Water available for delivery to Buyer. The sources of such additional Water may include the purchase of Water from another agency, Water supply storage, and any other means authorized by law.

(b) If the Buyer desires to have additional Water made available, the Buyer shall advise the Authority in writing, detailing its proposal to utilize additional Water, including information relating to quantity and source of supply for the additional Water. To utilize Water from another agency, Water supply storage, or any other means authorized by law, the Buyer shall coordinate with the Authority to either oversize the pumps and pipelines or to increase the capacity to the Buyer.

(c) The term of use for additional Water that is made available by the Authority shall be for a period of no more than one (1) year, provided that the period of availability may be extended by mutual consent of both the Authority and Buyer.

(d) The Buyer shall make Rental Fee payments to the Authority for making additional Water available at the rate specified in Exhibit B.

EXHIBIT F
SYSTEM DEVELOPMENT SCHEDULE

Section 1. Exhibit part of Contract and controls in conflict. This Exhibit F is an integral part of the Contract and is applicable to the Authority and Buyer as if fully set forth in the body of the Contract. If any provision of this Exhibit F conflicts with the general provisions in the Contract, the provisions of this Exhibit F shall control.

Section 2. Environmental Studies and Permits. The Authority Board no later than July 1, 2011, will establish an estimated date in which the environmental studies and permits will be obtained.

Section 3. Right-of-Way Acquisition. The Authority Board no later than July 1, 2011, will establish an estimated date in which the right-of-way acquisitions will be obtained.

Section 4. Construction Schedule. The Authority Board no later than July 1, 2011, will establish an estimated date in which the environmental studies and permits will be obtained.

WATER SERVICE CONTRACT

BETWEEN

CITY OF DETROIT

AND

TABLE OF CONTENTS

Article 1: Definitions	3
Article 2: Contract Term	5
Article 3: Early Termination Costs	6
Article 4: Service Area	7
Article 5: Pressure; Maximum Flow Rate; Minimum Annual Volume	8
Article 6: Technical Advisory Committee	11
Article 7: Rates	12
Article 8: Meters and Meter Facilities	13
Article 9: Dispute Resolution	14
Article 10: Default Provisions	14
Article 11: Force Majeure and Other Events	15
Article 12: Timely Payment	15
Article 13: Assignment	15
Article 14: Ensuring Equality of Contract Terms	16
Article 15: Amendment	16
Article 16: Notices	16
Article 17: Water Quality	17
Article 18: Rights-of-Way	17
Article 19: Access to Towers and Antennas	18
Article 20: Relationship to Wastewater Services	18
Article 21: Construction Standards	19
Article 22: Operation of Storage	19
Article 23: Miscellaneous	19
Signature Page	21
Exhibit A: Customer's Water Distribution Points	22
Exhibit B: Projected Annual Volume, Minimum Annual Volume, Pressure Range, Maximum Flow Rate, Flow Split Assumptions, and Addresses for Notice	23

**WATER SERVICE CONTRACT
BETWEEN
CITY OF DETROIT
AND**

This Water Service Contract ("Contract") is made between the City of Detroit, a municipal corporation, by its Water and Sewerage Department and Board of Water Commissioners (the "Board"), and _____, a municipal corporation ("Customer"). The Board and Customer may be referred to individually as "Party" or collectively as the "Parties."

Whereas, the City of Detroit owns a public water supply system ("System") operated by the Board; and

Whereas, the Board supplies water service to numerous governmental entities in the Board's water service area; and

Whereas, Customer desires to obtain water service from the Board; and

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

Whereas, the Board implemented 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 the Board in data gathering, alternative evaluations and recommendations, achieving full disclosure of rates, identifying true cost of service principles to guide revenue collection, and to provide assistance with a cohesive planning effort for the Board'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 Rate" shall have the meaning ascribed in Article 3 herein.

"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.
recorded - must be 365 (6) consecutive days of metering

"Board" shall mean the City of Detroit Board of Water Commissioners.

“**City**” shall mean the City of Detroit, a municipal corporation, acting through its Board of Water Commissioners.

“**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, the Board of Water Commissioners, and the Detroit City Council.

“**Contract Term**” shall have the meaning ascribed in Article 2 herein.

“**Customer**” shall mean the Party that enters into a contract with the City of Detroit 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 the Customer’s recorded water usage on the DWSD 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 the Customer’s recorded water usage during the DWSD Peak Hour. Customer Peak Hour Demand, in conjunction with Customer Maximum Day Demand, shall be a component of its Maximum Flow Rate.

“**DWSD**” shall mean the City of Detroit Water and Sewerage Department.

“**DWSD 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 DWSD in reviewing water production and storage reports.

“**DWSD Peak Hour**” shall mean the hour during the DWSD 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 DWSD in reviewing water production and pumping reports. In calculating the DWSD 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.

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

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

“**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.

“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 the Board 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 and operated by the City of Detroit, acting through its Board of Water Commissioners and its Water and Sewerage Department.

“Technical Advisory Committee” shall mean the committee consisting of representatives of the Detroit Water and Sewerage Department, wholesale water customers of the Detroit Water and Sewerage Department 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. The Board 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 the Detroit City Council or Customer’s governing body whichever is later. This Contract replaces and supersedes any prior water service contracts between the Parties.

- 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. The Board shall notify Customer of its first Contract renewal option during the twenty-fifth year of the thirty-year term; provided, however, that the Board'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 the Board for the payment of any costs incurred by the Board 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 the Board.
- 3.02 Calculation of Costs. Payment of Early Termination Costs will be calculated by applying the Adjusted Prevailing Water Rate to the Minimum Annual Volume requirements for the remainder of the Contract Term. The Adjusted Prevailing Water Rate shall be the rate charged by the Board 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 the Board has 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 the Board and Customer at or near the time of construction.
- 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 the Board. 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, the Board and the Detroit City Council.

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 the Board, 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**

- 4.01 Delivery Location. Water shall be delivered by the Board 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 the Board and Customer.
- 4.02 Limit of Responsibility. The Board shall have no responsibility for distributing, operating, repairing, replacing and maintaining any portions of the 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 Board Responsibility. The Board owns and is responsible for operating and maintaining all parts of its System upstream from Customer's Water Distribution Points. Should the Board fail to maintain its Meter Facilities and/or any Board owned and maintained equipment within the Meter Facilities, Customer shall provide written notice to the Board 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 the Board. Upon receipt of the notice and subject to Section 11.01, the Board 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 the Board 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 the Board.
- 4.04 Extension of Service Area. Customer's distribution of water supplied by the Board 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 the Board explaining the nature, duration and extent of the requested Service Area extension. The Board 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 the Board 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. The Board 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 the Board and Customer and shall be embodied in a written amendment to this Contract.
- 4.06 Sole Supplier. Except as provided in Article 17 herein, the Board shall be the sole supplier of public potable water to Customer's Service Area.

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

- 5.01 Pressure Range. The Board 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 the Board 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 DWSD transmission main, or which are located on a DWSD transmission main and are downstream of and subject to the flow demands of a water meter for another Board 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, the Parties shall meet to discuss the reasons for the non-compliance and, if agreed, develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the pressure event, 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 the Board'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 DWSD Maximum Day at the time Customer experiences a variation from the Pressure Range, then the Board 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 DWSD Maximum Day and during the DWSD Peak Hour.

5.04 Remedy for Non-Compliance with Maximum Flow Rate. The Board has no obligation to supply to Customer more than the Maximum Flow Rate. If Customer exceeds its Maximum Flow Rate on the DWSD Maximum Day or during the DWSD Peak Hour, the Board and Customer may, as needed, take one or more of the following steps:

- A. The Board 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 rate associated with the new Maximum Flow Rate in the subsequent rate year.
- C. The Board may recalculate Customer's rate for the Board's current fiscal year utilizing a revised cost allocation formula as follows:
 - i. For cost allocation purposes only, a new Maximum Flow Rate will be established from the first exceedance date forward. The new Maximum Flow Rate will be at least equal to the flow rate demonstrated by Customer on the DWSD Maximum Day, and may be higher than the actual flow rate demonstrated by Customer. Pursuant to subsection (ii) below, the Board will seek a recommendation from the Technical Advisory Committee's Analytical Work Group (as defined in Section 6.07 herein) on the establishment of the new Maximum Flow Rate. If the Board receives a recommendation and the recommendation is higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then the Board shall be limited to establishing a new Maximum Flow Rate that is at least equal to the flow rate demonstrated by Customer on the DWSD Maximum Day and no higher than the recommendation provided by the Analytical Work Group. If no recommendation is received by the Board, or if the Board 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 the Board shall be limited to establishing a new Maximum Flow Rate that is at least equal to the flow rate demonstrated by Customer on the DWSD Maximum Day and no higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate. In any event, Customer's exceedance of its Maximum Flow Rate will continue to affect each subsequent year's rate calculation until renegotiated. If a rate has been approved for the next fiscal year (July 1st to June 30th) but the rate has not yet been applied, the Board may modify Customer's rate to account for an exceedance of its Maximum Flow Rate. If the Board has built capital facilities based upon Customer's negotiated Maximum Flow Rate and Customer consistently exceeds its Maximum Flow Rate, then the Board may re-calculate the amount of Customer's percentage of the capital cost of such facilities.

- ii. The Board will seek a recommendation from the Technical Advisory Committee's Analytical Work Group, or its successor, whenever it intends to invoke subsection 5.04(C)(i). Any recommendation from the Analytical Work Group shall be received by the Board within sixty calendar days after the Board's request for a recommendation.

5.05 Procedure for Non-Compliance with Maximum Flow Rate. If Customer has failed in its obligations under Section 5.03, the Parties shall meet to discuss the reasons for the non-compliance and develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the non-compliance event, or as otherwise agreed. If the Parties determine that a corrective action plan is not required and a subsequent incident of non-compliance occurs, the Parties shall meet to develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the subsequent incident of non-compliance, 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). 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 DWSD, 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 the Board 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 the Board an amount computed by applying the current rate to the Minimum Annual Volume less any amounts already billed to the Customer by the Board.

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 first two years of the Contract Term. Not later than the second year of the Contract Term, the Board 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, the Board 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 the Board's inability to meet its Pressure Range agreements with Customer and/or the Board's other customers (hereinafter, "Pressure Problem"). The Board may review or monitor Customer's daily rates of flow if a Pressure Problem occurs and the Board's Pressure Range agreement with Customer and/or another customer of the Board 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. The Board 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, the Board 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 rate associated with the new Maximum Flow Rate in the subsequent rate 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 DWSD, 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.

5.09 Board Costs for Corrective Action Plan. If at any time the Board is required under the terms of this Article 5 to develop and implement a corrective action plan and the plan involves incurring capital costs, the Board 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 the Board determines that all or part of the costs should be borne by a specific customer or customers, the Board 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 thereto the corrective action plan.

Article 6.
Technical Advisory Committee

- 6.01 Establishment. The Technical Advisory Committee is formed to facilitate a cooperative working partnership between the Board and its wholesale water customers by facilitating the development of recommendations regarding System planning and supply to DWSD 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 rates, rate 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 the Board in its System planning effort. The Technical Advisory Committee shall have the opportunity each year to review the Capital Improvement Program as prepared by DWSD, prior to its adoption by the Board. The Technical Advisory Committee may consider Customer proposals for improving the operation of Customer's water system and/or the System. The Board will supply the Technical Advisory Committee with information the Board deems reasonably necessary to accomplish the general responsibilities defined in this Section 6.02.
- 6.03 Annual Report by Board. The Board 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 Board 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 the Board and another customer(s) where the terms of the contract(s) invoke the application of Article 14 herein.
- 6.04 Notification of Rates. The Board shall provide Customer and the Technical Advisory Committee with notice of the proposed rates for each fiscal year as early as possible before the implementation of the rates.
- 6.05 Disclosure of Rate Information by Board. Each year, the Board will disclose to Customer and the Technical Advisory Committee information related to wholesale rates.
- 6.06 Disclosure of 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 DWSD 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 1, 2008 are the Analytical Work Group, the Best Practices Work Group, the Contract Work Group, the Customer Service Work Group, the Emergency Preparedness Work Group, and the Rates Work Group. Any reference to a particular work group in this Contract shall include its successor or replacement if altered or discontinued.

Article 7.
Rates

- 7.01 Rates. Customer agrees to pay for all water supplied by the Board at such rates as the Board may establish. Rates shall be reasonable in relation to the costs incurred by the Board for the supply of water and shall conform to Public Act 34 of 1917, Michigan Compiled Laws, Sec. 123.141, et seq., as amended. The Board shall give written notice of any changes in the rates. 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").
- 7.02 Notification of Rates. As soon as possible in the ratemaking process, the Board shall provide information on proposed rates and the draft data and information used in the calculation of proposed rates in a format that will enable Customer to assist in the ratemaking process. Not less than thirty calendar days prior to the hearing required by Act 279, the Board shall provide Customer with written notice of a proposed rate and the underlying data used to calculate the rate. The Board shall meet with Customer to review the rate 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, the Board 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 the Board 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, the Board's determination of a method shall be conclusive and the Customer agrees to accept the estimate established by the Board.
- 7.04 Rate Methodology. The Board agrees to provide to Customer a description of the current methodology for rate making in the form of the "Rates 101" document produced by the Technical Advisory Committee, as may be periodically updated. The "Rates 101" document, entitled *DWSD Rates: Understanding DWSD Wholesale Water Rates*, and any updates thereto shall be provided to Customer via posting on the DWSD website.

Article 8.
Meters and Meter Facilities

- 8.01 Metering Requirement. All water furnished by the Board to Customer shall be measured by water meters installed in Meter Facilities at Customer's Water Distribution Points unless, in the Board's determination, it is not feasible to install water meters due to the configuration of Customer's water system.
- 8.02 Existing Distribution Points. As of the effective date of this Contract, the Board shall own, 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, the Board may take reasonable steps to maintain the appurtenances and charge the reasonable cost of doing so to Customer. Prior to the Board taking action to maintain the appurtenances, the Board shall give Customer thirty days written notice to complete the required maintenance. Notice to the Customer shall not be required if, in the Board'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 after the effective date of this Contract, Customer shall furnish at Customer's expense, a water meter and Meter Facility that meets the Board's specifications. Thereafter, the Board shall furnish any replacement water meters for new Water Distribution Points and the expense shall be recovered through the Board's rates as a System cost. The Board 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 the Board initiates a meter repair or meter replacement, the cost shall be recovered through the Board's rates 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 the Board'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. 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 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 the Board.
- 11.02 Board Liability. Except to the extent that the Board is the proximate cause, the Board 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 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.
- 11.03 Discontinuance of Service. In the event the public health, safety and welfare requires the Board 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 the Board. The Board will provide notice to Customer of any temporary discontinuance of the water supply.

Article 12.
Timely Payment

- 12.01 Bills for water service shall be rendered to Customer on a monthly basis. All such bills shall be due and payable within forty-five 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. The Board may disconnect water service if bills are overdue ninety calendar days from the billing date. The Board 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 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.

**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. Consent to an assignment by either Party shall not be unreasonably withheld.

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

- 14.01 If the Board 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 the Board 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, is approved by Customer's governing body, and is approved by the Board and the Detroit City Council.

**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 the Board, and the Board shall immediately notify Customer, of any emergency or condition that may affect the quality of water in either Party's system.
- 17.02 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 the Board. In cases of emergency, only such water from sources other than the Board 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.
- 17.03 Emergency Connections. During emergencies, Customer's water facilities may be used and connected, at the discretion of the Board, 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 the Board in writing, provided that Customer shall, after making the connection, promptly notify the Board of such event. When the emergency has been abated, the emergency connection must be severed as soon as practicable. The Board, 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 the Board with weekly updates on the emergency and a schedule for abatement of the emergency that must be approved by the Board in writing.
- 17.04 Water Quality. The Board shall endeavor to remain in compliance with all applicable Michigan and Federal laws, rules and regulations regarding drinking water quality.

Article 18.
Rights-of-Way

- 18.01 Use of Rights-of-Way. The Customer shall assist the Board to obtain permission to use streets, highways, alleys, and/or easements in the local governmental units within the Customer's jurisdiction for the purpose of constructing, maintaining, and operating water facilities to adequately service the 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, the Board shall request the Customer and local governmental units within the Customer's jurisdiction to execute such separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by the Board. The Board shall give the Customer notice of any construction work in the Customer's jurisdiction. The Board shall comply with any of Customer's ordinances that apply to the construction. Customer shall inform the Board of the applicable ordinances. The Board and Customer shall meet to review the construction and its impact on their respective operations. The Board 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. Any such facilities constructed, maintained and operated under this section shall remain the property of the Board and shall not be operated or maintained by any entity other than the Board or its authorized representatives.
- 18.02 Relocation of Facilities. Should future construction by any ~~federal, state or city, township, village, or county~~ require relocation of a water transmission main, Meter Facility or other Board facility, the cost incurred by the Board for such relocation, if not reimbursed by the ~~agency~~ entity requiring the relocation, will be charged in future rates as a common-to-all cost to all System users. ~~Otherwise, the cost incurred by the Board for construction requiring the relocation of a water transmission main, Meter Facility or other Board facility that is proposed, required, undertaken, conducted or facilitated by Customer will be charged to Customer.~~
- 18.03 Easements. Subject to the provisions of Section 18.01 herein and to the extent that Customer has jurisdiction, the Board 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 Board facilities. This consent by Customer is given in compliance with Article 7, Sec. 29 of the Michigan Constitution of 1963, provided that the Board 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 the Board 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 the Board, understands that any increase in the volume of water it receives from the System is not a guarantee of increased capacity in the Board's wastewater disposal system.

Article 21.
Construction Standards

21.01 The Board 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 and water towers. The Board'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 the Board's written approval of the filling schedule ("Filling Schedule") of the storage facility. The Board 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, the Board'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 Board approved Filling Schedule. The Board 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 Sections 5.03 and 5.04 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 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 law of the State of Michigan. ~~Each Party agrees, consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Wayne County, Michigan, for any action arising out of this Contract. Each Party also agrees that it shall not commence any action against the other Party because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Contract in any state or federal court of competent jurisdiction other than one in Wayne County, Michigan.~~
- 23.06 There are no third party beneficiaries to this Contract and this Contract shall not be construed to benefit any persons other than the Board 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, the Board 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 Any and all documents, memoranda, reports, exhibits or other written material referred to in this Contract are and shall be incorporated by reference herein.
- 23.10 This Contract shall be deemed to be mutually drafted.

(Signatures appear on next page)

In Witness Whereof, the City and Customer, by and through their duly authorized officers and representatives, have executed this Contract.

City of _____:

By: _____

Its: _____

City of Detroit:

By: _____
Dave Bing

Its: Mayor

APPROVED BY
CUSTOMER'S GOVERNING BODY ON:

Date

APPROVED BY DETROIT
BOARD OF WATER COMMISSIONERS ON:

Date

APPROVED BY
DETROIT CITY COUNCIL ON:

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 Board approved emergency connections;
4. The designation of appurtenances to be maintained by Customer and those to be maintained by the Board; 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), the Board may be unable to meet the stated Pressure Range commitments in this Contract or in the contract of another customer of the Board 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)
2010		
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		
2034		
2035		
2036		
2037		
2038		
2039		

EXHIBIT B

Table 2
Pressure Range and Maximum Flow Rate

Calendar Year	Pressure Range (psi)		Pressure Range (psi)		Pressure Range (psi)		Maximum Flow Rate (mgd)	
	Meter 1		Meter 2		Meter 3		Max Day	Peak Hour
	Min	Max	Min	Max	Min	Max		
2009								
2010								
2011								
2012								
2013								
2014								
2015								
2016								
2017								
2018								
2019								
2020								
2021								
2022								
2023								
2024								
2025								
2026								
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2028								
2029								
2030								
2031								
2032								
2033								
2034								
2035								
2036								
2037								
2038								

EXHIBIT B

Table 3
Flow Split Assumptions

Meter	Assumed Flow Split (2009-2010)
1	%
2	%
3	%

Table 4
Addresses for Notice

If to the Board:	If to Customer:
Director Detroit Water and Sewerage Department 735 Randolph Detroit, Michigan 48226	Title Address City, Michigan, Zip Code

TAC Vote on Proposed Revised Language in the Water Model Contract – October 23, 2009

Subject: On October 15, 2009, the Technical Advisory Committee (TAC) reviewed and discussed proposed revisions to the water model contract, previously approved by the TAC on February 1, 2008. The proposed changes can be viewed https://team.cdm.com/eRoomReq/Files/mi/CS1445/0_81d6/Model%20Water%20Contract%20-proposed%20revisions%20for%202009-2010.pdf. The TAC agreed to express its opinion about the changes in a voting process which will close on November 9. After the voting, the customer outreach team will compile the results and forward them to TAC members.

Background: In 2008, DWSD (with concurrence from the TAC Contracts Workgroup) agreed to identify/collect potential contract language changes during the contract negotiation process. In the last 18 months of negotiations with more than 60 customers, DWSD has identified eight potential changes, as shown below. If approved, the changes will be implemented as DWSD negotiates new contracts and renegotiates Exhibit B's (which must go through a formal amendment process). Note: customers who have already negotiated contracts are not required to accept the changes and can continue with the current contract as desired.

Summary of Proposed Language Revisions:

- i. 3.01 – suggested by Rockwood
- ii. 3.05 (New) – suggested by Hazel Park
- iii. 5.01 – suggested by DWSD
- iv. 5.10 – suggested by Hazel Park
- v. 18.02 – suggested by Farmington Hills
- vi. 18.03 – suggested by DWSD
- vii. 23.05 – suggested by Warren, Hazel Park, and others

Voting: Wholesale water customer representatives are asked to vote either "yes" or "yes with comments" or "no" on the proposed revised contract language per the marked-up contract.

Vote via eRoom: eRoom users may respond to the poll posted at:
https://team.cdm.com/eRoom/mi/CS1445/0_81d3

Vote via FAX: Complete the following information and fax to 248-476-2515 by November 9, 2009.

Name and Title: _____

Community Name: _____

_____ Yes, I approve the proposed water model contract language revisions.

_____ Yes, I approve the proposed water model contract language revisions, with comments.

_____ No, I do not approve the proposed water model contract language revisions.

GENESEE COUNTY DRAIN COMMISSIONER'S OFFICE
DIVISION OF WATER AND WASTE SERVICE
GENESEE COUNTY, MICHIGAN
WATER ADVISORY BOARD

PRELIMINARY

RESOLUTION NO. _____

A RESOLUTION RECOMMENDING THAT THE GENESEE COUNTY DRAIN COMMISSIONER'S OFFICE, DIVISION OF WATER AND WASTE SERVICES, EXECUTE THE RAW WATER SUPPLY CONTRACT WITH THE KAREGNONDI WATER AUTHORITY AND PURCHASE CAPACITY NOT TO EXCEED FORTY-TWO (42) MILLION GALLONS OF WATER PER DAY

Moved by _____, seconded by _____, to adopt the following:

WHEREAS, the Genesee County Drain Commissioner's Office ("GCDC") is a County Agency by and through its Division of Water & Waste Services (WWS) that operates pursuant to Act 342 of the Michigan Public Acts of 1939, as amended ("Act 342"); and

WHEREAS, pursuant to Act 342, the GCDC is responsible in part for the establishment of a system or systems of water improvements and services within or between cities, villages, townships, charter townships, or any duly authorized and established combinations thereof; and

WHEREAS, pursuant to Act 342, the GCDC purchases water from the Detroit Water and Sewerage Department ("DWSD") via the City of Flint; and

WHEREAS, the GCDC thereafter sells the water it purchases to various municipal governments that have entered into water contracts with the GCDC; and

WHEREAS, the GCDC has established a Water Advisory Board, which consist of representatives from various municipal governments that have entered into water contracts with the GCDC; and

WHEREAS, most issues that may have an impact on the water contracts that have been entered into between the various municipal governments and the GCDC, including issues involving rates, are first presented to the Water Advisory Board for a recommendation to the GCDC; and

WHEREAS, in 2010, the Counties of Genesee, Lapeer, and Sanilac along with the Cities of Flint and Lapeer established the Karegnondi Water Authority ("KWA") pursuant to Act 233 of the Michigan Public Acts of 1955, as amended; and

PRELIMINARY

WHEREAS, the KWA has presented to the GCDC a Raw Water Supply Contract, which provides among other things for the GCDC to purchase capacity for the delivery of raw water from the KWA; and

WHEREAS, by the GCDC executing a the Raw Water Supply Contract with the KWA, the GCDC will have the ability to negotiate all future contracts, including rates, directly with the KWA; and

WHEREAS, based upon the preliminary studies available, it is believed that if the GCDC purchases capacity from the KWA instead of water from DWSD via the City of Flint, that the end rate payers will benefit in future years; and

WHEREAS, based upon the preliminary studies available and the past, present, and future water consumption by the various municipal governments that purchase water from the GCDC, it is projected that it would be in the best interest of the GCDC to execute the Raw Water Supply Contract with the KWA and purchase capacity not to exceed forty-two (42) million gallons per day; now

THEREFORE BE IT RESOLVED THAT, that GCDC Water Advisory Board hereby recommends that the GCDC enter into the Raw Water Supply Contract with the KWA and further purchase capacity not to exceed forty-two (42) million gallons per day.

BE IT FURTHER RESOLVED THAT the GCDC Water Advisory Board hereby recommends that the County Agency acquire design and construct, operate, and maintain a water treatment facility to provide both treated and non-treated water to its customers.

BE IT FURTHER RESOLVED THAT the GCDC Water Advisory Board hereby authorizes its Chairperson, Robert W. Cole, Jr. to sign this Resolution and present it to Jeffrey Wright, the Genesee County Drain Commissioner.

Roll Call Vote: _____

The foregoing Resolution was duly adopted at a regular meeting of the Genesee County Drain Commissioner's Office, Division of Water and Waste Services, Advisory Board meeting held on the _____ day of September 2011.

Robert W. Cole, Jr.
Chairperson
GCDC Water Advisory Board



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House Committee Passes Bill to Fix Taxable Value Inequity (known as WPW)

© September 15, 2011 11:02 by [Summer Minnick](#)

The House Tax Policy Committee voted unanimously to support HB 4602 (Rep. Hobbs, D- Southfield), which is able to fix the longstanding inequity regarding commercial and industrial property valuation based on occupancy. Due to a Supreme Court decision in 2002, referred to as the "WPW case" local governments were only able to reduce taxable value based on reductions in occupancy, but they could not increase it back up once the occupancy increased. The bill would fix that by striking the use of occupancy as a factor in future valuations (it is not retroactive). We are hopeful that the bill will move out of the full House soon and we can work on trying to get this important legislation through the Senate. The League has been supporting this change for years.

Summer Minnick is the Director of State Affairs. She can be reached at (517) 908-0301 or sminnick@mml.org



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GCMPC
1101 Beach St., Room 223
Flint, MI 48502

**Friday
November 4th**

Save the Date!

7th Annual Genesee County Planning Forum

8:00 A.M. — 12:00 P.M.
Mass Transportation Authority

This year's topics include:

- The Art of Large-Scale Community Engagement
- Focus on Agriculture **and** Legal Issues of Urban Farming
- Green Filtering, Infrastructure and Streets
- Planning Commissioner Basics
- Michigan Main Street Program
- Distracted Driving



The Genesee County Planning Forum is an exciting opportunity for local officials and decision makers to learn about local planning issues. Registration packets will follow and space is limited, so be sure to register as soon as you receive your packet.

We hope to see you there!