

Utility Revenues Trust Agreement

Summary of Material Terms

Parties

The Trust Agreement is being entered into by and between the City and U.S. Bank Trust Company, National Association (U.S. Bank"). The Great Lakes Water Authority is ("GLWA") not a party to the Trust Agreement.

Receiving Fund

The Trust Agreement, as required under the Term Sheet and Settlement Agreement, requires all revenues generated from the operation of the System ("Utility Revenues") to be deposited into a Receiving Fund, which is the existing "Wade Trim" account held at Comerica Bank. The City will enter into a Deposit Account Control Agreement with Comerica and U.S. Bank to restrict the withdrawal of monies held in the Receiving Fund to twice weekly transfers to U.S. Bank.

Additionally, the City will enter into a lockbox agreement with Comerica, pursuant to which Comerica will establish a PO Box to which all mailed customer payments will be mailed. The City is also required to have all electronically paid customers payments be deposited directly into the Receiving Fund. For any payments paid in person, payments shall be deposited daily into the on-site safe and must be deposited into the Receiving Fund within five (5) days of receipt.

Trust Fund

The Trust Fund is being established with U.S. Bank pursuant to which U.S. Bank will hold all Utility Revenues until the 25th day of each month, and then disburse the funds to: GLWA for the payment of the monthly amounts then due (including any past due amounts); and to the City to pay the costs of operating the local System, after withholding any amounts due to the Michigan Finance Authority for the payment of the City's 1999 Revenue Bonds.

Rate Study and Reports

The Trust Agreement continues the requirement of the City to provide for an annual rate study, which shall include a cash flow forecast for the first three years to assist the City with forecasting any monthly deficiencies necessary to pay all System obligations.

The City shall also provide monthly copies of the Receiving Fund statements to GLWA and the Department of Treasury.

RESOLUTION APPROVING SETTLEMENT AGREEMENT; WATER AND SEWAGE SERVICES AGREEMENTS; TRUST AGREEMENT; AND LOCKBOX AGREEMENT

**City of Highland Park
County of Wayne, State of Michigan**

Minutes of a regular meeting of the City Council of the City of Highland Park, County of Wayne, State of Michigan (the “City”), held on March 18, 2024, at 7:00 p.m., prevailing Eastern Time.

PRESENT: Members: _____

ABSENT: Members: _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City has been engaged in long-term litigation (the “Litigation”) with the Great Lakes Water Authority (“GLWA”) related to the provision of wholesale water supply and sewage disposal services by GLWA to the City and the related payment for such services; and

WHEREAS, the City has been represented by Grigsby & Associates, Inc., Danville, CA, and Morganroth & Morganroth, PLLC, Birmingham, MI (together, “Litigation Counsel”), during the course of the Litigation; and

WHEREAS, the State of Michigan (the “State”) has been assisting the City and GLWA to resolve the Litigation in the best interests of each of the parties; and

WHEREAS, the City and GLWA have resolved the Litigation pursuant to the terms of that certain Settlement Agreement and Mutual Release (including all exhibits and attachments thereto, the “Settlement Agreement”), being entered into by and between the City, GLWA, and the State; and

WHEREAS, the terms of the Settlement Agreement require the City to provide for the intercept and distribution by a trustee, pursuant to a trust agreement (including all exhibits and attachments thereto, the “Trust Agreement,” and together with the Settlement Agreement, the “Settlement Documents”), of the revenues (“System Revenues”) derived from services provided by the City’s water supply and sewage disposal system (the “System”); and

WHEREAS, this City Council previously approved the Settlement Agreement, subject to the redrafting of the Trust Agreement; and

WHEREAS, since the previous Council approval, the Trust Agreement has since been redrafted and is in form and substance compliant with the City Charter and State and federal law; and

WHEREAS, certain limited provisions of the Settlement Agreement have been slightly modified to reflect changes arising from the new Trust Agreement, including to the Water Supply Services Agreement and Wastewater Disposal Services Agreements (together, the “Water and Sewage Services Agreements”) included as exhibits to the Settlement Agreement; and

WHEREAS, included in the package with this resolution are redline copies reflecting the changes made to the Settlement Agreement and the Water and Sewage Services Agreements; and

WHEREAS, the City previously entered into Administrative Consent Order #ACO-399-06-2017, dated July 28, 2017 (the “ACO”), which required the City to make certain modifications to its waterworks system, which improvements were necessary in order for the City to meet its obligations under relevant federal and state law; and

WHEREAS, the ACO needs to be updated in order to reflect the terms of the settlement, and the City and the Department of Environment, Great Lakes, and Energy have negotiated a new Administrative Compliance Agreement (the “ACA”) to replace the ACO; and

WHEREAS, the parties enter into the Settlement Agreement in good faith and to fully and finally compromise and settle all claims or potential claims which they may have against one another arising from the Litigation, whether or not specifically raised through the Litigation; and

WHEREAS, Litigation Counsel each approve the terms of the Settlement Documents and recommend that the City Council approve the Settlement Documents and authorize and direct the Mayor, the City Clerk, the City Treasurer, or any person acting in the role of an interim or deputy City Treasurer (the “Treasurer”), and any other officers, employees, attorneys, and agents to execute such Settlement Documents.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. **Approval of Settlement Agreement.** The City Council hereby ratifies and confirms its approval of the Settlement Agreement as presented herein, including all exhibits and attachments thereto, all as attached hereto as Exhibit A, and hereby authorizes and directs the Mayor and the City Clerk to execute such documents.

2. **Approval of Water Supply Services Agreement.** The City Council hereby ratifies and confirms its approval of the Water Supply Services Agreement as presented herein, attached as Exhibit D to the Settlement Agreement, and hereby authorizes and directs the Mayor and the City Clerk to execute such document.

3. **Approval of Wastewater Services Agreement.** The City Council hereby ratifies and confirms its approval of the Wastewater Services Agreement as presented herein, attached as Exhibit D to the Settlement Agreement, and hereby authorizes and directs the Mayor and the City Clerk to execute such document.

4. **Approval of Administrative Compliance Agreement.** The City Council hereby ratifies and confirms its approval of the Administrative Compliance Agreement as presented herein, attached as Exhibit B to the Settlement Agreement, and hereby authorizes and directs the Mayor and the City Clerk to execute such document.

5. **Approval of the Trust Agreement.** The City Council hereby approves the Trust Agreement, attached as Exhibit E to the Settlement Agreement, including all exhibits and attachments thereto (including, without limitation, the Deposit Account Control Agreement), and hereby authorizes and directs the Mayor, the City Clerk, and the Treasurer to execute such documents, with such additional changes as may be (a) required by either U.S. Bank Trust Company, National Association, as trustee under the Trust Agreement, or Comerica Bank, as depository for the Receiving Fund (as defined in the Trust Agreement) and (b) approved by Litigation Counsel.

6. **Approval of Lockbox Agreement.** The City Council hereby approves the Lockbox Agreement with Comerica to provide for the restriction on withdrawals from the Receiving Fund, attached hereto as Exhibit B, and hereby authorizes and directs the Mayor, the City Clerk, and/or Treasurer to execute such document with such additional changes as may be (a) required by either U.S. Bank Trust Company, National Association, as trustee under the Trust Agreement, or Comerica Bank, as depository for the Receiving Fund (as defined in the Trust Agreement) and (b) approved by Litigation Counsel.

7. **Rescission.** All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution be and the same hereby are rescinded.

8. **Immediate Effect.** This resolution is given immediate effect.

AYES: Members: _____

NAYS: Members: _____

RESOLUTION DECLARED ADOPTED.

Brenda Green
City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Highland Park, County of Wayne, State of Michigan, at a regular meeting held on March 18, 2024, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Brenda Green
City Clerk

EXHIBIT A
SETTLEMENT AGREEMENT

EXHIBIT B
LOCKBOX AGREEMENT

41920067.4/147515.00048

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (including all exhibits referenced herein, the “Agreement”) is entered into as of the last date signed below (the “Effective Date”) by and between the Great Lakes Water Authority (“GLWA”), the City of Highland Park (“Highland Park”) and the State of Michigan (the “State”). GLWA, Highland Park, and the State are sometimes collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

A. In 1983, the City of Detroit (“Detroit”) and Highland Park entered into a Sewer Service Contract (the “1983 Contract”) to formalize a previously unwritten agreement for Detroit to provide Highland Park wastewater disposal services.

B. In 1996, Detroit and Highland Park entered into a settlement agreement (the “1996 Settlement”) and consent judgment (the “1996 Judgment”) to settle Highland Park’s appeal to the Sixth Circuit from judgments entered against Highland Park in actions brought by Detroit under the 1983 Contract, Eastern District of Michigan Case Nos. 92-CV-76775 and 94-CV-73135.

C. In 2012, emergency connections were opened between Detroit and Highland Park to supply Highland Park with potable water.

D. On February 17, 2014, Detroit sued Highland Park in Wayne County Circuit Court for failure to pay amounts billed for wastewater disposal and potable water supply services, Case No. 14-001974-CK, and Highland Park filed a counterclaim (the “2014 Case”). On April 30, 2015, the Wayne County Circuit Court entered a Judgment on July 31, 2014 Opinion and Order against Highland Park in the amount of \$19,244,838.53, plus interest and costs (the “2015 Judgment”). On June 20, 2023, the Wayne County Circuit Court, on order of the Michigan Court of Appeals, reinstated the 2015 Judgment. Highland Park appealed from that ruling in Michigan Court of Appeals Case No. 367193.

E. In November 2014, Detroit and the Counties of Macomb, Oakland, and Wayne approved Articles of Incorporation establishing GLWA as a municipal authority under Act 233 of 1955, MCL 124.282. On June 12, 2015, Detroit, through its Water & Sewerage Department, entered into a Regional Sewage Disposal System Lease and a Regional Water Supply Lease Agreement with GLWA (collectively, the “Leases”). On January 1, 2016, GLWA began operating the regional water and wastewater systems in accordance with the Leases and other agreements between GLWA and Detroit. Pursuant to the Leases, Detroit assigned the 2015 Judgment to GLWA.

F. On October 28, 2016, Highland Park sued GLWA and other defendants in the U.S. District Court for the Eastern District of Michigan for alleged violations of the Clean Water Act, Case No. 16-cv-13840 (the “2016 Case”). On September 26, 2018, the U.S. District Court dismissed Highland Park’s claims in that action. On May 18, 2020, the Sixth Circuit Court of Appeals affirmed the dismissal in Sixth Circuit Case Nos. 19-1979 and 19-1981. The District Court then awarded GLWA attorneys’ fees in the amount of \$241,418.75 in the 2016 Case. Highland Park posted a cash bond in that amount with the U.S. District Court clerk and appealed again to

the Sixth Circuit Court of Appeals (Case No. 22-1288). The Sixth Circuit affirmed the U.S. District Court's ruling on September 20, 2023. Highland Park filed a petition for rehearing.

G. On August 6, 2019, Highland Park sued the State Land Bank Authority in the Michigan Court of Claims, Case No. 19-000129-MZ (the "2019 Case").

H. On September 8, 2020, GLWA sued Highland Park in the Wayne County Circuit Court, Case No. 20-011589-CB, alleging Highland Park failed to pay amounts due for wastewater disposal and potable water supply services (the "2020 Case"), seeking amounts owed after the filing of the 2014 Case. Highland Park asserted counterclaims for declaratory relief alleging that it had been overcharged for wastewater disposal and potable water supply services under the terms of the 1996 Settlement and the 1996 Judgment.

I. On July 28, 2021, GLWA sued the State in the Michigan Court of Claims, Case No. 21-000151-MM, to recover amounts due for potable water supplied by Detroit and GLWA to Highland Park (the "2021 Case"). On August 16, 2023, the Court of Claims dismissed GLWA's complaint. On November 3, 2023, the Court of Claims stayed proceedings and extended the deadline to file post-judgment motions to February 1, 2024.

J. On April 21, 2022, GLWA sued Highland Park in Wayne County Circuit Court for its failure to adopt certain rules approved by GLWA in connection with an industrial pretreatment plan, (the "2022 Case"). The Wayne County Circuit Court granted summary disposition in favor of GLWA and granted GLWA's request for declaratory relief by declaring the updated rules effective. Highland Park appealed to the Michigan Court of Appeals, Case No. 362416.

K. The Parties executed a term sheet dated October 18, 2023 (the "Term Sheet") providing that they "shall enter into a settlement agreement by January 15, 2024 that incorporates the basic terms set forth below including mutually agreeable release language." The Parties agreed to an extension of the January 15, 2024 deadlines referenced in the Term Sheet and signed stipulated orders confirming that agreement and extension.

L. The Parties have denied all liability or wrongdoing alleged in (1) the 2014 Case, (2) the 2016 Case, (3) the 2019 Case, (4) the 2020 Case, (5) the 2021 Case, and (6) the 2022 Case (collectively, including all matters on appeal in these cases, the "Litigation"). The terms, representations, warranties, and other statements contained herein are non-admissible as evidence of an admission of liability or wrongdoing.

M. Under the Term Sheet, the State and Highland Park agreed to amend or replace the current Administrative Consent Order (ACO) ACO-399-06-2017 between the Drinking Water and Environmental Health Division (DWEHD) of the Department of Environment, Great Lakes, and Energy (EGLE) and Highland Park, to address the requirements of the Term Sheet that are specific to Highland Park, as well as address any outstanding items from the current ACO. The current ACO will be replaced with the Administrative Compliance Agreement attached hereto and executed contemporaneously with this Agreement.

N. The Parties enter into this Agreement in good faith and to fully and finally compromise and settle all claims or potential claims which they may have against one another arising from the Litigation, whether or not specifically raised through the Litigation, and in

consideration of the mutual promises and representations contained in this Agreement, covenant and agree as follows.

TERMS

1. Term Sheet. The Parties agree that all of the terms and conditions provided in the Term Sheet, attached hereto as **Exhibit A**, are incorporated herein and made part of this Agreement.

a. Mutual Release. Except for the performance of the obligations set forth in this Agreement, or incorporated by reference in this Agreement, and subject to the terms and conditions of this Agreement, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties, for themselves and for any individual or legal entity which claims a derivative right herein, completely release and forever discharge each other and their past, present and future officers, directors, members, stockholders, attorneys, agents, servants, representatives, employees, parents, subsidiaries, affiliates, partners, indemnitors, departments, agencies, branches, predecessors, successors-in-interest and assigns, and related entities, of and from any and all claims, demands, causes of action, rights, damages, costs, attorneys' fees (except as provided herein), and compensation of any nature whatsoever, whether based in tort, contract (express, implied or otherwise), or any other theory of recovery, which the Parties now have or may hereafter accrue or otherwise acquire, in any way arising, directly or indirectly, out of or in any manner related to alleged acts or omissions in the Litigation. This Agreement, subject to the terms below, shall be a fully binding and complete settlement between the Parties.

The release by GLWA of the 2015 Judgment and claims asserted in the 2014 Case and 2020 Case, and Highland Park's release and waiver of any further challenge to GLWA's rules that were the subject of the 2022 Case (Wayne County Circuit Court Case No. 22-004754-CB), shall not be effective (a) unless all Parties execute this Agreement and execute within 10 business days of the first authorized signature all exhibits hereto, including the Water and Sewage Services Contracts, ACA, and Trust Agreement, each attached hereto and defined below, (b) until receipt by the trustee identified in the Trust Agreement, defined below, of one month of all amounts paid for Highland Park water, sewer (including industrial waste control) and stormwater services, as specified in the Trust Agreement, and distribution by the trustee identified in the Trust Agreement of such funds to GLWA pursuant to the Trust Agreement, and (c) until receipt by GLWA of the \$25 million sewer infrastructure grant funds and the State's commitment in writing to allocate to GLWA the \$5 million in drinking water infrastructure funds referenced at Paragraph 2.c of the Term Sheet.

b. Administrative Compliance Agreement. Highland Park and the State Department of Environment, Great Lakes and Energy ("EGLE") will amend and replace the July 28, 2017 Administrative Consent Order with the Administrative Compliance Agreement ("ACA") executed contemporaneously with this Agreement and attached hereto and incorporated herein as **Exhibit B**.

c. Consent Judgment. The Wayne County Circuit Court shall retain jurisdiction to enforce the terms of this Agreement in the 2014 Case. After execution by all Parties of this Agreement, including all exhibits hereto, this Agreement will be entered by the Wayne County Circuit Court in the 2014 Case with a copy of this fully executed Agreement as a consent judgment. A proposed stipulated order for entry of that consent judgment is attached hereto as **Exhibit C**. To the extent that any future disputes over water and sewer services arise between Highland Park and GLWA under the Water and Sewage Services Contracts attached as exhibits to this Agreement, such disputes shall be resolved in accordance with the dispute resolution procedures set forth in those agreements.

d. Water and Sewage Services Contracts. Highland Park and GLWA have executed contemporaneously with this Agreement contracts for wastewater disposal services (inclusive of industrial waste control and stormwater services) and potable water supply attached hereto and incorporated herein as **Exhibit D** (the “Water and Sewage Services Contracts”). Subject to all terms and conditions of this Agreement and the Water and Sewage Services Contracts between GLWA and Highland Park, beginning January 1, 2024 and on a going forward basis, Highland Park shall pay the full amount of GLWA’s monthly charges pursuant to the terms of the Water and Sewage Services Contracts between GLWA and Highland Park.

e. Trust Agreement. All amounts paid for all Highland Park water and sewer services, including all amounts paid for industrial waste control and stormwater services, shall be placed into a trust pursuant to a trust agreement, defined below, in which the trustee distributes such amounts to GLWA and any remaining amounts to Highland Park on the same date. The amounts required to be placed into the trust include all payments received for any and all types of water and/or sewer services, including payments for water, sewer (including IWC) and stormwater services provided by Highland Park or any person or entity acting on its behalf. These amounts include IWC charges, water consumption revenue, sewer consumption revenue, administrative charges, readiness-to-serve charges, stormwater charges, drainage charges, billing charges, miscellaneous charges (fees or charges related to permits, meters, and/or surcharges), and any other accounts, charges, fees, or amounts paid in connection with any services provided by the water department or any entity acting on its behalf, including any and all amounts received in payment for any bill issued by or on behalf of the Highland Park water department. Any grants or loans from the State of Michigan to Highland Park for infrastructure projects shall not be part of or included in the trust. The trust will be administered pursuant to the trust agreement executed by GLWA, Highland Park and Comerica Bank contemporaneously with this Agreement and attached hereto as **Exhibit E** (the “Trust Agreement”).

f. Independent Rate Analyst. By January 1, 2024, Highland Park shall increase its local water and sewer rates by adopting an interim amended budget for the period of January 1, 2024 to June 30, 2024. For all subsequent fiscal years, Metro Consulting Associates or its State-of-Michigan-approved successor shall annually retain an independent rate analyst, subject to the approval of the State, to calculate

necessary adjustments in its local water and sewer rates to ensure that the funding for Highland Park's water and sewer operations is sufficient to ensure payment of all GLWA charges and all overhead, maintenance, and operational costs associated with its local sewer operations. The rate analyst shall recommend the necessary rates to Highland Park and Highland Park shall annually adjust its local water and sewer rates in accordance with the recommendations of its rate analyst.

g. Dismissal of Claims. After (a) execution by all Parties of this Agreement and all the exhibits hereto, including the Trust Agreement attached hereto as Exhibit E, (b) receipt by the trustee identified in the Trust Agreement of one month of all amounts paid for Highland Park water, sewer (including industrial waste control) and stormwater services, as specified in the Trust Agreement, and distribution by the Trustee (as defined in the Trust Agreement) of such funds to GLWA pursuant to the Trust Agreement, and (c) receipt by GLWA of the \$25 million sewer infrastructure grant funds and the State's commitment in writing to allocate to GLWA the \$5 million of drinking water infrastructure funds referenced at Paragraph 2.c of the Term Sheet, the Parties shall submit proposed orders of dismissal with prejudice of all of their respective claims in the Litigation as set forth in Paragraph 9 of the Term Sheet, for dismissal of (1) the 2014 Case and satisfaction of the 2015 Judgment, (2) the 2016 Case, including the petition for rehearing in the appeal therefrom, (3) the 2019 Case, (4) the 2020 Case, (5) the 2021 Case, and (6) the 2022 Case, in the form of the proposed orders attached hereto at **Exhibit F**.

h. Release of Cash Bond. The \$241,418.75 cash bond, including any interest thereon, deposited by Highland Park with the U.S. District Court Clerk in the 2016 Case shall be released to GLWA. Highland Park and GLWA shall submit the stipulation in the form attached hereto as **Exhibit G** simultaneously with the proposed orders of dismissal referred to in the preceding paragraph.

2. Warranties. The Parties each warrant and represent that they have read this Agreement in its entirety, have had full opportunity to review and discuss the Agreement with their attorneys, fully understand and enter it freely and knowingly and that the signatories below have the requisite authority to execute this Agreement.

3. Compliance with Contracts. The Parties agree that neither this Agreement nor the performance thereof violates or constitutes a default under the provisions of any contract to which each Party is/was bound or under applicable law. The Parties further warrant that each of them is not subject to any restrictive covenant arising from prior agreements, writings or documents under which it is in any way restricted from fulfilling any of the obligations of this Agreement.

4. Entire Agreement and Modification. This Agreement, including the exhibits referenced herein and attached hereto, contains the entire understanding of the Parties with respect to the subject of this Agreement and completely integrates all prior discussions or agreements, written or oral, except for those expressly referenced herein. This Agreement may not be modified in any manner, except by written agreement signed by all Parties with approval from the Highland Park City Council, GLWA Board of Directors, and the Governor of the State of Michigan and a joint stipulation of all the Parties and a Wayne County Circuit Court order. The Parties shall file a

joint stipulation and notice to the Court for any such modification. Notwithstanding anything to the contrary herein, the ACA, Water and Sewage Services Contracts and the Trust Agreement may be amended according to their terms and without any stipulation or court order.

5. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. The Parties consent to entry of this Agreement as a consent judgment in the 2014 Case and agree that the Wayne County Circuit Court retains jurisdiction to enforce the terms of this Agreement. GLWA and Highland Park agree to resolve future disputes over water and sewer services through binding, mandatory, expedited arbitration as set forth in the Water and Sewage Services Contracts.

6. Rules of Construction. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent. In the event any term or condition of this Agreement is determined to be vague, ambiguous or unenforceable, such term will not be construed against any Party because of the Party's role in the preparation of this Agreement and all remaining provisions shall be fully enforceable and binding on the Parties.

7. Severability. The Parties agree that the provisions of this Agreement are severable, and if any provision of this Agreement is found to be inconsistent with, void, or unenforceable under existing or future law having jurisdiction over and otherwise properly governing the subject matter of the provision, the provision shall be deemed to be rescinded or modified in accordance with any such law, but all other provisions of this Agreement shall continue and remain in full force and effect. The Parties agree that this Agreement shall be binding upon and shall inure to the benefit of the Parties' successors and assigns.

8. Waiver of Challenge to Legality of Agreement. The Parties agree that this Agreement, and all documents referenced in this Agreement are legal, valid, and enforceable as written under applicable law. As a result, the Parties waive their right to later challenge the legality of this Agreement or the documents referenced in this Agreement.

9. Injunctive Relief. The Parties reserve their rights to pursue injunctive relief or take other appropriate action in the Wayne County Circuit Court to enforce the provisions of this Agreement.

10. Notices. Unless otherwise agreed in writing by the Party receiving notice or otherwise specified in exhibits hereto, notices allowed or required to be given under this Agreement shall be made via writing and mailed by first class mail, addressed as follows:

a. If to GLWA:
Chief Executive Officer
Great Lakes Water Authority
735 Randolph, Suite 1900
Detroit, Michigan 48226
Attention: General Counsel

b. If to Highland Park:
Mayor
City of Highland Park

12050 Woodward Avenue
Highland Park, MI 48203

cc: Water Department Director
City of Highland Park
12050 Woodward Avenue
Highland Park, MI 48203

c. If to State of Michigan:
Michigan Department of Attorney General
Environment, Natural Resources, and Agriculture Division
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909

GLWA, Highland Park, and the State of Michigan, by and through their duly authorized officers and representatives, have executed this Agreement.

City of Highland Park:

By: _____
Glenda McDonald
Mayor

Attest:

By: _____
Brenda Green
City Clerk

Approved by
Highland Park City Council on:

_____ Date

Great Lakes Water Authority:

By: _____
Suzanne R. Coffey
Its: Chief Executive Officer

Approved by
GLWA Board of Directors on:

_____ Date

Approved as to Form by
GLWA General Counsel on:

Signature _____ Date

State of Michigan

By: _____

Its:

INDEX OF EXHIBITS

- A. Term Sheet dated October 18, 2023
- B. Administrative Compliance Agreement
- C. Stipulation for entry of consent judgment
- D. Water and Sewage Services Contracts
- E. Trust Agreement
- F. Proposed orders of dismissal with prejudice of Litigation
- G. Stipulation to release \$241,418.75 cash bond



Judicial Resource Services PC

Facilitation - Mediation

28800 8 Mile Road, Suite 111
Farmington Hills, MI 48336

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James J. Rashid
Circuit Judge, Retired

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MEDIATION COMMUNICATION

Term Sheet– 10/18/2023

1. The Great Lakes Water Authority (GLWA), the City of Highland Park (HP), and the State of Michigan (SOM) shall enter into a settlement agreement by January 15, 2024 that incorporates the basic terms set forth below including mutually agreeable release language. The various documents referenced and necessary to effectuate this term sheet shall be attached, signed, and incorporated as a part of that agreement by that date. In addition, the Department of Environment, Great Lakes and Energy (EGLE) will either amend or replace its July 28, 2017 Administrative Consent Order (ACO) by January 15, 2024 to incorporate the terms set forth below that are specific to HP.
2. The SOM shall:
 - a. Pay for the reasonable and necessary cost to install water master meter(s) on water lines and sufficient temporary meters to estimate the sewage flow produced by HP. Metro Consulting (Metro) will be responsible for conducting the necessary work to install the meters. EGLE shall oversee that work pursuant to its regulatory authority. Metro will submit a proposal(s) to EGLE for this work, which will include the number and placement location of those meters in accordance with the provisions below. Metro will consult with GLWA in preparing the proposal(s). EGLE must approve in writing any proposal before installation of meters or implementation begins. In addition:
 - i. The water master meter(s) and temporary sewage metering devices will be installed subject to GLWA's specifications.
 - ii. The water master meter(s) shall be installed at all open points of connection between HP and GLWA.
 - iii. Upon transfer, GLWA will own, operate, and maintain the water master meter(s). HP shall be responsible for the cost of maintaining and operating the sewer meters.
 - iv. HP and GLWA shall agree to a third party and procedures to maintain and operate the sewer meters including the sharing of data produced by the meters. If the parties cannot agree to a third party or the procedures associated with operation, SOM shall identify the third party and prescribe the procedures.
 - v. HP shall have the same access to the Wholesale Automated Meter Reading (WAMR) system and Greater Detroit Regional Sewer System (GDRSS) data for the installed HP water and sewer meters as all other customer communities served by GLWA.



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- vi. HP shall have the right to annually inspect the water master meter(s) and sewer meters upon request.
- vii. Unless otherwise agreed by the parties, the water master meter(s) and sewage metering devices for HP shall be installed within one year of the execution of the settlement agreement and accompanying documents. HP shall provide full access to meter locations to complete the work timely.

b. Pay for work necessary to complete water main and service line replacement efforts within the boundaries of HP. EGLE shall have responsibility for determining the necessary work, including conducting or supervising this work.

c. Release the \$25M sewer infrastructure grant funds previously allocated in the FY 2023 budget to GLWA on or before December 31, 2023 and appropriate a \$5M grant for work to be conducted by GLWA on drinking water infrastructure.

3. HP shall continue to retain Metro to operate HP's water and sewer operations, which includes all billing, collections, maintenance, and improvements. If for any reason, Metro ceases to be HP's operator, then subject to SOM's approval, HP will retain another entity to conduct these operations. Subject to all terms and conditions of the settlement agreement and the contract between GLWA and HP, beginning January 1, 2024 and on a going forward basis, HP shall pay the full amount of GLWA's monthly charges pursuant to the terms of any contract between GLWA and HP.

4. HP will enter into contracts based on GLWA's model contract by January 15, 2024 covering the period of January 1, 2014 to December 31, 2044 for water and sewer services.

- i. The settlement agreement and contracts shall require all amounts paid for HP water, sewer (including industrial waste control) and stormwater services be placed into a trust in which the trustee pays GLWA and any remaining amounts to HP on the same date. Any grants or loans from SOM to HP for infrastructure projects shall not be part of or included in the trust.
- ii. Except to enforce the conditions of this term sheet and the settlement agreement, to the extent that any future disputes arise between HP and GLWA over water and sewer services, which the parties are unable to resolve within 30-days' notice of that dispute, HP and GLWA agree to resolve such disputes through expedited mandatory arbitration pursuant to Michigan statute and court rule that shall be binding upon them. For a charge or billing dispute, the trustee must place in escrow the amount in dispute.



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- iii. Once the master water meter(s) is installed, HP shall be treated as part of the master metered customer class.
- iv. For five years commencing on the date of this agreement, the model water contract will allow for Highland Park's max day and peak hour water volume demand to be updated annually as Highland Park continues to "dry up" its system by replacing water mains and lead service lines, or completing other infrastructure improvements that would impact Highland Park's water demand requirements.

5. HP and EGLE will either revise the current ACO or replace it with a new one to incorporate the terms set forth in this term sheet that are specific to HP. That ACO shall remain effective and in effect until January 1, 2044 after which it may be terminated if HP has met all of its terms.

6. Until metering data can be used to project water and sewer charges:

- a. For services provided until December 31, 2023, HP will continue to pay or the trustee will pay on HP's behalf 65% of any and all amounts received by HP in payment of bills for water and wastewater treatment services.
- b. Effective January 1, 2024, subject to and conditioned upon execution by all parties of the settlement agreement by January 15, 2024, GLWA will reduce HP's water charges based on reductions in usage volume due to documented repairs of leaks up to 25 percent of its current water usage.
- c. Effective January 1, 2024, subject to and conditioned upon execution by all parties of the settlement agreement by January 15, 2024, GLWA will also provide a settlement credit of \$60,000 per month to HP on its sewage charges until June 30, 2024 subject to the following:
 - i. HP may fully participate in GLWA's share and charge process for FY 2025.
 - ii. Beginning July 1, 2024, HP shall receive the lesser of (A) the current FY 2024 sewage charges and credit or (B) the new FY 2025 share and resulting charges.
 - iii. This settlement credit will terminate no later than June 30, 2025.

7. Once 12 months of quality metering data is available to project estimated annual water and sewer flows, GLWA charges to HP shall be based on that data and future data.

8. HP shall increase its water and sewer rates by adopting an interim amended budget no later than December 2023, for the period of January 1, 2024 to June 30, 2024. For all subsequent fiscal years, Metro shall annually retain an independent rate analyst, subject to the approval of the SOM, to calculate necessary adjustments in its water



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and sewer rates to ensure that the budget for HP's water and sewer operations is sufficient to ensure payment of all GLWA charges and all overhead, maintenance, and operational costs associated with its water and sewer operations. The analyst will recommend necessary rates changes to HP and HP shall annually adjust its water and sewer rates in accordance with the recommendations of the rate analyst.

9. Upon effectuation of the settlement agreement, its attachments and related documents, including initial funding consistent with this agreement and after receipt by the trustee of one month of HP's water and sewer receipts and distribution of one month's payment of funds to GLWA under Paragraph 4.i, all litigation between GLWA, Detroit Water and Sewerage Department (DWSD), HP, or SOM shall be dismissed with prejudice according to the following:

- a. The judgment entered in Wayne County Circuit Court Case No. 2014-001974-CK shall be released or deemed satisfied, and HP shall dismiss its pending appeal from that action (COA Case No. 367193). The court shall retain jurisdiction to enforce the terms of the settlement agreement, which will be entered by the court as a consent judgment.
- b. HP and GLWA shall submit a proposed stipulated order of dismissal of Wayne County Circuit Court Case No. 20-011589.
- c. HP shall dismiss its appeal (COA Case No. 362416) from Wayne County Circuit Court Case No. 22-004754-CB and shall release and waive any further challenge to GLWA's rules that were the subject of that action.
- d. GLWA and SOM shall submit a stipulated order of dismissal of Court of Claims Case No. 2021-000151.
- e. HP and SOM will submit a proposed stipulated order of dismissal in Court of Claims Case No. 19-000129-MZ.
- f. HP and GLWA shall submit a proposed stipulated order setting aside the Amended Consent Judgment dated June 18, 1996 in E.D. Mich. Case No. 92-CV7677-DT and 94-CV-73135-DT

10. The \$241,418.75 cash bond deposited by HP with the U.S. District Court Clerk shall be released to GLWA from E.D. Mich. Case No. 16-cv-13840.

11. Upon approval of this term sheet by HP, SOM, and GLWA, not later than October 23, 2023, GLWA and HP shall submit a signed copy of the term sheet to, and submit a request for, a stipulated Stay of the October 24, 2023, Status Conference and all further proceedings in Judge Joseph's Case No. 14-001974 and all appellate proceedings from that case, Case COA Docket No. 367193, until January 15, 2024.

12. Upon execution and approval of this term sheet by HP, SOM, and GLWA, not later than October 27, 2023, GLWA and HP shall submit:



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a. a signed copy of the term sheet to, and submit a request for, a stipulated Stay of the November 2, 2023, Status conference and all further proceedings in Judge Berry's Case No 20-011589 until January 15, 2024.

b. a signed copy of the term sheet to, and submit a request for, a stipulated Stay of Petition for Rehearing in Banc in 6th circuit case no. 22-1288, until January 15, 2024.

c. Stipulate to a stay of all proceedings in HP's appeal (COA Case No. 362416) from Wayne County Circuit Court Case No. 22-004754-CB.

13. This term sheet is conditional and dependent upon (a) final approval of terms by the Governor, (b) appropriation of funds from the legislature to the extent necessary, and (c) approval by the governing bodies of GLWA, and any other necessary party on or before October 26, 2023.

City of Highland Park:

Shel McDowell
Mayor
10/19/2023

Great Lakes Water Authority:

Suzanne R. Coffey
Chief Executive Officer
10/20/2023

Dated:

Brinda Green
City Clerk
10/19/2023

Dated:

State of Michigan:

KL
10/19/23

Dated: 10/19/23

STATE OF MICHIGAN
DEPARTMENT ENVIRONMENT, GREAT LAKES, AND ENERGY
DRINKING WATER AND ENVIRONMENTAL HEALTH DIVISION
WATER RESOURCES DIVISION

In the matter of: DWEHD Agreement Number ACA-399-02-2024
City of Highland Park
12050 Woodward Avenue
Highland Park, Michigan 48203

ADMINISTRATIVE COMPLIANCE AGREEMENT

This document results from the requirements outlined in the Term Sheet-10/18/2023 (Term Sheet); resulting from court ordered mediation in Wayne County Circuit Court Case No. 2014-001974-CK, in which the Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD) and Water Resources Division (WRD) are required under a consent judgment to be entered in the aforementioned Wayne County Circuit Court case to amend or replace the current Administrative Consent Order (ACO) ACO-399-06-2017 (Exhibit A) between DWEHD and the City of Highland Park (City) to address the requirements of the Term Sheet that are specific to the City, as well as address any outstanding items from the current ACO. As set forth below, EGLE alleges that the City, located at 12050 Woodward Avenue, Highland Park, Michigan is in violation of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (SDWA), and the administrative rules promulgated thereunder. The City is a supplier of water, as defined under the SDWA, through the City's ownership and operation of a Class S-2 water distribution system. The City and EGLE agree to resolve the violations set forth herein through entry of this Administrative Compliance Agreement (ACA), which are outstanding items from the Administrative Consent Order Number ACO-399-06-2017 entered into by the City of Highland Park and EGLE on July 28, 2017, as well as the requirements outlined in the above referenced Term Sheet.

The City owns and operates a combined sewer system throughout the City, which is subject to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq.* (Part 31). The City's sewer system collects and transports storm and sanitary wastewater for treatment to the Great Lakes Water Authority's (GLWA) Interceptor System and Wastewater Resource Recovery Facility (which are collectively leased by the GLWA from the Detroit Water and Sewerage Department [DWSD]).

Executive Order 2019-06, signed by Governor Gretchen Whitmer on February 20, 2019, renamed the Michigan Department of Environmental Quality (DEQ) as the Department of Environment, Great Lakes, and Energy (EGLE). Effective April 22, 2019, a reference to the DEQ will be deemed a reference to EGLE. After April 22, 2019, a reference to the Director of the DEQ will be deemed to be a reference to the Director of EGLE. The Drinking Water and Municipal Assistance Division (DWMAD) was renamed the Drinking Water and Environmental Health Division (DWEHD). A reference to the DWMAD will be deemed a reference to the DWEHD and a reference to the Director of the DWMAD will be deemed to be a reference to the Director of the DWEHD. A reference to the Southeast Michigan District Supervisor will be deemed to be a reference to the Warren District Supervisor.

I. STIPULATIONS

The City and EGLE stipulate as follows:

- 1.1 The SDWA, and the rules promulgated under the SDWA, 1979 AC, R 325.10101 *et seq.*, are pertinent to providing safe and reliable public drinking water.
- 1.2 EGLE has regulatory power and control over public water supplies and suppliers of water under MCL 325.1003.
- 1.3 MCL 325.1015(2) provides that EGLE “may order a supplier of water to make alterations in the waterworks system or its method of operation as may be required or considered advisable by [EGLE] to ensure the public water supply is adequate, healthful, and in conformance with state drinking water standards.”
- 1.4 The NREPA, MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.
- 1.5 Part 31 and the rules promulgated pursuant thereto provide for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.6 The City consents to the issuance and entry of this ACA and stipulates that entry of this ACA constitutes a final order of EGLE-DWEHD pursuant to MCL 325.1015(2), enforceable in accordance with MCL 325.1022 and EGLE-WRD Sections 3106 and 3112(4) of Part 31, MCLs 324.3106 and 324.3112(4), to enter orders requiring persons to abate pollution or otherwise cease or correct activities in violation of a specific part. The City waives its right to a public hearing on this matter as available under MCL 325.1015(2) and further agrees not to otherwise contest the issuance of this ACA. The Parties agree that the resolution of this matter by the entry of this ACA is appropriate and acceptable, and that this ACA shall become effective on the date it is signed by the Director of the DWEHD. This ACA supersedes Administrative Consent Order Number ACO-399-06-2017 entered into by the City of Highland Park and EGLE on July 28, 2017.
- 1.7 The City and EGLE agree that the entry of this ACA is for settlement purposes only and does not constitute an admission by the City it has violated the law.
- 1.8 The signatory to this ACA on behalf of the City agrees and attests that he or she is fully authorized to consent to this ACA on behalf of the City and to ensure that the City will comply with all requirements of this ACA. The DWEHD Director signs this ACA under the authority delegated by the Director of EGLE.
- 1.9 The City shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this ACA.

II. FINDINGS

- 2.1 On April 25, 2012, the DEQ issued a Director's Order to the City to address violations of the SDWA. A compliance schedule in the Director's Order addressed immediate issues as well as longer term corrective actions.
- 2.2 In November 2012, the City began work on repairs to the water treatment plant clarifier, as required in the Director's Order. Prior to commencing construction, the DWSD provided water to the City for a few days in order for the water plant to be shut down and repairs made. The repairs were unable to be completed, and the City continues to receive water from the DWSD (now the GLWA).
- 2.3 In a letter dated May 28, 2013, the DEQ agreed to hold deadlines pertaining to the water treatment plant in abeyance as long as the City was receiving water from the GLWA. The letter stressed the need to address items in the Director's Order related to the distribution system since the distribution system will be utilized regardless of whether the City restores the water treatment plant or continues to receive water from the GLWA. The letter requested the City submit a schedule for completion of items pertaining to the distribution system from the Director's Order. The City did not do so.
- 2.4 In July 2015, the City hired Wade Trim to take over the operations and maintenance for the City's Water Department. Wade Trim has replaced water meters, upgraded the meter reading system, and ensured water bills are sent out. The City hired Metro Consulting Associates, LLC, in April 2016 to run the City's Water Department. However, the City has not completed work on the distribution system.
- 2.5 A sanitary survey conducted in early 2016 found the distribution system deficiencies listed in Paragraph 19 of the Director's Order still need to be addressed. In April 2016, the DEQ issued a significant deficiency violation notice to the City (included in Exhibit A).
- 2.6 Since the effective date of the ACO-399-06-2017, as a result of the financial condition of the City's water and sewer fund, the City has completed some but not all of the work on the distribution system required under the Director's Order.
- 2.7 On December 14, 2023, EGLE issued a letter to the City (Exhibit B), which outlines the compliance items that are considered completed in ACO-399-06-2017. Outstanding compliance items from ACO-399-06-2017 have been incorporated into this ACA.

2.8 As set forth in the Term Sheet, multiple lawsuits have been filed by and between the City, the GLWA, the DWSD, and the State of Michigan. The GLWA alleges that the City owes in excess of \$50,000,000 for unpaid water and sewer bills. Although the City denies it owes that amount, on June 20, 2023, the Wayne County Circuit Court reinstated a judgment against the City for allegedly unpaid pre-2014 charges in excess of \$19 million plus interest and costs. The order reinstating the judgment is on appeal by Highland Park. The State subsequently appeared as an Interested Non-Party to try to assist the parties in reaching a resolution of that dispute. The Wayne County Circuit Court ordered the parties to participate in a mediated effort to resolve their issues. The Term Sheet outlines the basic terms of the agreement reached by the parties to resolve those issues. One of the terms agreed to by the parties was that the current Administrative Consent Order ACO-399-06-2017 between the DWEHD and the City of Highland Park will be amended or replaced to address the requirements of the Term Sheet, as well as address any outstanding items from the current ACO. The Term Sheet will be part of a Settlement Agreement executed by the parties that is to be submitted to the Wayne County Circuit Court, which will be entered by the court as a consent judgment over which the Court will retain jurisdiction to enforce its terms.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the City shall undertake the following actions outstanding from ACO-399-06-2017 to prevent further violations of the SDWA, as well as meeting the requirements of the Term Sheet.

The requirements from ACO-399-06-2017 shall be amended as specified below:

3.1 The City shall continue the programs established per Paragraphs 3.2 and 3.3 of ACO-399-06-2017 to locate, exercise, and inspect all valves and hydrants. The City shall submit a written report to EGLE, for review, summarizing the inventory of valves and hydrants including the number that are inoperable, in need of repair or replacement, and the number repaired or replaced. The City shall submit the report **by March 31 of each year** until the necessary water main replacements in Paragraph 3.9 are considered complete by EGLE.

- 3.2 The City shall continue to conduct an annual distribution system leak survey until the necessary water main replacements in Paragraph 3.9 are considered complete by EGLE, unless an alternative schedule is approved by EGLE. The City shall submit to EGLE, for review and approval, a written report summarizing the results of the leak survey **within 60 days** of the survey completion. The report shall include a leak repair schedule and indicate the repair method to be implemented for each leak. An update on the repair of leaks identified in the previous report shall be provided in the next report.
- 3.3 Within **eight (8) months** following EGLE's approval of water master meter location(s) proposal in Paragraph 3.7, within **eight (8) months** after there is at least one year of master meter data, and at least annually thereafter until necessary water main replacements in Paragraph 3.9 are considered complete by EGLE, the City shall submit, in writing, to EGLE, for review and approval, updates to the most current versions of the (1) Reliability Study prepared in accordance with Part 12 of the SDWA administrative rules, *see* Michigan Administrative Code (MAC) R 325.11201 *et seq.* and (2) the General Plan prepared in accordance with Part 16 of those administrative rules, *see* MAC R 325.11601 *et seq.* including the Capital Improvements Plan that identifies water system needs for 5-year and 20-year planning periods and the Asset Management Plan. The updates shall incorporate water system updates, including new water master meter(s), master meter usage data, completed water main replacements, and address comments provided by EGLE.

Term Sheet:

- 3.4 The City shall continue to retain Metro Consulting Associates, LLC (Metro) to operate Highland Park's water and sewer operations. If Metro ceases operations with Highland Park, the City shall propose another entity to EGLE, for review and approval, not later than 30 days from the release of Metro. The water and sewer operations conducted by Metro, or the EGLE-approved entity, includes all billing, collections, maintenance, and improvements which includes installation of meter(s) and replacement of lead service lines and water mains. Additionally, Metro, or the EGLE-approved entity, shall employ a full-time certified S-2 water system operator in charge and a backup operator holding an S-4 or higher certification, per the requirements of Part 19 (R 325.11905 (1), (2), (8), and (9)).

- 3.5 Not later than **September 1 of each of the City's fiscal years**, the City shall provide to EGLE, for approval, the name of the independent rate analyst the City will utilize to (1) calculate necessary water and sewer rate adjustments to ensure that the budget for the City's water and sewer operations is sufficient to ensure payment of all GLWA charges and all overhead, maintenance, and operational costs associated with its water and sewer operations and (2) recommend necessary rate changes to the City. Unless otherwise directed by EGLE, the analyst will only be required to complete a cost allocation analysis, as defined in American Water Works Manual M1 Principles of Water, Rates, Fees and Charges, as part of its report every three (3) years. **Not later than 15 days** following EGLE's approval, the City shall retain the independent rate analyst and provide EGLE documentation of retainage. The City shall provide EGLE documentation **not later than 14 days** following ratification of the rates by the City confirming that the water and sewer rates include the analyst's recommended rate adjustments and listing the effective date of ratified rates. This documentation shall include a copy of the independent rate analysts' report.
- 3.6 Subject to all terms and conditions of the Term Sheet, the Settlement Agreement, and the contract between the GLWA and the City, beginning on the effective date of this ACA and on a going forward basis, the City shall pay the full amount of the GLWA's monthly charges pursuant to the terms of any contract between the GLWA and the City. Not later than **seven (7) months** from effective date of this ACA, and every six months thereafter, the City shall submit to EGLE, for review, a summary of the previous six months of payments submitted to the GLWA.

WATER

- 3.7 **Not later than 30 days** from the effective date of this ACA, the City shall submit to EGLE, for review and approval, a proposal for the City to conduct all necessary work needed to provide water master meter(s) on all open points of connection between the City and the GLWA. It is understood that the City's obligation to conduct the work in this paragraph is dependent on the legislature appropriating funds or the State providing grants for this work per the Term Sheet. The proposal shall include the following items:

- a. The number and location of water master meter(s) and diameter of the connecting water main and the GLWA transmission mains. The location(s) shall be shown on a figure of the City of Highland Park's water distribution system.
- b. A summary of the hydraulic model and modeling results to be used to identify the proposed water master meter location(s). The summary shall include information regarding the setup of the model including boundary condition assumptions, values used to represent the GLWA's available capacity and pressures at the connection points, the extent of the water distribution system included in the model and associated assumptions and data used for and the results of the model calibration.
- c. Confirmation from the GLWA that the proposed water master meter location(s) are compatible with their system.
- d. A schedule covering pre-design including hydraulic modeling and an alternatives feasibility analysis, design, SDWA permitting including application submittal to EGLE and EGLE's review and approval, construction bidding and bidder selection process, construction, startup and testing, and commissioning. The schedule shall include specific dates and/or a timeline for the following items:
 - i. Submittal of an administratively complete SDWA permit application to construct the water master meter vault(s) and installation of the water master meter device(s). The permit application shall include design plans and written construction specifications in accordance with Section 4 of the SDWA, MCL 325.1004. The specifications shall also incorporate the GLWA's written equipment, construction, and operational specifications related to water master meter(s) and water master meter vault(s).
 - ii. Submittal of a summary of the construction bids, the basis for the evaluation of the bids, and the rationale for the selected bidder to EGLE.
 - iii. Submittal of written progress report(s) to EGLE for review. The progress report(s) shall be monthly unless an alternative schedule is approved by EGLE. Reports shall include a description of what has been completed, percent complete on activities, a statement regarding whether activities are on schedule, upcoming activities, a list of any

challenges and proposed resolutions, and a description of potential change orders including the impacts to schedule and/or costs. A final progress report shall be submitted following the completion of the construction and include documentation that the newly constructed components have been properly disinfected, contain water of quality that is ready to be distributed, and are fully operational, prior to putting the newly constructed components into service.

- iv. The completion of water master meter(s) installation, such that meter(s) are fully operational, within one year of the execution of the ACA and accompanying documents, unless otherwise agreed by the parties to the settlement agreement and granted through Paragraph 5.1 of this ACA.

In preparing the proposal, the City shall:

- a. Consult with the GLWA on (1) the number, location, and size of water master meter(s) and the information and documentation used to support that determination and (2) the process for testing and startup of the meter(s) to confirm proper connections to the GLWA's operational systems. The City shall update EGLE on the status of communications with the GLWA and shall include EGLE representatives in key meetings or written communications with the GLWA.
- b. Incorporate the GLWA's written equipment, construction, and operational specifications related to water master meter(s) and water master meter vault(s).

EGLE will notify the City, in writing, of approval or any deficiencies in the proposal. The EGLE-approved proposal shall be incorporated by reference into Section III – Compliance Program.

- 3.8 The City shall provide contractors, the GLWA, EGLE, or other entities full access to meter location(s) to complete the construction work timely.
- 3.9 **Not later than November 30, 2024, and each subsequent year**, the City shall submit to EGLE, for review and approval, an annual proposal listing the water main and lead service line replacement project(s) to be designed, bid out, and constructed in accordance with the EGLE-approved schedule provided per Paragraph 3.6d. It is

understood that the City's obligation to conduct the work in this paragraph is dependent on the legislature appropriating funds, the State providing grants, or the identification of any other funding for this work per the Term Sheet. The City shall continue to provide a proposal annually until EGLE has notified the City, in writing, that the necessary water main and lead service line replacements have been completed. This proposal shall include, at a minimum:

- a. A drawing showing the location of the work.
- b. The rationale for selecting the project(s) including supporting documentation from necessary hydraulic modeling studies, asset evaluations, and reliability studies which are to be updated per Paragraph 3.3.
- c. Cost estimate(s) and schedule(s) that include design, permitting, bidding and contracting, and construction. Schedule(s) shall include sufficient time to obtain EGLE approvals. The schedule(s) shall include line items and dates for each of the following tasks:
 - i. Submittal to EGLE, for review and approval, an administratively complete SDWA permit application(s) for water main replacement project(s). The permit application shall include design plans and written construction specifications in accordance with Section 4 of the SDWA, MCL 325.1004. The schedule shall allow sufficient time for EGLE's permit review and issuance process.
 - ii. Submittal of a summary of the construction bids, the basis for the evaluation of the bids, and the rationale for the selected bidder to EGLE.
 - iii. Submittal to EGLE, for review, written monthly progress reports for each separate project unless an alternative schedule is approved by EGLE. The progress reports shall include a description of what has been completed, percent complete on activities, a statement regarding whether activities are on schedule, upcoming activities, a list of any challenges and proposed resolutions, and a description of potential change orders including the impacts to schedule and/or costs. In addition, progress reports shall include documentation of water main hydrostatic leak testing and disinfection, including the location and

results of bacteriological testing, and commissioning of the water main into service.

EGLE will notify the City, in writing, of approval or any deficiencies in the proposal or if it determines that the proposed work is not necessary. The EGLE-approved proposal shall be incorporated by reference into Section III – Compliance Program.

- 3.10 **Not later than 14 days** from identification of a changed condition, the City shall submit a change order request for cost impacts and/or schedule impacts of greater than four (4) weeks to EGLE, for review and approval, prior to incurring costs or implementing changes. The change order request shall include an itemized description of the elements included, the reason for the change, and the schedule and/or cost impact. EGLE will notify the City, in writing, of approval or any deficiencies in the change order request or if it determines that the proposed change order work is not necessary.
- 3.11 Not later than 730 days from the completion of Paragraphs 3.7 and 3.9 of this ACA, the City shall complete the following to ensure adequate technical, managerial, and financial (TMF) capacity for the water system, in accordance with the SDWA.
 - a. Conduct a comprehensive analysis of water supply alternatives using a qualified third-party consultant. The consultant shall have experience with assessing the operation, management, and finances of public utilities and shall not have any conflicts of interest related to the City of Highland Park water system. The scope of the study shall include the water distribution system. The analysis shall compare the annual costs of the following options of (1) being a GLWA customer and owning, operating, and maintaining its water distribution system, (2) a partnership with an existing water system which would include the ownership, operation, and maintenance of the City of Highland Park's water distribution system, and (3) other alternative options proposed by the City. The analysis shall account for the capital and ongoing operating costs of each option and must express how each option analyzed will impact customer affordability.
 - b. Conduct a comprehensive TMF capacity study using a qualified third-party consultant. The consultant shall have experience with assessing the operation, management, and finances of public utilities and shall not have any conflicts of interest related to the City of Highland Park water system. The scope of the

study shall include the water distribution system. The study must identify the City of Highland Park's level of service goals, the TMF capacity necessary to maintain compliance with the SDWA for the options identified in Paragraph 3.11 and any gaps between the capacity needed to meet level of service goals and the capacity available, as well as provide a reasonably attainable implementation plan for closing any identified gaps in capacity. For the needed funding and available source(s) of funding, this evaluation must factor in affordability limitations, must clearly identify what funds are in hand, and if outside funding sources, such as state or federal grants, are proposed, then details of what is required to secure those funds and the likelihood of securing those funds must be provided.

- c. Once complete, the comprehensive analysis and TMF capacity study must be submitted to EGLE, for review and approval. Within 30 days of EGLE's approval, the City must announce and make available to the public for review the comprehensive analysis and TMF capacity study. At a minimum, the City shall make the document available to the public in a digital format at the City's website and in a hard copy format at public facilities, such as city offices, libraries, community centers, etc. The public shall have at least 60 days to submit comments and the City must provide the public a means to submit comments in a digital and written format. Within 30 days of the end of the public comment period, the City must compile and record all comments and provide a copy to EGLE.

SEWER

- 3.12 Not later than 30 days from the effective date of this ACA, the City shall submit to EGLE, for review and approval, a work plan for the City to conduct all necessary work needed to provide sufficient temporary meters to estimate the total combined sewage flow produced by the City. The work plan shall include the following items:
 - a. Sanitary sewer map(s) of the City's collection system and a description of the sewer districts identifying connection points to the DWSD, the GLWA, and subdistricts within the collection system (if any).

- b. Specific locations and types of flow meters to be installed or used within the collection system to ensure flow measurement throughout the system.
- c. In addition to flow meters, any other available information that will be used to estimate flow.
- d. Temporary sewage meters shall be programmed to collect sewer level data in addition to flow and velocity. The work plan should identify how the temporary meters will be programmed to collect data, preferably at not more than five minute standard recording intervals.
- e. The work plan should identify, for each proposed temporary meter, the location, sewer size, and rationale for the location of each temporary meter.
- f. A procedure for routine data collection and review.

3.13 In preparing the work plan, the City shall:

- a. Consult with the GLWA on items including, but not limited to, the number, location, and size of temporary sewer meters and the information and documentation used to support that determination.
- b. Include EGLE representatives in any meetings or written or verbal communications with the GLWA.
- c. Incorporate GLWA specifications related to temporary sewer meters.
- d. Prepare project schedules such that temporary sewer meters are installed within one year of the settlement agreement and accompanying documents. The City shall provide full access to meter locations to complete the work timely.

3.14 The City shall be responsible for the cost of maintaining and operating the temporary sewage metering.

3.15 Not later than 60 days after execution of this ACA, the City shall consult with the GLWA and agree to a third party and procedures to maintain and operate the sewer meters including the sharing of data produced by the meters and procedures to migrate to becoming a permanently sewer metered customer in the M-Class for sewer billing purposes. If the parties cannot agree to a third party or the procedures associated with operation, EGLE shall identify the third party and prescribe the procedures.

- 3.16 Not later than one year after execution of the settlement agreement, the City shall install temporary sewer meters in accordance with the EGLE-approved work plan. Flow metering shall be conducted for 12 months.
- 3.17 The temporary meters shall be installed at least two (2) weeks prior to the target start date so that any meter location issues can be resolved.

IV. EGLE APPROVAL OF SUBMITTALS

- 4.1 For any work plan, proposal, or other document that is required by this ACA, to be submitted by the City to EGLE for review and approval (excluding applications for permit or license), the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this ACA shall include all of the information required by every applicable statute or rule, and all of the information required by the applicable paragraph(s) of this ACA.
- 4.3 In the event EGLE disapproves a work plan, proposal, or other document, it will notify the City, in writing, specifying the reasons for such disapproval. In response, the City shall submit a revised work plan, proposal, or other document that adequately addresses the reasons for EGLE's disapproval within 30 days of the date of EGLE's notice. If the revised work plan, proposal, or other document is still not acceptable to EGLE, EGLE will notify the City of this disapproval.
- 4.4 In the event EGLE approves with specific modifications, a work plan, proposal, or other document, it will notify the City, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. EGLE may require the City to submit, prior to implementation and within 30 days of the date of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to EGLE, EGLE will notify the City of this disapproval.
- 4.5 Upon EGLE approval of an original or modified work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this ACA and shall be enforceable in accordance with the provisions of this ACA.

- 4.6 Failure by the City to submit an approvable work plan, proposal, or other document, within time periods specified above constitutes a violation of this ACA and shall subject the City to the enforcement provisions of this ACA, including the stipulated penalty provisions specified in Paragraph 9.1 of this ACA.
- 4.7 Any delays caused by the City's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the City's responsibility to comply with any other deadline specified in this ACA.
- 4.8 No informal advice, guidance, suggestions, or comments by EGLE regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by the City will be construed as relieving the City of its obligation to obtain written approval, if and when required by this ACA.

V. EXTENSIONS

- 5.1 The City and EGLE agree that EGLE may grant the City a reasonable extension of the specified deadlines set forth in this ACA. To obtain an extension, the City must submit a written request to the appropriate EGLE, District Supervisor (DWEHD or WRD) at the address in Paragraph 6.1, no later than ten (10) business days prior to the pertinent deadline, and shall include:
 - a. Identification of the specific deadline(s) of this ACA that will not be met.
 - b. A detailed description of the circumstances that will prevent the City from meeting the deadline(s).
 - c. A description of the measures the City has taken and/or intends to take to meet the required deadline.
 - d. The length of the extension requested and the specific date on which the obligation will be met.

The District Supervisor, in consultation with the Enforcement Specialist, shall respond in writing to such requests. No change or modification to this ACA shall be valid unless in writing from EGLE.

VI. REPORTING

- 6.1 The City shall make all submittals and written notifications required by this ACA, to EGLE, DWEHD or WRD, whichever is applicable, Warren District Supervisor (District Supervisor), 27700 Donald Court, Warren, Michigan 48092. The cover letter with each submittal shall identify the specific paragraph and requirement of this ACA that the submittal is intended to satisfy.
- 6.2 The City shall verbally report any violation(s) of the terms and conditions of this ACA to the District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The City shall report any anticipated violation(s) of this ACA to the above-referenced individual(s) in advance of the relevant deadlines whenever possible.

VII. RETENTION OF RECORDS

- 7.1 Upon request by an authorized representative of EGLE, the City shall make available to EGLE all records, plans, logs, and other documents required to be maintained under this ACA or pursuant to the SDWA and NREPA and/or its rules. All such documents shall be retained by the City for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by the SDWA or NREPA and retained by the City for at least a period of five (5) years from the date of generation of the record unless a longer period of record retention is required by the NREPA or its rules.

VIII. RIGHT OF ENTRY

- 8.1 The City shall allow any authorized representative or contractor of EGLE, upon presentation of proper credentials, to enter any City facilities directly connected to the water system at all reasonable times for the purpose of monitoring compliance with the provisions of this ACA. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to the SDWA and/or the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

IX. PENALTIES

- 9.1 For each failure to comply with a provision of Sections III or IV for this ACA, the City shall pay stipulated penalties of \$200 per violation per day for violations occurring one (1) to seven (7) days; \$300 per violation per day for violations continuing for eight (8) to 14 days; and \$500 per violation per day for violations continuing longer than 14 days.
- 9.2 To ensure timely payment of stipulated penalties, the City shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 9.3 The City agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for EGLE, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this ACA must include the **Payment Identification No. RMD90025**.
- 9.4 The City agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to Paragraphs 9.1 through 9.4, above, but reserves the right to dispute the factual basis upon which a demand by EGLE for stipulated penalties or interest penalties is made.

X. FORCE MAJEURE

- 10.1 The City shall perform the requirements of this ACA within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of the City's obligations under this ACA in accordance with this section.
- 10.2 For the purpose of this ACA, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the City, such as: an Act of God, untimely review of permit applications or submissions by EGLE or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the City's diligence and that delay the performance of an obligation under this ACA. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the City's actions or omissions.
- 10.3 The City shall notify EGLE, DWEHD or WRD, whichever is applicable, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this ACA. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the City to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The City shall adopt all reasonable measures to avoid or minimize any such delay. Nothing in this paragraph obviates the need to report violations as required by Paragraph 6.1 of this ACA.
- 10.4 Failure of the City to comply with the notice requirements and time provisions under Paragraph 10.3, above, shall render Section X, Force Majeure, void and of no force and effect as to the particular incident involved. EGLE may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of Paragraph 10.3, above.
- 10.5 If the Parties agree that the delay or anticipated delay was beyond the control of the City, this may be so stipulated, and the Parties to this ACA may agree upon an appropriate modification of this ACA. However, EGLE is the final decision-maker on whether or not

the matter at issue constitutes a “Force Majeure.” The Parties to this ACA understand and agree that the final decision by EGLE regarding a “Force Majeure” claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of the City, and that all the requirements of this Section X have been met by the City, rests with the City.

- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the City qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. GENERAL PROVISIONS

- 11.1 With respect to any violations not specifically addressed and resolved by this ACA, EGLE reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the City to comply with the requirements of the SDWA, and the rules promulgated thereunder, and Part 31 of NREPA, and the rules promulgated thereunder.
- 11.2 EGLE and the City consent to enforcement of this ACA in the same manner and by the same procedures for all final orders entered pursuant to the SDWA and Part 31 of NREPA.
- 11.3 This ACA in no way affects the City’s responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 EGLE reserves its right to pursue appropriate action, including injunctive relief, to enforce the provisions of this ACA. At its discretion, EGLE may also seek stipulated fines or statutory fines for any violation of this ACA. However, EGLE is precluded from seeking both a stipulated fine under this ACA and a statutory fine for the same violation.
- 11.5 Nothing in this ACA is or shall be considered to affect any liability the City may have for natural resource damages caused by the City’s ownership and/or operation of the City. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

- 11.6 In the event the City sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this ACA in connection with such sale or transfer. Within 30 calendar days, the City shall also notify the EGLE, DWEHD and WRD, Warren District Supervisors, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this ACA has been given to the purchaser and/or transferee. The purchaser and/or transferee of this ACA must agree, in writing, to assume all of the obligations of this ACA. A copy of that agreement shall be forwarded to the DWEHD and WRD District Supervisors within 30 days of assuming the obligations of this ACA.
- 11.7 The provisions of this ACA shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.8 This ACA constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

XII. TERMINATION

- 12.1 This ACA shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by EGLE, not earlier than January 1, 2044. Prior to issuance of a written TN, the City shall submit a request consisting of a written certification that the City has fully complied with the requirements of this ACA and has made payment of any stipulated or interest penalties required in this ACA. Specifically, this certification shall include:
 - a. The date of compliance with each provision of the Compliance Program in Section III, and the date any fines or penalties were paid.
 - b. A statement that all required information has been reported to the District Supervisor.
 - c. Confirmation that all records required to be maintained pursuant to this ACA are being maintained at the facility.

EGLE may also request additional relevant information. EGLE shall not unreasonably withhold issuance of a TN.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Administrative Compliance Agreement to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Eric J. Oswald, Director
Drinking Water and Environmental Health Division

Date

CITY OF HIGHLAND PARK

By: Glenda McDonald, Mayor
City of Highland Park

Date

By: Brenda Green, City Clerk
City of Highland Park

Date

APPROVED AS TO FORM:

By: Richard S. Kuhl, Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

Date

Exhibit A of ACA-399-02-2024



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GRETHER
DIRECTOR

July 31, 2017

CERTIFIED MAIL

Mr. Damon L. Garrett, P.E.
Metro Consulting Associates
45345 Five Mile Road
Plymouth, Michigan 48170

Dear Mr. Garrett:

SUBJECT: Administrative Consent Order ACO-399-06-2017

Enclosed please find one fully-executed original of an administrative consent order (ACO) between the City of Highland Park and the Department of Environmental Quality (DEQ), Drinking Water and Municipal Assistance Division (DWMAD), regarding violations of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (SDWA). The ACO became effective on July 28, 2017, the date it was signed by the Director of the DWMAD and contains dates for completion of actions to bring the distribution system in Highland Park back into compliance with the SDWA.

If you have any questions regarding the ACO, please contact me at 517-284-6536; mauls@michigan.gov; or at the address in the previous paragraph.

Sincerely,

A handwritten signature in cursive ink that appears to read "Susan S. Maul".

Susan S. Maul
Enforcement Specialist
Drinking Water and Municipal Assistance Division

Enclosure

cc: Ms. Kris Donaldson, DWMAD

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
DRINKING WATER AND MUNICIPAL ASSISTANCE DIVISION

In the matter of:
City of Highland Park
12050 Woodward Avenue
Highland Park, Michigan 48203

DWMAD Order No. ACO-399-06 -2017

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Drinking Water and Municipal Assistance Division (DWMAD). The DEQ alleges that the City of Highland Park (City), located at 12050 Woodward Avenue, Highland Park, Michigan, is in violation of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (SDWA), and the administrative rules promulgated thereunder, being 2009 ACS, R 325.10101 *et seq.* The City is a supplier of water as defined under the SDWA through the City's ownership and operation of a Class S-2 water distribution system. The City and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I. STIPULATIONS

The City and the DEQ stipulate as follows:

- 1.1 The SDWA, and the rules promulgated under the SDWA, 1979 AC, R 325.10101 *et seq.*, are pertinent to providing safe and reliable public drinking water.
- 1.2 The DEQ has regulatory power and control over public water supplies and suppliers of water under MCL 325.1003.
- 1.3 MCL 325.1015(2) provides that the DEQ "may order a supplier of water to make alterations in the waterworks system or its method of operation as may be required or considered advisable by the [DEQ] to ensure the public water supply is adequate, healthful, and in conformance with state drinking water standards."

- 1.4 The City consents to the issuance and entry of this Consent Order and stipulates that entry of this Consent Order constitutes a final order of the DEQ pursuant to MCL 325.1015(2), enforceable in accordance with MCL 325.1022. The City waives its right to a public hearing on this matter as available under MCL 325.1015(2) and further agrees not to otherwise contest the issuance of this Consent Order. The Parties agree that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable and that this Consent Order shall become effective on the date it is signed by the Director of the DWMAD. This Consent Order supersedes Determination and Order No. 399-04-12 issued by the DEQ Director on April 25, 2012.
- 1.5 The City and the DEQ agree that the entry of this Consent Order is for settlement purposes only and does not constitute an admission by the City it has violated the law.
- 1.6 The signatory to this Consent Order on behalf of the City agrees and attests that he or she is fully authorized to consent to this Order on behalf of the City and to ensure that the City will comply with all requirements of this Consent Order. The DWMAD Division Director signs this Consent Order under authority delegated by the Director of the DEQ.
- 1.7 The City shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

II. FINDINGS

- 2.1 On April 25, 2012, the DEQ issued a Director's Order to the City to address violations of the SDWA. A compliance schedule in the Director's Order addressed immediate issues as well as long-term corrective actions.
- 2.2 In November 2012, the City began work on repairs to the water treatment plant clarifier as required in the Director's Order. Prior to commencing construction, the Detroit Water and Sewerage Department (DWSD) provided water to the City for a few days in order for the water plant to be shut down and repairs made. The repairs were unable to be completed, and the City continues to receive water from the DWSD (now the Great Lakes Water

Authority [GLWA]).

2.3 In a letter dated May 28, 2013, the DEQ agreed to hold deadlines pertaining to the water treatment plant in abeyance as long as the City was receiving water from the GLWA. The letter stressed the need to address items in the Director's Order related to the distribution system since the distribution system will be utilized regardless of whether the City restores the water treatment plant or continues to receive water from the GLWA. The letter requested the City submit a schedule for completion of items pertaining to the distribution system from the Director's Order. The City did not do so.

2.4 In July 2015, the City hired Wade Trim to take over the operations and maintenance for the City's Water Department. The City hired Metro Consulting Associates, LLC, in April 2016 to run the City's Water Department. Wade Trim has replaced water meters, upgraded the meter reading system, and ensured water bills are sent out. However, they have not completed work on the distribution system.

2.5 A sanitary survey conducted in early 2016 found the distribution system deficiencies listed in Paragraph 19 of the Director's Order still needed to be addressed. In April 2016, the DEQ issued a significant deficiency violation notice to the City (attached as Exhibit A).

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the City shall undertake the following actions to prevent further violations of the SDWA:

3.1 The City shall, not later than **three (3) years** after the effective date of this ACO, provide its customers with water that conforms with all applicable SDWA requirements by implementing the evaluations and improvement projects set forth in Paragraphs 3.2 through 3.8, below.

- 3.2 Within **30 days** of the effective date of this ACO, the City shall initiate a program to locate, exercise, and inspect all valves throughout the City.
 - a. Within **one (1) year** of the effective date of this ACO, the City shall generate a list of all nonworking valves prioritized for repair and ensure at least 1/3 of all nonworking valves are repaired or replaced in order of priority. The City must prioritize those repairs that provide the most benefit to protection of public health.
 - b. Within **two (2) years** of the effective date of this ACO, the City shall ensure that all remaining nonworking valves identified on the list generated in Paragraph 3.2(a) are repaired or replaced.
- 3.3 The City shall continue the program to locate, exercise, and inspect all hydrants throughout the City.
 - a. Within **nine (9) months** of the effective date of this ACO, the City shall generate a list of all nonworking hydrants prioritized for repair and ensure that at least 1/3 of all nonworking hydrants are repaired or replaced in order of priority. The City must prioritize those repairs that provide the most benefit to the protection of public health. Priority determination must be in collaboration with the local fire department, documentation of which shall be submitted to the DEQ, DWMAD Southeast Michigan District Supervisor.
 - b. Within **21 months** of the effective date of this ACO, the City shall ensure that all remaining nonworking hydrants identified on the list generated in Paragraph 3.3(a) are repaired or replaced.
- 3.4 Within **11 months** of the effective date of this ACO, the City shall complete a distribution system leak survey.
 - a. Within **one (1) year** of the effective date of this ACO, the City shall generate a list of all water system leaks prioritized for repair and ensure at least 1/3 of all leaks have

been repaired in order of priority. Priority must be given to those repairs that provide the most benefit to protection of public health.

- b. Within **three (3) years** of the effective date of this ACO, the City shall ensure that all remaining water system leaks identified on the list generated in Paragraph 3.4(a) have been repaired.
- 3.5 Within **30 days** of the effective date of this ACO, the City shall submit a written cross-connection program to the DEQ for review and approval as required by Michigan Administrative Code (MAC) R 325.11404. Within **six (6) months** after DEQ approval, the City shall implement the program by ensuring the required inspections and corrective measures are underway.
- 3.6 Within **five (5) months** of the effective date of this ACO, the City shall recruit and employ a full time S-2 certified operator in charge and have that individual supervise the water distribution system. The City shall also begin actively overseeing all work done in the distribution system by contractors using certified distribution system operators.
- 3.7 Within **eight (8) months** of the effective date of this ACO, the City shall complete a Reliability Study in accordance with Part 12 of the SDWA administrative rules, see MAC R 325.11201 *et seq.*, and a General Plan in accordance with Part 16 of those administrative rules, see MAC R 325.11601 *et seq.* Applicable Part 16 requirements include creating a Capital Improvements Plan that identifies water system needs for 5-year and 20-year planning periods, and developing an Asset Management Plan by January 1, 2018. See MAC R 325.11606.
- 3.8 The City shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the District Supervisor, DEQ, DWMAD, Southeast Michigan District, 27700 Donald Court, Warren, Michigan 48092. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

IV. DEQ APPROVAL OF SUBMITTALS

- 4.1 For any work plan, proposal, or other document that is required by this Consent Order to be submitted by the City to the DEQ for review and approval (excluding any application for a permit or license), the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all of the information required by every applicable statute or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify the City, in writing, specifying the reasons for such disapproval. In response, the City shall submit a revised work plan, proposal, or other document that adequately addresses the reasons for the DEQ's disapproval within 30 days of receipt of the DEQ's notice. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the City of the reasons for its disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify the City, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the reasons for such modifications. The DEQ may require the City to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document that adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the City of the reasons for its disapproval.
- 4.5 Upon DEQ approval of an original or modified work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.

- 4.6 Failure by the City to submit an approvable work plan, proposal, or other document within the time periods specified above constitutes a violation of this Consent Order and shall subject the City to the enforcement provisions of this Consent Order.
- 4.7 Any delays caused by the City's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the City's responsibility to comply with any other deadline specified in this Consent Order.
- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by the City will be construed as relieving the City of its obligation to obtain written approval when required by this Consent Order.

V. EXTENSIONS

- 5.1 The City and the DEQ agree that the DEQ may grant the City a reasonable extension of the specified deadlines set forth in this Consent Order. To obtain an extension, the City must submit a written request in duplicate addressed to the DEQ, DWMAD Enforcement Specialist, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48933, and the District Supervisor at the address in Paragraph 3.8, no later than ten (10) business days prior to the pertinent deadline. The City's request shall include:
 - a. Identification of the specific deadline(s) of this Consent Order that will not be met.
 - b. A detailed description of the circumstances that will prevent the City from meeting the deadline(s).
 - c. A description of the measures the City has taken or intends to take to meet the required deadline(s).
 - d. The length of the extension requested and the specific date on which the obligation will be met.

The District Supervisor, in consultation with the Enforcement Specialist, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ.

VI. REPORTING

6.1 The City shall verbally report any violation(s) of the terms and conditions of this Consent Order to the District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The City shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

VII. RETENTION OF RECORDS

7.1 Upon request by an authorized representative of the DEQ, the City shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to the SDWA. All such documents shall be retained by the City for at least a period of three (3) years from the date of generation of the record unless a longer period is required by the SDWA.

VIII. RIGHT OF ENTRY

8.1 The City shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter any City facilities directly connected to the water system at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the SDWA or any other applicable statutory provision.

IX. PENALTIES

9.1 For each failure to comply with a provision of Sections III or IV of this Consent Order, the City shall pay stipulated penalties of **\$200** per violation per day for violations occurring one (1) to seven (7) days; **\$300** per violation per day for violations continuing for eight

(8) to 14 days; and \$500 per violation per day for violations continuing longer than 14 days.

9.2 To ensure timely payment of stipulated penalties, the City shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

9.3 The City agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for the DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. RMD 90025**.

9.4 The City agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to Paragraphs 9.1 through 9.3, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

X. FORCE MAJEURE

10.1 The City shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of the City's obligations under this Consent Order in accordance with this section.

10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the City, such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the City's diligence and that

delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the City's actions or omissions.

- 10.3 The City shall notify the DEQ, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the City to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The City shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of the City to comply with the notice requirements and time provisions under Paragraph 10.3, above, shall render Section X, Force Majeure, void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of Paragraph 10.3, above.
- 10.5 If the Parties agree that the delay or anticipated delay was beyond the control of the City, this may be so stipulated, and the Parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision-maker on whether or not the matter at issue constitutes a Force Majeure. The Parties to this Consent Order understand and agree that the final decision by the DEQ regarding a Force Majeure claim is not subject to judicial review. The City bears the burden of proving that any delay was beyond its reasonable control and that it has met all the requirements of Section X.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the City qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. GENERAL PROVISIONS

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the City to comply with the requirements of the SDWA and the rules promulgated thereunder.
- 11.2 The DEQ and the City consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to the SDWA.
- 11.3 This Consent Order in no way affects the City's responsibility to comply with any other applicable local, state, or federal laws or regulations.
- 11.4 The DEQ reserves its right to pursue appropriate action, including injunctive relief, to enforce the provisions of this Consent Order. At its discretion, the DEQ may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the DEQ is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability the City may have for natural resource damages caused by the City's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.6 In the event the City sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, the City shall also notify the DEQ, DWMAD District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the District Supervisor within 30 days of assuming the obligations of this Consent Order.

- 11.7 The provisions of this Consent Order shall apply to and be binding upon the Parties to this action, and their successors and assigns.
- 11.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

XII. TERMINATION

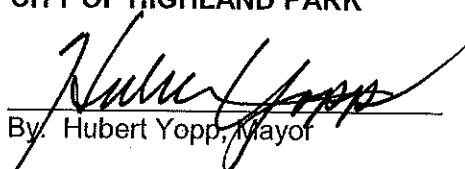
- 12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the City shall submit a request consisting of a written certification that the City has fully complied with the requirements of this Consent Order and has made payment of any stipulated or interest penalties required in this Consent Order. Specifically, this certification shall include:
 - a. The date of compliance with each provision of the Compliance Program in Section III, and the date any fines or penalties were paid.
 - b. A statement that all required information has been reported to the District Supervisor.
 - c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

CITY OF HIGHLAND PARK


By: Hubert Yopp, Mayor

Date: 7-19-17

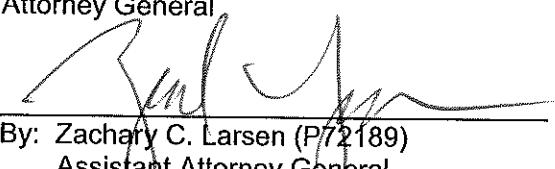
DEPARTMENT OF ENVIRONMENTAL QUALITY


By: Eric Oswald, Division Director
Drinking Water and Municipal Assistance
Division

28-31-17
Date

APPROVED AS TO FORM:

Bill Schuette
Attorney General


By: Zachary C. Larsen (P72189)
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
Department of Attorney General
P.O. Box 30755
Lansing, Michigan 48909

07/21/2017
Date



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHEAST MICHIGAN DISTRICT OFFICE



KEITH CREAGH
DIRECTOR

April 11, 2016

**SIGNIFICANT DEFICIENCY
VIOLATION NOTICE**

Mr. Al Coleman
City of Highland Park
14100 Woodward Avenue
Highland Park, MI

WSSN: 03140

Dear Mr. Coleman:

**SUBJECT: City of Highland Park - Water System Sanitary Survey
Significant Deficiency Violation Notice**

This letter will confirm the January 25, 2016 and March 30, 2016 meetings between Kris Donaldson, Michigan Department of Environmental Quality (DEQ) and Wade Trim staff (Chris Johnson, Andre Randall, Neil Harder, and Al Coleman); as well as City of Highland Park officials (Mayor Yopp and Cathy Square) and will summarize the subsequent review and discussion of the water supply facilities serving the City of Highland Park (City). The purpose of the meeting was to evaluate the water system with respect to the requirements of the Michigan Safe Drinking Water Act – Act 399 (PA 1976 as amended) as well as determine the status of efforts to meet the requirements of the DEQ's Determination and Order (order) issued to the City on April 25, 2012. The City's water treatment plant has been out of service since November 2012 and therefore only items in the order that pertain to the water distribution system were reviewed. In addition, the enclosed Water System Review form was updated to gather information on the City's water supply system.

The compliance items listed below pertain directly to the City's water distribution system. During the meeting, we discussed the need for the City to apply the limited available funds to the restoration of the water distribution system. The distribution system is a critical part of the water system that the City will utilize regardless of how water is generated. The City should not be applying funds to the restoration of the existing water treatment plant or to build a new water treatment plant until the needs of the water distribution system have been addressed. The outstanding deficiencies in the distribution system have continued to jeopardize the reliability of the system and must be addressed to protect public health.

The following table summarizes our findings from the survey of the water system:

Survey Element	Findings
Source	Not Applicable
Treatment	Not applicable
Distribution System	Significant Deficiencies Identified
Finished Water Storage	Not Evaluated
Pumps	Not Applicable
Monitoring & Reporting	No deficiencies/recommendations
Management &	Deficiencies Identified
Operator Compliance	No deficiencies/recommendations
Security	Recommendations
Financial	Significant Deficiencies Identified
Other	Not Applicable

The following significant deficiencies are violations of Act 399 and must be resolved in order to return the water system to compliance.

1. Paragraph 19a of the Order states the City will *"recruit and employ a full time S-2 certified Operator in Charge (OIC) and have that individual supervise the water distribution system. Begin actively overseeing work done in the distribution system by contractors using certified distribution system operators as required by R325.11905(8)"*

We are pleased the City has hired Wade Trim to operate the City's water department. During the meeting we discussed the limited onsite presence of the OIC. To comply with this requirement the OIC shall make daily visits to the City, be on call 24 hours per day, and supervise/direct staff responsible for daily operations.

2. Paragraph 19b of the order states the City shall *"develop a cross connection control program, initiate the required inspections, and begin any needed corrective measures as required by R325.11404."*

The City has not complied with this requirement to date. During recent meetings with the City, Wade Trim, and Michigan Department of Treasury (Treasury) staff the use of an upcoming distressed city grant was discussed as a possible funding source for hiring a contractor to develop and implement a cross connection program.

3. Paragraph 19c of the Order states the City shall *"complete a distribution system leak survey and repair all major leaks"*

The City has not complied with this requirement to date. Funding for a leak survey was provided as a part of a previous year distressed city grant. The funds available from the grant allocated for the leak survey was not sufficient to complete the survey. During a recent meeting we discussed the use of the remaining previous grant funds along with a possible upcoming loan to obtain an adequate leak study and repairs.

4. Paragraph 19d of the Order states the City shall "*initiate a program to locate and repair all nonfunctional distribution valves and fire hydrants as required by R325.11108 and TSS 8.3 and 8.4.*"

The City has not complied with this requirement to date. During recent meetings an upcoming distressed city grant was discussed as a possible funding source to bring additional staff on board for the summer to conduct a valve location and turning program to exercise and locate all nonfunctional valves. We also discussed the importance of isolating the water treatment plant property from the distribution system. The appropriate valves need to be located and closed or new valves need to be installed to properly disconnect the water treatment plant from the system.

5. Paragraph 19e of the Order states the City shall "*resolve all billing and payment issues, including ensuring that everyone receiving water is billed, reconcile the billing list to connections to the system, disconnect or shut off nonpaying or inactive accounts and ensure that bills are accurate based on metered usage.*"

The City has not fully complied with this requirement to date. During a recent meeting we discussed progress made to change out water meters and the update of the meter reading, billing, and collection system.

6. Paragraph 19f of the Order states the City shall "*resolve all lost water issues by ensuring all inaccurate customer meters and system leaks are repaired and stopping unmetered or unauthorized use of water.*"

The City has not fully complied with this requirement to date. During a recent meeting we discussed the continued water meter replacement project as well as the intent to investigate in active accounts.

The following additional deficiencies are violations of Act 399 and must be resolved in order to return the water system to compliance.

7. Part 12, Reliability, Rule 1203, requires that the City establish certain requirements as part of the Reliability Study to maintain the reliability of the public water supply system to assure a continuous supply of water for drinking and household purposes. Our records indicate that a draft reliability study was completed in 2008. Please note that effective December 4, 2009, Part 12 was revised to incorporate five year and 20 year projections, as well as additional basic information that must now be presented in the study. The minimum information which must be incorporated in this study includes the following:

- a) Basic planning data, including current population, number of service connections, and equivalent residential units.
- b) Sufficient water production and consumption data to identify trends for both five year and 20 year planning periods, including the following elements:
 - The present and projected average daily demand.
 - The present and projected maximum daily demand.
 - The present and projected maximum hourly demand.
 - The present and projected peak instantaneous demand for systems using hydropneumatic storage.
 - The present and projected fire flow demand.
 - The basis of demand projections.
 - Monthly and annual production totals for each source, including water purchased from another public water supply.
 - Annual usage totals for water supplied to other public water supplies.
 - Annual usage totals for each customer class as determined by the public water supply.

(c) A water shortage response plan for emergencies.

8. Part 16, *General Plans*, was revised December 4, 2009, to include additional General Plan requirements. Per Rule 1604, a General Plan of the waterworks system must include a general layout of the water treatment system and distribution system, as well as the rated capacity of the waterworks system. Further, Rule 1605 requires distribution systems intended to provide fire protection to include a hydraulic analysis of the distribution system showing pressure contours under peak demands. These distribution systems must also include an inventory of water main by size, material, and age, as well as service area maps indicating service area boundaries. Additionally, according to Rule 1606, by January 1, 2016, publicly owned water supplies must include a Capital Improvements Plan that identifies water systems needs for five year and 20 year planning periods. Our records indicate that the most recent General Plan was completed in draft form in 2008. We ask that you incorporate the additional requirements as you update the City's General Plan, likely this will be done as you update your reliability study.

The Reliability Study and General Plan should be updated as part of any water system planning initiative commissioned by the City. An updated hydraulic model as well as GIS mapping of the distribution system were recently discussed uses of potential grant and/or loan funds. These tasks are important components to a reliability study and general plan and should be completed in conjunction with the updated plans.

9. Part 23, *Emergency Response Plan* (previously Contingency Plans) was recently revised to include terrorist or other intentional attacks on drinking water supplies. Enclosed is an Emergency Response Plan template. Please review the template

located on the DEQ website and update the City's existing plan to incorporate the additional considerations. The plan should be readily available to City personnel in the event of an emergency. It should be located and distributed, as necessary, to assure effective use by appropriate water system personnel. We also ask that the plan be made available for DEQ review upon request. Once the plan has been amended, please submit notification for our records.

Our investigation is considered complete. This significant deficiency begins as of the date of receipt of this letter and will continue until you complete corrective action. You must complete corrective action within 120 days of receipt of this letter or be in compliance with a corrective action plan and schedule approved by this office. Contact us within 30 days of receipt of this letter to discuss appropriate corrective action. You must also notify us in writing within 30 days of correcting the significant deficiency. We will visit the site within 30 days of your notification to confirm the significant deficiency has been corrected as is our obligation under the Ground Water Rule, 40 CFR §142.16(o)(4).

If you have any factual information you would like us to consider regarding the significant deficiencies identified in this Significant Deficiency Violation Notice please provide it in a written response by April 27, 2016.

We anticipate and appreciate your cooperation in resolving this matter. If you have any questions regarding this Significant Deficiency Violation Notice, please feel free to contact me at 586-753-3759, donaldsonk@michigan.gov; or Department of Environmental Quality, Office of Drinking Water & Municipal Assistance, Southeast Michigan District Office, 27700 Donald Court, Warren, Michigan 48092.

Sincerely,



Kris Donaldson
District Supervisor
Office of Drinking Water & Municipal Assistance

Enclosure(s)

cc/enc:Mayor Yopp, City of Highland Park
Cathy Square, City of Highland Park
Kris Donaldson, MDEQ
Amy Lachance, MDEQ
Mary Ann Dolehanty, MDEQ
Sue Maul, MDEQ
Neil Harder, City of Highland Park (Wade Trim)

27700 Donald Ct
Warren, MI 48092
Phone: 586-753-3700
Fax: 586-753-3832

WSSN: 03140

Office of Drinking Water and Municipal Assistance

Southeast Michigan District Office

Water System Sanitary Survey

Highland Park Water System

2016



WATER SYSTEM SANITARY SURVEY

GENERAL

Basic Information					
WSSN	03140	Supply	Highland Park	County	Wayne
Date	3/30/2016	Reviewed by	Islam/Donaldson	District	43
Primary Contact	Al Coleman		Copy To	Neil Harder/Andre Randall	
SDWIS Role			SDWIS Role		
Title	Superintendent		Title	OIC	
Telephone	248-497-8588		Telephone	989-415-2817(neil) / 734-330-7926 (andre)	
Cell Phone			Cell Phone		
Pager			Pager		
Fax			Fax		
e-mail	acoleman@wadetrim.com		e-mail	nharder@wadetrim.com / arandall@wadetrim.com	
Address	14100 Woodward Ave Highland Park, MI		Address	14100 Woodward Ave Highland Park	
Population	11,776	Year	2010	Basis	Census

Operator Certification					
Distribution Classification:	S-2	Certification	Op. #	Exp. Date	
Operator In Charge:	Neil Harder (Wade Trim)	F-2, S-2	5640	7/15/2008	
Backup Operator:	Andre Randall (Wade Trim)	S-2, D-1	5174	1/15/2019	
Other Operators:	Buffa Moncrief Devon Knight Natasha Tyler	DPW DPW Collections Clerks			
Treatment Capacity:	NA (Water Treatment Plant offline since 11/2012)				
Treatment Classification:	NA	Certification	Op. #	Exp. Date	
Operator In Charge:	NA				
Backup Operator:	NA				
Other Operators:					

Do the operators receive adequate technical training? Yes

If not, what and why?

Comments:

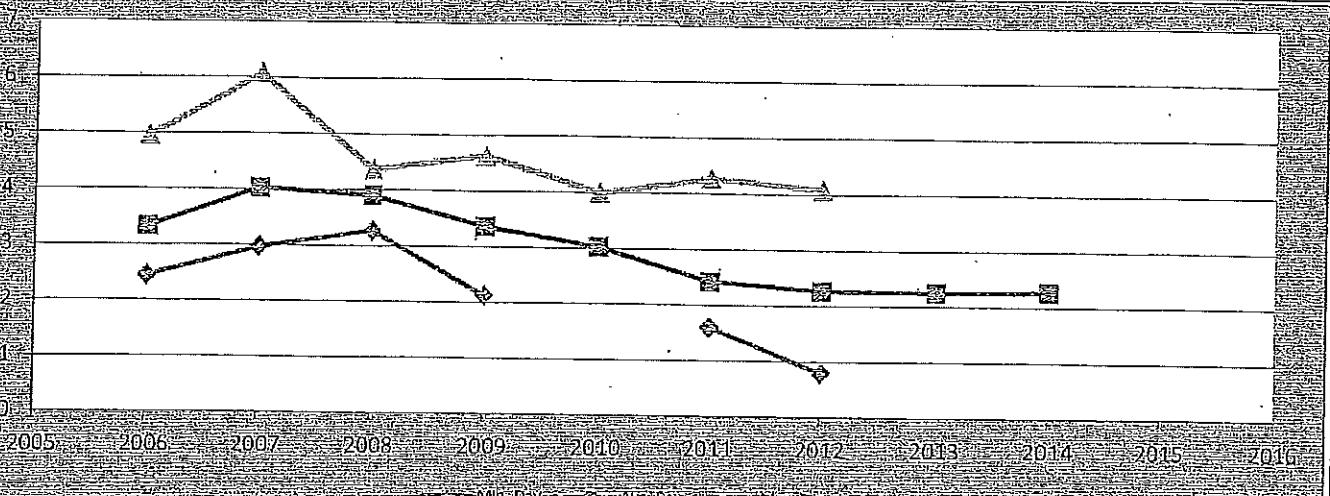
Al Coleman - Superintendent on location daily at customer service office in Model T Shopping complex. Customer service office handles billing with help from outside processing company. Wade Trim handles all collections and funds go into city account earmarked for water department functions. Meter shop onsite. CPI contracting (Chuck Smith) handles all watermain repairs. Discussed need for more OIC onsite presence 1-25-2016)

Ownership					
Ownership:	City	(City, Village, Township, County, Authority, Association)			
Consent Agreement:	2012 Directors Order				
Escrow Account:	NA				
Annual Fee:	Paid	(Paid, Unpaid, Exempt, Etc.)			
Comments:					

SOURCE

Capacity

Year	Demand (MGD)					Max/Avg	Population History	G/C/D	% unacct, H ₂ O
	Max. Day	Date	Avg. Day	Min. Day	Date				
2006	4.960		3.334	2.450		1.487702	11,776	283.1	
2007	6.070		4.030	2.970		1.506203	11,776	342.2	
2008	4.370	8/21/2008	3.900	3.270	11/28/2008	1.120513	11,776	331.2	
2009	4.630		3.368	2.130		1.374703	11,776	286.0	
2010	3.990		3.022			1.320318	11,776	256.6	
2011	4.270	1/13/2011	2.425	1.600	12/17/2011	1.760825	11,776	205.9	
2012	4.081	9/10/2012	2.270	0.797	11/13/2012	1.797797	11,776	192.8	
2013			2.253						
2014			2.273						
2015									



Five Year Max. Day

4.270

* No master meters in Highland Park, unable to estimate usage

Ten year Max. Day

6.070

Five Year Avg. Day

2.305

MaxDay for capacity requirements:

6.070

Purchase Contract

Principle Parities of Contract: NA - no contract with GLWA in place

Date of Contract:

Expiration Date:

Annual Volume Available by Contract:

MG

Maximum Day Available by Contract:

MGD

Maximum Hour Available by Contract:

GPH

Maximum Pressure Allowed by Contract:

PSI

Minimum Pressure Required by Contract:

PSI

Comments:

DISTRIBUTION

Interconnections with Other Supplies

Is water purchased from other supplies?	GLWA
If yes, list WSSN number (s):	2838
No. of Emergency Connections:	

Location	Main Size	Capacity	Metered?	Status (Regular/Emergency)	WSSN of Connection
Hamilton and Webb	16"		Active/No	2838	
Hamilton and Six Mile Road	16"		Active/No	2838	
Pilgrim and Woodrow Wilson	12"		Emergency	2838	
Oakland and Six Mile Road	8"		Emergency	2838	
Oakland and Tennyson	12"		Emergency	2838	
Midland and Joslyn	8"		Emergency	2838	
Six Mile Road and Brush	6"		Emergency	2838	
Woodward and Six Mile Road	12"		Emergency	2838	
Woodward and Woodland	12"		Active/No	2838	

Are valves exercised annually? _____
Flushed?

Comments:

Currently only operating three or four of the available connections. Testing system to see what is the best option for connection location. Will likely stay on the 3-4 connections until summer when another connection may be opened due to demand. 1-25-2016

Distribution Piping

Mains by Material	
Cast Iron	90%
Ductile Iron	10%
PVC	
Asbestos-Cement	
HDPE	
Galvanized	
Concrete	

Mains by Size	
2"	
4"	
6"	45%
8"	22%
10"	1%
12"	17%
16"	4%
24"	10%
30"	1%

Estimated percent of piping with coal tar lining %

Comments:

DISTRIBUTION

Operational Concerns & Maintenance

Are there areas where water main breaks are frequent?	scattered locations
If yes, identify locations:	_____
Comments:	_____
3-6 water main breaks per month on average. Approximately 60 breaks per year 1-25-2015	
Are there areas where aesthetic water quality complaints are frequent?	no
If yes, identify locations:	_____
Comments:	_____
Do you receive complaints alleging illness due to the water?	no
If yes, identify locations:	_____
Comments:	_____
Are there areas where customers complain of low pressure?	yes
If yes, identify locations:	_____
Comments:	_____
Some complaints from time to time. 30-50psi pressure ranges. As long as two 16" meters are open there are good pressures and flows. A problem in the northwest corner of town that HP and DWSD are working on resolving. 1-25-2016	
What is the procedure to respond to and track these complaints?	
Comments:	_____
Working to identify low pressure areas in conjunction with GLWA (1/2016)	

Distribution System Capacity

Are there areas where peak flows (including fire flow) cannot be maintained?	_____		
If yes, identify locations:	_____		
Comments:	_____		
Last ISO report date?	2009	Rating	4
Proposed distribution system improvements:	_____	Estimated Completion Date	_____
Location:	_____	_____	_____
Comments:	_____		
*2009 ISO report done prior to switch to GLWA water.			

DISTRIBUTION

Hydrants		
Number of Hydrants	~560	
Number Without Auxiliary Shut-Off Valves	~42 (from WT contract)	
Number that are Self-Draining		
Number of Inoperable Hydrants	~50	
Frequency of Hydrant inspection:	yearly	
Inspection Staff:	Fire Department	
Are there areas where additional hydrants are needed?	?	
If yes, list locations:		
Hydrant location system	map	Accurate?
Are hydrants color coded for capacity?	no	
Has this information been provided to the fire department?	yes	
Frequency and seasons of hydrant flushing	1 per year	
Purpose of flushing	flush main/hydrant testing	
Is the public notified prior to flushing?	no	
Does flushing follow a specific format?	no	
Is the volume of water used during flushing estimated?	no	
Do hydrants receive maintenance painting?	?	
Is a record maintained of hydrant activities?	?	
<i>Hydrant records should include: Hydrant number, location of the hydrant, type of hydrant, size of barrel, size of bottom valve, size of lead, direction of turn, operable or inoperable, auxiliary valve type and size, weep holes plugged or unplugged, condition of hydrant (caps, chains, valve operation, operating nut, leakage & etc.), color coded capacity, flow data (gpm & psi) flushing dates, inspection dates.</i>		
Comments: Approximately 50 missing or inoperable hydrants in the city. Not sure if auxiliary valves work on all hydrants. Need to do citywide inspection of all hydrants and valves. Hoping to get grant funding to hire more staff for this task. Recommended Hydrant Flushing program. 1-25-2016		

Valves		
Number of Valves	?	
Number of inoperable valves	?	
Are there areas where additional valves are needed?		
If yes, list locations:		
Valve location system	map	Accurate?
Valve turning frequencies	Primary:	
	Others:	
Records Maintained?		
<i>Valve records should include: valve number, location of valve (with witness points), type of valve, size of valve, normal operating status (open or closed), condition of valve (operable or inoperable), direction of turn, number of turns, and dates of operation.</i>		
Comments: CMMS project, Wade Trim will identify all key and non-key valves. Well exercise every key valve annually and nonkey valves every 4 years. 1-25-2016		

DISTRIBUTION

Customer Service Information

Number of service connections	2487 active accounts,
Number of metered service connections	100
Percentage of service line materials:	Ownership of Service (CWS/Customer)
Copper	From Corp Stop to Curb Stop
PVC/PE/PB	City
Galvanized	From Curb Stop to Property Line
Lead	Customer
	From Property Line to Meter
	Customer
	Meter
	'City

CUSTOMER METERS

Types of meters Used	Neptune-Full AMI reading come in thru radio towers to city hall
Number of Meters with Remote Reading Devices	
Residential Meter Sizes	5/8-1"
Industrial/Commercial Meter Sizes	1" and up
Meter Testing/Maintenance Program	City currently undergoing changeout (1-25-2016)
Average Age of Meter in System	
Criteria for Changeout	
Number or Percent Changeout per Year	
Master Meter Locations	Factories
Calibration of Master Meters	Not yet, Meter Changeout in progress
Meter Reading Staff/Contract:	Buffa Moncrief/Devon Knight
Percent of Usage by Customer Type	Large Users - % of Use
% Residential	
% Commercial	
% Industrial	
% Other	

Comments:

Records indication over 10,000 service lines in the city with 2487 active account and 2600 inactive accounts. Wade Trim going to each of the 2600 inactive account addresses to verify status. Eventually hope to have GIS system that notes status.

System Growth

Year	# of Construction Permits Issued	Permitted Amount of WM Feet
2003	0	
2004	0	
2005	0	
2006	0	
2007	2	1725
2008	0	
2009	2	681 & liquid alum tank
2010	0	
2011	0	
2012	0	
2013	0	
2014	0	
2015	0	

Comments:

DISTRIBUTION

Water Rates	
What is your current rate schedule?	/1000gals or \$/qtr, \$/cuM
Are current rates adequate to support O&M and CIPS?	No
When was last time rates were adjusted?	2015
Has a water rate study been performed? When?	?
Is there a meter charge or ready to serve charge?	yes depends on meter size
Is a copy of the water rate schedule and ordinance available?	?
Comments:	

Repair Parts Inventory	
Extra Mains (Sections for Each Size in Service)	None
Repair Clamps (2 or more for each size)	None
Tees, Crosses & Elbows	None
Hydrants	None
Valves	None
Services (Corp & Curb Stops, Clamps and Lines)	None
Other	None
Comments:	
None - Work on water mains contracted to CPI contracting	

Safety Programs	
Confined Space Entry Program	None
Trench Safety Program	None
Comments:	
Work that would require confined space entry and trench safety training is contracted out to CPI contracting	

PROGRAM COMPLIANCE

Cross Connection Programs

Ordinance No.	1153 Ch1044	Date:	12/15/1986	(Chris Johnson will send copy)
Approved Program (Y/N)?	?	Date:	3/27/2009	
Staff Assigned to Program (No. Dept and/or who)				
Is Annual Cross Connection report required (Y/N)?	N			
Was previous year's annual report received (Y/N)?	N			
Was previous year's annual report acceptable (Y/N)?	N			
Inspection Status				
Assembly Testing Frequency	High Hazard:		Low Hazard:	
Assembly Testing Performance				
Recordkeeping				
Private Well Isolation/Abandonment Procedure:				
Comments:	If city gets disadvantaged city grant, a portion of the money will go to hiring a company to implement cross connection program. Grant awards to be announced soon, however this is a reimbursement grant and city must have funds to spend first and will later be reimbursed. Have the funds upfront is an issue for the city. 1-25-2016			

Annual Pumpage Reports

Is Annual Pumpage Report required (Y/N)?	Y
Was previous year's annual report received (Y/N)?	Y
Comments:	Date: 2/5/2016
No Master Master Meters from GLWA. City unable to report usage. City will have an idea of retail usage, but does not know how much water loss. There are plans to place ultrasonic meters in 3 locations to estimate usage.	

Monthly Operator Reports

Are Monthly Operation Reports required (Y/N)?	NA
Were all previous year's reports received (Y/N)?	NA
Are previous year's reports acceptable (Y/N)?	NA
Comments:	Timely? NA
If no, describe problems:	
Comments:	

Consumer Confidence Reports

Is the annual CCR required? (Y/N)	Yes
Was the previous year's report received? (Y/N)	Date: _____
Was the previous year's acceptable? (Y/N)	Date: _____
Was the previous year's certification form received? (Y/N)	Date: _____
Comments:	
Discussed upcoming CCR.	

Emergency Response Plan

Date of ERP	Need update	Acceptable?	N
Filed where?			
Comments:	Discussed need for updated ERP, looked up location of template forms on DEQ website during meeting 1-25-2016		

PROGRAM COMPLIANCE

General Plan

Date of Most Recent Plan	DRAFT 2008	Filed Where?	Acceptable?
General Layout			
Facility locations & capacities			
Water Main Inventory			
Identification of Service Areas			
Hydraulic Analysis			
Capital Improvement Plan			
Comments: DRAFT Plan done by Wade Trim in 2008 was never finalized. Discussed need to update in accordance with regulation changes and submit (1-25-2016)			

Reliability Study

Date of Most Recent Study	DRAFT 2008	Filed Where?	Acceptable?
Contents:			
5 & 20 Year Demand Projections			
Source Production Totals (Monthly)			
Customer Supply Usage (Annual)			
Res/Comm/Ind Usage (Annual)			
Water Shortage Response Plan			
Recommended Improvements			
Comments: DRAFT Plan done by Wade Trim in 2008 was never finalized. Discussed need to update in accordance with regulation changes and submit (1-25-2016)			

Permits

Applies for and obtains permits prior to construction (Y/N):	Y
Reviews plans prior to submittal to DEQ (Y/N):	Y
Standard specifications on file at CWS (Y/N):	N
If applicable, adheres to contract with supplier regarding plan submittal (Y/N):	NA
Follows master plan for any construction (Y/N):	NA
Develops as-built plans (Y/N):	
Updates general plans (Y/N):	
Comments:	Date: _____

MONITORING

Bacteriological

Date of Approved Site Sampling Plan	2/5/2016
Number of samples required each month	15
Certified Lab Used	DEQ Lab
MCL Monitoring or Reporting Violation(s) in past 3 years? (Y/N)	Date:
Number & Type of Violations	
Public Notice Issued according to regulations? (Y/N)	Date:
Comments:	

Chemical

Date of Monitoring Schedule	Feb-16
Were nitrate, nitrite and fluoride (or partial chemical) samples collected? (Y/N)	NA
If nitrate detect, what is concentration?	NA
If nitrite detect, what is concentration?	NA
Detected for metals >50% of MCL? (Y/N)	NA
Metals (list)	NA
Detected for VOCs? (Y/N)	NA
Detected for SVOCs? (Y/N)	NA
Date of Approved Disinfection Byproduct Monitoring Plan	NA
Comments:	Y

Lead and Copper Monitoring

No. of Samples Required:	5
Frequency (Semi) Annual/Annual/Triennial)	triennial
Exceedance of lead or copper action level? (Y/N)	No
If yes, was public education issued? (Y/N)	NA
Next Monitoring Period:	June-Sept 2016
Corrosion Control Program Status, if applicable	I receiving water from GLWA
Lead service line replacement status, if applicable	none known
Comments:	

Radiological Monitoring

Date of Monitoring Schedule	NA
Alpha, beta, radium, uranium	NA
Radon	NA
Tritium	NA
Detected for Rads > 50% of MCL? (Y/N)	NA
Comments:	If yes, list NA Date:

Sanitary Survey of Community Water Supply - Review Summary

Water Supply: Highland Park

WSSN: 03140

County: Wayne

District: 43

Evaluator: Islam/Donaldson

Date: 3/30/2016

Category	Comment	N/A	NotEv	NoD/R	Rec	Def	SigDef
Source		X					
Construction & Maintenance		X					
Standby Power		X					
Isolation		X					
Source Water Protection		X					
Capacity		X					
Treatment		X					
Disinfection		X					
Fluoride		X					
Phosphate Addition		X					
Softening		X					
Iron/Manganese Removal		X					
Arsenic Removal		X					
Pretreatment		X					
Filtration (gravity or membranes)		X					
C-T		X					
Other	Proper valved off isolation	X					
Distribution System							X
Interconnections w/ Other WS	optimize GLWA connection locations/isolate WTP					X	
Hydrants & Valves	hydrant&valve inspection and repair program						X
Service Lines & Metering	meter replacement, unaccounted water loss						X
General Plan	needs update					X	
Cross Connections							X
Construction & Maintenance	leak survey, improve O&M						X
Capacity					X		
Finished Water Storage		X					
Construction & Maintenance		X					
Controls		X					
Capacity		X					
Pumps (All Pumping Facilities)		X					
Construction & Maintenance		X					
Controls		X					
Capacity		X					
Monitoring & Reporting							
Bacteriological Monitoring					X		
Chemical Monitoring			X				
MOR or Annual Pumpage Report			X				
Consumer Confidence Report			X				
Analytical Capabilities			X				
System Management & Operations						X	
Owner Responsibility				X			
Capacity Development			X				
Reliability Study	needs update					X	
Operations Oversight	improve OIC presence/oversight				X		
Permits				X			
Operator Compliance					X		
Operator Certification				X			
Technical Knowledge & Training			X				
Security					X		
Emergency Response Plan				X			
Site Security (Fences, Alarms...)	needs update			X			
Financial					X		
Rates				X			
Budget & Capital Imp. Plan	cost/billing system improvements, CIP-needed.			X			
Other							

N/A - Not Applicable

NotEv - Not Evaluated

NoD/R - No Deficiencies/Recommendations Made

Rec - Recommendations Made

Def - Deficiencies Identified

SigDef - Significant Deficiencies Identified



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
WARREN DISTRICT OFFICE

EGLE
PHILLIP D. ROOS
DIRECTOR

December 14, 2023

VIA EMAIL

Damon Garrett
Metro Consulting Associates LLC
Highland Park Water Department
14110 Woodward Avenue
Highland Park, Michigan 48203

PWSID: MI0003140
County: Wayne
System: City of Highland Park

Dear Damon Garrett:

SUBJECT: Administrative Consent Order (ACO) ACO-399-06-2017
Paragraphs 3.2, 3.2(a), 3.2(b), 3.3(a), 3.3(b), 3.4, 3.4(a), 3.5, 3.6, and part
of 3.7 – Submittal Approval

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Drinking Water and Environmental Health Division (DWEHD) has received twelve progress reports from the City of Highland Park (City) between the dates of November 13, 2017, and March 3, 2022, containing updates on the compliance status and documents submitted in response to ACO-399-06-2017 (Consent Order). EGLE has reviewed the information and documentation in the progress reports that pertain to Paragraphs 3.2, 3.2(a), 3.2(b), 3.3(a), 3.3(b), 3.4, 3.4(a), 3.5, 3.6, and part of 3.7, and has approved them as follows:

1. Paragraph 3.2 states: *Within 30 days of the effective date of this ACO, the City shall initiate a program to locate, exercise, and inspect all valves throughout the City.*

The City satisfied this requirement as documented in Progress Report 1 received November 13, 2017.

2. Paragraph 3.2(a) states: *Within one (1) year of the effective date of this ACO, the City shall generate a list of all nonworking valves prioritized for repair and ensure at least 1/3 of all nonworking valves are repaired or replaced in order of priority. The City must prioritize those repairs that provide the most benefit to protection of public health.*

The City satisfied this requirement as documented in Progress Report 4 received September 10, 2018.

3. Paragraph 3.2(b) states: *Within two (2) years of the effective date of this ACO, the City shall ensure that all remaining nonworking valves identified on the list generated in Paragraph 3.2(a) are repaired or replaced.*

The deadline for this paragraph was extended twice, with the final extension granted to May 31, 2022. The City satisfied this requirement as documented in Progress Report 12 received March 3, 2022.

4. Paragraph 3.3(a) states: *Within nine (9) months of the effective date of this ACO, the City shall generate a list of all nonworking hydrants prioritized for repair and ensure that at least 1/3 of all nonworking hydrants are repaired or replaced in order of priority. The City must prioritize those repairs that provide the most benefit to the protection of public health. Priority determination must be in collaboration with the local fire department, documentation of which shall be submitted to the DEQ, DWMAD Southeast Michigan District Supervisor.*

The City satisfied this requirement as documented in Progress Report 1 received November 13, 2017, and Progress Report 4 received September 10, 2018.

5. Paragraph 3.3(b) states: *Within 21 months of the effective date of this ACO, the City shall ensure that all remaining nonworking hydrants identified on the list generated in Paragraph 3.3(a) are repaired or replaced.*

The City satisfied this requirement as documented in Progress Report 7 received June 27, 2019.

6. Paragraph 3.4 states: *Within 11 months of the effective date of this ACO, the City shall complete a distribution system leak survey.*

The deadline for this paragraph was extended to August 31, 2018. The City satisfied this requirement as documented in Progress Report 4 received September 10, 2018, which included the submission of the leak survey report.

7. Paragraph 3.4(a) states: *Within one (1) year of the effective date of this ACO, the City shall generate a list of all water system leaks prioritized for repair and ensure at least 1/3 of all leaks have been repaired in order of priority. Priority must be given to those repairs that provide the most benefit to protection of public health.*

The deadline for this paragraph was extended to December 31, 2018. The City satisfied this requirement as documented in Progress Report 4 received September 10, 2018, and in Progress Report 5 received January 7, 2019.

8. Paragraph 3.5 states: *Within 30 days of the effective date of this ACO, the City shall submit a written cross-connection program to the DEQ for review and approval as required by Michigan Administrative Code (MAC) R 325.11404. Within six (6) months after DEQ approval, the City shall implement the program by ensuring the required inspections and corrective measures are underway.*

The City submitted a cross-connection program which was approved by EGLE on September 18, 2017. Documentations was provided in Progress Report 1 received November 13, 2017. An annual cross connection report was received March 21, 2018, documenting the implementation of the program.

9. Paragraph 3.6 states: *Within five (5) months of the effective date of this ACO, the City shall recruit and employ a full time S-2 certified operator in charge and have that individual supervise the water distribution system. The City shall also begin actively overseeing all work done in the distribution system by contractors using certified distribution system operators.*

The City satisfied this requirement as documented in Progress Report 1 received November 13, 2017, and Progress Report 4 received September 10, 2018. Additional information and updates were provided in Progress Report 5 received November 1, 2019, Progress Report 6 received April 1, 2019, Progress Report 9 received July 1, 2020, and Progress Report 10 received January 21, 2021.

10. Paragraph 3.7 states: *Within eight (8) months of the effective date of this ACO, the City shall complete a Reliability Study in accordance with Part 12 of the SDWA administrative rules, see MAC R 325.11201 et seq., and a General Plan in accordance with Part 16 of those administrative rules, see MAC R 325.11601 et seq. Applicable Part 16 requirements include creating a Capital Improvement Plan that identifies water system needs for 5-year and 20-year planning periods and developing an Asset Management Plan by January 2, 2018. See MAC R 325.11606.*

The deadline for this paragraph was extended to December 31, 2018. A reliability study, general plan, capital improvement plan, and asset management plan were received on January 7, 2019, as part of Progress Report 5. The asset management plan was approved by EGLE on December 4, 2019. Updates to the reliability study, general plan, capital improvement plan, and asset management plan were received on January 17, 2020, and January 7, 2021. Comments related to the reliability study, general plan, and capital improvement plan will be provided separately.

EGLE appreciates your cooperation to resolve these compliance matters. If you have questions, please contact me by email at YuskoKotimkoT@Michigan.gov, or by phone at 586-817-9120.

Sincerely,



Tiffany Yusko-Kotimko, District Engineer
Warren District Office
Drinking Water and Environmental Health Division

cc: Glenda McDonald, City of Highland Park
Jaron Bradley, Metro Consulting Associates
Andrew Richmond, Metro Consulting Associates
Vicki Garon, P.E., EGLE
Maureen Nelson, EGLE

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF WAYNE

GREAT LAKES WATER AUTHORITY,

Plaintiff,

v.

Case No. 2014-001974-CK
Hon. Edward J. Joseph

CITY OF HIGHLAND PARK, a municipal
corporation,

Defendant.

DYKEMA GOSSETT PLLC

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STIPULATED ORDER FOR ENTRY OF A CONSENT JUDGMENT

At a session of said Court, held in the City of Detroit,
County of Wayne, State of Michigan,

ON: _____

PRESENT: HON. Edward J. Joseph
CIRCUIT COURT JUDGE

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that the settlement agreement between the Great Lakes Water Authority, the City of Highland Park, and the State of Michigan, attached hereto as **Exhibit A**, is hereby entered as a consent judgment (the “Consent Judgment”). This Court retains jurisdiction to enforce the terms of the Consent Judgment.

SO ORDERED

HON. EDWARD J. JOSEPH

SO STIPULATED:

By: _____
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Matthew R. Cassar (P83663)
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WATER SERVICE CONTRACT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

CITY OF HIGHLAND PARK, A MICHIGAN MUNICIPAL CORPORATION

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**WATER SERVICE CONTRACT
BETWEEN
GREAT LAKES WATER AUTHORITY
AND
CITY OF HIGHLAND PARK**

This Water Service Contract (“Contract”) is made between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to the provisions of Act 233, Public Acts of Michigan, 1955, as may be amended from time to time (“Act 233”), with its principal place of business located at 735 Randolph, Detroit, Michigan 48226 (“GLWA”), and the City of Highland Park, a Michigan municipal corporation and constituent municipality pursuant to the provisions of Act 233, with offices located at 12050 Woodward Avenue, Highland Park, Michigan 48203 (“Customer”). GLWA and Customer may be referred to individually as “Party” or collectively as the “Parties.”

Recitals

- A. On June 12, 2015, GLWA and the City of Detroit entered into a Regional Water Supply System Lease (the “Lease”) for the purpose of leasing the System (defined below) to GLWA for a minimum term of 40 years; and
- B. Pursuant to the Lease, all wholesale service functions are conducted by GLWA, and the System is operated and maintained by GLWA; and
- C. Customer seeks to contract for water services with GLWA; and
- D. The Parties intend that this Contract be interpreted consistently with the Lease, the GLWA Articles of Incorporation, the Settlement Agreement, and Michigan state law including without limitation the provisions of Act 233, as each may be amended from time to time; and
- E. The Parties agree that this Contract shall be subject to the terms and conditions of the Settlement Agreement; and
- F. GLWA has established a Water Residential Assistance Program (“WRAP”) funded annually in an amount equal to .5% of the base budgeted operating revenues; and
- G. Customer shall be eligible to participate in GLWA’s WRAP consistent with the terms of the WRAP as may be amended from time to time; and
- H. GLWA intends to maintain a voluntary, collaborative partnering effort with its wholesale water customers and the City of Detroit, of which the One Water Partnership is a central part, which is intended to assist GLWA in data gathering, alternative evaluations and recommendations, achieving full disclosure of charges, identifying true cost of service principles to guide revenue collection, and to provide assistance with a cohesive planning effort for GLWA’s water service area.

Accordingly, the Parties agree as follows:

Article 1. **Definitions**

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

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

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

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

“Board” shall mean GLWA Board of Directors.

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

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

“Customer” shall mean the City of Highland Park, Michigan.

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

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

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

“EGLE” shall mean the State of Michigan Department of Environment, Great Lakes, and Energy.

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

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

“GLWA Maximum Day” shall mean the maximum reported water production day for the System during any twenty-four-hour period as measured from 12:00 a.m. Eastern Standard

Time in any given calendar year, as determined by GLWA in reviewing water production and storage reports.

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

“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 GLWA water master 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” or “Notice” shall mean the notices, consents, approvals, requests, and other communications required to be given under the terms of this Contract.

“One Water Partnership” shall mean the voluntary, advisory organization consisting of representatives of GLWA, representatives of the City of Detroit Water and Sewerage Department, and wholesale water and wastewater customers of GLWA and their respective representatives and shall include its successor or replacement if altered or discontinued. The One Water Partnership or its successor shall remain in existence for a minimum term of January 1, 2008 until December 31, 2038 unless the organization determines otherwise.

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

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

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

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

“Settlement Agreement” shall mean the *Settlement Agreement and Mutual Release* by and between the SOM, Customer, and GLWA, ~~approved and executed contemporaneously with this Contract~~, which incorporates the provisions of the mediation term sheet dated

October 18, 2023, the Trust Agreement, and other documents referenced by the Settlement Agreement.

“SOM” shall mean the State of Michigan.

“System” shall mean the public water works system owned by the City of Detroit and leased, operated, and maintained by GLWA and any improvements, additions and/or changes to the System made by GLWA on or after January 1, 2016, which shall be owned, operated, and maintained by GLWA. The System does not include any City of Detroit local assets not leased to GLWA. Customer shall not have an ownership interest in the System.

“Trust Agreement” shall mean the trust agreement ~~approved and executed by the Parties contemporaneously with this Contract and~~ attached as Exhibit C. ~~If no Trust Agreement is approved and executed by the Parties on or before March 29, 2024, then this Contract shall be void and have no force or effect.~~

“Trustee” shall mean the trustee of the trust described in Article 12 and in the Trust Agreement attached as Exhibit C.

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

Article 2. Contract Term

- 2.01 **Term.** GLWA shall sell and supply water to Customer from the System in accordance with the terms of this Contract for a period of thirty years from the effective date of this Contract and any ten-year renewal terms (collectively the “Contract Term”), subject to Article 3 herein. The effective date of this Contract shall be January 1, 2014. This Contract replaces and supersedes any prior water service contracts between the Parties and any prior water service contracts between the City of Detroit and Customer.
- 2.02 **Renewal.** This Contract shall automatically renew at the conclusion of the thirty-year term for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before December 31, 2039, which is the conclusion of the twenty-fifth year of the thirty-year term, stating its intent not to renew this Contract. Thereafter, this Contract shall automatically renew every ten years for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the fifth year of the then current ten-year term stating its intent not to renew this Contract. The automatic renewals of this Contract shall not preclude a review of its terms and the Parties are encouraged to reaffirm or amend its terms as necessary. The Parties may, in writing, mutually agree upon a longer renewal term.
- 2.03 **Notification of Renewal.** GLWA shall notify Customer of its first Contract renewal option during the twenty-fifth year of the thirty-year term; provided, however, that GLWA’s failure to so notify Customer shall not obviate Customer’s obligations as set forth in Section 2.02.

Article 3. **Early Termination Costs**

3.01 **Early Termination Costs.** In addition to any other remedies provided for by law or by the terms of this Contract, Customer shall be liable to GLWA for the payment of any costs incurred by GLWA related to providing water to Customer in the event Customer terminates this Contract before the conclusion of a Contract Term (“Early Termination Costs”), unless Customer terminates this Contract for cause in accordance with Article 10; provided, however, that payment of such Early Termination Costs by Customer shall not entitle Customer to receive water service from GLWA.

3.02 **Calculation of Costs.** Payment of Early Termination Costs will be calculated by applying the Adjusted Prevailing Water Charge to the Minimum Annual Volume requirements for the remainder of the Contract Term. The Adjusted Prevailing Water Charge shall be the charge assessed by GLWA to Customer as of Customer’s effective termination date, adjusted annually to reflect projected inflationary increases utilizing a locally based wholesale price index. The Parties may agree upon another standardized price index. The Board may seek a recommendation from the One Water Partnership on the amount of the Early Termination Costs.

3.03 **Specifically Constructed Facilities.** If GLWA has constructed or the City of Detroit previously constructed facilities specifically for the benefit of Customer, additional costs may be included in the calculation of the Early Termination Costs, provided that any such facilities shall be identified in a written agreement between GLWA and Customer at or near the time of construction. If any facilities have been constructed specifically for the benefit of Customer such facilities shall be indicated on Exhibit A.

3.04 **Formation of Water Authority.** Customer may join with another authority, city, township, village, or other municipal corporation recognized by the SOM to form a water authority for the sole purpose of collectively contracting for water service from GLWA. The exercise of this right shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new water service contract by Customer’s governing body and the Board.

3.05 **Customer Annexation or Consolidation.** In the event the territory of Customer is annexed or consolidated with another Michigan municipal corporation and if said municipal corporation is a current customer of GLWA, then such an annexation or consolidation shall not be construed as an early termination of this Contract and this Contract shall be voided upon the approval of a new or amended water service contract with the annexing or consolidating municipal corporation.

Article 4. **Service Area**

4.01 **Delivery Location.** Water shall be delivered by GLWA to Customer at the location(s) identified in Exhibit A (collectively, the “Water Distribution Points”) and at other locations as may be mutually agreed upon in writing by GLWA and Customer.

A. Construction of Permanent Meters. Customer's consultant, Metro Consulting Associates ("MCA") or its SOM-approved successor, shall consult with GLWA in preparing Customer's metering proposal prior to submitting the proposal to EGLE regarding the number and placement of water master meters. Customer shall obtain written approval of its metering proposal from EGLE before the installation of the meters. The meters shall be installed subject to GLWA's specifications at all open points of connection between GLWA and Customer. Unless otherwise agreed by the Parties, the meters shall be installed within one (1) year of the effective date of the Settlement Agreement, and Customer shall provide full access to the meter locations to ensure timely completion of the work. Upon completion of the meter installation work and acceptance of the meters by GLWA, ownership, operation, and maintenance of the meters shall be transferred by Customer to GLWA at no cost to GLWA. After the transfer of ownership to GLWA, the meters shall become GLWA Meter Facilities.

4.02 Limit of Responsibility. GLWA 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 GLWA Responsibility. GLWA has a license to utilize the City of Detroit's local system upstream from Customer's Water Distribution Points and the City of Detroit is responsible for operating and maintaining its local system. GLWA is responsible for operating and maintaining all parts of the System. Should GLWA fail to maintain the Meter Facilities and/or any GLWA owned or leased equipment within the Meter Facilities, Customer shall provide written Notice to GLWA which describes the objectionable condition of the Meter Facility and/or the equipment within, and its intent to take reasonable steps to maintain the condition and charge the reasonable cost of doing so to GLWA. Upon receipt of the Notice and subject to Section 11.01, GLWA shall have thirty calendar days to repair the condition specified in the Notice, unless a force majeure event prevents the repair within the thirty-day period. If GLWA has not repaired the condition at the conclusion of the thirty-day period and has not provided a written explanation to Customer explaining the reason for the delay (e.g., necessary parts are on order or occurrence of a force majeure event specified in Section 11.01), then Customer may take reasonable steps to maintain the specified condition and charge the reasonable cost of doing so to GLWA.

A. With reasonable prior written Notice to GLWA, and occurring not more than once per calendar year, Customer may, at its own expense, have an expert acceptable to GLWA inspect and verify the accuracy of any GLWA water meter serving Customer.

4.04 Extension of Service Area. Customer's distribution of water supplied by GLWA shall be limited to the Service Area stated in Exhibit A. The Parties agree that situations may arise in which Customer desires to extend its Service Area, either temporarily or permanently, beyond its corporate limits. Should such a situation arise, Customer shall provide written Notice to GLWA explaining the nature, duration, and extent of the requested Service Area extension. GLWA shall have the option, which it may exercise at any time, of requiring a written amendment to this Contract to accommodate the change in Service Area. Should

GLWA determine that an immediate amendment is required, the Parties shall, within thirty calendar days of Customer's request, meet to negotiate mutually agreeable terms for the extension of the Service Area. GLWA shall not unreasonably deny a request to extend the Service Area.

- 4.05 **Change or Addition of Water Distribution Points.** Water Distribution Points described in Exhibit A may be added to or changed only by the express written agreement of GLWA and Customer and shall be embodied in a written amendment to this Contract.
- 4.06 **Sole Supplier.** Except as provided in Article 17 herein, GLWA shall be the sole supplier of public potable water to Customer's Service Area.
- 4.07 **Customer Local Operations.** Customer shall continue to retain MCA to operate its local water operations, which includes all billing, collections, maintenance, and improvements. If for any reason MCA ceases to be Customer's operator, then subject to approval by the SOM, Customer shall retain another entity to conduct its local water operations.

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

- 5.01 **Pressure Range.** The Parties agree that (i) Customer's consultant (MCA or its SOM-approved successor) shall consult with GLWA in preparing Customer's metering proposal prior to submitting the proposal to EGLE regarding the number and placement of water master meters, (ii) EGLE shall approve in writing Customer's metering proposal before the installation of meters, and (iii) water master meters will be installed subject to GLWA's specifications. If Customer does not consult with GLWA in preparing Customer's metering proposal as submitted to EGLE, or EGLE does not approve Customer's metering proposal before the installation of meters, or Customer fails to install meters subject to GLWA's specifications, including the number and location of meters, then GLWA shall have no obligation to adhere to the terms and conditions of this Section 5.01. Otherwise, the terms of this Section 5.01 shall apply as set forth below. Subject to the foregoing, GLWA shall use its best efforts to deliver water at the Water Distribution Points at a pressure range ("Pressure Range") adequate to meet the reasonable requirements of Customer. For purposes of evaluating this effort, water pressure shall be determined by reviewing the average hourly pressure measured from top-of-the-hour to top-of-the-hour (e.g., 7:00 AM to 8:00 AM). The Pressure Range to be provided by GLWA to Customer's Water Distribution Points is specified in Exhibit B. The location at which the water pressure will be measured shall be specified in Exhibit A and identified as point "P". A Pressure Range will not be established for water meters that are not located on a GLWA transmission main, or which are located on a GLWA transmission main and are downstream of and subject to the flow demands of a water meter for another GLWA customer.
- 5.02 **Remedy for Non-Compliance with Pressure Range.** Subject to the terms and conditions of Section 5.01, if the water pressure at Customer's Water Distribution Points is above or below the Pressure Range, at Customer's request the Parties shall meet within thirty calendar days to discuss the reasons for the non-compliance and, if agreed necessary, develop, and implement a mutually agreeable written corrective action plan within sixty

calendar days of the meeting, or as otherwise agreed. The corrective action plan shall include a timetable for resolution of the non-compliance issue(s).

- A. If it is determined that another customer's exceedance of the rates of flow established by that customer's Maximum Flow Rate caused or contributed to GLWA's inability to meet its Pressure Range agreement with Customer, then the corrective action plan shall provide for the resolution of the issue.
- B. If Customer is exceeding the rates of flow established by its Maximum Flow Rate on a day other than GLWA Maximum Day at the time Customer experiences a variation from the Pressure Range, then GLWA shall be relieved from its obligation to provide water to Customer within the Pressure Range for that period of time during which Customer is exceeding the rates of flow established by its Maximum Flow Rate.

5.03 Maximum Flow Rate. Customer's Maximum Flow Rate is specified in Exhibit B. Customer shall not exceed the Maximum Flow Rate specified in Exhibit B, as measured in million gallons on GLWA Maximum Day and during GLWA Peak Hour.

- A. GLWA shall notify all customers in writing on or before October 1 of each calendar year if Customer or any other wholesale customer is alleged to have exceeded its Maximum Flow Rate in a given calendar year. The Notice shall state the day and/or hour that Customer or any other wholesale water customer is alleged to have exceeded its Maximum Flow Rate.
- B. If Customer is alleged to be in breach of its obligations under this Section 5.03, the Parties shall endeavor to meet before November 1 of the current calendar year, or as soon as practicable, for the purposes of validating the breach, reviewing, and analyzing the causes, and to negotiate a possible remedy pursuant to Sections 5.04 and 5.05 herein.
- C. The One Water Partnership's Analytical Work Group, or its successor shall review any alleged breach of this Section 5.03.
 - i. The Analytical Work Group shall meet once, at a minimum, on or before November 1 of each calendar year to review the alleged breaches, if any, and may thereafter schedule subsequent meetings as necessary to conclude its review.
 - ii. GLWA will seek a recommendation from the Analytical Work Group on (1) an Allocation Flow Rate, if any, and/or (2) concurrence with the remedy tentatively negotiated between Customer and GLWA, if any. Customer and GLWA shall have the right to present any information related to the alleged breach a Party deems necessary to the deliberations.
 - iii. Any recommendation submitted by the Analytical Work Group shall be received by GLWA on or before December 1 of each calendar year.

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

- A. GLWA may require that Customer take all reasonable steps to reduce its consumption to the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation.
- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the charge associated with the new Maximum Flow Rate in the subsequent fiscal year.
- C. For charge-making and cost allocation purposes only, GLWA may recalculate Customer's charge for the current and/or subsequent fiscal years utilizing a revised cost allocation formula as follows:
 - i. GLWA shall, as set forth below, establish an Allocation Flow Rate to replace the contractual Maximum Flow Rate in the charge calculation process.
 - ii. The Allocation Flow Rate shall be applied from no earlier than the first exceedance date forward.
 - iii. The Allocation Flow Rate will be at least equal to the flow rate demonstrated by Customer on GLWA Maximum Day and may be higher than the actual flow rate demonstrated by Customer.
 - iv. Pursuant to Section 5.03(C), if GLWA receives a recommendation on the Allocation Flow Rate to be applied from the Analytical Work Group and the recommendation is higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then GLWA shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on GLWA Maximum Day and no higher than the recommendation provided by the Analytical Work Group.
 - v. If no recommendation on the Allocation Flow Rate to be applied is received by GLWA, or if GLWA receives a recommendation and the recommendation is less than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate, then GLWA shall be limited to establishing an Allocation Flow Rate that is at least equal to the flow rate demonstrated by Customer on GLWA Maximum Day and no higher than twice the amount by which the demonstrated flow rate exceeded the original Maximum Flow Rate.

- vi. The Allocation Flow Rate will continue to be applied to each subsequent year's charge calculation process until the Maximum Flow Rate is renegotiated.
- vii. If a charge has been approved for the subsequent fiscal year (July 1st to June 30th) but the charge has not yet been applied, GLWA may modify Customer's charge for that subsequent fiscal year to account for an exceedance of its Maximum Flow Rate.
- viii. If GLWA and/or the City of Detroit has built capital facilities based upon Customer's negotiated Maximum Flow Rate and Customer consistently exceeds its Maximum Flow Rate, then GLWA may re-calculate the amount of Customer's percentage of the capital cost of such facilities.

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

- A. If the Parties determine that a corrective action plan is not required and an incident of non-compliance occurs in the subsequent calendar year, the Parties shall meet to develop a mutually agreeable written corrective action plan by December 31 of the year in which the non-compliance occurred, or as otherwise agreed.
- B. In the event the reason for Customer's non-compliance under Section 5.03 is due to a Customer water main break, fire or meter calibration performed by GLWA, these events will be taken into consideration in determining (1) whether a corrective action plan is warranted and (2) the extent to which, if any, the steps specified in Section 5.04 should apply.

5.06 [Removed and Intentionally Left Blank]

5.07 Periodic Review and Reopener. For Customer and System planning purposes and, regarding the Minimum Annual Volume, enforcement of the provisions of Article 3, Maximum Flow Rates, Pressure Ranges, Projected Annual Volumes, and Minimum Annual Volumes (collectively, "Values") shall be established by mutual agreement for the Contract Term. The Parties shall annually review the Values in calendar years 2024, 2025, 2026, 2027 and 2028. For calendar years 2024 and 2025, Exhibit B, Table 2 shall be modified in accordance with the best available technical data provided by Customer and confirmed by GLWA. For calendar years 2026-2028, Exhibit B, Table 2 shall be modified using metered data. The Values based on calendar year 2028 data shall remain in place through calendar year 2030. If on October 1, 2024 it appears that all meters will not be installed by January 1, 2025, the Parties shall meet to determine how the delay shall be treated for purposes of the Parties' compliance with the terms and conditions of this

Contract, including this Section 5.07. If the Parties are unable to agree on a solution within 30 days, the matter shall proceed to arbitration in accordance with Section 9.03. Starting with calendar year 2030, the Parties shall always use the metered data to review the Values in calendar year 2030 and every four years thereafter for the Contract Term and any renewal terms (each review year under this Section 5.07 a “Reopener Year”, and collectively the Reopener Years comprising the “Reopener Schedule”). The Values shall be contractually binding between each Reopener Year. If the Parties do not negotiate Values according to the Reopener Schedule, then the Values established for planning purposes (as shown in italicized type in Exhibit B) shall become contractually binding until the next Reopener Year.

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

- A. GLWA may require that Customer take all reasonable steps to reduce its consumption to the rate of flow established by the Maximum Flow Rate. Such steps may include water conservation measures, outdoor water use restrictions, water loss studies and remediation, and an internal system operation evaluation. In addition, GLWA may require that Customer adjust its rate of flow at individual meters, including the establishment of a not-to-exceed flow rate for individual meters.
- B. The Parties may meet to negotiate a new Maximum Flow Rate. If so negotiated, Customer shall pay the charge associated with the new Maximum Flow Rate in the subsequent fiscal year.

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

5.09 GLWA Costs for Corrective Action Plan. If at any time GLWA is required under the terms of this Article 5 to develop and implement a corrective action plan and the plan involves

incurring capital costs, GLWA will determine whether the costs will be charged as a System cost or whether the cost will be borne by a specific customer or customers. If GLWA determines that all or part of the costs should be borne by a specific customer or customers, GLWA will seek a recommendation from the One Water Partnership on the assessment of the costs.

5.10 **Customer Costs for Corrective Action Plan.** If at any time Customer is required under the terms of this Article 5 to develop and implement a corrective action plan, Customer shall be so informed in writing and Customer will pay all costs related to the corrective action plan.

Article 6. **One Water Partnership**

6.01 **Establishment.** The One Water Partnership is a voluntary, advisory organization that exists to facilitate a cooperative working partnership between GLWA and its wholesale water customers by facilitating the development of recommendations regarding System planning and supply to GLWA management and the Board. The One Water Partnership 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 One Water Partnership and the terms of this Contract, the terms of this Contract shall control.

6.02 **General Responsibilities.** The One Water Partnership shall periodically review and evaluate the charges, charge methodology, and performance of the System. The One Water Partnership shall review and evaluate flow rates, pressures, and Annual Volumes for the System at a minimum of every five years to assist GLWA in the System planning effort. The One Water Partnership shall have the opportunity each year to review the Capital Improvement Program as prepared by GLWA, prior to its adoption by GLWA. The One Water Partnership may consider Customer proposals for improving the operation of Customer's water system and/or the System. GLWA will supply the One Water Partnership with information GLWA deems reasonably necessary to accomplish the general responsibilities defined in this Section 6.02.

6.03 **Annual Report by GLWA.** GLWA will present an annual report to the One Water Partnership which shall consist of (1) all instances of non-compliance with the Parties' obligations contained in Article 5 herein, including Customer and GLWA responses thereto; and (2) a general report on System operation and maintenance.

6.04 **Notification of Charges.** GLWA shall provide Customer and the One Water Partnership with notice of the proposed charges for each fiscal year as early as possible before the implementation of the charges.

6.05 **Disclosure of Charge Information by GLWA.** Each year, GLWA will disclose to Customer and the One Water Partnership information related to wholesale charges.

6.06 **Disclosure of Retail Rate Information by Customer.** Each year, Customer will disclose to its customers information related to its retail rates and other charges, and information

regarding what portion of those costs is related to charges from GLWA and/or other major service providers.

6.07 **Work Groups.** The One Water Partnership may create work groups to address specific issues facing the System. The work groups in existence as of January 2016, are the Analytical Work Group, the Asset Management and CIP Work Group, the Best Practices Work Group, the Charges Work Group, and the Public Education Work Group. Any reference to a particular work group in this Contract shall include its successor or replacement if altered or discontinued.

Article 7. Charges

7.01 **Charges.** Customer agrees to pay for all water supplied by GLWA at such charges as GLWA may establish. Charges shall be reasonable in relation to the costs incurred by GLWA for the supply of water and shall conform to Public Act 34 of 1917, Michigan Compiled Laws, Sec. 123.141, et seq., as amended. GLWA shall give written Notice of any changes in the charges. Notice shall be made in accordance with Section 5e of Public Act 279 of 1909, Michigan Compiled Laws, Sec. 117.5e, as amended, (“Act 279”).

7.02 **Notification of Charges.** As soon as possible in the charge-making process, GLWA shall provide information on proposed charges and the draft data and information used in the calculation of proposed charges in a format that will enable Customer to assist in the charge-making process. Not less than thirty calendar days prior to the hearing required by Act 279, GLWA shall provide Customer with written Notice of a proposed charge and the underlying data used to calculate the charges. GLWA shall meet with Customer to review the charges and the data.

7.03 **Estimate of Usage.** In the event meters fail to correctly measure the quantity of water supplied to Customer for any period of time, GLWA shall provide a reasonable estimate of the quantity of water supplied to Customer for such period provided that there is a reasonable basis for the estimate. Customer and GLWA shall, either through their respective technical representatives and/or the One Water Partnership, 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 Parties shall proceed under Articles 9 and 12.

7.04 **Charge Methodology.** GLWA agrees to provide to Customer an updated description of the methodology for charge-making utilizing the most recent cost of service studies as may be updated by GLWA in its sole discretion from time to time, and as may be modified and approved by the Board. The charge methodology documents referred to in this paragraph and any updates thereto shall be provided to Customer via posting on the GLWA website.

- A. Once Customer’s water master meters are installed, Customer shall be treated as part of the master metered customer class for GLWA charge making purposes.
- B. Once twelve (12) months of quality metering data is available to project estimated annual water demands, GLWA charges to Customer shall be based on that data and future data in accordance with the water contract negotiation protocol used by

GLWA with all of its other wholesale water customers. Until such data is available and to the extent specified in this Section (C), GLWA shall adjust its fiscal year 2023-2024 water charges to Customer effective January 1, 2024, and shall establish its fiscal year 2024-2025 water charges to Customer based on reductions in Customer's usage volume due to documented repairs of leaks, up to 25% of Customer's current water usage.

Article 8. **Meters and Meter Facilities**

- 8.01 **Metering Requirement.** All water furnished by GLWA to Customer shall be measured by water meters installed in Meter Facilities at Customer's Water Distribution Points unless, in GLWA's determination, it is not feasible to install water meters due to the configuration of Customer's water system; provided however, that this Section 8.01 is subject to the terms of Exhibit A.
- 8.02 **Existing Distribution Points.** Except as provided in Section 8.04, as of January 1, 2016, GLWA shall own or lease, and operate and maintain all water meters and Meter Facilities for all existing Water Distribution Points, unless specifically indicated otherwise in Exhibit A.
- 8.03 **Customer Maintenance Responsibilities.** Customer shall be responsible for maintaining at its Water Distribution Points any and all appurtenances as may be designated as Customer's responsibility in Exhibit A. Should Customer fail to maintain the appurtenances shown in Exhibit A, GLWA may take reasonable steps to maintain the appurtenances and charge the reasonable cost of doing so to Customer. Prior to GLWA taking action to maintain the appurtenances, GLWA shall give Customer thirty days written Notice to complete the required maintenance. Notice to the Customer shall not be required if, in GLWA's determination, there exists an emergency condition affecting the operation of the System or if the health, safety and welfare of the general public may be jeopardized.
- 8.04 **New Distribution Points.** For any new Water Distribution Points that may be constructed or installed on or after January 1, 2016, Customer shall furnish at Customer's expense or as otherwise set forth in the Settlement Agreement, a water meter and Meter Facility that meets GLWA's specifications. Thereafter, GLWA shall furnish any replacement water meters for new Water Distribution Points and the expense shall be recovered through GLWA's charges as a System cost. As provided in this paragraph, GLWA shall own, operate, and maintain all water meters and Meter Facilities after construction, installation, or replacement, unless specifically indicated otherwise in Exhibit A.
- 8.05 **Meter Repair and Replacement.** If GLWA initiates a meter repair or meter replacement, the cost shall be recovered through GLWA's charges as a System cost. If Customer requests a meter replacement for reasons other than malfunction or disrepair, Customer shall pay the cost of the replacement.
- 8.06 **Pressure Regulating Facilities.** After the effective date of this Contract, all newly installed Customer-owned pressure regulating facilities shall be installed in a facility that is separate from GLWA's Meter Facility.

8.07 **Access to WAMR.** Customer shall at all times have access to the same GLWA wholesale automated meter reading (“WAMR”) system platform and associated data as all other customers of GLWA.

Article 9. **Dispute Resolution**

9.01 **General.** Any and all disputes alleging a breach of this Contract shall be resolved as set forth in this Article 9.

9.02 **Disputes; Resolution.**

- A. The Parties shall each designate in writing to the other from time to time a representative who shall be authorized to resolve any dispute relating to the subject matter of this Contract in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of such Party to make decisions by mutual agreement.
- B. The Parties each agree (i) to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner and (ii) to provide each other with copies of or reasonable access during normal business hours to any and all non-privileged written records, information, and data pertaining to any such dispute.
- C. If any dispute arising under this Contract is not resolved between the Parties pursuant to this Section 9.02 within 30 days of the date on which a Party provides written Notice to the other Party of such dispute and of the notifying Party's position on the disputed matter, then upon written notification by either Party to the other Party, such dispute shall be settled exclusively and finally by binding expedited arbitration in accordance with Section 9.03.
- D. During the pendency of any dispute and until such dispute is resolved, the Parties shall continue to operate under the terms of this Contract.
- E. Any dispute regarding amounts owed by Customer, Customer's billings, or related charges shall be subject to the terms and conditions of Article 12.

9.03 **Mandatory, Expedited Arbitration.**

- A. Any dispute arising under this Contract that cannot be resolved between the Parties shall be submitted to binding expedited arbitration irrespective of either the magnitude thereof or the amount in dispute. The Wayne County Circuit Court shall retain jurisdiction to enforce the terms of the Settlement Agreement, which will be entered by the court as a consent judgment. Disputes arising under the Trust Agreement shall be resolved by the Wayne County Circuit Court and are excluded from the application of this Article 9.03 unless (i) all amounts required to be deposited into the trust, -pursuant to the Trust Agreement and Paragraph 1.e of the Settlement Agreement, -Payments (as defined in Article I of the Trust Agreement) -are received by the Trustee in accordance

with the Trust Agreement, and (ii) any disputed amounts are retained in the trust in accordance with the process and notice requirements described in Section 12.03.

- B. Each arbitration between the Parties shall be conducted pursuant to the Uniform Arbitration Act, Act No. 371, Public Acts of Michigan, 2012 (“Act 371”).
- C. Unless otherwise agreed by the Parties, the arbitration shall be conducted before a panel composed of three arbitrators (the “Arbitration Panel”). Each Party shall appoint an arbitrator, obtain its appointee's acceptance of such appointment, and deliver written notification of such appointment and acceptance to the other Party within 15 days after delivery of a Notice of arbitration. The two arbitrators appointed by the Parties shall jointly appoint the third (who shall be the chairperson), obtain the acceptance of such appointment, and deliver written notification of such appointment within 15 days after their appointment and acceptance. The chairperson shall have demonstrated expertise in the field of utility operations and/or ratemaking.
- D. Any arbitration commenced hereunder shall be completed within 90 days after the appointment of the Arbitration Panel absent agreement of the Parties to the contrary. Further, absent agreement of the Parties or, upon request of one of the Parties and an order from the Arbitration Panel to the contrary: (i) all discovery shall be completed within 45 days after the appointment of the Arbitration Panel; (ii) each Party shall be limited to a maximum of 5 depositions; (iii) each deposition shall be completed within a maximum period of one day of four hours; (iv) each Party shall be limited to 2 expert witnesses; and (v) interrogatories shall be limited to a maximum of 20 single issues without sub-parts. The Parties waive any claim to any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages or otherwise expressly provided for herein, and the Arbitration Panel is specifically divested of any power to award such damages. The Arbitration Panel shall have the power to award injunctive or other equitable relief. All decisions of the Arbitration Panel shall be pursuant to a majority vote. Any interim or final award shall be rendered by written decision.
- E. If either Party fails to appoint its arbitrator within 15 days after delivery of a Notice of arbitration, or if the two arbitrators appointed cannot agree upon the third arbitrator within 15 days after appointment of the second arbitrator, then the required arbitrator(s) shall be appointed by the American Arbitration Association or as otherwise agreed by the Parties.
- F. The Parties shall each bear the out-of-pocket costs and expenses of their respective arbitrator, attorneys, and witnesses, and they shall each bear one-half of the out-of-pocket costs and expenses of the chairperson of the Arbitration Panel and all administrative support for the arbitration. The Arbitration Panel may award attorney's fees and costs to the prevailing party in connection with any dispute upon finding that a claim or billing challenge was frivolous or brought in bad faith.

9.04 Enforcement. Customer or GLWA may enforce any awards or decisions of the Arbitration Panel issued under Section 9.03 pursuant to Section 22 of Act 371 (MCL 691.1702). Except as provided otherwise in this Contract, the provisions of this Article 9 shall be the sole and

exclusive remedy of the Parties with respect to any dispute arising under this Contract and the Parties agree not to bring, or cause to be brought, in a court of law any action, proceeding, or cause of action whatsoever with respect to any such dispute.

Article 10. Default Provisions

- 10.01 **General.** If a Party is alleged to have committed 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 alleged to be in breach shall be given a reasonable time to cure the breach. If the Party alleged to be in breach fails to cure the breach, the non-breaching Party may pursue the remedies available pursuant to Article 9. In the event that the Party alleged to be in breach is showing reasonable progress toward curing the breach, the Party alleging the breach may extend the time for curing the breach.
- 10.02 **Notice to Trustee.** The Trustee shall be notified simultaneously with any Notice of material breach arising under this Contract.

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 GLWA.
- 11.02 **GLWA Liability.** Except to the extent that GLWA is the proximate cause, GLWA shall not be held liable or accountable for any bursting, leakage, breakage, damage or accident of any kind that may occur to Customer's water works system, or any damages of any kind or nature, including, but not limited to, injury to persons or damage to property, resulting from 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. All claims arising under this Section 11.02 shall be subject to the GLWA claims review process, which shall toll the dispute resolution process under Article 9 for ninety (90) days.
- 11.03 **Discontinuance of Service.** In the event the public health, safety and welfare requires GLWA to discontinue temporarily all or part of the supply of water to Customer, no claims for damages of any kind or nature for such discontinuance shall be made by Customer against GLWA. GLWA will provide notice to Customer of any temporary discontinuance of the water supply.

Article 12. Timely Payment

12.01 **Payment Terms.** Bills for water service shall be rendered to Customer on a monthly basis. All such bills shall be due and payable within forty-five (45) calendar days from the date shown on the bill. Any portion of the charges not related to a dispute regarding the accuracy of the bill that is 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. Such finance charge shall not apply to any disputed amounts held in escrow by the Trustee in accordance with Section 12.03. Any portion of the total bill, plus any finance charges applied to the bill which are not paid by the next billing date, shall be shown on the next bill as arrears.

12.02 **Trust Agreement.** A trust shall be established and funded in accordance with the Settlement Agreement and administered in accordance with the Trust Agreement, attached as Exhibit C, to provide, in relevant part, payment to GLWA for all water services rendered and to Customer for local services rendered. If there is any conflict between the terms of Exhibit C and any other terms of this Contract regarding the Trust Agreement, the terms of Exhibit C shall control.

12.03 **Dispute.** GLWA may disconnect water service to Customer if bills are overdue ninety (90) calendar days or more from the billing date, in addition to any other remedies provided for in this Contract. GLWA shall not disconnect water service if there is a good-faith dispute concerning the accuracy of billings. If the accuracy of a bill is in dispute, Customer shall have thirty (30) business days from the date of the invoice in which to provide written Notice to GLWA and the Trustee of its dispute, and the Trustee shall withhold and retain in the trust and not remit to Customer or GLWA any claimed amounts in dispute until the dispute is resolved. Accrued interest on the disputed amount shall belong to the Party that prevails in the resolution of the dispute. Disputes under this Section 12.03 shall be subject to the terms and conditions of Article 9, provided however, that any notices required by this Section shall not extend the times provided in that Article.

Article 13. Assignment

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

Article 14. Intentionally Omitted

Article 15. **Amendment**

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

Article 16. **Notices**

- 16.01 **Addresses for Notice.** Except as otherwise specified herein, all 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 **When Deemed Given.** 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 **Special Mailing Requirements.** Notwithstanding the requirement above as to the use of first-class mail, Notices regarding change of address, termination, and any Notices required by Sections 2.02, 2.03, 4.03, 7.01, 7.02, 8.03, 9.02, 9.03, 10.01, 10.02, 12.03, and 15.03, shall be sent by certified first-class mail, postage prepaid.
- 16.04 **Notice to Trustee.** Notices to the Trustee required by this Contract shall be sent to the address identified in Exhibit C.

Article 17. **Water Quality**

- 17.01 **Contamination.** For the protection of the health of all consumers supplied with water from the System, Customer agrees to guard carefully against all forms of contamination. Should contamination occur, the area or areas affected shall immediately be shut off and isolated and shall remain so until such conditions shall have been abated, and the water declared safe and fit for human consumption by the properly constituted governmental health agencies having jurisdiction of the area affected. Customer shall immediately notify

GLWA, and GLWA shall immediately notify Customer, of any emergency or condition that may affect the quality of water in either Party's system.

17.02 Co-mingling of Water Sources. Except in cases of emergency, Customer will not permit water from any other source of supply to be mixed or mingled with water from the System without prior written approval from GLWA. In cases of emergency, only such water from sources other than GLWA shall be used as shall meet the requirements of the Michigan Department of Environment, Great Lakes, and Energy, and then only in such quantities as shall be necessary to relieve the emergency.

17.03 Emergency Connections. Subject to the terms of Exhibit A, during emergencies, Customer's water facilities may be used and connected, at the discretion of GLWA, to water facilities serving other communities for flow in either direction to provide an adequate water supply from the System to Customer and to other areas and other units of government. Customer shall be permitted to immediately make an emergency connection when the connection point to be used has been previously approved for emergency use by GLWA in writing, provided that Customer shall, after making the connection, promptly notify GLWA of such event. When the emergency has been abated, the emergency connection must be severed as soon as practicable. GLWA, or its designee, must approve, in writing, the continuation of any emergency connection that is required for longer than seven calendar days. If an approved emergency connection continues for more than seven calendar days, Customer must provide GLWA with weekly updates on the emergency and a schedule for abatement of the emergency that must be approved by GLWA in writing.

17.04 Water Quality. GLWA 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 GLWA 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, GLWA 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 GLWA. GLWA shall give the Customer notice of any construction work in the Customer's jurisdiction. GLWA shall comply with any of Customer's ordinances that apply to the construction. Customer shall inform GLWA of the applicable ordinances. GLWA and Customer shall meet to review the construction and its impact on their respective operations. GLWA shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place. As contemplated by this paragraph, any such water facilities existing on or before December 31, 2015, shall remain under the ownership of the City of Detroit as leased to GLWA, and any new water facilities constructed on or after January 1, 2016, shall be owned by GLWA, and in no case shall either the existing or new water

facilities be operated or maintained by any entity other than GLWA or its authorized representatives.

18.02 **Relocation of Facilities.** Should future construction by any city, township, village, or county require relocation of a water transmission main, Meter Facility or other GLWA facility, the cost incurred by the GLWA for such relocation, if not reimbursed by the entity requiring the relocation, will be charged in future charges as a common-to-all cost to all System users.

18.03 **Easements.** Subject to the provisions of Section 18.01 and to the extent that Customer has jurisdiction, GLWA shall be granted temporary and permanent easements, and shall be permitted to use the streets, alleys, and highways within Customer's legal jurisdiction for the purpose of constructing, operating, and maintaining the System, including the relocation of water transmission mains, Meter Facilities or other GLWA facilities. This consent by Customer is given in compliance with Article 7, Sec. 29 of the Michigan Constitution of 1963, provided that GLWA shall provide Customer with a written explanation of the type of easement required and the duration thereof.

Article 19. Access to Towers and Antennas

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

Article 20. Relationship to Wastewater Services

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

Article 21. Construction Standards

21.01 GLWA shall have the right to review and approve Customer's construction plans for Meter Facilities at new Water Distribution Points, water mains sized twenty-four inches and larger, pump stations, reservoirs, water towers, and any other construction that will cross, or be within close proximity to, or have influence upon System infrastructure. GLWA's approval of construction plans shall be timely and shall not be unreasonably withheld. All construction must otherwise comply with MCL 325.1001 *et seq.* as may be amended from time to time.

Article 22.
Operation of Storage

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

Article 23.
Miscellaneous

- 23.01 If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 23.02 This Contract, including the exhibits attached hereto, contains the entire agreement between the Parties regarding water services and all prior negotiations and agreements regarding water services 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 This Contract and all actions arising under it shall be governed by, subject to, and construed according to the laws of the State of Michigan.
- 23.06 Pursuant to the terms of its Lease with GLWA, the City of Detroit is an acknowledged third-party beneficiary of this Contract as the owner of the System, and this Contract shall not be construed to benefit any persons other than GLWA, the City of Detroit and Customer.
- 23.07 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, GLWA shall provide a copy to the Customer.

- 23.08 The rights and benefits under this Contract shall inure to the benefit of and be binding upon the respective Parties hereto, their agents, successors, and assigns.
- 23.09 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.
- 23.11 The recital paragraphs set forth in the preamble of this Contract are incorporated in and made a part of the Contract.

(Signatures appear on next page)

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

City of Highland Park:

By: _____
Its: Glenda McDonald
Its: Mayor

By: _____
Its: Brenda Green, CMC
Its: City Clerk

APPROVED BY
HIGHLAND PARK CITY COUNCIL ON:

_____ Date

Great Lakes Water Authority:

By: _____
Its: Suzanne R. Coffey, P.E.
Its: Chief Executive Officer

APPROVED BY
GLWA BOARD OF DIRECTORS ON:

_____ Date

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL ON:

Signature _____ Date

EXHIBIT A

Customer's Water Distribution Points

This Exhibit contains the following information:

1. The corporate limits of Customer,
2. The agreed upon water Service Area of Customer which (a) may or may not be entirely within the corporate limits of Customer and (b) which may or may not include the entire area within the Customer's corporate limits,
3. The specific location of the Water Distribution Points, including any GLWA approved emergency connections,
4. The designation of appurtenances to be maintained by Customer and those to be maintained by GLWA,
5. A list of any closed meter locations, and
6. A list of any facilities specifically constructed for Customer pursuant to Section 3.03, if any.

EXHIBIT B

Projected Annual Volume and Minimum Annual Volume (Table 1)

Pressure Range and Maximum Flow Rate (Table 2)

Flow Split Assumptions (Table 3)

Addresses for Notice (Table 4)

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

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

EXHIBIT B

Table 1
Projected Annual Volume and Minimum Annual Volume

Fiscal Year Ending June 30	Projected Annual Volume (Mcf)	Minimum Annual Volume (Mcf)
2015	NA	NA
2016	NA	NA
2017	NA	NA
2018	NA	NA
2019	NA	NA
2020	NA	NA
2021	NA	NA
2022	NA	NA
2023	NA	NA
2024	NA	NA
2025	77,200	38,600
2026	<i>TBD</i>	<i>TBD</i>
2027	<i>TBD</i>	<i>TBD</i>
2028	<i>TBD</i>	<i>TBD</i>
2029	<i>TBD</i>	<i>TBD</i>
2030	<i>TBD</i>	<i>TBD</i>
2031	<i>TBD</i>	<i>TBD</i>
2032	<i>TBD</i>	<i>TBD</i>
2033	<i>TBD</i>	<i>TBD</i>
2034	<i>TBD</i>	<i>TBD</i>
2035	<i>TBD</i>	<i>TBD</i>
2036	<i>TBD</i>	<i>TBD</i>
2037	<i>TBD</i>	<i>TBD</i>
2038	<i>TBD</i>	<i>TBD</i>
2039	<i>TBD</i>	<i>TBD</i>
2040	<i>TBD</i>	<i>TBD</i>
2041	<i>TBD</i>	<i>TBD</i>
2042	<i>TBD</i>	<i>TBD</i>
2043	<i>TBD</i>	<i>TBD</i>
2044	<i>TBD</i>	<i>TBD</i>

EXHIBIT B

Table 2
Pressure Range and Maximum Flow Rate

Calendar Year (Reopener Schedule in bold type)	Pressure Range (psi)		Pressure Range (psi)	
	Meter EC-1		Meter EC-6	
	<u>Min</u>	<u>Max</u>	<u>Max Day</u>	<u>Peak Hour</u>
2014	NA	NA	NA	NA
2015	NA	NA	NA	NA
2016	NA	NA	NA	NA
2017	NA	NA	NA	NA
2018	NA	NA	NA	NA
2019	NA	NA	NA	NA
2020	NA	NA	NA	NA
2021	NA	NA	NA	NA
2022	NA	NA	NA	NA
2023	NA	NA	NA	NA
2024	NA	NA	NA	NA
2025	NA	NA	NA	NA
2026	NA	NA	NA	NA
2027	NA	NA	NA	NA
2028	NA	NA	NA	NA
2029	NA	NA	NA	NA
2030	NA	NA	NA	NA
2031	NA	NA	NA	NA
2032	NA	NA	NA	NA
2033	NA	NA	NA	NA
2034	NA	NA	NA	NA
2035	NA	NA	NA	NA
2036	NA	NA	NA	NA
2037	NA	NA	NA	NA
2038	NA	NA	NA	NA
2039	NA	NA	NA	NA
2040	NA	NA	NA	NA
2041	NA	NA	NA	NA
2042	NA	NA	NA	NA
2043	NA	NA	NA	NA

EXHIBIT B

Table 2 (*continued*)
Pressure Range and Maximum Flow Rate

Calendar Year (Reopener Schedule in bold type)	Pressure Range (psi)		Pressure Range (psi)		Pressure Range (psi)		Maximum Flow Rate (mgd)	
	Meter HP-05		Meter HP-06		Meter XX		<u>Max Day</u>	<u>Peak Hour</u>
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>		
2014	NA	NA	NA	NA			NA	NA
2015	NA	NA	NA	NA			NA	NA
2016	NA	NA	NA	NA			NA	NA
2017	NA	NA	NA	NA			NA	NA
2018	NA	NA	NA	NA			NA	NA
2019	NA	NA	NA	NA			NA	NA
2020	NA	NA	NA	NA			NA	NA
2021	NA	NA	NA	NA			NA	NA
2022	NA	NA	NA	NA			NA	NA
2023	NA	NA	NA	NA			NA	NA
2024	NA/TBD	NA/TBD	NA/TBD	NA/TBD			2.40	2.46
2025	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2026	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2027	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2028	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2029	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2030	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2031	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2032	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2033	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2034	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2035	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2036	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2037	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2038	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2039	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2040	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2041	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2042	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD
2043	NA/TBD	NA/TBD	NA/TBD	NA/TBD			TBD	TBD

EXHIBIT B

Table 3
Flow Split Assumptions

Meter	Assumed Flow Split (2024)
EC-1 (Hamilton/McNichols)	85%
EC-6 (Hamilton/Webb)	15%

Table 4
Addresses for Notice

If to GLWA:	If to Customer:
General Counsel Great Lakes Water Authority 735 Randolph, Suite 1901 Detroit, Michigan 48226	Mayor City of Highland Park 12050 Woodward Avenue Highland Park, MI 48203 cc: Water Department Director City of Highland Park 12050 Woodward Avenue Highland Park, MI 48203

EXHBIT C

Trust Agreement

**WASTEWATER DISPOSAL SERVICES CONTRACT
BETWEEN
GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY
AND
CITY OF HIGHLAND PARK, A MICHIGAN MUNICIPAL CORPORATION**

This Wastewater Disposal Services Contract is made by and between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to the provisions of Act 233, Public Acts of Michigan, 1955, as may be amended from time to time (“Act 233”), with its principal place of business located at 735 Randolph, Detroit, Michigan 48226 (“GLWA”), and the City of Highland Park, a Michigan municipal corporation and constituent municipality pursuant to the provisions of Act 233, with offices located at 12050 Woodward Avenue, Highland Park, Michigan, 48203 (“Customer”). GLWA and Customer may be referred to individually as a “Party” or collectively as the “Parties.”

Recitals

A. On June 12, 2015, GLWA and the City of Detroit entered into a Regional Sewage Disposal System Lease (the “Lease”) for the purpose of leasing the System (defined below) to GLWA for a minimum term of 40 years; and

B. Pursuant to the Lease, all wholesale service functions are conducted by GLWA, and the System is operated and maintained by GLWA; and

C. Customer seeks to contract for wastewater disposal Services with GLWA; and

D. The Parties intend that this Contract be interpreted consistent with the Lease, the GLWA Articles of Incorporation, the Settlement Agreement, and Michigan state law including without limitation the provisions of Act 233, as each may be amended from time to time; and

E. The Parties agree that this Contract shall be subject to the terms and conditions of the Settlement Agreement; and

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

G. Customer shall be eligible to participate in GLWA’s WRAP consistent with the terms of the WRAP as may be amended from time to time; and

H. GLWA intends to maintain a voluntary, collaborative partnering effort with its First Tier Customers, of which the One Water Partnership is a central part, which assists GLWA in data gathering, alternative evaluations and recommendations.

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:

“**Board**” shall mean the GLWA Board of Directors.

“**CFS**” shall mean cubic feet per second.

“**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 by the duly authorized representatives of the Parties, and approved by Customer’s governing body and the Board.

“**Customer-Owned Meter(s)**” shall mean a temporary or permanent sewerage metering device owned, operated, and/or maintained by Customer or its agents.

“**Customer Overflow Volume**” shall mean that volume of wastewater generated in Customer’s Service Area during a wet weather event that exceeds the capacity of Customer’s system and is discharged before entering the System.

“**EGLE**” shall mean the SOM Department of Environment, Great Lakes, and Energy.

“**Exhibit A**”, entitled Customer’s Service Area, shall be a depiction of Customer’s Service Area from which wastewater may be delivered to the System. It shall depict the corporate limits of Customer, the agreed upon Service Area, the Maximum Allowable Flow Limit, the specific location of any System Meters and Customer-Owned Meters, any System Meter vault(s), and the Point(s) of Connection. It shall also identify the names of any System Meters and Customer-Owned Meters and the location of any Customer and GLWA data acquisition equipment.

“**Exhibit B**” is deleted and reserved.

“**Exhibit C**” is deleted and reserved.

“**Exhibit D**” is deleted and reserved.

“**Exhibit E**”, entitled *Modified List of Relevant Charge-making Terms*, shall contain the modified list of relevant charge-making terms as mandated by the order dated August 31, 2011 in the matter of *United States Environmental Protection Agency v City of Detroit*, Civil Action No. 77-71100 and related charge-making protocols. Exhibit E is subject to the terms of the Settlement Agreement.

“**Exhibit F**”, entitled *Trust Agreement*, shall be a copy of the trust agreement ~~entered into by the Parties attached hereto~~contemporaneously with this Contract.

“First Tier Customer(s)” shall mean those municipal customers contracting directly with GLWA for Services.

“Flow” shall mean wastewater delivered by Customer from Customer’s Service Area to the System. It shall include sanitary flow, dry weather infiltration and inflow, and a wet weather flow component. It shall also include wastewater from industrial and/or commercial facilities in compliance with the City of Detroit’s Wastewater Discharge Control Ordinance, Chapter 56, Article I and Article III of the Detroit City Code, Section 56-3-56.1 *et seq.*, as amended, or any successor or similar ordinances, rules or regulations adopted by GLWA in place thereof.

“GDRSS” shall mean the Greater Detroit Regional Sewer System.

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

“Maximum Allowable Flow Limit” shall mean the maximum allowable Flow that Customer may deliver to the System. This limit is specified in Section 2.01 and shall be determined by averaging the sum in any sixty-minute period, measured from top-of-the-hour to top-of-the-hour (e.g., 7:00 a.m. to 8:00 a.m.), along with any supplemental calculations developed and approved by the One Water Partnership’s Wastewater Analytics Task Force and GLWA, once the final Customer metering network has been installed by Customer and approved by EGLE.

“MGD” shall mean million gallons per day.

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

“One Water Partnership” shall mean the voluntary, advisory organization consisting of representatives of GLWA, representatives of the City of Detroit Water and Sewerage Department, and wholesale water and wastewater customers of GLWA and their respective representatives and shall include its successor or replacement if altered or discontinued. The One Water Partnership or its successor shall remain in existence for a minimum term of January 1, 2008, until December 31, 2038, unless the organization determines otherwise.

“Point(s) of Connection” shall mean the location(s) where Flow shall be deemed to be delivered from the Customer’s wastewater collection system into the System and shall be the location at which the ownership and responsibility for operation and maintenance between the System and the Customer shall be established.

“Service Area” shall mean the geographic area of Customer from which Flow may be delivered to the System as designated in Exhibit A to this Contract.

“Services” shall mean the collection, transportation, and treatment of wastewater by GLWA including without limitation industrial waste control, stormwater, drainage, and other miscellaneous services provided or charged to Customer.

“Settlement Agreement” shall mean the *Settlement Agreement and Mutual Release* by and between the SOM, Customer, and GLWA, ~~approved and executed contemporaneously with this Contract~~, which incorporates the provisions of the mediation term sheet dated October 18, 2023, the Trust Agreement, and other documents referenced by the Settlement Agreement.

“SOM” shall mean the State of Michigan.

“System” shall mean the public wastewater disposal system, including without limitation the WRRF and System Meters, owned by the City of Detroit and leased, operated, maintained, and/or utilized by GLWA and any improvements, additions and/or changes to the System made by GLWA on or after January 1, 2016, which shall be owned, operated, and maintained by GLWA. Except as has been agreed by GLWA and the City of Detroit, the System does not include any City of Detroit local assets not leased to GLWA. Customer shall not have an ownership interest in the System.

“System Meter(s)” shall mean a System wastewater-billing meter which primarily measures Customer’s usage.

“Trust Agreement” shall mean the trust agreement ~~approved and executed by the Parties contemporaneously with this Contract and~~ attached as Exhibit F. ~~If no Trust Agreement is approved and executed by the Parties on or before March 29, 2024, then this Contract shall be void and have no force or effect.~~

“Trustee” shall mean the trustee of the trust described in Article 10 and in the Trust Agreement attached as Exhibit F.

“WRRF” shall mean the Water Resource Recovery Facility.

Article 2. **Delivery of Flow; Maximum Allowable Flow Limit; Enforcement**

- 2.01 **Maximum Allowable Flow Limit.** Customer’s Maximum Allowable Flow Limit shall be the peak Flow resulting from a ten-year storm event.
- 2.02 **Delivery of All Flow.** GLWA agrees to accept, and Customer agrees to deliver all Flow from Customer originating within Customer’s Service Area, excluding any Customer Overflow Volumes, up to Customer’s Maximum Allowable Flow Limit.
- 2.03 **Calculation of Charges.** Customer shall pay GLWA for Services for Flow delivered into the System at such charges as GLWA may establish during its cost allocation and charge

design processes, which charges shall be established in accordance with Article 20 of this Contract.

- 2.04 **Enforcement of Maximum Allowable Flow Limit.** The Parties acknowledge that Customer deviations over the Maximum Allowable Flow Limit may occur. If Customer has multiple incidents of Flow exceeding the Maximum Allowable Flow Limit which evidence a pattern of exceedances, as determined in the sole and reasonable discretion of GLWA, GLWA shall give written Notice of such exceedances to Customer. Thereafter, the Parties shall meet and attempt to develop a plan for reducing or eliminating the exceedances. If, in the opinion of GLWA, the Parties are unable to agree on a plan, GLWA shall have the right to assert any available remedies for breach of contract in accordance with Article 9.
- 2.05 **Applicability to Overflow Volumes.** Nothing in this Article 2 shall be construed to preclude Customer from constructing or operating wastewater facilities for the purpose of reducing or eliminating Customer Overflow Volumes or improving the operation of Customer's sewage system, or for any other lawful purpose.
- 2.06 **Reopener.** The Parties reserve the right to reopen for negotiation at any time the Maximum Allowable Flow Limit specified in Section 2.01 in the event that the System Wastewater Master Plan or other analysis acceptable to the Parties demonstrates modifications to the then-existing Maximum Allowable Flow Limit may be warranted. If a new Maximum Allowable Flow Limit is mutually agreed upon, the Parties will amend this Contract to reflect the new Maximum Allowable Flow Limit. Until such time, if any, that the Maximum Allowable Flow Limit is modified, the Maximum Allowable Flow Limit specified in Section 2.01 shall continue in full force and effect.

Article 3. Ownership, Maintenance, and Accuracy of Equipment and Facilities

- 3.01 **GLWA Ownership and Maintenance Responsibility.** GLWA owns or leases, and shall maintain all System Meters, System Meter vaults, and data acquisition equipment used for GLWA's operational and/or billing purposes, unless otherwise provided for in Exhibit A. GLWA shall not own, operate, or maintain Customer-Owned Meters.
- 3.02 **Maintenance Standards.** GLWA shall maintain System Meters and associated data acquisition equipment in accordance with the GDRSS Phase IV Technical Memoranda 4-8, or subsequent modifications thereto. GLWA shall collect data from System Meters in accordance with the Good Metering Practice specified in the GDRSS Phase IV Technical Memoranda 4-8, or subsequent modifications thereto. GLWA may contract for any such services.
- 3.03 **Accuracy.** GLWA will ensure the accuracy of System Meters. Customer shall have the right to annually inspect System Meters and check for proper operation, including inspection of records. GLWA and the One Water Partnership shall review the accuracy of System Meters on a regular basis and compare the findings to the then-best available technology. In the event that the accuracy of a System Meter is found to be unsatisfactory,

as determined by the One Water Partnership and approved by GLWA, GLWA shall, as soon as practicable, repair, rehabilitate or replace the System Meter.

3.04 **Customer-Owned Meters.** Customer's consultant, Metro Consulting Associates ("MCA") or its SOM-approved successor, shall consult with GLWA in preparing Customer's metering proposal prior to submitting the proposal to EGLE regarding the number and placement of temporary sewage metering devices. Customer shall obtain written approval of its metering proposal from EGLE before the installation of the meters. The meters shall be installed subject to GLWA's specifications. Unless otherwise agreed by the Parties, the meters shall be installed within one (1) year from the effective date of the Settlement Agreement, and Customer shall provide full access to the meter locations to ensure timely completion of the work. All Customer-Owned Meters shall be owned by Customer. Customer shall be responsible for the cost of operating and maintaining all Customer-Owned Meters. The Parties shall agree to a third-party and the procedures to operate and maintain the Customer-Owned Meters including the sharing of all data produced by the Customer-Owned Meters. If the Parties cannot agree to a third-party or the procedures associated with the operation and maintenance of the Customer-Owned Meters, EGLE shall identify the third-party and prescribe the Customer-Owned Meter operation and maintenance procedures. Customer may contract for any such services. GLWA shall have the right to annually inspect Customer-Owned Meters and check for proper operation, including inspection of records. GLWA and the One Water Partnership shall review the accuracy of Customer-Owned Meters on a regular basis and compare the findings to the then-best available technology. If the accuracy of a Customer-Owned Meter is found to be unsatisfactory, as determined by the One Water Partnership and approved by GLWA, Customer shall, as soon as practicable, repair, rehabilitate or replace the Customer-Owned Meter. Once Customer completes the repair, rehabilitation or replacement of the Customer-Owned Meter, any dispute regarding the cost associated therewith shall be resolved as provided in Article 9.

3.05 **Customer Local Operations.** Customer shall continue to retain MCA to operate its local water operations, which includes all billing, collections, maintenance, and improvements. If for any reason MCA ceases to be Customer's operator, then subject to approval by the SOM, Customer shall retain another entity to conduct its local water operations.

Article 4. **Service Area; Acceptance of Flow**

4.01 **Service Area.** The area for which GLWA agrees to provide Services shall be as shown in Exhibit A. Customer shall not deliver to the System any Flow originating in any area outside of the specified Service Area without the prior written consent of GLWA. A memorandum of understanding between Customer and GLWA may temporarily authorize the delivery of Flow from outside the Service Area. A permanent change in the Service Area shall require amendment of this Contract.

4.02 **Acceptance of Flow.** Due to the configuration of the wastewater collection system owned, operated, and maintained by Customer, GLWA will accept Flow from Customer, as limited

by the terms of this Contract, from within the Service Area shown on Exhibit A. The location of each Point of Connection shall be determined to be wherever Customer's wastewater collection system connects to the System as set forth in Exhibit A, which shall include any connections metered by a Customer-Owned Meter. GLWA shall have no responsibility for operating and maintaining any portions of Customer's wastewater collection system upstream of the Points of Connection, unless specifically indicated otherwise on Exhibit A.

A. As of the date of execution of this Contract, Exhibit A depicts the Parties' best available, non-field-verified information. Accordingly, field verification of the information therein shall be completed by the Parties as soon as practicable and the necessary modifications to Exhibit A shall be agreed upon. The update to Exhibit A required by this paragraph shall not require approval by the legislative body of either Party.

4.03 Change in Service Area. The boundaries of the Service Area may be changed only by the express written agreement of GLWA and Customer and shall be embodied in an amendment to this Contract.

Article 5. **Flow Measurement**

5.01 Information Gathering. GLWA shall, with guidance and input from the One Water Partnership, make all reasonable efforts to use the best available information to establish Customer's estimated sanitary flows and non-sanitary flows.

5.02 Process. GLWA shall, with guidance and input from the One Water Partnership, decide on the type of analyses, and shall carry out analyses of Flow from Customer using complete Customer-Owned Meter information provided to and accepted by GLWA, and other relevant data and best available information, including System Meter data, as set forth in this Section 5.02.

A. Upon the dismissal of the outstanding litigation between the Parties in accordance with the Settlement Agreement, for purposes of conducting an initial Flow analysis, Customer shall submit to GLWA (i) a memorandum describing the research or analysis conducted to identify the proposed metered locations for the currently installed meters and the rationale for not metering other connections, (ii) all raw and quality assured and quality controlled data collected since July 1, 2022 for all existing or previously installed Customer-Owned Meters, including all installation and calibration records and descriptions of any meter failures or other mechanical issues, and (iii) all monthly volumetric water sales data of Customer's water customers for the period beginning July 1, 2022 until the date of the memorandum referenced in this paragraph.

B. Subsequent to producing the information required in Section 5.02(A), for purposes of conducting Flow analyses, Customer shall submit to GLWA monthly (i) all raw and quality assured and quality-controlled data for all existing Customer-Owned Meters,

including all installation and calibration records and descriptions of any meter failures or other mechanical issues, and (ii) all volumetric water sales data of Customer's water customers.

- C. All submittals required by Section 5.02(A) and (B) shall be quality assured and quality controlled by Customer prior to transmittal to GLWA. After transmittal, the Parties' technical representatives shall discuss the submitted data monthly, or as otherwise agreed, to ensure the Parties' collective agreement on the results thereof.
- D. The water sales data and the results of the Flow analyses shall be utilized by GLWA, in its sole and reasonable discretion but subject to Article 20, in its cost allocation and rate design processes and shall form the basis of billings for Customer.
- E. Unless otherwise agreed by the Parties, nothing in this Contract shall require Customer to (i) provide to GLWA any Customer-Owned Meter data prior to the dismissal of the outstanding litigation between the Parties in accordance with the Settlement Agreement, or (ii) provide to GLWA Customer-Owned Meter data pertaining to the time period prior to July 1, 2022.

5.03 **Responsibility for Review and Use of Information.** The One Water Partnership shall have the responsibility for reviewing the information it obtains pursuant to this Article 5 for the purpose of verifying that the information is acceptable from a technical basis. GLWA shall have the authority, in its sole and reasonable discretion, for determining how best to utilize the information analyzed by the One Water Partnership.

5.04 **Access to Data.**

- A. Customer shall at all times have access to the same GLWA Greater Detroit Regional Sewer System ("GDRSS") data as all other customers of GLWA.
- B. GLWA shall at all times have access to live, real-time, 5-minute, and/or such other best available data from all Customer-Owned Meters when and to the extent it is available.

Article 6. **Flow Re-Allocation**

6.01 **Flow Re-Allocation.** Should Customer terminate or reduce its Flow into the System, whether at the end of this Contract's term, by mutual agreement, or due to a breach of this Contract by Customer, that portion of its Maximum Allowable Flow Limit so terminated or reduced shall be re-allocated at the discretion of GLWA for the benefit of the System. Flow re-allocation between First Tier Customers may occur only with the prior written approval of GLWA and shall be incorporated as an amendment to this Contract.

6.02 **Responsibility for Capital Cost Recovery.** If Customer reduces or terminates its Flow into the System, whether at the end of this Contract's term, by mutual agreement, or due to a breach of this Contract by Customer, Customer shall remain responsible for any remaining

capital costs for facilities built to provide Customer its Maximum Allowable Flow Limit. In such event, Customer shall either (1) pay in full all outstanding capital costs accumulated to the date of its termination of participation in the System, or (2) enter into a contract guaranteeing monthly payments to GLWA of the remaining capital costs, or (3) assign the responsibility for the remaining capital costs to the First Tier Customer to whom Customer has re-allocated its Flow (the “RAF Customer”) provided that Customer shall remain ultimately responsible for the remaining capital costs in the event the RAF Customer fails to timely pay said capital costs. As of the effective date of this Contract, the amount of such capital costs allocable to Customer (not including the cost of any future capital improvements) is \$0.00.

Article 7. **Contract Term; Renewal and Termination**

- 7.01 **Term.** GLWA shall provide Services to Customer in accordance with the terms and conditions 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”). The effective date of this Contract shall be January 1, 2014. This Contract replaces and supersedes any prior wastewater disposal services contracts between the Parties and any prior wastewater disposal services contracts between the City of Detroit and Customer.
- 7.02 **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 December 31, 2039, which is 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.
- 7.03 **Continuing Obligation.** Customer’s obligations under Article 6, if any, shall survive the expiration or termination of this Contract and continue until such obligations are satisfied.

Article 8. **Construction Standards**

- 8.01 Except as otherwise specified in this Contract, Customer shall abide by GLWA’s design specifications and construction standards. Customer shall submit plans and specifications for new wastewater collection or transport facilities for review and approval to GLWA prior to the installation of such facilities. GLWA will review the plans and specifications and provide Customer with a determination as to its approval or disapproval of the plans and specifications.

Article 9. **Dispute Resolution**

9.01 **General.** Any and all disputes alleging a breach of this Contract shall be resolved as set forth in this Article 9.

9.02 **Disputes; Resolution.**

- A. The Parties shall each designate in writing to the other from time to time a representative who shall be authorized to resolve any dispute relating to the subject matter of this Contract in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of such Party to make decisions by mutual agreement.
- B. The Parties each agree (i) to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner and (ii) to provide each other with copies of or reasonable access during normal business hours to any and all non-privileged written records, information, and data pertaining to any such dispute.
- C. If any dispute arising under this Contract is not resolved between the Parties pursuant to this Section 9.02 within 30 days of the date on which a Party provides written Notice to the other Party of such dispute and of the notifying Party's position on the disputed matter, then upon written notification by either Party to the other Party, such dispute shall be settled exclusively and finally by binding expedited arbitration in accordance with Section 9.03.
- D. During the pendency of any dispute and until such dispute is resolved, the Parties shall continue to operate under the terms of this Contract.
- E. Any dispute regarding amounts owed by Customer, Customer's billings, or related charges shall be subject to the terms and conditions of Article 10.

9.03 **Mandatory, Expedited Arbitration.**

- A. Any dispute arising under this Contract that cannot be resolved between the Parties shall be submitted to binding expedited arbitration irrespective of either the magnitude thereof or the amount in dispute. The Wayne County Circuit Court shall retain jurisdiction to enforce the terms of the Settlement Agreement, which will be entered by the court as a consent judgment. Disputes arising under the Trust Agreement shall be resolved by the Wayne County Circuit Court and are excluded from the application of this Article 9.03 unless (i) all amounts required to be deposited into the trust, pursuant to the Trust Agreement and Paragraph 1.e of the Settlement Agreement, Payments (as defined in Article I of the Trust Agreement) are received by the Trustee in accordance with the Trust Agreement, and (ii) any disputed amounts are retained in the trust in accordance with the process and notice requirements described in Section 10.03.

- B. Each arbitration between the Parties shall be conducted pursuant to the Uniform Arbitration Act, Act No. 371, Public Acts of Michigan, 2012 (“Act 371”).
- C. Unless otherwise agreed by the Parties, the arbitration shall be conducted before a panel composed of three arbitrators (the “Arbitration Panel”). Each Party shall appoint an arbitrator, obtain its appointee's acceptance of such appointment, and deliver written notification of such appointment and acceptance to the other Party within 15 days after delivery of a Notice of arbitration. The two arbitrators appointed by the Parties shall jointly appoint the third (who shall be the chairperson), obtain the acceptance of such appointment, and deliver written notification of such appointment within 15 days after their appointment and acceptance. The chairperson shall have demonstrated expertise in the field of utility operations and/or ratemaking.
- D. Any arbitration commenced hereunder shall be completed within 90 days after the appointment of the Arbitration Panel absent agreement of the Parties to the contrary. Further, absent agreement of the Parties or, upon request of one of the Parties and an order from the Arbitration Panel to the contrary: (i) all discovery shall be completed within 45 days after the appointment of the Arbitration Panel; (ii) each Party shall be limited to a maximum of 5 depositions; (iii) each deposition shall be completed within a maximum period of one day of four hours; (iv) each Party shall be limited to 2 expert witnesses; and (v) interrogatories shall be limited to a maximum of 20 single issues without sub-parts. The Parties waive any claim to any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages or otherwise expressly provided for herein, and the Arbitration Panel is specifically divested of any power to award such damages. The Arbitration Panel shall have the power to award injunctive or other equitable relief. All decisions of the Arbitration Panel shall be pursuant to a majority vote. Any interim or final award shall be rendered by written decision.
- E. If either Party fails to appoint its arbitrator within 15 days after delivery of a Notice of arbitration, or if the two arbitrators appointed cannot agree upon the third arbitrator within 15 days after appointment of the second arbitrator, then the required arbitrator(s) shall be appointed by the American Arbitration Association or as otherwise agreed by the Parties.
- F. The Parties shall each bear the out-of-pocket costs and expenses of their respective arbitrator, attorneys, and witnesses, and they shall each bear one-half of the out-of-pocket costs and expenses of the chairperson of the Arbitration Panel and all administrative support for the arbitration. The Arbitration Panel may award attorney's fees and costs to the prevailing party in connection with any dispute upon finding that a claim or billing challenge was frivolous or brought in bad faith.

9.04 **Enforcement.** Customer or GLWA may enforce any awards or decisions of the Arbitration Panel issued under Section 9.03 pursuant to Section 22 of Act 371 (MCL 691.1702). Except as provided otherwise in this Contract, the provisions of this Article 9 shall be the sole and exclusive remedy of the Parties with respect to any dispute arising under this Contract and

the Parties agree not to bring, or cause to be brought, in a court of law any action, proceeding, or cause of action whatsoever with respect to any such dispute.

Article 10. **Payment for Services**

- 10.01 **Payment Terms.** Bills for Services shall be rendered to Customer on a monthly basis. All such bills shall be due and payable not more than forty-five (45) calendar days from the date shown on the bill. Any portion of the charges not related to a dispute regarding the accuracy of the bill that is 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. Such finance charge shall not apply to any disputed amounts held in escrow by the Trustee in accordance with Section 10.03. 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.
- 10.02 **Trust Account.** A trust shall be established and funded in accordance with the Settlement Agreement and administrated in accordance with the Trust Agreement, attached as Exhibit F, to provide, in relevant part, payment to GLWA for all Services rendered and to Customer for local services rendered. If there is any conflict between the terms of Exhibit F and any other terms of this Contract regarding the Trust Agreement, the terms of Exhibit F shall control.
- 10.03 **Dispute.** GLWA may discontinue Services to Customer if bills are overdue ninety (90) calendar days or more from the billing date, in addition to any other remedies provided for in this Contract. GLWA shall not discontinue the Services if there is a good faith dispute concerning the accuracy of billings. If the accuracy of a bill is in dispute, Customer shall have thirty (30) business days from the date of the invoice in which to provide written Notice to GLWA and the Trustee of its dispute, and the Trustee shall withhold and retain in the trust and not remit to Customer or GLWA any claimed amounts in dispute until the dispute is resolved. Accrued interest on the disputed amount shall belong to the Party that prevails in the resolution of the dispute. Disputes under this Section 10.03 shall be subject to the terms and conditions of Article 9, provided however, that any notices required by this Section shall not extend the times provided in that Article.

Article 11. **Emergency Situations**

- 11.01 No failure or delay in performance of this Contract by any 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 enumerated in this Article 11 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 Services provided by GLWA.

Article 12. **Default Provisions**

- 12.01 If a Party is alleged to have committed 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 alleged to be in breach shall be given a reasonable time to cure the breach. If the Party alleged to be in breach fails to cure the breach, the non-breaching Party may pursue the remedies available pursuant to Article 9.
- 12.02 The Trustee shall be notified simultaneously with any Notice of material breach arising under this Contract.

Article 13. **Assignment**

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

Article 14. **One Water Partnership**

- 14.01 **Establishment.** The One Water Partnership is a voluntary, advisory organization that exists to facilitate a cooperative working partnership between GLWA and First Tier Customers by facilitating discussion and development of recommendations to GLWA regarding System operation, maintenance, charges, and best practices, and is based on the free flow of information regarding financial and operational functions. The One Water Partnership 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 One Water Partnership and the terms of this Contract, the terms of this Contract shall control.
- 14.02 **General Responsibilities.** The One Water Partnership shall periodically review and evaluate the charges, charge methodology, operation, and maintenance of the System. The One Water Partnership shall have the opportunity each year to review the Capital Improvement Program as prepared by GLWA, prior to its adoption by the Board.
- 14.03 **Annual Report by GLWA.** GLWA will present an annual report to the One Water Partnership that shall consist of a general report on System operation and maintenance.
- 14.04 **Annual Meeting and Report by One Water Partnership.** The One Water Partnership will meet annually with and report to the Board. The One Water Partnership may otherwise meet and communicate with the Board as the One Water Partnership deems necessary.
- 14.05 **Work Groups.** The One Water Partnership may create work groups and sub-committees to address specific issues facing the System. Customer shall have the right to attend all

meetings of the One Water Partnership and any work groups and sub-committees established thereby.

Article 15. **Amendment**

- 15.01 **General.** The Parties may from time to time consider it in their best interests to change, modify or extend a term, condition, or covenant of this Contract. Any such change, addition, deletion, extension, or modification, which is mutually agreed upon by the Parties shall be incorporated in a written amendment to this Contract. Such amendments shall not invalidate this Contract nor relieve or release any Party of any of its respective obligations under this Contract unless so stated in the amendment.
- 15.02 **Approval.** No amendment to this Contract shall be effective and binding upon the Parties unless it expressly refers to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of the Parties, is approved by Customer's legislative body, and is approved by the Board.
- 15.03 **Notice to Trustee.** The Trustee shall be given written Notice of any amendment to this Contract, the Trust Agreement, or the Settlement Agreement that may affect the Trustee's obligations arising out of this Contract, the Trust Agreement, or the Settlement Agreement.

Article 16. **Notices**

- 16.01 **Addresses for Notice.** Except as otherwise specified in this Contract, all Notices required or permitted under this Contract shall be given in writing and mailed by first class mail, addressed as follows:

If to GLWA:

Chief Executive Officer
Great Lakes Water Authority
735 Randolph, Suite 1900
Detroit, Michigan 48226
Attention: General Counsel

If to Customer:

Mayor
City of Highland Park
12050 Woodward Avenue
Highland Park, MI 48203

cc: Water Department Director
City of Highland Park
12050 Woodward Avenue
Highland Park, MI 48203

16.02 **When Deemed Given.** 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 **Special Mailing Requirements.** Notwithstanding the requirement above as to the use of first-class mail, Notices regarding change of address, termination, and any Notices required by Sections 2.04, 7.02, 9.02, 9.03, 10.03, 12.01, 12.02, 15.03, 20.01, 20.02, shall be sent by certified first-class mail, postage prepaid.

16.04 **Notice to Trustee.** Notices to the Trustee required by this Contract shall be sent to the address identified in Exhibit F.

Article 17. Industrial Waste Control Program

17.01 Customer agrees to abide by the requirements of the Industrial Waste Control Program as set forth in Exhibit E, paragraph F. To the extent that Exhibit E obligates Customer in the future to adopt any new or modified ordinance, rule, or regulation based upon a future amendment to the City of Detroit's Wastewater Discharge Control Ordinance or any successor or similar ordinance, such amendment shall be consistent with the then-current rules and regulations of the United States Environmental Protection Agency ("USEPA") and EGLE but may be more stringent than USEPA and EGLE rules and regulations.

Article 18. Rights-of-Way

18.01 **Assistance from Customer; Restoration.** Customer shall assist GLWA to obtain permission to use streets, highways, alleys, and/or easements within the Customer's jurisdiction for the purpose of constructing, maintaining, and operating wastewater disposal facilities to adequately service the Customer's jurisdiction and other areas. In the event of such construction, GLWA shall request Customer to execute such separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by GLWA. GLWA shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place. As contemplated by this paragraph, any such facilities existing on or before December 31, 2015, shall remain under the ownership of the City of Detroit as leased to GLWA, and any new facilities constructed on or after January 1, 2016, shall be owned by GLWA and in no case shall either the existing or new facilities be operated or maintained by any entity other than GLWA or its authorized representatives.

18.02 **Relocation of Facilities.** Should future construction by any federal, state or county agency require relocation of a wastewater interceptor, System Meter or other System facility, the cost incurred by GLWA for such relocation, if not reimbursed by the agency requiring the relocation, will be allocated in future charges as a common-to-all cost to all System users

for the relocation of a common-to-all facility, or as a customer-specific cost to a specific customer or customers for the relocation of a customer-specific facility.

18.03 **Easements**. Subject to the provisions of Section 18.01 and to the extent that Customer has jurisdiction, GLWA shall be granted temporary and permanent easements, and shall be permitted to use the streets, alleys, and highways within Customer's legal jurisdiction for the purpose of constructing, operating, and maintaining the System. This consent by Customer is given in compliance with Article 7, Sec. 29 of the Michigan Constitution of 1963, provided that GLWA shall provide Customer with a written explanation of the type of easement required and the duration thereof.

Article 19. **Miscellaneous**

19.01 **Enforceability**. 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.

19.02 **Integration**. This Contract, including the exhibits attached hereto, contains the entire agreement between the Parties regarding the Services and all prior negotiations and agreements are merged into this Contract. No Party has made any representations regarding the subject matter of this Contract except those expressly set forth in this Contract.

19.03 **Headings**. 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.

19.04 **Governing Law**. 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.

19.05 **Execution of Contract**. This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, GLWA shall provide a copy to Customer.

19.06 **Benefits to Inure**. The rights and benefits under this Contract shall inure to the benefit of and be binding upon the Parties, their agents, successors, and assigns.

19.07 **Third-Party Beneficiaries**. Pursuant to the terms of its Lease with GLWA, the City of Detroit is an acknowledged third-party beneficiary of this Contract as the owner of the System, and this Contract shall not be construed to benefit any persons other than GLWA, the City of Detroit and Customer.

19.08 **Drafting**. This Contract shall be deemed to be mutually drafted.

19.09 **Recital Paragraphs.** The recital paragraphs set forth in the preamble of this Contract are incorporated in and made a part of the Contract.

Article 20.

Charges

20.01 **Charges.** Customer agrees to pay for all Services supplied by GLWA at such charges as GLWA may establish. Charges shall be reasonable in relation to the costs incurred by GLWA for the provision of the Services. GLWA shall give written Notice of any changes in the charges. Notice shall be made in accordance with Section 5e of Public Act 279 of 1909, Michigan Compiled Laws, Sec. 117.5e, as amended (“Act 279”) or other applicable federal court orders.

20.02 **Notification of Charges.** As soon as possible in the charge-making process, GLWA shall provide information on proposed charges and the draft data and information used in the calculation of proposed charges in a format that will enable Customer to assist in the charge-making process. Not less than thirty calendar days prior to the hearing required by Act 279 or other applicable federal court orders, GLWA shall provide Customer with written Notice of a proposed charge and the underlying data used to calculate the charge. GLWA shall meet with Customer to review the charge and the data. GLWA shall provide Customer, upon written request, a copy of the charge notebook containing the detailed tabulations supporting the establishment of the final charges for the next charge year and the look back adjustments.

20.03 **Disclosure of Rate Information by Customer.** Each year, Customer will disclose to its customers information related to its local rates and other charges, and information regarding what portion of those costs is related to charges from GLWA and/or other major service providers.

20.04 **Estimate of Usage.** Once twelve (12) months of quality metering data is available to project estimated annual sewerage flows, GLWA charges to Customer shall be based on that data and future data. Until such data is available, GLWA shall base its charges on analyses of Flow from Customer using complete Customer-Owned Meter information provided to and accepted by GLWA, water sales data of Customer’s water customers including wholesale, retail, commercial, and industrial if applicable, and/or other relevant data and best available information in accordance with Section 5.02, including System Meter data.

If any Customer-Owned Meter experiences any failure, outage, or other technical issue, including any failure to correctly measure the quantity of wastewater transmitted by Customer for any period of time, GLWA shall provide a reasonable estimate of the quantity of wastewater generated by Customer for such period provided that there is a reasonable basis for the estimate. Customer and GLWA shall, either through their respective technical representatives and/or the One Water Partnership, seek agreement upon a method to estimate such quantities. If the Parties are unable to agree upon a method to estimate such quantities, GLWA’s determination of a method shall be conclusive, and Customer agrees to accept the estimate established by GLWA.

20.05 **Charge-Making Terms.** The charge-making terms set forth in Exhibit E attached hereto, as may be revised by GLWA from time to time and approved by the Board, are incorporated into and made a part of this Contract. Further, GLWA agrees to provide to Customer an updated description of the methodology for charge-making utilizing the most recent cost of service studies as may be updated by GLWA in its sole discretion from time to time, and as may be modified and approved by the Board. The charge methodology documents referred to in this paragraph and any updates thereto shall be provided to Customer via posting on the GLWA website.

- A. Effective January 1, 2024, GLWA shall provide a settlement credit of \$60,000.00 per month to Customer on its sewage charge until June 30, 2024, subject to the following:
 - (i) Customer may fully participate in the GLWA share and charge process for fiscal year 2025, and
 - (ii) Beginning July 1, 2024, Customer shall receive the lesser of (a) the fiscal year 2024 sewage charges and credit, or (b) the fiscal year 2025 sewer share and resulting charges, and
 - (iii) The settlement credit shall terminate no later than June 30, 2025.

20.06 **Accounting of Project Expenses.** GLWA recognizes that Customer's allocation of charges and rates to its customers may vary depending upon the nature, location and purpose of the particular project carried out by GLWA. Accordingly, when requested by Customer in writing, GLWA shall provide reasonable information to assist Customer in the accounting of expenses for a specified project.

Article 21.
Intentionally Omitted

(Signatures appear on next page)

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

City of Highland Park:

By: _____
Its: Glenda McDonald
Its: Mayor

By: _____
Its: Brenda Green, CMC
Its: City Clerk

APPROVED BY
HIGHLAND PARK CITY COUNCIL ON:

_____ Date

Great Lakes Water Authority:

By: _____
Its: Suzanne R. Coffey, P.E.
Its: Chief Executive Officer

APPROVED BY
GLWA BOARD OF DIRECTORS ON:

_____ Date

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL ON:

Signature _____ Date

EXHIBIT A

Customer's Service Area

This Exhibit contains the following information:

1. The corporate limits of Customer
2. The Service Area of Customer
3. Customer's Maximum Allowable Flow Limit
4. The specific location of any Customer-Owned Meters, System Meters, and System Meter vault(s)
5. The Points of Connection to the System
6. The designation/name of any Customer-Owned Meters and System Meters
7. The location of any Customer and System data acquisition equipment

EXHIBIT B

RESERVED

EXHIBIT C

RESERVED

EXHIBIT D

RESERVED

EXHIBIT E

Modified List of Relevant Charge-making Terms

A – Rate Making Process

1. User Charge System. Not less than every two years, GLWA shall review its User Charge System to assure that it accomplishes the requirements set out in 40 C.F.R. §35.929-2(b).

2. Local User Charge System. Each wholesale customer agrees that it shall adopt and enforce, and shall cause each of its local governmental customers for sewage treatment and disposal services to adopt and enforce rules and regulations to implement and maintain a revenue system whereby, as a minimum, the operation, maintenance and replacement portion of GLWA's charges are distributed proportionately to each user or user class that is tributary to GLWA's treatment works. The rules and regulations shall provide for monitoring of commercial, governmental and industrial users and shall be consistent with the monitoring rules and regulations of the City of Detroit. GLWA shall have the right under said rules and regulations to audit all monitoring activities including the right to perform monitoring tests itself to verify the accuracy of monitoring results.

3. Future Charge-making Information.

a. Whenever GLWA undertakes any study which may result in the revision of charges to its wholesale customers, it shall notify its wholesale customers and provide those customers, their agents, consultants and attorneys, any final reports prepared in the course of such study and, upon written request, any interim or preliminary reports, and meet with the contracting parties to explain and discuss the reports being provided. When implementing any change in sewage treatment charges, GLWA shall comply with the applicable public participation requirements of 40 CFR Part 25, and MCL 117.5e(b). GLWA shall hold a public hearing prior to the adoption of sewage treatment charges. No later than fifteen (15) days prior to GLWA's hearing, and upon request, GLWA shall provide contract customers with the charge report and supporting documents to be considered by GLWA.

4. Commitment to Collaborative Process. GLWA shall establish and continue a customer outreach and involvement process to facilitate a cooperative working partnership between GLWA and First Tier Member Partners based on the free flow of information regarding financial conditions and operational functions. The One Water Partnership, with its subcommittees, is established as the forum in which discussion and development of recommendations to GLWA regarding wastewater system operation, maintenance, charges, and best practices occurs. The parties agree that the charge-making process will incorporate guidance and input from the One Water Partnership and its work groups.

B – Revenue Requirements

1. Revenue Requirements. Revenue requirements shall be based upon the finances required to meet all operating, maintenance, capital requirements including debt financing and

debt service coverage required by bond covenant, ordinance, or GLWA policy, and any obligations imposed by law, and shall reflect not only recent cost experience but also a recognition of the reasonably estimated future cost levels during the period for which the charges are being established.

a. Operating and Maintenance Expenses of the System.

(i) Operating and maintenance expenses shall include replacement of process equipment, accessories, or appurtenances which are necessary to maintain the capacity and performance for which the treatment works is designed and constructed.

(ii) The charge for operation and maintenance expenses, including replacement, shall include surcharges to be applied to discharges of individual users whose loadings of specified pollutants exceed normal loadings. GLWA shall specify the pollutants that may be surcharged and shall define normal loading thresholds of each pollutant. The charge shall conform to Section 204(b) (1) (A) of Public Law 92-500, as amended, and regulations of the United States Environmental Protection Agency, being 40 CFR 35.929 through 35.929-3.

b. Capital Financing. GLWA shall adopt a five-year financial plan and a five-year capital improvement plan for the expansion, renewal and replacement of common use major capital assets and improvements and shall update the plans at least bi-annually. The plans shall provide for the financing of major capital assets and improvements with a mix of revenue bonds and revenue-financed capital designed to accomplish the financial goals established by GLWA, considering public water and sewer utility financial benchmarks, including, without limitation, unrestricted net assets, charge stability, strong bond ratings and a long-term goal of achieving reasonable debt service coverage levels and reasonable levels of debt service as a percentage of total revenue.

c. Depreciation. To the extent that the “Cash Basis” of charge-making is applied in future charges, revenue requirements shall not include a depreciation expense element, which, together with a rate of return and provision for operation and maintenance expense, would generate revenues in excess of system revenue requirements including coverage.

2. Amended Look-Back Process: Adjustments to Prospective Revenue Requirements. GLWA shall review the differences in each class cost pool between the projected revenue requirement for a charge year and the actual revenue requirement for that charge year to determine potential adjustments to prospective allocations and budgets/revenue requirements for that cost pool according to the procedures set forth in **Attachment 1**, Charge Simplification Recommendations, November 22, 2013. The purpose of this review will be to avoid material deviations from the principles in Section D(1) below between projected and actual revenue requirements over the medium term. To the extent that GLWA determines that a material variance exists in a cost pool, GLWA may, at its discretion, modify prospective revenue requirements in one or more subsequent charge years to eliminate the variance.

3. Bad Debt Expense.

a. A “bad debt expense” is a delinquency by a GLWA customer that is classified as “bad debt expense” pursuant to then applicable accounting procedures.

b. Quarterly, GLWA will provide to the wholesale customers current information on individual delinquencies in payment of wholesale class bills. On or before January 1 each year, GLWA will provide the wholesale customers a statement of the amount of wholesale customer and the amount of bad debt expense from prior charge years bad debt expense to be included in the prospective charges for each delinquent wholesale customer and the amount of bad debt expense from prior charge years for each such delinquent customer.

c. GLWA shall review the differences between the projected bad debt expense assigned to specific customer classes (noted below) in a charge year and the actual bad debt expense incurred for that charge year. Any variance between the projected bad debt expense and the actual bad debt expense incurred for that year shall be incorporated into the revenue requirement for the next-coming charge year to ensure that revenue shortfalls due to nonpayment of sewer charges are recovered.

d. For purposes of this clause, specific customer classes are defined as:

	Bad Debt Expense	Responsible Customer Class
1.	Detroit Retail Customers	Detroit Retail Customers
2.	Wholesale Contract Customers	Wholesale Contract Customers
3.	Surcharge Customers	Surcharge Customers
4.	Wayne County Hwy Drainage	Wayne County Hwy Drainage
5.	Michigan DOT Hwy Drainage	Michigan DOT Hwy Drainage
6.	Industrial Waste Control	Industrial Waste Control

e. GLWA shall use all commercially reasonable efforts, which may include legal action, to recover all delinquent wholesale billings before they are classified as bad debt expense and charged to the wholesale customer class.

f. Delinquencies that have been classified as bad debt expense shall continue to be charged against and shown on the delinquent wholesale customer's bill until such time as the delinquency is paid or released pursuant to subsection 3(g) below. Payments made by a wholesale customer with regard to its delinquent accounts after they have been charged as a bad debt expense to the wholesale customer class shall be credited to the wholesale customer class' revenue requirement in the charge year following such payment. Payments received from delinquent wholesale customers shall be applied to the oldest unpaid invoice, whether or not the invoice has been classified as a bad debt expense.

g. GLWA shall not compromise, release or discharge part or all of its claims against a wholesale customer when the delinquency has been charged as a bad debt expense against the wholesale customer class without the consent of two thirds in number of the representatives of Wayne, Oakland and Macomb Counties authorized to execute and carry out the terms of the Wastewater Disposal Services Contract in the exercise of their commercially reasonable judgment.

h. If GLWA has not instituted legal action to collect a wholesale customer delinquency after it has been charged to the wholesale customer class, at the request of one or more

wholesale customers, GLWA shall assign to the wholesale customer class (or such member(s) of that class who agree to pursue such claims) that claims(s) against the delinquent wholesale customer on behalf of GLWA. If one or more wholesale customers request that the right to prosecute a claim be assigned to them, GLWA shall notify all wholesale customers of the requested assignment, the nature and amount of the claim, the party or parties to whom the claim is assigned and that the other wholesale customers may have the right to appear or intervene in the action. The customers who are assigned the claim shall pursue the claim using common counsel. The wholesale customers that pursue such claims may recover their reasonable attorneys and other expenses incurred in pursuing the claim(s) from the sums recovered with the balance of any recovery paid over to GLWA for the benefit of the wholesale customer class. The wholesale customers to whom GLWA has assigned its right to pursue a claim(s) on behalf of its wholesale customers shall not compromise, release or discharge part or all of the claim(s) without the consent of two thirds in number of the representatives of Wayne, Oakland and Macomb Counties as well as GLWA Board of Directors, in the exercise of their commercially reasonable judgment.

i. Any wholesale customer that through its delinquency has created a bad debt expense to GLWA, regardless of whether that bad debt has been charged as an expense against the wholesale customer class, shall not receive any charge benefits or credits pertaining to the wholesale class at large that result from calculations under section B(2) so long as the delinquency creating the bad debt expense remains unpaid or un-discharged.

j. GLWA shall develop rules and procedures as necessary to implement and carry out the provisions of article B(3) of this Exhibit E.

C – Payments to the City of Detroit

1. Payment for Indirect Benefits or Services. Following the computation of charges for customers residing or located within the City of Detroit and customers residing or located without the City of Detroit, such charges shall be further adjusted by deducting from the revenue requirement for customers within the City of Detroit and added to the revenue requirement for customers without the City of Detroit an amount determined as follows:

a. For the fiscal year 1979, the sum of \$1 million. For each fiscal year thereafter, such amount shall be increased by 5%, determined on a compounded basis. This adjustment is known as “Adjustment A” in the charge protocol.

b. This payment shall be made and the charges so adjusted as a payment to reflect the cost of indirect benefits or services provided by the City of Detroit to DWSD for common use facilities within the City of Detroit, such as police and fire protection, the risk of tort liability, the loss of tax base that the City loses as a result of the Department’s tax exemption, and the fact that the suburbs receive sewage treatment without having to devote any of their land to a tax free utility.

c. In the event that the City of Detroit shall at any time hereafter render billings or accounting statements for indirect services to the DWSD such as police and fire protection, risk of tort liability, loss of tax base or any other type of contribution in lieu of taxes with the effect that such billings or statements become part of the DWSD budget for charge-making purposes, then the amount of such charges allocated or apportioned to the contracting customers shall be deducted

from the amount determined in subsection (a) above, and shall in no event exceed the amount determined pursuant to subsection (a) above.

d. DWSD shall allocate the amount charged to the customers residing or located without the City of Detroit for payment for indirect benefits and services set forth in subsections (a)-(c) in the same manner in which it allocates treatment costs.

2. Payment for Direct Services. DWSD may continue to include in its charges fees for direct services which the City currently renders and bills to DWSD. Such "direct services" shall be limited to the kind of services historically provided by offices, departments or agencies of the City of Detroit such as various kinds of licenses and permits, electricity, steam, paving required by DWSD's facilities or projects, vehicles and rubbish pickup and those which were included in the DWSD budget for fiscal 1978. No additional charges may be made for "direct services" provided by other additional city offices, departments and/or agencies without the prior agreement of the contracting parties. Such agreement shall not be unreasonably denied or delayed should it appear that the particular service or services result in a legitimate, direct benefit to system and its customers.

D – Allocation of Costs of Service

1. Uniform Allocations of Costs Incurred. GLWA shall recover costs incurred by the system by instituting charges which assign, allocate, and apportion such costs to all charge-payers on the basis of principles uniformly applicable to all, it being the intention of the parties that such charges (whether designed on the utility or cash basis) will, as nearly as is practical, recover from each customer class the respective costs of providing service regardless of the charge-payer's location. In particular:

a. If GLWA implements charges based upon a system of charging a percentage rate of return on net asset or capital structure rate base, (through the use of the so-called utility basis of rate making) there shall be no differential in the rate of return charged to customers residing or located within the City of Detroit and customers located without the City of Detroit. Nothing herein contained shall prohibit GLWA from designing its charges on the so-called cash basis.

b. Should GLWA use the cash basis in any future in any future charge study, the allocation of debt service costs to all customers or facilities shall be based upon the system weighted average interest rate at the time.

c. GLWA shall use surcharges to recover incremental revenue requirements incurred in treating sewage which, at the point of discharge, contains specified pollutants in concentrations exceeding those of normal domestic sewage as defined by GLWA.

d. All revenue requirements other than those revenue requirements recovered by surcharges pursuant to subsection (1)(c) may be recovered by volume alone, or by volume and surcharges, or by any method which provides a distribution of costs reasonably related to the service provided.

e. The parties' current (at the time of this agreement) for achieving the principles

set forth in this Section is set forth in **Attachment 1**. Consistent with Section A(2) of this agreement, the parties, by mutual agreement, may modify **Attachment 1** to reflect new information and approaches to achieving the principle set forth in Section D(1).

2. DWSD Combined Sewer Overflow (Wet Weather Facilities).

a. Certain new wet weather facilities being constructed or to be constructed by GLWA to alleviate combined sewer overflows from its wastewater transportation, conveyance and treatment system contain or will contain wet weather flows generated from both inside and outside the City of Detroit. GLWA shall charge customers within the City of Detroit 83% and customers outside the City of Detroit 17% of the capital costs and costs incurred in the operation and maintenance of such facilities. GLWA shall allocate the 17% of such capital and operation and maintenance costs charged to customers outside the City of Detroit consistent with **Attachment 2**, Agreement to Revise CSO Project List.

b. **Attachment 2** provides a description of the new wet weather facilities, referred to in subsection (2)(a) above, that are currently under construction or to be constructed by GLWA and their estimated costs. Costs associated with improvements to facilities at the wastewater treatment plant, also listed on **Attachment 2**, will continue to be allocated on a common-to-all basis. Costs associated with Detroit-only projects, also listed on **Attachment 2**, will be charged to Detroit retail customers only. If GLWA determines that it is reasonable, appropriate or necessary to construct additional wet weather facilities in the future that will serve wet weather flows generated inside and outside of the City of Detroit, each contract customer reserves the right to contest its respective allocation of costs.

E – Evaluation of Wastewater Flows

GLWA shall continue ongoing technical review of wastewater flows in the System to establish and maintain wastewater contribution data that will support the proportional allocation of costs as set forth in D(1). The parties agree that the wastewater flow elements of charge-making terms under prior agreements, including the allocation of infiltration and inflow and the application of a uniform overflow credit are accommodated in the sewer charge methodology set forth in **Attachment 1**. The scope of the ongoing review is intended to encompass the types of evaluations traditionally conducted utilizing the Greater Detroit Regional Sewer System (“GDRSS”) model and related tools. The scope of ongoing review will be established from time to time by GLWA, after consultation with the One Water Partnership and related forums.

F – Industrial Waste Charges

1. Each wholesale customer agrees that it shall adopt and enforce, and shall cause each of the local governmental units within its jurisdiction for sewage treatment and disposal service as provided by GLWA to adopt and enforce, rules and regulations pertaining to the use, design and construction of sewers, and the discharge of industrial or commercial wastes into sewers, where such sewers are tributary to the treatment works owned by the City of Detroit and leased, operated and maintained by GLWA. Such rules and regulations shall be consistent with and at least as stringent as all applicable provisions of the pertinent ordinances adopted by the City of Detroit, these being Chapter 56, Article I, and Chapter 56, Article III, of the Municipal Code of the City of

Detroit as they may be adopted and amended from time to time. In the event any municipality or other governmental unit fails to adopt a required ordinance, or fails to diligently enforce the same, GLWA shall take appropriate action which may include suit in an appropriate court of general jurisdiction alleging such municipality's failure to adopt or enforce an ordinance. Should the court find, following a hearing on the merits, that the allegations in GLWA's petition are true, the parties agree that such court may, in such instance, grant appropriate injunctive relief against said municipality or any individual discharger located there, terminate the municipality's contractual right to discharge waste waters into the System and/or to grant GLWA such other relief as may be appropriate under the circumstances. These actions shall enable GLWA to:

- a. Deny or condition new or increased contributions of pollutants or changes in the nature of pollutants, to the waste collection system by Industrial Users and Significant Industrial Users. The terms "Industrial Users" and "Significant Industrial Users" shall mean those users defined in Section 56-3-58.1(a) of Chapter 56, Article III, Division 3 of the Municipal Code of the City of Detroit and as may be amended from time to time.
- b. Require compliance with applicable current future National Pretreatment Standards and other more restrictive requirements as may be imposed by GLWA promulgated by the U.S. EPA under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.
- c. Control, through permit, contract order, or similar means, the contribution to the waste collection system by Industrial Users and Significant Industrial Users to ensure compliance with subsection (b) above.
- d. Require the development of compliance schedules by Industrial Users and Significant Industrial Users for the installation and facilities required to meet applicable National Pretreatment Standards and other more restrictive requirements as may be imposed by GLWA.
- e. Require the submission of notices and self-monitoring reports from Industrial Users and Significant Industrial Users to assess and assure compliance with National Pretreatment Standards and other more restrictive requirements as may be imposed by GLWA.
- f. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users and Significant Industrial Users, compliance or noncompliance with applicable National Pretreatment Standards and other more restrictive requirements as may be imposed by GLWA. The parties recognize that GLWA may contract with qualified parties to carry out the inspection, surveillance and monitoring procedures of this paragraph.
- g. Seek injunctive relief for noncompliance with National Pretreatment Standards and other more restrictive requirements as may be imposed by GLWA.
- h. Require Industrial Users and Significant Industrial Users to install containment facilities to protect the treatment works from accidental spills of critical or hazardous materials.

2. Contract Amendment for Industrial Waste Control.

- a. All wholesale customers and all municipalities under contract to such wholesale

customers shall enter into amendments of the service contracts between or among them and GLWA to embody or incorporate the provisions that assure uniformity throughout the System as required by applicable federal statutes and regulations.

b. GLWA's wastewater contracts shall be amended to include:

i. A process of diligent and uniform enforcement and implementation of the ordinances, rules and regulations to be adopted pursuant to Section IV(9) of the 1980 Settlement Agreement.

ii. A process to pass through to industrial customers' amounts billed with respect to such customers for sewage surcharges and industrial cost recovery charges.

iii. Such provisions as are required to establish delegated or cooperative authority or procedures for inspection, monitoring, measurement, surveillance, enforcement and dispute resolution, with respect to prohibited discharges, sewage surcharges and industrial cost recovery charges.

(Attachments 1 and 2 to Exhibit E follow this page)

EXHIBIT E
ATTACHMENT 1
CHARGE SIMPLIFICATION RECOMMENDATIONS

EXHIBIT E
ATTACHMENT 1
EXHIBIT 1
INITIAL CHARGE PERIOD SHARES

EXHIBIT E

ATTACHMENT 1

EXHIBIT 2

PROCESS TO ADDRESS CUSTOMER'S REQUEST FOR INTERIM SHARE CHANGE

EXHIBIT E

ATTACHMENT 1

EXHIBIT 3

CHARGE SIMPLIFICATION PRO FORMA

EXHIBIT E
ATTACHMENT 2
AGREEMENT TO REVISE CSO PROJECT LIST

EXHIBIT E

ATTACHMENT 2

EXHIBIT 1

APPROVED WET WEATHER FACILITIES

(End Exhibit E)

EXHIBIT F
TRUST AGREEMENT

TRUST AGREEMENT

THIS TRUST AGREEMENT is made and entered into as of April __, 2024, by and between the City of Highland Park, County of Wayne, State of Michigan (the "City") and U.S. Bank Trust Company, National Association, Detroit, Michigan, a national banking association lawfully authorized to conduct business in the State of Michigan (the "Trustee"). Collectively, the signatories are referred to as the Parties, and individually, as a Party. Capitalized terms not otherwise defined in Article IV hereof shall have such meanings assigned to them in the Settlement Agreement (hereinafter defined).

RECITALS

WHEREAS, between 1992 and 2016, the City was engaged in a portion of the Litigation with the City of Detroit through its Water and Sewerage Department, and since 2016, the City has been engaged in the balance of the Litigation with the Great Lakes Water Authority ("GLWA") and the State of Michigan.

WHEREAS, in 1999, the City issued and sold the 1999 Bonds to the Michigan Municipal Bond Authority as predecessor to the Michigan Finance Authority, to evidence the City's obligation to repay various loans from the State of Michigan's Drinking Water State Revolving Fund Program for improvements to the City's System.

WHEREAS, the 1999 Bonds are payable from and secured (a) primarily by an irrevocable pledge of net utility revenues pursuant to the provisions of the revenue bond act, Act 94, Public Acts of Michigan, 1933, as amended, and (b) secondarily by a pledge of the City's limited tax full faith and credit.

WHEREAS, in November 2014, GLWA was established as a municipal authority under Act 233 of 1955, MCL 124.282. On June 12, 2015, the City of Detroit, through its Water & Sewerage Department, entered into a Regional Sewage Disposal System Lease and a Regional Water Supply System Lease Agreement with GLWA, and, on January 1, 2016, GLWA began operating the regional water and wastewater systems in accordance therewith.

WHEREAS, the City and GLWA have entered into the Water and Sewage Services Contracts and a Settlement Agreement, which establish the terms and conditions by which the City shall pay the full amount of GLWA's monthly charges for water and sewage services in accordance with a stipulated order of consent judgment to settle and finally resolve the prior Litigation. The Settlement Agreement provides, in part, for the deposit of Utility Revenues into a Trust for distribution as provided in this Agreement.

WHEREAS, the Parties are entering into this Agreement to provide for the orderly payment of amounts due first to GLWA under the Water and Sewage Services Contracts and subsequently to pay other System Obligations, each with Utility Revenues.

WHEREAS, the City has provided for the deposit of all Utility Revenues to the Bank for further transfer to the Trustee for deposit in the Trust Fund; and

WHEREAS, the City Treasurer has recommended and the Council of the City has authorized the execution of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE RESPECTIVE COVENANTS, AGREEMENTS AND REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, THE PARTIES TO THIS AGREEMENT, INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:

ARTICLE I
ESTABLISHMENT OF FUNDS; DEPOSITS AND DISTRIBUTIONS

Section 100. Receiving Fund; Deposits and Disbursements.

(a) Receiving Fund. The City shall enter into, and maintain at all times during the term of this Agreement (except as otherwise provided in this paragraph), the DACA with the Bank and the Trustee to restrict the ability of any party from removing funds from the Receiving Fund except as provided therein. Additionally, for the term of this Agreement, the City shall enter into and maintain a Lockbox Agreement with the Bank for lockbox services for the Receiving Fund. The City shall not commingle any funds or moneys of the City in the Receiving Fund except for Utility Revenues. The City may move the Receiving Fund to a successor Bank with the prior written consent (which shall not be unreasonably withheld) of the Department and GLWA; provided that the successor Bank has the capacity to perform the functions as required by this Agreement, the DACA, and the Lockbox Agreement.

(b) Deposits. The City shall cause any and all Utility Revenues to be remitted directly to the Receiving Fund. The City shall ensure (i) its customer invoices direct all Utility Revenues to be mailed to the Lockbox PO Box for deposit into the Receiving Fund and (ii) all electronic payments by or on behalf of all System customers (including any amounts received from the Heat and Warmth Fund and the Wayne Metro Community Action Agency) be deposited directly into the Receiving Fund. If any payments of Utility Revenues are otherwise received by the City (such as payments paid in-person at the water department service center), the City shall deposit such amounts, within five (5) days of receipt thereof, in the Receiving Fund or on the next Business Day if the fifth day is not a Business Day. All Utility Revenues deposited in the Receiving Fund shall be retained therein until transferred to the Trustee for deposit in the Trust Fund in accordance with Section 100(c).

(c) Disbursements. Pursuant to the standing order in the DACA, on each Tuesday and Thursday or on the following Business Day if such Tuesday or Thursday is not a Business Day, the Bank shall disburse all funds held in the Receiving Fund less the Retained Balance which shall remain as an available Receiving Fund account balance for application to any applicable customer chargebacks, NSF deposits, restored check fees or similar amounts. The DACA shall be irrevocable during the term of this Agreement and shall provide for its revocation upon the expiration of this Agreement. The City shall receive a monthly credit of \$80 per month towards the Aggregate Monthly Amount Due to defray the transaction costs of the twice weekly sweeps from the Receiving Fund.

Section 101. Trust Fund; Appointment of Trustee; Deposits; Disbursements.

(a) Appointment. The City hereby appoints the Trustee as depository and trustee for the Trust Fund pursuant to the terms of this Agreement. The Trustee hereby agrees to act as trustee and to receive, hold, and disburse funds from the Trust Fund pursuant to the terms and conditions of this Agreement.

(b) Establishment; Deposits. The City hereby directs the Trustee to establish a trust account (the "Trust Fund") designated and maintained by the Trustee for the deposit of all Utility Revenues received pursuant to the Bank Direction. The Trustee shall deposit Utility Revenues in the Trust Fund as received and shall disburse funds from the Trust Fund in accordance with the provisions of this Agreement. All such deposits of Utility Revenues shall become part of the Trust Fund. All funds within or owed to the Trust Fund shall be held irrevocably in trust for the beneficiaries hereof. Funds shall be remitted to the recipients only in accordance with the terms of this Agreement.

(c) Disbursements. On each Monthly Distribution Date, the Trustee shall disburse funds from the Trust Fund in accordance with the following direction and in the following priority:

(1) first, the Trustee shall pay GLWA the Aggregate Monthly Amount Due for such month (less any amounts necessary to be withheld pursuant to Section 202 hereof);

(2) second, the Trustee shall pay itself for any properly invoiced fees or costs of the Trustee which have not been paid within thirty (30) days of the date of the invoice therefor;

(3) third, the Trustee shall pay the City the balance of the funds in the Trust Fund less any Debt Service Costs to be paid from Utility Revenues specified in Subsection 101(c) (4) and (5) below; and

(4) fourth, the Trustee shall continue to hold in trust the monthly set aside for the 1999 Bonds Debt Service Costs as described on Exhibit C attached hereto and shall, on each payment date for the 1999 Bonds Debt Service Costs as described on Exhibit C, transfer to U.S. Bank Trust Company, National Association, as depository (or such successor depository as shall be communicated to the City and the Trustee by the Michigan Finance Authority) for the 1999 Bonds as delivered to the Trustee by the Michigan Finance Authority or the City (notwithstanding the set aside of amounts from the Utility Revenues, should such amounts be insufficient to make a debt service payment on any debt service payment date, the City shall transfer the amount necessary to remedy the shortfall to the depository for the 1999 Bonds in accordance with the invoice from the Michigan Finance Authority); and

(5) fifth, to the depository, trustee or paying agent for any additional bonds or notes (if any) which are secured by or payable from Utility Revenues that may subsequently be issued to pay costs of capital improvements to the System, the Trustee shall transfer an amount necessary pay the monthly set aside for any debt service costs for any such additional bonds or notes.

Notwithstanding the fact that the payment to GLWA on the Monthly Distribution Date may result in the payment of the Aggregate Monthly Amount Due beyond the due date stated on an invoice to the City, GLWA shall not assess, levy, or charge the City any late fee that may become

due under, the Water and Sewage Services Agreements; provided that the full amount due, including any past due payments, is paid on the next succeeding Monthly Distribution Date less any withholding of Disputed Amounts under Section 202 hereof. If the full amount due, including all past due payments, is not paid on the next succeeding Monthly Distribution Date, GLWA may begin levying any late charges and pursue any other remedies under the Water and Sewage Services Contracts.

Exhibit B attached hereto and made a part hereof contains wire instructions to GLWA, the City, the Trustee, and the paying agent for the 1999 Bonds, GLWA, and the City.

Section 102. Rate Study; Cash Flow Forecast; Financial Reports; Rates.

(a) **Rate Study; Rates; Budget.** Each year, the City shall ensure the Rate Analyst prepares a Rate Study that is provided to the City, GLWA, the Trustee, and the Department by the later (the “Due Date”) of (i) March 1 and (ii) thirty (30) days after the provision by GLWA to the City of the rates and charges to be assessed to the City for the Wholesale Services for the following fiscal year. For 2024, the Rehmann Robson LLC report prepared in early 2024 shall constitute the Rate Study for 2024; provided that, such report shall be supplemented with the Cash Flow Forecast for fiscal year 2024-25 required hereunder. If a Rate Study is not provided by the Due Date of each year, commencing in 2025, the Trustee or GLWA may provide notice to the City of such failure, and if such Rate Study is not provided within 15 days after such notice, the Trustee shall withhold any disbursements to the City under Section 101(c)(3) until the Rate Study has been provided to the Trustee, the Department, and GLWA as required under this section.

No later than June 30, of each year, the City shall adopt the water and sewer rates and Water Department budget necessary to pay the Service Costs, as such rates and budget are determined in the Rate Study. No later than July 1, of each year, the City shall provide the copies of the resolutions and/or ordinances which adopted the Water Department rates and budget to GLWA, the Department, and the Trustee.

(b) **Cash Flow Forecast.** Commencing on the Effective Date and continuing for a period of three years (unless extended as provided hereinbelow), the City shall ensure the Rate Study includes a Cash Flow Forecast for the subsequent fiscal year. Additionally, the City shall revise and distribute the Cash Flow Forecast when it becomes aware that the Cash Flow Forecast is no longer accurate. Upon the passage of three years, the Rate Analyst shall determine whether it is in the best interest of the City to continue preparing the Cash Flow Forecast, and, upon the Agreement of the City and GLWA, the City shall continue preparing the Cash Flow Forecast for a subsequent three (3) year period.

(c) **Statements.** The Trustee shall furnish the City, the Department, and GLWA with a monthly written accounting of the complete account activity of, and transactions executed with respect to, the Trust Fund, within ten (10) days after the end of such month. Additionally, the Trustee shall provide the City, GLWA, and the Department viewing-access-only to the Trust Fund, and all transactions therefrom, through its online account portal.

(d) **Financial Records.** The City shall provide a copy of the annual Water Department budget to the Trustee, the Department, and GLWA each year no later than July 1 for the fiscal

year beginning on such date and shall provide any amendments to the budget thereafter. The City shall provide a copy of the annual Water Department audited financial results each year no later than April 1 for the fiscal year ending the prior June 30. The City shall provide the Trustee, the Department, and GLWA monthly balance manager reports generated by the City's BS&A system (or such other system as the City may use that provides substantially similar information and reports) by the fifth business day of each month which reflect all the activity occurring in the prior month for all Water Department accounts. GLWA and the State shall be entitled at any time to obtain such records from the Trustee upon reasonable, written advance request. BS&A (or similar program) balance manager reports are a data base of payments made online or in person and are recorded when made. It is recognized that because checks sometimes bounce or there can be a 5-day delay in making deposits made in person, the BS&A balance manager reports may not reconcile with the bank statements on a monthly basis.

ARTICLE II **MATTERS RELATED TO THE WATER AND SEWAGE SERVICES** **CONTRACTS**

Section 201. Notification to Trustee and other Parties of Aggregate Monthly Amounts Due. Each month, the City shall request GLWA to provide written notice to the City and Trustee, via electronic transmission, of the Aggregate Monthly Amount Due five calendar days before the Monthly Distribution Date as set forth on the invoices provided to the City under the Water and Sewage Services Contracts. The City shall also provide written notice to GLWA and the Trustee within thirty (30) business days from the date of the invoice (billed date) when there is any dispute of the invoiced amounts.

Section 202. Disputes. Disputes under the Water and Sewage Services Contracts will be resolved in accordance with the Dispute Resolution Provisions thereof. GLWA or the City shall provide written notice to the Parties when any dispute described therein arises. Upon notice of such a dispute, the Trustee must retain and hold the Disputed Amount in the Trust Fund until the dispute is resolved pursuant to the respective Dispute Resolution Provisions. Upon resolution of the dispute in accordance with the applicable Dispute Resolution Provisions, the Trustee shall release the Disputed Amount to the prevailing party. A dispute shall be deemed resolved for purposes of this Agreement when a final award is rendered pursuant to Section 9.03 of the Water and Sewage Services Contracts.

ARTICLE III **THE TRUSTEE**

Section 301. Acceptance of Trusts. The Trustee hereby accepts and agrees to execute the trusts hereby created upon the terms and conditions set forth in this Agreement. The situs of the trust established hereunder shall be Michigan.

Section 302. No Responsibility for Recitals. The Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of the recitals, statements or representations made in this Agreement.

Section 303. Limitations on Liability. The Trustee undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Trustee has no discretionary duties of any kind. The Trustee's permissive rights shall not be construed as duties. The Trustee shall have no liability under and no duty to inquire as to the provisions of any document other than this Agreement, including without limitation any other agreement between any or all of the Parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to the Trustee. The Trustee may execute any of the powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder and shall incur no liability whatsoever for actions taken in good faith and in accordance with the advice of such counsel. The Trustee shall not be answerable for the exercise of any discretion or power under this Agreement or for anything whatsoever in connection with the trust created hereby, except only for its own gross negligence, fraud or willful misconduct. In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages or penalties of any kind (including, but not limited to lost profits), even if the Trustee has been advised of the likelihood of such damages or penalty and regardless of the form of action.

The Trustee shall not be liable for any error of judgment made in good faith by any of its directors, officers, employees or agents, unless it shall be established that the Trustee engaged in gross negligence, fraud or willful misconduct in ascertaining the pertinent facts.

The Trustee shall be protected in acting upon opinions of counsel and upon any notice, request, consent, certificate, order, affidavit, letter, or other paper or document (including electronic transmissions) believed to be genuine and correct and to have been signed or sent by an authorized representative of such person or persons.

All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Agreement. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

The Trustee shall not be obligated to take any legal action in connection with this Agreement or any other matter or to appear in, prosecute or defend any such legal action. No provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

Section 304. Compensation, Expenses, Advances and Indemnification. The Trustee shall be entitled to compensation for its services pursuant to its fee schedule (current schedule attached hereto as Exhibit D, subject to adjustment in accordance with standard business practices of the Trustee), and absent such agreement, to reasonable compensation for its services rendered hereunder, including expenses, charges, disbursements, extraordinary time and services (not limited by any provision of law in regard to the compensation of the trustee of an express trust) and to reimbursement promptly for its actual out-of-pocket expenses (including fees and expenses of counsel, accountants, consultants and other experts, agent fees and expenses and Trustee's costs of enforcement of this

Section 4.4) reasonably and necessarily incurred in connection with the Trustee's services or any claim asserted against the Trustee by any Party hereto or any other person or entity in connection with this Agreement, except to the extent determined by a court of competent jurisdiction to have been directly caused by the Trustee's gross negligence, fraud or willful misconduct. In no event will the Trustee look to the moneys in the Trust Fund for compensation for its services or expenses, other than as set forth in Section 101(c) of this Agreement.

Section 305. Good Faith Reliance. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice (including telephonic notice), email, or facsimile transmission, request, consent, waiver, certificate, statement, affidavit, voucher, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Agreement or upon the written opinion of any attorney, engineer, accountant or other expert believed by the Trustee, to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements.

Section 306. Resignation and Removal of Trustee. The Trustee may resign and be discharged of the trusts created by this Agreement by executing an instrument in writing resigning such trust and specifying the date when such resignation shall take effect, and delivering the same to the Parties hereto and the third-party beneficiaries not less than 45 calendar days before the date specified in such instrument when such resignation shall take effect. Such resignation shall take effect on the day specified in such instrument and notice, unless previously a successor Trustee shall have been appointed by the Parties, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee. Notwithstanding the above, such resignation shall not be effective until a successor Trustee has assumed the Trustee's duties hereunder. The Trustee may only be removed with the prior written consent (which consent shall not unreasonably be withheld) of the Department, the City, and GLWA upon 30 calendar days' prior written notice, provided that at the effective time of removal a successor Trustee has been appointed by such Parties and the successor Trustee has assumed the Trustee's duties hereunder.

Section 307. Successor Trustee. Any successor Trustee shall be a corporation or association organized and doing business under the laws of the United States or the State of Michigan, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to the supervision or examination by federal or state authority. Any successor Trustee shall execute, acknowledge and deliver to the Parties and the Trustee an instrument accepting such appointment hereunder, and the Trustee shall immediately execute and deliver an instrument transferring to such successor Trustee, subject to the terms of this Agreement, all the rights, powers and trusts of the Trustee hereunder.

Section 308. Successor by Merger or Consolidation. Any corporation into which any Trustee hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor Trustee under this Agreement, without the execution or filing of any paper or any further act on the part of the Parties hereto, anything in this Agreement to the contrary notwithstanding.

Section 309. **Force Majeure.** In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 310. **Permitted Investments.** Moneys in the Trust Fund shall be invested by the Trustee in a short-term money market fund permitted by Act 20, Public Acts of Michigan, 1943, as amended, and selected by the City on the form provided for such purpose by the Trustee, except as hereafter specifically revoked in writing by the City. Interest earnings shall be retained in the Trust Fund until disbursed in accordance with Section 101 of this Agreement.

The Trustee will not provide supervision, recommendations or advice relating to either the investment of funds or the purchase or disposition of any investment and the Trustee shall not have any liability for any loss in an investment made pursuant to the terms of this Agreement. The Trustee has no responsibility whatsoever to determine the market or other value of any investment and makes no representation or warranty as to the accuracy of any such valuations. To the extent applicable regulations grant rights to receive brokerage confirmations for certain security transactions, the City waives receipt of such confirmations.

The Trustee may elect, but shall not be obligated, to credit the Trust Fund with funds representing income or principal payments due on, or sales proceeds due in respect of, investments in the Trust Fund, or to credit to the Trust Fund investments intended to be purchased with such funds, in each case before actually receiving the requisite funds from the payment source, or to otherwise advance funds for Trust Fund transactions. The City acknowledges that the trust's legal obligation to pay the purchase price of any assets arises immediately at the time of the purchase. Notwithstanding anything else in this Agreement, (i) any such crediting of funds or assets shall be provisional in nature, and the Trustee shall be authorized to reverse or offset any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Agreement shall constitute a waiver of any of the Trustee's rights as a securities intermediary under Uniform Commercial Code §9-206.

Section 311. **Trustee's Powers.** Notwithstanding any other provision of this Agreement, the Trustee may cause any part, or all, of the Trust Fund to be invested in one or more of the common trust funds maintained by the Bank or its affiliates. The portion of the Trust Fund so invested may be commingled with the funds of other trusts, to the extent allowed by law.

ARTICLE IV **DEFINITIONS**

Section 401. **Definitions.** Capitalized terms used but not defined herein shall have the meanings given them in the Settlement Agreement. In this Agreement, the following words and terms shall, unless the context otherwise requires, have the following meanings:

“1999 Bonds” means the City’s Water Supply System Bonds, Series 1999.

“1999 Debt Service Costs” means the cost of paying the remaining amounts on the dates set forth on the set aside schedule for the 1999 Bonds attached hereto as Exhibit D hereof.

“Aggregate Monthly Amount Due” means, as of any Monthly Distribution Date, the total of the amount then due to GLWA under the Water and Sewage Services Contracts, as such amounts are properly invoiced as required under the Water and Sewage Services Contracts.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement.

“Bank” means Comerica Bank, a Texas banking association, as the depositary bank for the Receiving Fund or such successor bank selected as provided in Section 100 hereof.

“Bonds” means the 1999 Revenue Bonds and any additional bonds to be issued for improvements to the System.

“Business Day” means any day other than (i) a Saturday, Sunday or legal holiday on which banking institutions in Detroit, Michigan or the designated corporate trust office of the Trustee is located are authorized by law to close, or (ii) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed.

“Cash Flow Forecast” means an annual projected cash flow forecast (corresponding to the City’s fiscal year) showing, on a month-to-month basis, the projected Utility Revenues and System Obligations, including all monthly inflows, such as receipts from customers, and outflows, such as vendor payments, and the resulting cash deficit or surplus.

“City” has the meaning set forth in the introductory paragraph of this Agreement.

“DACA” means that irrevocable deposit account control agreement entered into by and between the City, the Trustee, and the Bank, in the form substantially similar to Exhibit A hereof, granting the Trustee control over the Receiving Fund and specifying the manner in which the Trustee may access funds.

“Debt Service Costs” means the amounts necessary to pay (a) the 1999 Bonds Debt Service Costs, plus (b) the principal of, premium if any, and interest on any additional bonds or notes issued by the City the proceeds of which are used to maintain, improve, extend, or repair the System, whether or not such bonds or notes are secured by a pledge the Utility Revenues or are general obligations of the City.

“Department” means the Michigan Department of Treasury.

“Dispute Resolution Provisions” means, for the Water Services Agreement, Article 9 and Section 12.03, and for the Wastewater Disposal Services Contract, Article 9 and Section 10.03.

“Disputed Amount” means an amount the City is disputing under either of the Water and Sewage Services Contracts.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“GLWA” means the Great Lakes Water Authority.

“IWC” means industrial waste control.

“Litigation” means, collectively, the matters filed in (i) the U.S. District Court for the Eastern District of Michigan as Case Nos. 92-CV-76775, 94-CV-73135, and 16-cv-13840; (ii) the Third Judicial Circuit Court for the County of Wayne, State of Michigan as Case No. 14-001974-CK and 20-011589-CB; (iii) the Court of Appeals of the State of Michigan as Case Nos. 367193 and 362416; (iv) in the United States Court of Appeals for the Sixth Circuit as Case Nos. 19-1979, 19-1981, and 22-1288; and (v) the State of Michigan Court of Claims as Case Nos. 19-000129-MZ, 21-000151-MM.

“Local Services” means water, sewer, IWC, and/or stormwater or similar services provided by the City to all customers of the System.

“Local Service Costs” means all costs necessary to provide the Local Services to the customers of the Water Department, including any administrative costs of the Water Department.

“Lockbox Agreement” means the agreement by and between the City and the Bank which establishes the provision of lockbox services for the Receiving Account.

“Lockbox PO Box” shall mean PO Box _____, _____, MI 482__.

“Monthly Distribution Date” means the 25th of each calendar month, or if such date is not a Business Day, the first Business Day thereafter.

“O&M Costs” means the reasonable and necessary operations and maintenance costs required to keep the System in good and working condition, excluding any capital costs for System improvements.

“Party” and “Parties” have the meanings set forth in the introductory paragraph of this Agreement.

“Rate Analyst” means initially Rehmann and subsequently, an independent rate analyst selected in accordance with Section 3.5 of the Administrative Compliance Agreement.

“Rate Study” means the rate study required under Section 3.5 of the Administrative Compliance Agreement, which shall be completed in compliance therewith, that, in addition to the other requirements contained in Section 3.5 of the Administrative Compliance Agreement, (1) establishes the level of funding and rates necessary for the payment of all System Obligations, accounting for historic delinquent amounts and (2) includes the annual Cash Flow analysis required under Section 103(b) hereof (if such a requirement is still in effect), commencing on the Effective Date and each subsequent three year period thereafter.

“Receiving Fund” means the deposit account commonly referred to as the “Wade Trim” account (account number ending -9678) at the Bank into which all Utility Revenues are deposited.

“Retained Balance” means the amount of \$10,000.

“Service Costs” means the Local Service Costs and the Wholesale Service Costs.

“Settlement Agreement” means the Settlement Agreement and Mutual Release, which is to be executed and entered into by the City, GLWA, and the State of Michigan on or about the same date as this Trust Agreement.

“System” means the City’s water supply and sewage disposal system, which provides the Local Services.

“System Deficit” means a shortfall in the amount necessary to pay the System Obligations in a particular fiscal year.

“System Obligations” means all amounts necessary or customarily paid out of revenues generated by a municipality’s water and/or sewage disposal system, including the O&M Costs, the Service Costs, and the Debt Service Costs. For the avoidance of doubt, the System Obligations do not include amounts to reimburse the City’s general fund for any costs not necessary to provide the Local Services.

“Term Sheet” means the term sheet dated October 18, 2023 and executed by the State of Michigan, the City, and GLWA as of October 20, 2023. The Term Sheet includes and incorporates any Term Sheet dates modified or extended by court order.

“Treasurer” or “City Treasurer” means the elected City Treasurer of the City of Highland Park or acting or Deputy City treasurer, as the case may be.

“Trustee” has the meaning set forth in the introductory paragraph of this Agreement.

“Trust Fund” means the trust fund created by the Trustee pursuant to Section 101 of this Agreement entitled “Highland Park Utility Revenue Trust Fund.”

“Utility Revenues” shall mean all payments received for any and all types of water and/or sewer services, including payments for water, sewer (including IWC) and stormwater services provided by City or any person or entity acting on its behalf. These amounts include IWC charges, water consumption revenue, sewer consumption revenue, administrative charges, readiness-to-serve charges, stormwater charges, drainage charges, billing charges, miscellaneous charges (fees or charges related to permits, meters, and/or surcharges), and any other accounts, charges, fees, or amounts paid in connection with any services provided by the water department or any entity acting on its behalf, including any and all amounts received in payment for any bill issued by or on behalf of the City water department, including any amounts advanced or recovered pursuant to the enforcement of any delinquent amounts.

“Water and Sewage Services Contracts” means the Water Service Contract and the Wastewater Disposal Services Contract between the City and GLWA, each dated concurrently with the date of this Agreement, pursuant to which GLWA supplies potable water and wastewater disposal services to the City.

“Water Department” means the department of the City responsible for providing the Local Services.

“Wholesale Service Costs” means all costs due to GLWA under the Water and Sewage Services Contracts.

ARTICLE V **MISCELLANEOUS**

Section 501. Term. The term of this Agreement shall commence on the Effective Date and shall automatically expire on the earlier of: (a) the expiration or termination of the initial term of the Water and Sewage Services Contracts and (b) twenty (20) years from the Effective Date (_____, 2044). Following such expiration, this Agreement shall be of no further force or effect, and no further fees or expenses shall be invoiced by the Trustee pursuant hereto except for unbilled fees or expenses incurred by the Trustee prior to such time.

Section 502. Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and be given in person, by delivery service, by facsimile transmission, electronic mail, or by mail, and shall become effective (a) on delivery if given in person, (b) on the date of delivery if sent by delivery service, (c) on the date of delivery if sent by facsimile transmission or other similar unsecured electronic methods, or (d) five Business Days after being deposited in the mail, with proper postage for first class registered or certified mail, prepaid.

(i) if to the City:

City of Highland Park
12050 Woodward Avenue
Highland Park, Michigan 48203
Attention: City Attorney

cc: Director of Highland Park Water Department

(ii) if to the Department:

Department of Treasury
Attention: _____
Austin Building, 1st Floor
430 West Allegan Street
Lansing, MI 48922

(iii) if to the Trustee:

(iv) if to GLWA:

Great Lakes Water Authority
735 Randolph Street, Suite 1901
Detroit, Michigan 48226
Attention: General Counsel

Section 503. Interpretation. Unless the context otherwise requires, references in this Agreement to Sections and Exhibits refer to the Sections and Exhibits to this Agreement. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to dollar amounts contained in this Agreement shall mean United States dollars. References in this Agreement to any gender include references to all genders, and references to the singular include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement.

Section 504. Entire Agreement. This Agreement and the other agreements and court orders referred to herein constitute the entire agreement of the Parties to this Agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof.

Section 505. Third-Party Beneficiaries. Except as expressly provided herein, none of the provisions of this Agreement are intended to provide any rights or remedies to any person other than the Parties hereto and their respective successors and assigns (if any). GLWA and the Department are express third-party beneficiaries of this Agreement with the right to enforce their respective rights hereunder, to receive and give notices hereunder, and to receive reports hereunder. The rights of GLWA and the Department shall vest immediately upon execution of this Agreement.

Each of GLWA or the Department may sue the City to enforce this Agreement if the City takes any of the following actions, which are hereby deemed to constitute an impairment of the rights of the third party-beneficiaries: failure to comply with any of the provisions of this Agreement or the DACA, including but not limited to failing to make complete and timely deposits in the Receiving Fund, or attempting to terminate or amend this Agreement or the DACA without the prior written consent of the third party beneficiaries, which consent shall not be unreasonably withheld.

Section 506. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 507. Governing Law; Jurisdiction and Venue.

(a) This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of Michigan (without giving effect to principles of conflicts of laws).

(b) Each Party to this Agreement:

(i) irrevocably submits to the exclusive jurisdiction of the Circuit Court for the County of Wayne in the State of Michigan and any state appellate court therefrom within the State of Michigan for the purpose of any legal proceeding directly or indirectly based upon, relating to or arising out of this Agreement or any transaction contemplated hereby or the negotiation, execution or performance hereof or thereof and irrevocably agrees that all claims in respect of such action or proceeding shall be brought in, and may be heard and determined, exclusively in such state or federal courts;

(ii) irrevocably consents to the service of the summons and complaint and any other process in any other action or proceeding relating to the transactions contemplated by this Agreement, on behalf of itself or its property, by personal delivery of copies of such process to such Party at the addresses set forth in Section 501, provided that nothing in this Section 507 shall affect the right of any Party to serve legal process in any other manner permitted by law;

(iii) acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury in any legal proceeding directly or indirectly based upon, relating to or arising out of this Agreement or any transaction contemplated hereby or the negotiation, execution or performance hereof or thereof; and

(iv) certifies and acknowledges that (A) no representative, agent or attorney of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of any legal proceeding, seek to enforce the foregoing waiver in Section 507(b)(iii); (B) each Party understands and has considered the implication of such waiver; (C) each Party makes such waiver voluntarily and (D) each Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 507.

Section 508. Rules of Construction. The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

Section 509. Assignment and Successors. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties, GLWA, and the Department, except with respect to a successor trustee as set forth under Section 303(b) of this Agreement. This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties, including the holders of the Obligations.

Section 510. Further Assurances. Each Party hereto shall execute and cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

Section 511. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or pdf transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

Section 512 Amendments. This Agreement may be amended from time to time by a written amendment duly executed and delivered by each of the parties hereto, and only with the prior written consent of GLWA and the Department, each of which shall not be unreasonably withheld; provided that Exhibit B and Exhibit C attached hereto may be updated upon written notice of the party making the change without formal amendment of the Agreement to reflect.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed as of the date first written above.

CITY OF HIGHLAND PARK

By _____

Approved as to form

Its: Mayor

By _____

By _____

City Attorney

Its: City Clerk

By _____

Its: Treasurer

_____, AS TRUSTEE

By _____

Its: _____

ACKNOWLEDGED AND AGREED TO BY:

_____, AS RECEIVING FUND DEPOSITORY

By _____

Its: _____

City of Highland Park Utility Revenue Trust
Exhibit A

Deposit Account Control Agreement

(to come)



DEPOSIT ACCOUNT CONTROL AGREEMENT (Account Access Restricted)

This Deposit Account Control Agreement (this "Agreement") is entered into as of April __, 2024, by and among the City of Highland Park, a Michigan Home Rule City ("Customer"), U.S. Bank Trust Company, National Association, Detroit, Michigan ("Secured Party") as Trustee under that certain Trust Agreement dated as of **April 1, 2024** by and between the Customer and U.S. Bank Trust Company, National Association, as trustee, and **COMERICA BANK**, a Texas banking association ("Bank") with reference to the following facts:

A. Customer maintains the Deposit Account (as defined below) at Bank **[and has a Lockbox (defined below) associated with a corresponding Deposit Account all as indicated on the attached Exhibit "A"]**.

B. Under the Trust Agreement, the Customer has named U.S Bank Trust Company, National Association as trustee with respect to the trust account established thereunder (the "Trust Account") and Customer has granted Secured Party a security interest in the Deposit Account and all checks, automated clearinghouse transfers, wire transfers, instruments, Lockbox Items (defined below), and other payment items now or at any time hereafter held in or credited to the Deposit Account (collectively, the "Funds"), which Funds are required to be transferred to the Trust Account pursuant to the terms of the Trust Agreement.

C. Secured Party, Customer and Bank have agreed to enter into this Agreement to provide for the control of the Deposit Account by Secured Party. The parties acknowledge that the Deposit Account constitutes a "deposit account" within the meaning of Section 9-102 of the Code (as defined below) and Bank is a "bank" within the meaning of Section 9-102 of the Code.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows.

ARTICLE 1 - DEFINITIONS

1.01 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Account Charges" means those items described in clauses (i) through (ix) of *Section 2.02(c)* of this Agreement.

"Account Contract" means Bank's Business and Personal Deposit Account Contract, and such other agreement(s) in effect between Customer and Bank governing the Deposit Account, as amended or modified from time to time.

"Account Documents" means Bank's current Signature Card, Declaration, Resolution or any other documents required by Bank to evidence Customer's authority and ownership over the Deposit Account.

"Banking Office" means, collectively, the locations set forth as the addresses for notice to Bank in *Section 3.07* of this Agreement.

"Business Day" means any day, other than a Saturday, Sunday or any other day designated as a holiday under Federal or applicable State statute or regulation, on which Bank is open for all or substantially all of its domestic business in the state of **Michigan**.

"Code" means the **Michigan** Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute applicable to the Deposit Account.

"Collected Balance" means the balance in the Deposit Account that reflects deposits, posted withdrawals and other debits, less deposited items in the process of collection and less Account Charges.

“Deposit Account” means the deposit accounts (whether one or more) established by Customer with Bank and identified on Exhibit “A” attached hereto and made a part of this Agreement, all Funds and any other deposit account of Customer established with Bank in replacement and substitution therefor, including any deposit account established with a new account number, whether required by Bank, upon maturity or renewal of any time deposit or otherwise.

“Effective Date” means the date that is five (5) Business Days after Bank receives (i) a fully executed Agreement with original signatures from all parties sent to the Relationship Manager Banking Office, and (ii) satisfactory updated or new Account Documents, if required.

“Lockbox” means a post office box maintained for Customer by Bank to receive Lockbox Items to be processed by Bank for deposit as indicated on the attached Exhibit “A”

“Lockbox Agreement” means the agreement between Bank and Customer governing the Lockbox and the services to be provided by Bank to Customer in connection therewith.

“Lockbox Items” means all checks, drafts, documents, electronic payments and other remittances received in the Lockbox for credit to a Deposit Account prior to Bank processing and crediting such Items for deposit to the Deposit Account.

“Order” means any written instruction issued by Customer, Secured Party or any authorized person and timely received by Bank with respect to the disposition of Funds contained in the Deposit Account, including Orders in the form of Exhibits “B-1” or “B-2” attached to this Agreement or another form acceptable to Bank.

“Relationship Manager Banking Office” means the Banking Office address of the Relationship Manager set forth in *Section 3.07* of the Agreement.

1.02 Construction. Any reference in this Agreement to any document includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Bank, whether under any rule of construction or otherwise. This Agreement has been reviewed by each of the parties hereto, and, to the extent applicable, their respective counsel. This Agreement shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Customer and Secured Party.

1.03 Lockbox. In the event Exhibit “A” indicates that there is a Lockbox for receipt and deposit of Lockbox Items to Customer in connection with any Deposit Account, Customer and Bank acknowledge that they have entered into a Lockbox Agreement that governs Bank’s obligations in connection with such Lockbox. Moreover, Customer and Secured Party acknowledge and agree that Bank’s operation of each Lockbox, and the receipt, retrieval, processing or deposit of Lockbox Items are governed by the Lockbox Agreement. Upon execution and delivery of this Agreement, Lockbox Items will continue to be deposited in the applicable Deposit Account in accordance with the term of the Lockbox Agreement. Customer agrees that Customer will not instruct Bank regarding the receipt, processing or deposit of Lockbox Items nor will it attempt to change or redirect the Lockbox Items deposited in any Lockbox. Customer further agrees that Secured Party alone will have the right and ability to instruct Bank regarding the Lockbox and Lockbox Items.

ARTICLE 2 - CONTROL

2.01 No Withdrawals, Payments, Instructions or Orders from Customer. Customer hereby absolutely, irrevocably and unconditionally gives full control over the Deposit Account to Secured Party and Secured Party agrees to assume such control. As a result:

(a) Bank shall neither accept nor comply with any Order from Customer for the payment of Funds to any third person nor permit Customer to withdraw Funds;

(b) Bank shall comply with the instructions contained in any Order received from Secured Party concerning the Deposit Account regarding disposition and/or delivery of Funds without further consent or direction from Customer and without regard to any inconsistent or conflicting Orders given to Bank by Customer **[; and]**.

(c) **[Pursuant to the terms of this Agreement, Secured Party hereby instructs Bank to execute a standing wire transfer pursuant to the Automated Standing Transfer Instructions form, or its equivalent ("AST Form") executed by Secured Party, as its initial payment Order (the "Initial Payment Order"):**

Wire Transfer as follows:

Bank:

ABA Number:

For Credit to Account Number:

Reference:

Wires initiated through the foregoing Initial Payment Order will begin no later than seven (7) Business Days from the Effective Date and Bank shall take such actions to prevent debits from the Deposit Account (other than Secured Party's wire transfers) within two (2) Business Days following the Effective Date. Secured Party may change the foregoing Initial Payment Order and any subsequent Order by delivering a signed Order of the revised AST Form to Bank at Banking Office in accordance with the terms of this Agreement.]

Secured Party hereby agrees that before it attempts to give Bank any Orders concerning the Deposit Account, Secured Party shall deliver to the Banking Office such documentation as Bank may from time to time reasonably request to evidence the authority of those person(s) whom Secured Party may designate to give Orders, and that Bank shall be entitled to assume the authenticity and accuracy of such documents and rely on such documents without further inquiry that the person(s) named in any such evidence of authority have the authority to give such Orders. Customer hereby agrees that Bank shall have no duty to notify Customer or make any inquiry whatsoever as to Secured Party's right or authority to give any such Orders, instructions or directions. Any Order to Bank to wire transfer funds domestically will each be deemed a Payment Order (as defined in Section 4A of the Code or applicable state equivalent law) and Secured Party and Customer agree that the wire transfer, if in conformance with such Order, is authorized by Customer and/or Secured Party, as applicable, is deemed authenticated via the notice process contained in this Agreement and agree that this notice process is a commercially reasonable means for determining authentication without any duty to further authenticate the Payment Order.

2.02 Priority of Lien. Bank hereby acknowledges and agrees that:

(a) By this Agreement, Bank has received notice of the existence of Secured Party's security interest in the Deposit Account and recognizes the security interest granted to Secured Party by Customer;

(b) Said security interest shall be noted by Bank on its books and records in any manner that the Bank deems appropriate;

(c) All of Bank's present and future rights against the Deposit Account are subordinate to Secured Party's security interest during the term of this Agreement. However, by signing this Agreement, Secured Party acknowledges and agrees that nothing herein subordinates or waives, and Bank expressly reserves, all of its present and future rights (whether described as rights of setoff, banker's lien, security interest, chargeback or otherwise, and whether available to Bank under the law or under any other agreement between Bank and Customer concerning the Deposit Account, or otherwise) with respect to the following: (i) items deposited to the Deposit Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of return of any such items or the occurrence or timeliness of any drawee's notice of non-payment of such items; (ii) ACH entries credited to the Deposit Account and later reversed, whether for insufficient funds or for any other reason, and without regard to the timeliness of such entries' reversal; (iii) chargebacks to the Deposit Account of credit card transactions, without regard to the timeliness of such chargebacks; (iv) erroneous entries to the Deposit Account; (v) overdrafts on the Deposit Account, (vi) claims of breach of the transfer or presentment warranties made to Bank pursuant to the Code in connection with items deposited to the Deposit Account; (vii) any early withdrawal penalties as provided in the Account Contract resulting from withdrawal of Funds prior to the maturity date (if the Deposit Account includes a Time Deposit or similar account) (the items

from (i) through (vii) shall be collectively referred to as "Returned Items"); (viii) any lien arising in connection with any loan or other credit relationship between Customer and Bank; and (ix) Bank's usual and customary charges for services rendered in connection with the Deposit Account including the fees and charges listed on **Schedule I** attached to this Agreement (which, subject to 30 days' prior notice to Customer, may be changed by Bank from time to time) (collectively, "Bank Charges");

(d) Except as otherwise required by Legal Mandate (defined below), Bank shall not enter into any agreement with any third party that affects the security interest of Secured Party during the term of this Agreement without the prior written consent of Secured Party; and

(e) Bank is permitted to comply with any, writ, levy, garnishment, or court or administrative law order or other similar judicial or regulatory order or process concerning the Deposit Account (each referred to as "**Legal Mandate**"). Upon receipt of any Legal Mandate, to the extent allowed by law, Bank will make a reasonable effort to forward copy of the same to Secured Party as promptly as possible at its address set forth in *Section 3.07* of this Agreement, but Bank will in no event incur any liability to Secured Party or Customer by reason of any failure or delay in providing such notice. In addition, in the event of the commencement of a case pursuant to Title 11, United States Code, filed by or against Customer, or in the event of the commencement of any similar case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Customer, Bank may act as Bank deems necessary to comply with all applicable provisions of governing statutes and shall not be in violation of this Agreement as a result.

2.03 Control of Deposit Account. At all times during the effectiveness of this Agreement, Customer hereby absolutely, irrevocably and unconditionally instructs, and Bank hereby agrees, that:

(a) Bank shall comply with the instructions contained in any Orders concerning the Deposit Account from Secured Party without further consent by Customer;

(b) Except for Legal Mandates, Bank shall not comply with any Orders or other instructions concerning the Deposit Account from Customer or any third party, without the prior written consent of Secured Party, and

(c) Bank shall not, without the specific prior written consent of Secured Party in each instance, accept or comply with Orders from Customer for the payment of any Funds to Customer or any third person, or permit Customer to withdraw any Funds.

2.04 Representations, Warranties and Acknowledgments.

(a) Bank represents and warrants to Secured Party that as of the Effective Date:

- (i) The Deposit Account has been or will be established and maintained with Bank solely in Customer's name upon execution of this Agreement and Customer's delivery of satisfactory updated or new Account Documents if required;
- (ii) Bank has no knowledge of any claim to, security interest in or lien upon the Deposit Account, except the security interests in favor of Secured Party and Bank's liens and interests as described in *Section 2.02(c)* hereof; and
- (iii) Bank has not knowingly entered into any agreement with any third party regarding the Deposit Account or agreed that it will comply with any Orders concerning the Deposit Account originated by any such third party.

(b) Customer and Secured Party represent and warrant to Bank that the execution, delivery, and performance of this Agreement and any related Account Document, as applicable, (i) is within Customer's and Secured Party's powers, (ii) has been duly authorized, executed and delivered by such party, and (iii) does not conflict with nor constitute a breach of any provision contained in any agreement by which Customer or Secured Party, as applicable, is bound.

(c) Customer represents and warrants to Bank and Secured Party that it has not granted a lien on or security interest in the Deposit Account to any person or entity other than Secured Party and is not aware of any legal judgment resulting in a lien on the Deposit Account.

2.05 Deposit Account Information. Bank and Customer agree that:

(a) At Customer's expense and Secured Party's request, Bank shall endeavor in good faith to send copies of statements relating to the Deposit Account simultaneously to Customer and to Secured Party;

(b) Bank is authorized to, and may in its sole discretion, disclose to Secured Party such other information concerning the Deposit Account as Secured Party may from time to time reasonably request during the term of this Agreement; **and**

(c) To the extent allowed by law, rule, regulation or order, Bank shall use reasonable efforts to promptly notify Secured Party and Customer if any other party asserts any claim to, security or property interest in or lien upon the Deposit Account.

2.06 Bank's Responsibility.

(a) Except for permitting a withdrawal, transfer or payment from the Deposit Account in violation of *Section 2.01* hereof, Bank shall not be liable to Secured Party for complying with Orders from Customer that are received by Bank before Bank receives and has had a reasonable opportunity to act on any Order from Secured Party in accordance with the terms of this Agreement;

(b) Bank shall not be liable to Customer for complying with Orders originated by Secured Party, even if Customer notifies Bank that Secured Party is not legally entitled to issue such Orders;

(c) This Agreement does not create any obligation of Bank except for those expressly set forth in this Agreement. In particular, Bank need not investigate whether Secured Party is entitled under Secured Party's agreement with Customer to give Orders. In acting or performing under this Agreement, Bank may rely on any papers, documents, notices and communications it believes are given, signed or sent by the appropriate party or its authorized representative;

(d) Bank will not have any liability to Customer or Secured Party for (i) closing the Deposit Account due to fraud or criminal activity in connection with any Deposit Account (Bank will also notify Secured Party substantially contemporaneously with closing the Deposit Account, unless prohibited by law), or (ii) claims, losses, liabilities or damages suffered or incurred by Customer or Secured Party as a result of or in connection with this Agreement except to the extent such losses, liabilities and damages directly result from Bank's gross negligence or willful misconduct;

(e) The parties agree that substantial compliance by Bank with the terms of this Agreement and the agreements entered into with Customer from time to time with respect to the Deposit Account, as they may be amended from time to time, shall be deemed to constitute the exercise of ordinary and reasonable care. In the event that Bank is liable to Customer or Secured Party under this Agreement, Bank's liability shall be limited to the lesser of (i) the actual direct and provable amount of money damages suffered by the claiming party, or (ii) the amount maintained in the Deposit Account at the time the claim for such liability arose; and

(f) In no event shall Bank have any liability to Customer or Secured Party for (1) any consequential, special, punitive or exemplary damages, indirect loss or damage or any lost profits, whether or not any claim for such damages is based on tort or contract or an allegation that Bank knew or should have known the likelihood of such damages in any circumstances, (2) any failure to perform Bank's responsibilities under this Agreement if such failure is due to strikes, lockouts or other labor disturbances, riots or civil commotions, fire or other casualty, earthquakes, floods, windstorms, lightning or other acts of God, epidemics, sabotage, insurrection, war, civil disorders, hostilities, expropriation or confiscation of properties, equipment failures or malfunctions, power failures, failures of or delays by carriers or other third parties, interference by civil or military authorities, or any other cause or condition beyond Bank's control, (3) any act or failure to act by Customer or Secured Party, or (4)

acting pursuant to a court order, subpoena, garnishment, tax levy or similar process in regard to any account or service covered by this Agreement.

2.07 Returned Items and Bank Charges. Customer and Secured Party hereby agree that Returned Items and Bank Charges shall be subject to the Account Contract and shall be paid by Bank by debiting the Deposit Account, without prior notice to Customer or Secured Party. To the extent that funds are not available in the Deposit Account to cover the amount of any Returned Item or Bank Charge, Customer shall promptly pay such amount or any shortfall upon Bank's written demand, without setoff or counterclaim; provided that if Customer fails to pay such amount or shortfall within ten (10) days of Bank's written demand, then Secured Party hereby agrees that it will pay, within five (5) days of Bank's written demand, amounts owed for each such Returned Item or Bank Charge that is not paid in full by Customer.

2.08 Indemnity.

(a) Customer and Secured Party hereby agree that Bank is released from any and all claims and liabilities to Customer and Secured Party arising from the terms of this Agreement and the compliance by Bank with the terms hereof, except to the extent that such liabilities arise directly from Bank's gross negligence or willful misconduct.

(b) Customer shall indemnify and hold harmless Bank, its officers, directors, employees, and agents from and against any and all claims, liabilities, demands, losses, damages, costs and expenses arising out of this Agreement (including without limit reasonable attorneys' fees and disbursements), except to the extent the claims, liabilities, damages or expenses are caused directly by Bank's gross negligence or willful misconduct. Customer shall indemnify Secured Party for any indemnity obligations Secured Party owes to Bank under this Agreement.

(c) Secured Party shall indemnify and hold harmless Bank, its officers, directors, employees, and agents from and against any and all claims, liabilities, demands, losses, damages, costs and expenses arising out of this Agreement in connection with any Order or instruction given by Secured Party (including without limit reasonable attorneys' fees and disbursements), except to the extent the claims, liabilities, damages or expenses are caused directly by Bank's gross negligence or willful misconduct; provided, however, that in no event shall Secured Party be liable for any special, consequential, punitive or exemplary damages, or lost profits.

2.09 Termination, Survival.

(a) This Agreement shall terminate:

- (i) immediately (1) if Bank suspects or becomes aware of fraud or criminal activity in connection with any Deposit Account or this Agreement, (2) upon written notice from Bank to Customer and Secured Party indicating that Customer or Secured Party failed to make a payment due to Bank from Customer or Secured Party under the terms of this Agreement, or (3) upon receipt by Bank of written notice in the form of **Exhibit "C"** attached hereto from Secured Party expressly stating that Secured Party is terminating this Agreement. Upon the occurrence of any of the foregoing, Bank's duties under this Agreement shall be terminated except as otherwise stated in this Agreement. If Customer wishes to retain the Deposit Account after Secured Party terminates this Agreement pursuant to clause (3) above, Customer must request that Bank revert the control of the Deposit Account back to Customer and, subject to Bank's receipt of new or updated Account Documents, if required, eliminate any reference to this Agreement, Secured Party and Secured Party's security interest from Bank's books and records; and
- (ii) no later than fifteen (15) Business Days after delivery of written notice from Bank to Secured Party and Customer stating that it is terminating this Agreement, and thereupon Bank's duties under this Agreement shall be terminated. If Bank terminates this Agreement, no later than the fifteenth (15th) Business Day following delivery of such termination, Bank shall close the Deposit Account **and any related Lockbox(s)** after sending all Funds to Secured Party. If Customer wishes to retain the Deposit Account after Bank terminates this Agreement pursuant to this clause (ii), Customer must request

that Bank revert the control of the Deposit Account back to Customer and, subject to Bank's receipt of new or updated Account Documents, if required, eliminate any reference to this Agreement, Secured Party and Secured Party's security interest in the Deposit Account from Bank's books and records.

(b) Notwithstanding anything to the contrary contained herein, *Sections 2.06, "Bank's Responsibility," and Section 2.08, "Indemnity,"* shall survive termination of this Agreement.

ARTICLE 3 - GENERAL PROVISIONS

3.01 Conflicts; Controlling Agreement. As to the matters specifically the subject of this Agreement, in the event of any conflict between this Agreement and any other agreement between Bank and Customer, the terms of this Agreement shall control.

3.02 Final Agreement; Amendments, Modifications and Waivers. In addition to the terms contained in this Agreement, the parties agree that the Deposit Account will be subject to the terms contained in the Account Contract. To the extent any term of the Account Contract conflicts with any term of this Agreement, the terms of this Agreement shall prevail. This Agreement and the Account Contract, together with any other document, instrument, or agreement entered into between Bank, Customer and Secured Party in connection therewith with respect to the subject matter contained therein constitutes the entire understanding among each of them with respect to the subject matter thereof. This Agreement supersedes any and all prior oral or written agreements relating to the subject matter hereof. Any provision of this Agreement may be amended, modified, or waived if, but only if, such amendment, modification, or waiver is in writing and is signed by the party asserted to be bound thereby, and then such amendment, modification, or waiver shall be effective only in the specific instance and specific purpose for which given.

3.03 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties. However, Bank shall not be obligated to accept a successor or assign of Customer or Secured Party and may terminate this Agreement or require such other documentation it determines necessary to continue this Agreement.

3.04 Severability of Provisions. If any provision of this Agreement for any reason is held to be invalid, illegal or unenforceable in any respect, that provision shall not affect the validity, legality or enforceability of any other provision of this Agreement.

3.05 Section Headings. Headings and numbers used to identify sections and paragraphs of this Agreement have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

3.06 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile, emailed portable document format ("pdf"), or tagged image file format ("tiff") or any other electronic means that reproduces an image of the actual executed signature of an authorized signer of such party (collectively, "Electronic Execution") shall be effective as delivery of an original executed counterpart of this Agreement, and shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by Electronic Execution also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

3.07 Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing and delivered to each party at the following address:

Bank:

[Relationship Manager]

[Mail Code: 1]

Fax. No.: _____
Email: _____
Attn: _____

And With a copy to:

[GM]
[Mail Code:]

Fax. No.: _____
Email: _____
Attn: _____

And With a copy to:

COMERICA BANK
Mail Code: 6506
Corporate Legal Department
1717 Main Street
Dallas, TX 75201
Email: DACALegal@comerica.com
Attn: DACA Legal

Customer:

City of Highland Park
Attention: City Treasurer
12050 Woodward Ave.
Highland Park, MI 48203
Fax. No.: _____
Email: _____

Secured Party:

U.S. Bank Trust Company, National Association
Attention: Tracey Mooney

Fax. No.: _____
Email: _____

or to such other address, facsimile number, or email address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed received as follows: (i) if hand delivered, upon delivery; (ii) if sent by facsimile, after receipt is acknowledged by a telephone call or email from the intended recipient; (iii) if sent by overnight courier, upon receipt, and (iv) if sent by email, after receipt is acknowledged by a telephone or email from the intended recipient.

3.08 Governing Law. CUSTOMER, BANK AND SECURED PARTY HEREBY AGREE THAT THIS AGREEMENT AND ALL OTHER DOCUMENTS, INSTRUMENTS AND AGREEMENTS RELATED TO THIS AGREEMENT (BETWEEN CUSTOMER AND BANK, OR AMONG CUSTOMER, BANK AND SECURED PARTY) (COLLECTIVELY, REFERRED TO HEREIN AS THE "**DACA DOCUMENTS**") SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF **[STATE]**, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. WITH RESPECT TO THE DACA DOCUMENTS, CUSTOMER, SECURED PARTY AND BANK EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL COURT OR **MICHIGAN** STATE COURT SITTING IN **DETROIT, MICHIGAN** (AND ANY APPELLATE COURT THEREOF) IN

ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE DACA DOCUMENTS, (II) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD, AND DETERMINED IN ANY SUCH COURT, (III) WAIVES ANY OBJECTION, TO THE LAYING OF VENUE OF ANY SUCH SUIT OR PROCEEDING IN ANY SUCH COURT, AND (IV) CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY COURT IN OR OF THE STATE OF **MICHIGAN** BY THE DELIVERY OF COPIES OF SUCH PROCESS TO THE CUSTOMER OR SECURED PARTY AT ITS RESPECTIVE ADDRESS SPECIFIED IN SECTION 3.07 OF THIS AGREEMENT OR BY CERTIFIED MAIL DIRECTED TO SUCH ADDRESS (OR, IN ANY CASE, ANY OTHER ADDRESS DESIGNATED BY SUCH PARTY IN A NOTICE TO BANK). NOTHING HEREIN SHALL LIMIT OR OTHERWISE AFFECT THE RIGHT OF BANK TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY SUCH ACTION OR PROCEEDING AGAINST CUSTOMER OR SECURED PARTY OR ANY OF THEIR PROPERTY IN ANY COURT OF ANY OTHER JURISDICTION.

3.09 JURY TRIAL WAIVER. CUSTOMER, BANK AND SECURED PARTY, BY ACCEPTANCE OF THIS AGREEMENT, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO THE DACA DOCUMENTS OR THE OBLIGATIONS.

3.10 Effectiveness. This Agreement shall become effective as of the Effective Date. Bank shall provide a copy of this Agreement with the signatures of each party to Customer and Secured Party.

[Rest of Page Intentionally Left Blank – Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.

CUSTOMER:

City of Highland Park

By: _____
Name: _____
Title: _____

BANK:

COMERICA BANK, a Texas banking association

By: _____
Name: _____
Title: _____

SECURED PARTY:

U.S. Bank Trust Company, National Association

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LIST OF ACCOUNTS

CUSTOMER NAME	ACCOUNT NUMBER	ACCOUNT TYPE (Checking, Money Market, etc.)	LOCKBOX (Y/N)	DEMAND OR TIME DEPOSIT
City of Highland Park			Y	N

EXHIBIT "B-1"
[SECURED PARTY LETTERHEAD]

**ORDER
Transfer Funds**

[Insert Date]

Comerica Bank

[Address]

[City, State, ZIP]

Attention: _____

with a copy to:

COMERICA BANK

Mail Code: 6506

Corporate Legal Department

1717 Main Street

Dallas, TX 75201

Email: DACALegal@comerica.com

Attn: DACA Legal

Re: **CITY OF HIGHLAND PARK, [ACCOUNT NUMBER(S) LISTED IN AGREEMENT] (collectively, the "Deposit Account")**

Ladies and Gentlemen:

Reference is made to that certain Deposit Account Control Agreement, dated as of _____ (as amended or otherwise modified from time to time, the **"Agreement"**), among the **City of Highland Park, a Michigan Home Rule City ("Customer")**, Comerica Bank, a Texas banking association ("Bank") and **U.S. Bank Trust Company, National Association ("Secured Party")** regarding the Deposit Account. In accordance with Article 2 of the Agreement, Secured Party hereby gives Bank notice of Secured Party's change to the last Order it provided to Bank dated as of _____.

Secured Party hereby instructs Bank to begin wire transfers as soon as practical but in no event more than seven (7) Business Days from Bank's receipt of this Order Notice from said Deposit Account(s) to:

Wire Transfer as follows:

Bank: _____
ABA Number: _____
For Credit to Account Number: _____
Reference: _____

Very truly yours,

U.S. Bank Trust Company, National Association

By: _____

Name: _____

Title: _____

Acknowledged by Comerica Bank on _____, 20____, by _____

cc: City of Highland Park

EXHIBIT "B-2"
[SECURED PARTY LETTERHEAD]
ORDER
Transfer Funds and Close Account

[Insert Date]

Comerica Bank

[Address]

[City, State, ZIP]

Attention: _____

with a copy to:

COMERICA BANK
Mail Code: 6506
Corporate Legal Department
1717 Main Street
Dallas, TX 75201
Email: DACALegal@comerica.com
Attn: DACA Legal

Re: City of Highland Park, [ACCOUNT NUMBER(S) LISTED IN AGREEMENT] (collectively, the "Deposit Account")

Ladies and Gentlemen:

Reference is made to that certain Deposit Account Control Agreement, dated as of _____ (as amended or otherwise modified from time to time, the "Agreement") among **the City of Highland Park, a Michigan Home Rule City ("Customer")**, Comerica Bank, a Texas banking association and **U.S. Bank Trust Company, National Association ("Secured Party")** regarding the Deposit Account. Capitalized terms used, but not otherwise defined herein, shall have the meanings given to them in the Agreement.

Secured Party hereby instructs Bank to close the Deposit Account after transferring the Collected Balance in the Deposit Account to Secured Party by the method checked below, provided however, if the Deposit Account is a Time Deposit, Secured Party must choose Certified Check):

Wire Transfer as follows:

Bank: _____

ABA Number: _____

For Credit to Account Number: _____

Reference: _____

Certified Check sent to the following address:

[Secured Party]

[Attn]

[Address]

[City, State, ZIP]

Very truly yours,

U.S. Bank Trust Company, National Association

By: _____
Name: _____
Title: _____

Acknowledged by Comerica Bank on _____, 20____, by _____

cc: **City of Highland Park**

EXHIBIT "C"

[SECURED PARTY LETTERHEAD]

TERMINATION NOTICE

[Insert Date]

Comerica Bank
[Address]
[City, State, ZIP]
Attention: _____

with a copy to:

COMERICA BANK
Mail Code: 6506
Corporate Legal Department
1717 Main Street
Dallas, TX 75201
Email: DACALegal@comerica.com
Attn: DACA Legal

Re: **City of Highland Park, [ACCOUNT NUMBER(S) LISTED IN AGREEMENT] ([collectively,] the "Deposit Account")**

Ladies and Gentlemen:

Comerica Bank, a Texas banking association ("Bank"), **U.S. Bank Trust Company, National Association** ("Secured Party") and **the City of Highland Park, a Michigan Home Rule City** ("Customer"), have entered into certain restricted account arrangements as set forth in the Deposit Account Control Agreement, dated as of **[Insert Date]**, by and among Bank, Secured Party and Customer (as amended or otherwise modified from time to time, the "Agreement") with respect to the Deposit Account (as defined in the Agreement). Capitalized terms used, but not otherwise defined herein, shall have the meanings given to them in the Agreement.

Effective as of the date hereof and pursuant to Section 2.09(a)(i) of the Agreement: (i) the Agreement is terminated and is and shall be of no further force and effect, (ii) Secured Party shall have no other or further security interest in or under the Agreement or in the Deposit Account or any amounts received therein or held or deposited therein, and (iii) the name of the Deposit Account shall be changed to omit any reference to Secured Party therein, if required.

Very truly yours,

U.S. Bank Trust Company, National Association

By: _____
Name: _____
Title: _____

cc: **City of Highland Park**

SCHEDULE I
FEES AND CHARGES

Deposit Account Control set up Fee \$1,150 (one time charge) per account.

Monthly Deposit Account Control Maintenance fee \$368 per account.

Automatic Standing Wire Transfer Payment Order fee is the fee described in the applicable Business Account Service Charge and Interest Information Brochure

Secured Party Initials _____

Customer Initials _____

**City of Highland Park Utility Revenue Trust
Exhibit B**

Wire Instructions

[Confidential; full instructions separately provided]

Wire Instructions to Great Lakes Water Authority

Wire Instructions to City of Highland Park

Wire Instructions to U.S. Bank Trust Company, National Association, as depository for 1999 Bonds

[Wire Instructions to U.S. Bank Trust Company, National Association, as Trustee }

City of Highland Park Utility Revenue Trust
Exhibit C

Debt Service Costs (w/Monthly Set Asides)

Michigan Finance Authority

City of Highland Park

Debt Service Set Aside Schedule

Account ID: 7058-01

Issue Date: 9/30/1999

Interest Rate: 0%

Set-Aside Date	Set-Aside Amount	Debt Service Due Date	Debt Service Amount
4/25/2024	\$ 51,000.00		
5/25/2024	\$ 51,000.00		
6/25/2024	\$ 51,000.00		
7/25/2024	\$ 51,000.00		
8/25/2024	\$ 51,000.00		
		9/25/2024	\$ 255,000.00
9/25/2024	\$ 21,666.67		
10/25/2024	\$ 21,666.67		
11/25/2024	\$ 21,666.67		
12/25/2024	\$ 21,666.67		
1/25/2025	\$ 21,666.67		
2/25/2025	\$ 21,666.67		
3/25/2025	\$ 21,666.67		
4/25/2025	\$ 21,666.67		
5/25/2025	\$ 21,666.67		
6/25/2025	\$ 21,666.67		
7/25/2025	\$ 21,666.67		
8/25/2025	\$ 21,666.67		
		9/25/2025	\$ 260,000.00
9/25/2025	\$ 22,083.33		
10/25/2025	\$ 22,083.33		
11/25/2025	\$ 22,083.33		
12/25/2025	\$ 22,083.33		

1/25/2026	\$	22,083.33		
2/25/2026	\$	22,083.33		
3/25/2026	\$	22,083.33		
4/25/2026	\$	22,083.33		
5/25/2026	\$	22,083.33		
6/25/2026	\$	22,083.33		
7/25/2026	\$	22,083.33		
8/25/2026	\$	22,083.33		
			9/25/2026	\$ 265,000.00
9/25/2026	\$	22,916.67		
10/25/2026	\$	22,916.67		
11/25/2026	\$	22,916.67		
12/25/2026	\$	22,916.67		
1/25/2027	\$	22,916.67		
2/25/2027	\$	22,916.67		
3/25/2027	\$	22,916.67		
4/25/2027	\$	22,916.67		
5/25/2027	\$	22,916.67		
6/25/2027	\$	22,916.67		
7/25/2027	\$	22,916.67		
8/25/2027	\$	22,916.67		
			9/25/2027	\$ 275,000.00
9/25/2027	\$	23,333.33		
10/25/2027	\$	23,333.33		
11/25/2027	\$	23,333.33		
12/25/2027	\$	23,333.33		
1/25/2028	\$	23,333.33		
2/25/2028	\$	23,333.33		
3/25/2028	\$	23,333.33		
4/25/2028	\$	23,333.33		
5/25/2028	\$	23,333.33		
6/25/2028	\$	23,333.33		
7/25/2028	\$	23,333.33		
8/25/2028	\$	23,333.33		
			9/25/2028	\$ 280,000.00
9/25/2028	\$	22,074.83		
10/25/2028	\$	22,074.83		
11/25/2028	\$	22,074.83		
12/25/2028	\$	22,074.83		
1/25/2029	\$	22,074.83		
2/25/2029	\$	22,074.83		

3/25/2029	\$	22,074.83
4/25/2029	\$	22,074.83
5/25/2029	\$	22,074.83
6/25/2029	\$	22,074.83
7/25/2029	\$	22,074.83
8/25/2029	\$	22,074.83
	9/25/2029	
		\$ 264,898.00

**Debt service payments are due to the MFA's paying agent
by September 25th of each year as noted in bold above.**

**City of Highland Park Utility Revenue Trust
Exhibit D**

Trustee Fees

41864974.13/147515.00048



Schedule of Fees for Services as

For

City of Highland Park Trust Account

		Amount
CTS01010	A Acceptance Fee - The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing. Does not include legal fees.	\$1,000.00
CTS04060	Depository - Annual fee for standard depository services associated with the administration of the account. Administration fees are payable in advance.	\$1,250.00

Direct Out of Pocket Expenses. Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel's fees and expenses after the initial closing, travel expenses, and filing fees will be billed at cost.

Extraordinary Administration Services. Extraordinary Administration Services ("EAS") are duties, responsibilities or activities not expected to be provided by the trustee or agent at the outset of the transaction, not routine or customary, and/or not incurred in the ordinary course of business, and may require analysis or interpretation. Billing for fees and expenses related to EAS is appropriate in instances where particular inquiries, events or developments are unexpected, even if the possibility of such circumstances could have been identified at the inception of the transaction, or as changes in law, procedures, or the cost of doing business demand. At our option, EAS may be charged on an hourly (time expended multiplied by current hourly rate), flat or special fee basis at such rates or in such amounts in effect at the time of such services, which may be modified by us in our sole and reasonable discretion from time to time. In addition, all fees and expenses incurred by the trustee or agent, in connection with the trustee's or agent's EAS and ordinary administration services and including without limitation the fees and expenses of legal counsel, financial advisors and other professionals, charges for wire transfers, checks, internal transfers and securities transactions, travel expenses, communication costs, postage (including express mail and overnight delivery charges), copying charges and the like will be payable, at cost, to the trustee or agent. EAS fees are due and payable in addition to annual or ordinary administration fees. Failure to pay for EAS owed to U.S. Bank when due may result in interest being charged on amounts owed to U.S. Bank for extraordinary administration services fees and expenses at the prevailing market rate.

General. Your obligation to pay under this Fee Schedule shall govern the matters described herein and shall not be superseded or modified by the terms of the governing documents, and survive any termination of the transaction or governing documents and the resignation or removal of the trustee or agent. This Fee Schedule shall be construed and interpreted in accordance with the laws of the state identified in the governing documents without giving effect to the conflict of laws principles thereof. You agree to the sole and exclusive jurisdiction of the state and federal courts of the state identified in the governing documents over any proceeding relating to or arising regarding the matters described herein. Payment of fees constitutes acceptance of the terms and conditions described herein.

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

STATE OF MICHIGAN
COURT OF CLAIMS

CITY OF HIGHLAND PARK, a municipal
corporation,

Plaintiff,

No. 19-000129-MZ

v

Hon. James Robert Redford

STATE LAND BANK AUTHORITY,

Defendant.

Mayer Morganroth (P17966)
Jeffrey M. Thomson (P72202)
Pamela K. Burneski (P82039)
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STIPULATED ORDER OF DISMISSAL

At a session of said Court, held in the
Michigan Court of Claims
On _____, 2023

PRESENT: HON. James Robert Redford
Court of Claims Judge

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that all claims by and between the parties are dismissed with prejudice.

IT IS FURTHER ORDERED that all parties shall bear their own costs and attorneys' fees.

This is a final Order and closes this case.

SO ORDERED.

HON. JAMES ROBERT REDFORD

IT IS SO ORDERED.

Hon. Thomas C. Cameron
Court of Claims Judge

Dated: _____

Approved as to form and substance:

/s/
Jeffrey M. Thomson (P72202)
Attorney for Plaintiff

/s/
Mary A. Waddell (P70545)
Assistant Attorney General
Attorney for Defendant

STATE OF MICHIGAN
IN THE COURT OF APPEALS

GREAT LAKES WATER AUTHORITY,

Plaintiff-Appellee,

v.

CITY OF HIGHLAND PARK, a municipal corporation,

Defendant-Appellant.

Court of Appeals No. 367193

Case No. 2014-001974-CK
Hon. Edward J. Joseph

DYKEMA GOSSETT PLLC

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STIPULATED ORDER OF DISMISSAL

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that this action and any and all applications and claims on appeal by and between the parties are dismissed with prejudice.

IT IS FURTHER ORDERED that all parties shall bear their own costs and attorneys' fees.

This is a final Order and closes this case.

SO ORDERED.

SO STIPULATED:

By: _____

John F. Rhoades (P75575)
Mark J. Magyar (P75090)
Matthew R. Cassar (P83663)
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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

GREAT LAKES WATER AUTHORITY, a
municipal authority, by itself and as assignee of the
CITY OF DETROIT, a Michigan municipal
corporation, through the DETROIT WATER AND
SEWERAGE DEPARTMENT, a department of the
City of Detroit,

No. 2021-000151-MM

Hon. James Robert Redford

Plaintiff,

v

STATE OF MICHIGAN, a Michigan public
corporation, acting through the Department of
Environment, Great Lakes and Energy,

Defendant.

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STIPULATED ORDER OF DISMISSAL

At a session of said Court, held in the
Michigan Court of Claims,

ON: _____

PRESENT: HON. _____
JUDGE OF THE COURT OF CLAIMS

This matter comes before the Court upon the stipulation of the parties hereto, as attested
to by the signatures of their respective counsel appearing below; the parties having amicably
reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that all claims by and between the parties are dismissed with prejudice.

IT IS FURTHER ORDERED that all parties shall bear their own costs and attorneys' fees.

This is a final Order and closes this case.

SO ORDERED.

HON. JAMES ROBERT REDFORD

SO STIPULATED:

By: _____

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

GREAT LAKES WATER AUTHORITY,

Plaintiff/Appellee,

v.

CITY OF HIGHLAND PARK,
a Municipal corporation,

Defendant/Appellant.

Court of Appeals No. 362416

Lower Case No. 22-004754-CB
Hon. Muriel D. Hughes

DYKEMA GOSSETT PLLC

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STIPULATED ORDER OF DISMISSAL

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that this action and all applications and claims on appeal by and between the parties are dismissed with prejudice.

IT IS FURTHER ORDERED that all parties shall bear their own costs and attorneys' fees.

This is a final Order and closes this case.

SO ORDERED.

SO STIPULATED:

By: _____

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CITY OF HIGHLAND PARK,
MICHIGAN,

Plaintiff-Appellant,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant,

GREAT LAKES WATER AUTHORITY;
SUSAN MCCORMICK,

Defendants-Appellees.

DYKEMA GOSSETT PLLC

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STIPULATED ORDER OF DISMISSAL

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that this appeal is dismissed with prejudice.

This is a final Order and closes this case.

SO ORDERED.

SO STIPULATED:

By:_____

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STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF WAYNE

GREAT LAKES WATER AUTHORITY,

Plaintiff,

v.

CITY OF HIGHLAND PARK,

Defendant.

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STIPULATED ORDER OF DISMISSAL

At a session of said Court, held in the City of Detroit,
County of Wayne, State of Michigan,

ON: _____

PRESENT: HON. Annette J. Berry
CIRCUIT COURT JUDGE

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably

reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that all claims by and between the parties are dismissed with prejudice.

IT IS FURTHER ORDERED that all parties shall bear their own costs and attorneys' fees.

This is a final Order and closes this case.

SO ORDERED.

HON. ANNETTE J. BERRY

SO STIPULATED:

By: _____

John F. Rhoades (P75575)
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STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF WAYNE

GREAT LAKES WATER AUTHORITY,

Plaintiff,

v.

Case No. 2014-001974-CK
Hon. Edward J. Joseph

CITY OF HIGHLAND PARK, a municipal
corporation,

Defendant.

DYKEMA GOSSETT PLLC

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smcleod@jacobsdiemer.com

STIPULATED ORDER OF DISMISSAL

At a session of said Court, held in the City of Detroit,
County of Wayne, State of Michigan,

ON: _____

PRESENT: HON. Edward J. Joseph
CIRCUIT COURT JUDGE

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that any and all claims by and between the parties are dismissed with prejudice.

IT IS FURTHER ORDERED that the judgment entered against the City of Highland Park on April 30, 2015 in the amount of \$19,840,035.31 as of that date and reinstated by this Court on June 20, 2023 is released and deemed satisfied. This court retains jurisdiction to enforce the Settlement Agreement and Mutual Release that has been entered as a consent judgment by separate order of this Court.

IT IS FURTHER ORDERED that all parties shall bear their own costs and attorneys' fees.

SO ORDERED

HON. EDWARD J. JOSEPH

SO STIPULATED:

By: _____
John F. Rhoades (P75575)
Matthew R. Cassar (P83663)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF HIGHLAND PARK, a
Michigan Municipal corporation,

Plaintiff,

v.

Case No. 16-cv-13840

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA), et al. Hon. Stephen J. Murphy, III

Defendants.

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mcassar@dykema.com
Counsel for GLWA Defendants

STIPULATED ORDER FOR RELEASE OF SUPERSEDEAS BOND

This matter comes before the Court upon the stipulation of the parties hereto, as attested to by the signatures of their respective counsel appearing below; the parties having amicably reached a settlement agreement; and the Court being otherwise fully advised;

IT IS ORDERED that the supersedeas bond deposited by the City of Highland Park with the Clerk of the Court in the amount of \$241,418.75, plus 100% of the

interest that has since accrued on the bond, shall be immediately released to the Great Lakes Water Authority, c/o John F. Rhoades, Dykema Gossett PLLC, 400 Renaissance Center, Detroit, MI 48243.

SO ORDERED.

HON. STEVEN J. MURPHY, III

SO STIPULATED:

By: *s/ John F. Rhoades*

John F. Rhoades (P75575)
Matthew R. Cassar (P83663)
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Counsel for GLWA
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By: _____

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Treasury Management Services Master Agreement

Effective August 21, 2023

Dear User of Treasury Management Services:

Strong, effective financial systems are essential to the success of your business. Whether you want to streamline operations with powerful online systems, take advantage of image services, or match payment options to the needs of your customers, Comerica has the solutions to help your company succeed. Comerica provides innovative, customized treasury management solutions developed from our experience, understanding, and state-of-the-art technology—a combination that allows us to meet your specific requirements in a more cost-efficient manner.

At Comerica we recognize that you need efficient means of managing your business. You need banking services that integrate with your systems, processes, and staffing circumstances. However, as a condition of our Treasury Management services, you are expected to follow safe and sound security procedures. Comerica's standard security procedures, if implemented and maintained by you, are designed to prevent improper, unapproved and/or other detrimental or problematic transactions. Your systems, processes, and staff are integral elements of these standard security procedures and must be configured, maintained, and updated to prevent the unauthorized access of your security credentials and other confidential information.

Although Comerica's Treasury Management internet-based solutions have been developed with multiple layers of security, you may choose to adopt a lower or less effective level of security based on your payment and technology risk tolerances that are influenced by your company's systems, processes, and staffing levels. Although we do not recommend a lower level of security or security procedure than our standard security procedures, we do allow you to specify and adopt security procedures that differ from our standard security procedures. Please take special note that should you specify or otherwise adopt security procedures that differ from our standard security procedures, you may put your funds transfers, systems, and accounts at risk. Also, please pay special attention to the limitation of liability clauses included in your Treasury Management services documents. They set forth your rights and duties, as well as those of Comerica, regarding your access to Treasury Management services.

One example of the importance of these security procedures is our Treasury Management Wire Transfer Service. Wire transfer allows you to transfer funds and achieve same-day availability without settlement risk because only available funds are transferred and/or received. There are significant cost savings and other benefits by initiating wires electronically through the Treasury Management Wire Transfer Service. Under the attached documents, however, when a business decides to initiate wire transfers, if the authenticity of a payment order in the name of the customer is verified pursuant to an agreed upon security procedure, the payment order is effective whether or not actually authorized by the customer. As such, if your business sustains a financial loss from an unauthorized fraudulent wire transfer, whether through an outside cyber-attack on your system or internal malfeasance of your employee/agent, Comerica will not be liable.

The best way to minimize your risk with wire transfers is to follow Comerica's standard security procedures. Our Treasury Management Wire Transfer Service offers you the ability to set up templates for those transfers done on a repetitive basis and initiate both domestic and international wires with multiple levels of security with the convenience of initiating a wire transfer from your own computer. However, where you have elected to have your funds transfers processed by a security procedure other than Comerica's standard security procedures, or have not configured, maintained or updated your systems or procedures; your risk of loss is increased.

We trust that you will find Comerica's innovative, customized Treasury Management solutions as an important banking resource for your business. Please feel free to ask any questions you may have regarding our Treasury Management services or any of the terms of the attached documents. We are happy to answer any questions you may have so that you can manage your business and the risks your business may face.

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Comerica Treasury Management Services Master Agreement

Terms and Disclosures

This Comerica Treasury Management Services Master Agreement ("Master Agreement") governs the treasury management relationship between Comerica Bank, a Texas banking association and/or any other Comerica Affiliate that enters into an Implementation Agreement ("Bank") and the business entity, trust, individual or other person identified on the signature page of the Implementation Agreement that requests and agrees to receive a Service ("Customer"). Bank and Customer are sometimes collectively referred to as the "Parties." By executing the Implementation Agreement as defined in **Section I.A.**, and/or Separate Agreement (as defined in **Section I.A.**), or by using Treasury Management service(s) governed by this Master Agreement, Customer agrees to be bound by the terms of this Master Agreement, the Implementation Agreement, any Separate Agreement, and any supplements, addenda, or amendments to any of the foregoing.

Customer also agrees that the deposit accounts to which the Services apply are governed by the Business and Personal Deposit Account Contract, or such other contract entered into by Customer and Bank, the terms of which govern the Designated Account (as defined in **Section I.A.**), as may be amended from time to time ("Deposit Contract"). Except as otherwise provided herein, where any terms and conditions contained in the Implementation Agreement or the Deposit Contract conflict with the terms of this Master Agreement, the terms of this Master Agreement control.

Section I: General Terms and Conditions

The following general terms and conditions apply to all Services provided by Bank to Customer:

A. DEFINITIONS

Access Method: Any access method(s) offered by Bank to access a Service, including Bank's online treasury management portal (e.g., Comerica Business Connect™). An Access Method is a Service.

ACH: Automated Clearing House.

Addendum: Any writing executed and delivered by the Parties and intended to supplement the provisions of this Master Agreement.

Administrator: A Service administrator(s) appointed by Customer's Authorized Signer in the Implementation Agreement or in another manner acceptable to Bank.

Affiliate: Any party, other than a party to this Master Agreement, that directly or indirectly controls, is controlled by or is under common control with a party subject to this Master Agreement, including any level of parent, any level of affiliate or any level of subsidiary of such party. For purposes of the foregoing definition, "control" (including "controlled by" and "under common control") means ownership of, or the right to acquire, directly or indirectly: (a) not less than fifty percent (50%) of the voting stock of a corporation; (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation; or (c) not less than fifty percent (50%) ownership interest in a corporation, partnership, limited liability company or other entity.

Authorized Signer: The named individuals or titles designated by Customer in a Business Deposit Account Signature Document and Declaration for Deposit Accounts and Treasury Management Services or other similar document accepted by Bank.

Available Funds: The total amount of the immediately available, good and collected funds in a Designated Account as of the close of business on any Business Day, determined in accordance with the manner in which Bank generally provides credit for deposited items as set forth in the Deposit Contract.

Bank Third-Party Provider: Bank's or its Affiliate's third-party agent, subcontractor, service provider or licensor that provides software, hardware, equipment, products, data, documentation and/or services related to, or in support of, the Software and/or Services.

Business Day: Any portion of a day on which Bank is open for purposes of conducting substantially all business functions, including the applicable Service.

Charge: Any costs, fees, expenses or other amounts paid by Customer to a third party and/or collected by Bank from Customer on behalf of a third party.

Codes: Any security codes, security devices, keys, passwords, personal identification numbers, tokens and template numbers, including, but not limited to User, login or company IDs or passwords or Pretty Good Privacy (PGP) encryption.

Contingency Plan: One or more contingency plans utilized in conjunction with a Service when Bank determines that the Service is not operationally available.

Confidential Information: Information that either party may consider to be confidential and/or a trade secret, including, but not limited to, preexisting copyrightable works of original authorship (including but not limited to computer programs, technical specifications, manuals, and business plans), ideas, inventions (whether patentable or not), know-how, processes, compilations of information, patented property, trademarks, service marks, trade secrets and other intellectual property, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing, financial information, customer lists and other information about customers, product information, concepts, and compilations of data and any other information given from one party to the other. The confidentiality provisions of this Agreement do not apply to information that is entirely in the public domain; was known to the party prior to access to the information through no breach of any obligation of confidentiality; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the other party; is created by that party's employees independently of the other party's Confidential Information; or is required to be disclosed to a party's regulatory agencies or auditors or pursuant to court order or applicable Laws.

Customer Affiliate: Affiliate that is a wholly owned direct or indirect subsidiary of Customer or that is otherwise controlled by Customer.

Customer Third-Party Provider: A third party hired, retained or employed by Customer to use or access a Service Customer receives from Bank, whether to process transactions on Customer's behalf or otherwise.

Designated Account: The deposit account(s) at Bank that Customer designates, and Bank approves, for use in conjunction with a Service for transactions and/or for the payment of Fees and Charges.

Fees: Any costs, fees, expenses or other amounts paid to or charged by Bank.

Fee Schedule: The document(s) provided to Customer that sets forth Fees and Charges for a Service.

Fines: Any and all fines, penalties, costs, expenses, fees and/or other liabilities assessed, levied or charged against (a) Customer; and/or (b) Bank, its Affiliates, Bank Third-Party Providers, and/or any third party.

HIPAA: The Health Insurance Portability and Accountability Act of 1996, as amended from time to time, as well as the regulations and other authority promulgated thereunder.

Implementation Agreement: The Treasury Management Services Implementation Agreement used to designate and accept the Service Terms for the Services that the Customer elects to receive from Bank.

Indemnify (or Indemnification): To, at the indemnifying party's expense, defend, indemnify and hold another harmless from and against Losses. For clarification, any time Customer is obligated to Indemnify Bank under this Master Agreement, the term "Bank" includes Bank, its Affiliates, Bank Third-Party Providers, and their respective directors, officers, employees and agents.

Laws: All applicable federal, state, local and foreign laws, statutes, rules, codes, directives, regulations, orders and ordinances, as enacted and/or amended from time to time.

Legal Requirements: Laws and Rules.

Losses: Any and all Fines, fees, costs, expenses, losses, liabilities, damages, and claims, and all costs and expenses relating to such Fines, fees, costs, expenses, losses, liabilities, damages, and claims (including, without limitation, costs and/or expenses of investigation, litigation or other dispute resolution proceedings, settlement, judgment and interest and reasonable attorneys' fees and paralegals' fees [whether or not suit is instituted and, if instituted, at the trial or appellate court levels, in a probate, administrative, bankruptcy or other proceeding, or otherwise]).

Nacha: The National Automated Clearing House Association, the organization that establishes standards, rules, and procedures for ACH transactions.

Nacha Rules: Nacha Operating Rules & Guidelines, as they may be amended from time to time.

OFAC: Office of Foreign Assets Control.

Proprietary Property: This Master Agreement, Software, Services, User Guides, related documentation and proprietary file formats, including, without limitation, all Software, Services, documentation and proprietary file formats provided or licensed by Bank or Bank Third-Party Providers.

RTP®: Real-time payment network managed by The Clearing House Payment Company LLC.

Rules: Any rule, regulation, order, directive or decision of any governing payment network or trade association, as enacted and/or amended from time to time, including, as applicable, Nacha, RTP, Electronic Check Clearing House Organization, card associations, clearinghouses, networks and/or other associations involved in transactions under this Master Agreement.

Security Procedure: One or more security procedures utilized in conjunction with a Service or Contingency Plan.

Separate Agreement: Additional or supplemental agreements or Addenda to this Master Agreement and Implementation Agreement that are required by Bank or third-party service providers in connection with the provision of Services including, without limitation, documents utilized by Bank to collect from Customer information Bank determines necessary to provide a Service (e.g. Designated Account(s), Authorized Signers, and selected Service features and options). If Customer is permitted to use a Service that requires execution of a Separate Agreement, Customer's use of such Service will be conditioned on and subject to Customer's execution of such applicable Separate Agreement.

Service (or Services): One or more Treasury Management services or Access Method, identified by name and/or description which Customer contracts Bank to provide in accordance with the Implementation Agreement, any Separate Agreement that is subject to the terms of this Master Agreement and the terms and conditions set forth in this Master Agreement. Bank is under no obligation to permit Customer's use of any Service. The decision to permit Customer's use of any one or more Service is within Bank's sole discretion.

Service Terms: Terms and conditions contained in this Master Agreement, Implementation Agreement, Separate Agreement(s) applicable to a specific Service, including Fee Schedules and User Guide(s) applicable to a specific Service.

SFTP: Secure File Transfer Protocol.

Software: Software, system or other platform provided by Bank in conjunction with a Service, including all related user documentation.

Third-Party Information: Information about or from a person or entity other than Customer or Bank.

User: A person designated by an Administrator to be given access to an internet-based Service.

User Guide: The document(s) (electronic and/or paper) provided by Bank to Customer that contains detailed information and instructions regarding the use and functionality of a Service.

B. STRUCTURE AND AMENDMENTS.

1. Implementation Agreement: Service Terms: Prior Agreements. Bank shall provide Services to Customer as designated in the Implementation Agreement, any Separate Agreement(s) and any supplement or amendment to any of the same which Bank and Customer may execute from time to time. Bank will be responsible only for performing the Service(s) that Bank expressly agrees to provide pursuant to the signed Implementation Agreement, any Separate Agreement(s) and any supplement, addenda, or amendment thereto. If Customer entered into a "Service Schedule" or "Service Agreement" to receive Treasury Management services under a previous treasury management services agreement with Bank ("Prior Agreement"), Customer may continue to receive the Service without an Implementation Agreement until Customer requests a change (e.g. to add a Service, add or change an Administrator or to add an Affiliate) for which Bank requires an Implementation Agreement, at which time Customer will be required to enter into an Implementation Agreement with Bank to continue using Services. Therefore, for avoidance of doubt, notwithstanding any requirement under this Master Agreement that Customer must enter into an Implementation Agreement to use a Service, Customers who entered into a "Service Schedule" or "Service Agreement" under a Prior Agreement may continue to receive the contracted Services without an Implementation Agreement until the Customer requests a change that requires that an Implementation Agreement be signed. Customer's continued use of Services shall, in all other respects, be subject to and in accordance with the terms of this Master Agreement.

2. User Guides. For each Service, Customer will be given a User Guide(s) that provides instructions pertaining to the Service. Bank will make User Guides available electronically. Customer agrees to read the User Guide(s) prior to using the applicable Service. By signing the Implementation Agreement, Separate Agreement(s) or using the Services, Customer acknowledges receipt of, and agrees to the terms of, the User Guide(s) for the selected Services. If Customer disagrees with the terms of any User Guide(s), then Customer shall not use the applicable Service.

3. Amendments and Changes.

(a) Amendments and Changes by Bank. Bank may amend any portion of this Master Agreement by giving Customer notice in advance as required by Law or, if there is no applicable Law, Bank will attempt to give Customer notice thirty (30) days in advance, when possible. Use of a Service following the effective date of an amendment is Customer's acceptance of the amendment. If Customer does not agree with the amendment, Customer must cease using the Service before the effective date of the amendment. Notwithstanding the foregoing, Bank may change:

(i) a Security Procedure upon giving Customer fifteen (15) days prior notice, except that a change in Security Procedure due to a breach in security is effective immediately when notice is given;

(ii) the Fees and Charges set forth in a Fee Schedule for a Service upon giving Customer thirty (30) days prior written notice; and

(iii) a cutoff time in accordance with **Section I.C.5.**

(b) Amendments and Changes by Customer. If Customer's authorized representative requests a change to a Service, Customer agrees that Bank may, in its discretion, implement such changes without requiring a new Implementation Agreement.

C. SERVICES GENERALLY.

1. **Submission of Data, Information and Documents.** In order to provide Customer with a Service, Bank may require data, information and/or documentation from Customer that is relevant to the Service. Customer will provide Bank with timely, correct and complete data, information and/or documentation as requested by Bank and/or as set forth in this Master Agreement, User Guide(s), Implementation Agreement and/or a Separate Agreement for a Service. Until Bank receives the data, information and/or documentation Bank requires, in a form and with content satisfactory to Bank, Bank is not obligated to provide the Service, and/or there may be delays in providing the Service and/or changes to the Service. Only employees or third parties authorized by Customer will send data, information and/or documentation to Bank. Information requested by Bank may be required for Bank to comply with applicable provisions of Law, including without limitation the USA PATRIOT Act and its implementing regulations. Information and documentation requested by Bank may include, without limitation, information Customer's financial condition, business operations and the nature and capability of equipment owned and maintained by Customer for the purposes of accessing the Services. Customer is solely responsible for the format, timeliness, accuracy, completeness and/or appropriateness of all data, information and documentation provided to Bank by or on behalf of Customer. Bank shall have no obligation to reformat any data or information. In addition, Bank shall have no liability or responsibility for the timeliness, accuracy, completeness or appropriateness of any data, information and/or documentation received from Customer, Customer's systems, Customer Third-Party Providers, other financial institutions or any Bank Third-Party Providers. Bank's obligations with respect to each Service provided hereunder, is expressly conditioned on Bank's receiving all data and information it requires, in substance form and quality and within the time frame required by Bank or Bank Third-party Providers. In the event that required data or information is not provided, then (i) Bank will not be bound by any performance or delivery schedules set forth herein, (ii) Bank may charge additional Fees as appropriate, (iii) Bank may return improper or incomplete information or data, and (iv) any Services, reports, or information that are delivered by Bank will be considered to be complete.

2. **Exploration, Development, Implementation and Maintenance Costs.** Customer and Bank will each be responsible for their own costs incurred: (a) in exploring the use of any Service; (b) in the development of any infrastructure to use any Service; (c) to buy, lease, install, upgrade, update and/or enhance any hardware, software, and equipment (e.g., telephone lines, servers, modems, internet access) necessary to use any Service; (d) for the payment of any compensation to any person or entity in regard to the development or implementation of any Service; or (e) in contemplation of entering into the Implementation Agreement and/or Separate Agreement.

3. **Designated Accounts.** To use Services, Customer must maintain at least one deposit account at Bank. Customer shall provide to Bank the Designated Account number(s) to be used in conjunction with each Service. Any changes, additions or deletions to the Designated Account requested by Customer must be sent to Bank in writing. Each Designated Account is subject to the terms of the Deposit Contract. Customer represents and warrants that its Administrator is duly authorized by Customer to select the Designated Accounts and to grant User authorities with respect to such Designated Accounts.

4. **Administrator.** Any Authorized Signer may: (a) serve as Customer's Administrator(s) for all Services; or (b) designate to Bank other individuals empowered to serve as its Administrator(s) for all Services. Subsequent changes to Customer's Administrator(s) may require Customer's execution of a new Business Deposit Account Signature Document and Declaration for Deposit Accounts and Treasury Management Services or other similar document accepted by Bank. Administrator(s) will be Customer's primary contact(s) with Bank and Bank's primary contact(s) with Customer for the applicable Service(s). In addition to Administrator's rights as an Authorized Signer and those rights set forth in **Section I.G.1 of this Master Agreement** (Administrator Responsibilities), Customer hereby authorizes the Administrator(s) to:

(a) Select and change Service options and features, including security options/features, in a manner acceptable and made available by Bank to the Administrator(s); and

(b) Receive all communications from Bank regarding the Service(s), including but not limited to notices related to change in Fees, Charges or terms, suspension and/or termination. Customer shall designate a single Administrator to receive such communications in the Implementation Agreement.

5. **Cutoff Times.** Transfers, withdrawals, credits, debits, payment orders, payment origination instructions and communications received by Bank after its established cutoff deadlines for such transactions, instructions or communications, or that are received on non-Business Days, will be treated as received on the next Business Day. Bank may change its cutoff times at any time, provided that Bank will attempt to give prior notice of such change, when possible, unless the Law requires otherwise.

6. **Use of Third-Party Providers.**

(a) **Use of Bank Third-Party Providers.** Bank uses or may use third-party networks and other Bank Third-Party Providers to provide or assist in the delivery of certain Services. Bank may use an alternate third-party network or Bank Third-Party Provider at its discretion. In the event Bank determines, in its sole discretion, that it is unable to provide third-party network access, Bank may discontinue the related Service or may provide the Service through an alternate third-party network and shall have no liability for the unavailability of such access.

(b) **Use of Customer Third-Party Providers.** Customer shall not, without Bank's prior written consent, allow any Customer Third-Party Provider Customer hires, retains or employs to use or access a Service Customer receives from Bank, whether to process transactions on Customer's behalf or otherwise. If Bank allows Customer to use a Customer Third-Party Provider, Customer will advise the Customer Third-Party Provider of all the requirements for the applicable Service and of the confidentiality requirements of this Master Agreement. Also, if Bank requires, Customer will obtain a written confidentiality agreement from the Customer Third-Party Provider. In any event, Customer shall ensure that any Customer Third-Party Service Provider that accesses or uses a Service has agreed in writing to confidentiality obligations that are at least as restrictive as the confidentiality obligations that Customer has to Bank under this Master Agreement and any Separate Agreement. Customer is responsible for the acts and omissions of each Customer Third-Party Provider and shall Indemnify Bank from any act or omission of such Customer Third-Party Provider, regardless of whether the Customer advised Bank of the existence of the Customer Third-Party Provider or obtained Bank's prior written consent to the Customer Third-Party Provider's use or access of a Service Customer receives from Bank.

7. **Use of Couriers.** Unless we have agreed otherwise in a separate writing with you, Bank does not provide courier service for Customer's use or pay Customer's courier's charges in connection with providing Services covered by this Master Agreement. Delivery by U.S. Mail for purposes of this Section does not constitute delivery by a courier. If Customer utilizes a courier to deliver instructions, data or other information or, in the case of the Cash Vault Service, cash, coin and/or check deposits, to Bank, Customer agrees at all times and in all respects, and regardless of who pays for the services of the courier, that: (i) the courier is Customer's agent and not Bank's agent; (ii) Bank is not responsible or liable for the acts or omissions of the courier; and (iii) Customer assumes all risk of loss in regard to the items to be delivered until Bank is in actual receipt of the items and has given the courier a receipt for such items.

8. **Recording.** Bank may record or monitor any telephone conversation regarding any Service and Customer agrees to such recording. If state law requires Customer's employee or agent to give consent to the conversation, Customer will advise the employee or agent to do so. However, Bank has no duty to record or monitor telephone conversations and the election to record and/or monitor is within Bank's discretion.

9. **Customer Records.** No agreement between Customer and Bank shall relieve either party from any obligation it may have under Law, contract with a third party or otherwise to make or keep records and/or employ its own adequate audit, accounting and review practices.

10. **Compliance with Legal Requirements.**

(a) Customer shall at all times comply with all Legal Requirements applicable to Customer, Customer's business, each Service Customer receives under this Master Agreement and the Implementation Agreement and Customer's performance of its obligations and exercise of its rights under this Master Agreement and the Implementation Agreement. Without limiting the generality of the foregoing, Customer is responsible for knowing, and for determining Customer's obligations under, all such Legal Requirements.

(b) Bank shall at all times comply with all Legal Requirements applicable to Bank, each Service Bank provides to Customer under the Agreement and Bank's performance of its obligations and exercise of its rights under the Agreement. Bank shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, color, religion, sex or national origin. Moreover, these regulations require that affirmative action be taken to employ and advance in employment of individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

11. **Inconsistency of Name and Account Number.** For any Service or transaction that requires the use of an account name and account number, if the account name and account number do not match, Bank and any other financial institution involved in the Service or transaction may, in their sole discretion, reject the transaction or rely solely upon the account number or other identifying number provided by Customer.

12. **Unauthorized Use of Services.** It is Customer's sole responsibility to ensure that only those Customer Administrators, Users, employees, agents and Customer Third-Party Providers duly authorized by Customer have access to and/or use of any Service, and that such access and use is in an authorized manner and within the scope of their delegated authority. Bank shall have no liability for, and Customer shall Indemnify Bank in connection with, any unauthorized use of any Service.

13. **Use of Services by Customer Affiliates.** Customer may, from time to time, request that Customer Affiliates be permitted to use Services subscribed to by Customer.

(a) **Documentation and Authority.** Each Customer Affiliate must sign an Implementation Agreement to use Customer's Services. By signing an Implementation Agreement or by accessing and/or using a Service, each Customer Affiliate authorizes the Customer's designated Administrator to act as agent for such Customer Affiliate in connection with any and all matters that are within the Administrator's authority under this Master Agreement, including, without limitation, all powers described in **Sections I.C.4** (Administrator) and **I.G.1** (Administrator Responsibilities). Customer and all Customer Affiliates specifically acknowledge that the Administrator is empowered to select Designated Accounts used with a Service and to delegate authorities in connection with such Designated Accounts to Users. Each Customer Affiliate agrees that all notices received by an Administrator will be effective against the Customer Affiliate and any and all actions by Customer shall be binding on Customer Affiliates. Customer agrees to notify Customer Affiliates of any notices received, agreements made and actions taken on behalf of any Customer Affiliate. Bank may conclusively rely on Customer's authority to act for itself and to bind the Affiliates with respect to any actions required to be taken by Customer in connection with this Master Agreement and any applicable Service Terms.

(b) **Indemnification.** In addition to any other Indemnification obligations set forth in this Master Agreement or any applicable Service Terms, Customer agrees to Indemnify Bank for any and all Losses that Bank may suffer or incur in connection with providing Services to Customer Affiliates or any other matters related to the Agreement, except

for Losses attributable to Bank's gross negligence or willful misconduct. In addition, Customer agrees that it is liable to Bank for each Customer Affiliate's performance under, and compliance with, the terms of the Master Agreement (including, without limitation, the payment of Fees and any overdrafts of any kind or other amounts owed to Bank for the initiation of any ACH, wire or other electronic funds transfer) and all applicable Service Terms, and with regard to such performance and compliance by any Customer Affiliate, Bank may enforce the Master Agreement and applicable Service Terms directly against Customer without first being required to seek enforcement against any Affiliate.

(c) **Warranties.** Customer represents and warrants to Bank that each Customer Affiliate that it permits to use a Service is a wholly owned direct or indirect subsidiary of Customer, or is otherwise controlled by Customer, and that Customer has all necessary power and authority to act for and on behalf of each Customer Affiliate in connection with this Master Agreement, the Services and Designated Accounts. Each Customer Affiliate represents and warrants to Bank that it is a wholly owned direct or indirect subsidiary of Customer or is otherwise controlled by Customer, and that all necessary action was taken by the Affiliate's governing body to provide Customer all necessary power and authority to act on behalf of Customer Affiliate in connection with the Services and Designated Accounts of such Customer Affiliate as contemplated by this Master Agreement and all applicable Service Terms. Each Customer Affiliate represents and warrants to Bank that (a) the execution and delivery of the Implementation Agreement, which accepts the terms of the Master Agreement, and all applicable Service Terms has been authorized by all necessary corporate and governmental action and does not violate any provision of Legal Requirements applicable to such Customer Affiliate, or any provision of such Customer Affiliate's organizational documentation or any other agreement binding upon such Customer Affiliate, and (b) the person(s) executing and delivering the Implementation Agreement for and on behalf of such Customer Affiliate is/are duly authorized to do so. Each Customer Affiliate and Customer agree that Bank's reliance and actions taken based on the foregoing representations and warranties do not constitute negligence or willful misconduct. Further, each Customer Affiliate hereby agrees that Bank will not be liable and such Customer Affiliate shall not sue or otherwise make claims against Bank for or on account of any claim for damages arising out of or relating to Bank allowing the arrangements contemplated by the Implementation Agreement, the Master Agreement or any Service Terms, including any fraudulent activity or instructions resulting from or relating thereto.

D. SERVICE FEES AND CHARGES.

1. **Fees and Charges.** Customer agrees to pay the Fees and Charges set forth in each Fee Schedule, or otherwise described in this Master Agreement. All amounts Customer owes under this Master Agreement and Fee Schedules will be charged against a Designated Account. If a Designated Account is closed or if no specific account has been designated by Customer, all amounts Customer owes under the Agreement may be charged against any account maintained by Customer with Bank.

2. **Earnings Credit.** Some Fees may be reduced by an earnings credit amount, which is determined through the analysis process and is based on the positive collected balances in the Designated Account. The total Fees for a Service(s) during the month are reduced by the earnings credit amount. Fees that are not reduced by an earnings credit amount will be charged against the Designated Account.

3. **Taxes.** The Fees and Charges set forth in the Fee Schedule, or elsewhere in this Master Agreement, do not include sales, use, excise, value added, utility or other taxes that Customer may be responsible to pay.

4. **Security Interest.** Customer hereby provides Bank, to the extent allowed by Law, a continuing and perfected security interest in any and all funds in Designated Accounts, and in any other account maintained by Customer with Bank and/or any of its Affiliates, to satisfy Customer's financial and other obligations in connection with any Service and/or to otherwise secure present and future indebtedness Customer owes to Bank.

E. MONETARY TRANSACTIONS.

1. Account Balances for Funding Payment Transactions and/or Service Fees and Charges.

(a) Sufficiency of Funds in Designated Account. Customer is responsible to ensure that the Designated Account used in conjunction with a Service has sufficient Available Funds to cover Customer's requested transactions in connection with the Service and to pay the Fees and Charges applicable to the Service. Customer acknowledges and agrees that Bank is under no obligation to pay any amount on Customer's behalf or process any transaction that would cause a Designated Account to go into an overdraft position or increase an existing overdraft position or line of credit. In addition, Bank does not make any commitment to extend intra-day or other forms of credit to Customer, or otherwise lend or advance funds to Customer.

(b) Insufficient Funds in Designated Account. If the Designated Account does not have such sufficient Available Funds, Customer is and remains fully liable and responsible to Bank for the payment of the applicable amounts and Bank may, and Customer hereby expressly authorizes Bank to:

(i) dishonor any one (1) or more transactions that would create an overdraft position in the Designated Account, increase an existing overdraft position in the Designated Account and/or increase a line of credit Customer maintains with Bank;

(ii) debit other Designated Accounts, and if such other Designated Accounts do not have sufficient Available Funds to cover the amounts owed, then Bank may debit other Customer accounts at Bank and/or any of its Affiliates;

(iii) set off against any amounts Bank owes to Customer;

(iv) allow an overdraft position in the Designated Account, allow an increase in an existing overdraft position in the Designated Account and/or allow an increase in a line of credit Customer maintains with Bank, in the amount of one (1) or more transactions and/or the amount of the Fees and Charges, in which case:

(A) if Bank and Customer do not have a separate written agreement regarding overdrafts, the overdraft shall be subject to the provisions of the Deposit Contract regarding overdrafts;

(B) Customer agrees to pay Bank interest on the overdraft amount and/or the excess line of credit amount at such rate as Bank may elect to charge, or as may be required or limited by Law;

(C) Customer shall pay Bank the amount of, or cause Available Funds to be deposited to the Designated Account in the amount of, the overdraft or excess line of credit, interest and applicable Fees and Charges, on demand and not later than one (1) Business Day after Bank's written or oral demand; and

(D) Customer shall be liable for Losses of Bank in connection with the collection of such overdraft amount or excess line of credit amount, interest and applicable Fees and Charges, including, without limitation, all reasonable attorney's fees and paralegals' fees (whether or not suit is instituted).

(E) Customer acknowledges and understands that allowing an overdraft position in a Designated Account, an increase in the amount of any existing overdraft position in a Designated Account and/or an increase in a line of credit does not obligate Bank to do so for other or future transactions, even if Bank has done any one (1) or more of the foregoing on Customer's behalf or the Designated Account Owner's behalf in the past.

(v) require pre-funding of any or all future transactions and/or applicable Fees and Charges.

(c) Review and Verification of Transactions. If the Service Customer used to initiate the transaction does not provide electronic verification, it is Customer's obligation to review reports, review

Designated Account balance and transaction information and/or to telephone Bank's Treasury Management Relationship Services Department at the telephone number provided in the User Guide for the Service to verify the status of Customer's transaction request.

2. Dishonor of Monetary Transactions. Bank may dishonor transactions and/or require pre-funding of any transactions Customer requests:

(a) for the reasons set forth in **Section I.E.1** above;

(b) if Customer is in breach of this Master Agreement, Deposit Contract or loan arrangement, guarantee, or any other agreement with Bank and the breach has not been cured within the time period, if any, provided in such agreement;

(c) if Customer's instruction does not comply with the requirements for the Service; or

(d) if the transaction: (i) involves funds subject to a hold, dispute or legal process preventing their withdrawal; (ii) violates, in the opinion of Bank's legal counsel, any provision of any present or future risk control program of the Federal Reserve, applicable Law, OFAC policy or Presidential Order; or (iii) violates Bank's policies, procedures or practices.

3. Bank Excused from Liability. In regard to transactions involving the transmission of funds, Bank shall be excused from any failure or delay in transmitting funds if the transmittal would result in Bank: (a) exceeding any limitation upon Bank's intra-day net funds position that is or may be established by Bank's regulators as a regulation or guideline; or (b) violating any provision of any present or future risk control program of the Federal Reserve or any Law.

F. SECURITY PROCEDURES.

1. Security Procedures Generally. Some Services and Contingency Plans require the use of a Security Procedure for the purpose of determining and/or verifying the authenticity of a communication, transaction and/or transmission. Such Security Procedures will be described in this Master Agreement, the User Guide(s) for the Service, on the online screen instruction for the Service, and/or in a separate document provided by Bank. Security Procedures may vary for each Service and Contingency Plan. Contingency Plans for each Service may not utilize the same Security Procedure as the Security Procedure for the Service. Security Procedures may require the use of one (1) or more Codes. By using a Service, Customer acknowledges receipt of all Security Procedures recommended by Bank that are applicable to the Service, and Customer agrees to follow all such Security Procedures applicable to the Service unless different Security Procedures are agreed to by Bank and Customer in writing. Bank reserves the right to change the Security Procedure for a Service as it deems necessary. Bank will notify Customer of a Security Procedure change in accordance with **Section I.B.3(a)(i)**. Customer's use of the Service following such change shall be deemed Customer's acceptance of the new Security Procedures as the Security Procedure for the Service.

2. Need for Proactive Security Procedures, Maintenance of Security Procedures. Customer acknowledges and agrees that, as part of the Security Procedure, Customer is required to take certain actions to prevent unauthorized transactions. Customer also acknowledges that Bank's ability to protect Customer from unauthorized transactions depends on Customer's monitoring of Customer's transactions and following the Security Procedures Bank provides to Customer to prevent unauthorized transactions. In this regard, Customer agrees to monitor Customer's transactions, screen Customer's systems using anti-virus software and conduct other procedures and safeguards that are part of the Security Procedure to prevent any unauthorized transactions. Customer further agrees to: (a) maintain the integrity and protection of the Security Procedure used in conjunction with the Service; (b) establish and maintain commercially reasonable procedures to safeguard against unauthorized communications, transactions and/or transmissions to Bank; and (c) establish and maintain commercially reasonable procedures to ensure the confidentiality of the Security Procedure, including, but not limited to, Codes and related instructions Bank provides to Customer in connection with the Security Procedure. Bank will have no liability to Customer for: (i)

Losses resulting from Customer's failure to comply with the terms of this Section; or (ii) substandard performance of a Service or failure to provide the Service if Customer does not employ the minimum recommended Security Procedure requirements set forth in the User Guide(s) for the Service, on the online screen instruction for the Service, and/or in a separate document provided by Bank.

3. **Limited Purpose of Security Procedures.** The purpose of the Security Procedure is to verify the authenticity of the communication, transaction and/or transmission and not to detect an error in the content of the communication, transaction and/or transmission. If Bank receives a communication, transaction and/or transmission that complies with the Security Procedure, Customer agrees that Bank may treat it as authorized by Customer. Customer shall hold Bank harmless for any actions taken by Bank in reliance upon the use of the applicable Security Procedure. Bank may refuse to accept any communication, transaction and/or transmission that does not comply with the Security Procedures.

4. **Adequacy of Security Procedures.** If at any time Customer believes that the Security Procedure offered to or selected by Customer is not adequate for the type, size or volume of communications, transactions and/or transmissions Customer intends to conduct, or is otherwise not commercially reasonable for any reason, or if Customer believes that the Security Procedure has been compromised, Customer will not use the Service to conduct Customer's communications, transactions and/or transmissions. Customer agrees that each time Customer initiates a communication, transaction and/or transmission using the Security Procedure offered to or selected by Customer, Customer acknowledges and agrees that the Security Procedure is adequate for the type of communication, transaction and/or transmission Customer intends to conduct, is commercially reasonable, and that Customer is not aware of any compromise to the Security Procedure. This is a continuing acknowledgement so long as Customer uses the Service.

5. **Notification Regarding Security Procedure Inadequacy or Compromise.** In the event Customer believes that the Security Procedure offered to or selected by Customer is not adequate for the type of communication, transaction and/or transmission Customer intends to conduct, or is otherwise not commercially reasonable for any reason, Customer should contact Bank's Treasury Management Relationship Services at the telephone number provided in the User Guide for the applicable Service to determine the alternatives, if any, that may be available to Customer. If Customer believes or suspects that any Security Procedure has been compromised in any manner, or has become known or accessed by an unauthorized person (whether or not employed by Customer), Customer agrees to notify Bank immediately (but in any case, not later than twenty-four (24) hours after becoming aware of such occurrence) by telephone at the telephone number set forth in the User Guide for the Service, followed by written confirmation to the street and/or electronic address set forth in the User Guide for the Service. Such compromise or unauthorized access will not affect any transfers and/or transactions Bank made in good faith prior to Bank's receipt of Customer's notification and for a reasonable time period thereafter (not to exceed one (1) Business Day), unless Bank has caused the compromise or unauthorized access.

6. **Effect of Compromised Security Procedures.** If Customer notifies Bank, or Bank has reason to believe, that Customer's computer(s), system(s) and/or the Security Procedure has been or may have been compromised, Bank will, in Bank's sole and absolute discretion, determine the appropriate action to re-establish the security of the Service and will advise Customer promptly of the status of the security and of any Security Procedure changes that will be required. Bank reserves the right to immediately: (a) modify an existing Security Procedure or require a new Security Procedure to be used; and/or (b) temporarily suspend or permanently terminate the affected Service. Bank may notify Customer of a breach in security, or a change in Security Procedure due to a breach in security, in any manner Bank determines is the most expeditious. Such notice shall be deemed effective immediately when given. Bank shall never have liability to Customer for Bank's failure to act on any communication, transaction and/or transmission if Bank believes that there has been a breach of the applicable Security Procedure and the communication, transaction and/or transmission is unauthorized.

G. ONLINE SERVICES.

1. **Administrator Responsibilities.** If Customer elects to receive internet-based Services, Customer's Administrator shall: (a) designate to Bank each Designated Account to be used in connection with the applicable internet-based Service, even if the Administrator is not an Authorized Signer (as defined in the Deposit Contract) on the Deposit Account; (b) designate to Bank each User who should be given access to the applicable internet-based Service; (c) grant rights to access the Designated Account to Users; (d) set limits desired by Customer for each User through options made available through the applicable internet-based Service; (e) enable each User and give access rights to each User, including administrative rights, if any, or provide to Bank the type of access rights the User is to receive (some Service types require the Administrator to actually establish the Users and their access rights while others require Bank to do this based upon the Administrator's instructions); and (f) disable Users and access rights as Customer determines timely and appropriate. By Customer's execution of the Implementation Agreement and/or Separate Agreement for an internet-based Service, Customer represents, warrants and agrees with Bank that: (i) Customer's Administrator is authorized to, and shall, provide the Designated Account information to Bank on each Designated Account to be used with any such Service; and (ii) Users may access, and, if applicable, conduct transactions in regards to the Designated Account, even if they are not Authorized Signers (as defined in the Deposit Contract) on such Designated Account.

2. **Access Credentials.** Generally, Bank will provide the Administrator and each User with the necessary access credentials to gain access to each applicable internet-based Service. A User ID, PIN, and/or other security Code may be required to gain access to the Internet-based Service. Access to certain Services available through the internet may require additional IDs, passwords, PINs and/or other security Codes (which, if applicable, will be provided to the Administrator and each User designated to Bank by the Administrator to receive one), as more fully described in the User Guide(s) for the applicable Service.

3. **Notice Regarding Internet Risk.** Customer understands that Bank does not guarantee or make any representations regarding the safety or security of the internet. The Security Procedures that are required for the use of an internet-based Service are intended by the Parties as the sole means by which Bank shall determine that the communications, transactions and/or transmissions received by Bank through the use of the internet-based Service are authorized by Customer. The Security Procedures for internet-based Services are described in detail in the applicable User Guides. If Customer, its employees or agents provide, whether intentionally or otherwise, all of the authenticating information required by the Security Procedure (e.g., User IDs, passwords, other Codes), Bank shall be entitled to rely on the authenticating information received, and Customer shall be liable for each communication, transaction and/or transmission processed by Bank that conforms to the authentication requirements in the Security Procedure, until Bank has been notified by Customer not to accept and process further transactions because of a breach or potential breach of the Security Procedures. Notwithstanding the foregoing, Customer shall not be liable for access to the Internet-based Service, or transactions processed that comply with the authentication requirements of the Security Procedure if, in fact, the transactions and/or access to the Service were not authorized by Customer and a breach of the Security Procedure was directly caused by Bank, its employees or Bank Third-Party Providers retained by Bank to provide the Service.

H. SOFTWARE AND TECHNICAL SPECIFICATIONS.

1. **Software.**

(a) If Bank provides Customer with Software that comes with a separate license agreement, the terms of the Software license agreement shall apply with respect to the Software.

(b) If Bank provides Customer with Software that does not come with a separate license agreement, the following provisions apply to the Software:

(i) Bank warrants to Customer that Bank has the right to extend the use of such Software to Customer.

(ii) Customer shall not decompile, disassemble or reverse engineer the Software or assign, sell, lease, disseminate or give the Software, Software documentation or Service documentation to any third party without Bank's prior written consent.

(iii) Copying of the Software and related documentation is limited to one (1) copy for archival and backup purposes only.

(iv) Customer does not acquire any proprietary interest or rights in the Software, systems or related documentation as a result of using it or any Service.

(v) The Software may not be used in violation of any Law or in any terrorist supporting country where the U.S. government prohibits such use.

(vi) Bank will Indemnify Customer from any third-party claims made against Customer or Customer's affiliates, officers or directors alleging that Customer's authorized use of the Software infringes on a third-party's copyright, patent or trade secret enforceable in the U.S.; provided that Customer has not breached any of the provisions in **Subsections I.H.1(b) (ii) through I.H.1(b) (v)** and has not caused or contributed to the claimed infringement.

(A) In regard to this Indemnification, Bank will pay the judgments finally awarded by a court of competent jurisdiction and any settlements of such third-party claims approved in writing by Bank, provided that: (1) Customer provides Bank with prompt written notice of the claim; (2) Customer permits Bank to exercise sole control over the defense and/or settlement of the claim; and (3) Customer cooperates with Bank, at Bank's expense, in the defense and/or settlement of the claim.

(B) Bank and Bank's agents, licensors and Bank Third-Party Providers shall have no liability for any claim of infringement based on: (1) use of other than a current, unaltered release of Software available from Bank; or (2) use or combination of the Software with software, hardware, programs or data not provided by Bank.

(C) Should any Software become, or in Bank's opinion be likely to become, the subject of a claim of infringement, Bank may at its option and expense: (1) procure for Customer the right to continue using the alleged infringing Software; or (2) replace or modify the same so that it becomes non-infringing; or (3) if neither (1) nor (2) is reasonably practicable, Bank may terminate Customer's use of the Software and the affected Service(s).

(D) This **Subsection I.H.1(b)(vi)** sets forth Customer's sole remedy, and Bank's sole obligations, in connection with any infringement claim with respect to the Software.

(E) If the medium on which the Software was provided was defective and Customer reported the problem to Bank within sixty (60) days of receiving the Software, Bank may, at Bank's option, provide Customer with new Software within five (5) days or reimburse Customer the Fees and/or Charges Customer paid for the Software and Service that Customer was not able to use. The remedies set forth in this **Subsection I.H.1(b)(vi)** constitute Customer's sole remedies, and Bank's sole obligations, in connection with errors or problems with the Software.

2. **Technical Specifications.**

(a) Bank may recommend or require specific hardware, software and/or other equipment to be used in connection with one or more Services. Such recommendations or requirements may change from time to time. Unless otherwise stated in this Master Agreement, or Bank otherwise agrees in writing, Bank makes no representations or warranties in regard to, nor will it provide technical support for, such hardware, software and/or other equipment.

(b) Customer understands that in order to use some Services, upgrades to required browsers, operating systems, equipment, hardware and/or software may be required or recommended by Bank. Customer shall maintain its systems and equipment in good working order, at all times. Failure to upgrade and/or use Bank-recommended browsers, operating systems, equipment, hardware and/or software may prevent the use and/or effective use of the Service. Bank will not be liable to Customer for any claims by Customer related to the use or quality of the Service if Customer fails to comply with this **Section I.H.2.**

(c) Hardware, software and equipment must be compatible with Bank's equipment and operating systems for use and/or effective use of the Services. Bank will not be liable to Customer for any effects of any changes or upgrades made by Customer to its hardware or operating system after commencement of any Service to a Customer.

I. **CONFIDENTIALITY OF INFORMATION AND PROPRIETARY PROPERTY.**

1. **Customer's Information.** Bank agrees that information concerning Customer that comes into Bank's possession in conjunction with a Service or in contemplation of providing a Service, will be maintained as confidential and will not be disclosed by Bank to any other person or entity except when: (a) necessary to provide Customer with the Service, including, but not limited to, disclosure to Bank's vendors, Bank Third-Party Providers and Bank's Affiliates; (b) as required or authorized by Law and/or (c) disclosed with Customer permission or pursuant to Customer's instruction to Bank, including, without limitation pursuant to a request that conforms to the authentication requirements in the Security Procedure. Bank will comply with its current data privacy policy and the federal Gramm Leach Bliley Act with respect to information obtained under this Master Agreement. Bank has established and will maintain a written information security plan ("Information Security Plan") in compliance with the Gramm Leach Bliley Act. Bank's Information Security Plan shall be designed to (a) ensure the security, integrity and confidentiality of information relating to the Designated Account; (b) protect against any anticipated threats or hazards to the security or integrity of such information; and (c) protect against unauthorized access to or use of such information. Customer agrees to report any data breach as defined in applicable Legal Requirements to Bank as soon as possible.

2. **Third-Party Information.** While providing Customer with a Service, if Bank gives Customer Third-Party Information or access to Third-Party Information in error, Customer agrees to notify Bank of Customer's receipt of the Third-Party Information or access to such Third-Party Information. Customer agrees to keep the Third-Party Information confidential, not use it for any purpose or disclose it to anyone, and return it to Bank at Bank's expense or destroy it at Bank's request.

3. **Bank's Proprietary Property and Confidential Information.** Bank's Proprietary Property and Confidential Information has great commercial value to Bank and Bank Third-Party Providers. Customer agrees to keep such Proprietary Property and Confidential Information confidential except to the extent that disclosure is required by Law or if Bank agrees in writing to Customer's disclosure. If Customer is required by Law to disclose Bank's Proprietary Property or Confidential Information, Customer must notify Bank as soon as possible before making the disclosure unless Customer is prohibited by Law from doing so.

4. **HIPAA Compliance.** To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA, including keeping, safeguarding and using Protected Health Information ("PHI") electronic Protected Health Information ("ePHI"), which shall have the meanings provided at 45 C.F.R. 160.103, as required by HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement (as defined by HIPAA) prior to or commensurate with the date upon which Bank provides a Service subject to HIPAA.

5. **PCI Compliance.** To the extent the Payment Card Industry Data Security Standard ("PCI DSS") may apply, Customer agrees to take all necessary steps to comply with the PCI DSS which is an information security standard for organizations that handle branded cards from the

major card schemes. PCI DSS is mandated by the card brands but administered by the Payment Card Industry Security Standards Council. The standard was created to increase controls around cardholder data to reduce credit card fraud.

J. WARRANTIES, REPRESENTATIONS AND ERRORS.

1. Representations Regarding Contract Authority, Information Provided and Compliance with Laws.

(a) Mutual Representations. Each party represents and warrants to the other party that:

(i) The execution, delivery and performance of the Master Agreement, Implementation Agreement and Separate Agreement(s), as applicable, are within its powers, have been duly authorized by all necessary action and do not contravene an applicable bylaw, charter law or contractual restriction;

(ii) no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the execution, delivery and performance of the Master Agreement, Implementation Agreement and Separate Agreement(s), as applicable; and

(iii) the Master Agreement, Implementation Agreement and Separate Agreement(s), as applicable shall constitute a legal, valid and binding obligation and is enforceable in accordance with the terms contained herein.

(b) Customer Representations. Customer represents and warrants to Bank that:

(i) all data and funds transfer requests initiated by Customer, whether by wire, ACH, RTP or otherwise, comply with all applicable Legal Requirements and do not include transmitting funds to, from, or on behalf of any person, business or country subject to U.S. sanction or which would in any manner violate applicable Law;

(ii) Customer has not been induced to enter any Service and/or Implementation Agreement based upon any representations or statements (oral or written), which are not expressly set forth in this Master Agreement, the Implementation Agreement and/or any Separate Agreement(s);

(iii) no data, information and/or documentation furnished by or on behalf of Customer in connection with a Service is inaccurate or incomplete in any material respect, nor does it contain any material misstatement of fact as of the date it is dated, or if not dated, the date it is given to Bank; and

(iv) the individual signing the Implementation Agreement on Customer's behalf is duly authorized by Customer.

2. Disclaimer of Warranties. Except as otherwise specifically stated in this Master Agreement or in a separate writing signed by Bank (including a Software license agreement, if any), all Software, Services and User Guides are provided **"as is"** and Bank makes no representations or warranties, express or implied, in law or in fact including, but not limited to, the implied warranties of fitness for a particular purpose and of merchantability, either to Customer or to any other party, person or entity. Bank makes no representations or warranties, nor shall Bank nor Bank Third-Party Providers have any liability, with respect to third-party products.

3. Errors. Customer acknowledges that it is not possible for the Services to be free of operator, program or equipment error and that errors in processing and compiling account data may occasionally occur, requiring adjustments. As such, Customer agrees to review and verify all results and to maintain adequate controls for ensuring both the accuracy of data transmissions and the detection of errors. Notwithstanding the foregoing:

(a) If the Service required Bank to provide Customer with a report and Customer notified Bank within thirty (30) days of receiving the report that it is not accurate, Bank may: (i) reimburse Customer the Fees Customer paid for the report; or (ii) when Bank, in its sole discretion,

determines it feasible to do so, correct the report and submit it to Customer. For clarification, a Designated Account statement is not a "report" for purposes of this **Section I.J.3(a)**.

(b) If Customer and the majority of customers using an internet-based Service are unable to access the Service during its regular operational hours for twenty-four (24) consecutive hours, Bank will give Customer credit, or reimburse Customer, for the Fees Customer paid in advance for the Service on a pro-rata basis if: (i) this inability was in no part due to any act, omission or failure caused by Customer, Customer's agent or other Customer Third-Party Provider; and (ii) this inability was not due to scheduled maintenance by Bank.

(c) The remedies set forth above in **Subsections I.J.3(a)** and **I.J.3(b)** constitute Customer's sole remedies, and Bank's sole obligations, in connection with errors or problems with any Service.

K. TERMINATION OF SERVICE; OTHER REMEDIES.

1. Termination by Customer with or without Cause. Customer may, at its option and with or without cause, terminate a Service upon discontinuing use of the Service and providing Bank with thirty-one (31) days' prior notice of termination. Customer may give Bank notice in writing or by telephone followed by a fax to the telephone number and fax number provided to Customer for that purpose in the User Guide for the Service.

2. Termination by Bank.

(a) Termination without Cause. Bank may, at its option and without cause, terminate this Master Agreement and/or any Service(s) upon giving notice to Customer in any manner Bank determines is most expeditious (e.g., by telephone, fax, email or regular mail). Termination of the Service shall be effective one (1) Business Day after the notice is delivered unless a later date is stated in the notice.

(b) Termination for Cause by Bank. Bank may, at its option, terminate this Master Agreement and/or any Service(s) for cause immediately upon written or oral notice for any of the following reasons:

(i) Customer is in default of any term of this Master Agreement, including, but not limited to, failure to maintain sufficient Available Funds to cover the transactions initiated through the use of a Service, including costs and expenses related to the Service, and Customer has no credit arrangement with Bank to cover the transactions;

(ii) Customer has failed to timely pay in full the Fees and Charges for any Service; or Customer is in default of the Deposit Contract, a loan or credit arrangement or other agreement with Bank and Customer has not cured the default within the applicable cure period, if any;

(iii) Bank determines that Customer or Customer Third-Party Provider does not meet Bank's qualification requirements for the applicable Service(s);

(iv) Customer ceases conducting business in the normal course, admits to insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization;

(v) Bank determines in its reasonable judgment that Customer has experienced a material adverse change in its financial condition or its ability to perform its obligations under this Master Agreement, Implementation Agreement and/or Separate Agreement;

(vi) Customer engages in an activity that Bank views in its reasonable judgment exposes Bank to a potential of negative impact on, or damage to, Bank's commercial reputation;

(vii) Customer is not the surviving successor in interest in a merger or acquisition or Customer acquires an entity that Bank determines is a competitor; and/or

(viii) Bank, in its sole discretion determines that a Service must be terminated due to a compromise, unauthorized access or other security breach;

(ix) Customer is in violation of Legal Requirements;

(x) Bank has been ordered by a regulator or court of law to discontinue providing the particular Service to Customer;

(xi) Bank's contract with a Third-Party Service Provider that is necessary for the performance of a Service is terminated; and/or

(xii) Customer has twelve (12) months or more of continuous inactivity and/or lack of access to Services.

(c) **Termination Without Notice by Bank.** Bank may terminate the applicable Services without notice in the event that (i) Customer's Designated Account(s) associated with the Service is/are closed; and/or (ii) Customer does not maintain at least one (1) deposit account at Bank.

3. **Rights and Obligations Following Termination.** Upon the termination of any Service:

(a) the rights and responsibilities of the Parties shall continue through any applicable settlement period, including Customer's responsibility to pay for the Service with respect to transactions processed prior to the effective date of termination and any other obligation that is owed regardless of the termination;

(b) Customer shall remove any Software provided by Bank from the systems on which it was installed and return to Bank any Software, related documentation and any other Bank property provided by Bank, or, if applicable, physically destroy the Software and related documentation and all copies, and provide Bank with a written certification from one of Customer's senior officers certifying the destruction and/or removal of such Software and related documents, upon request; and

(c) all Fees and Charges for Services rendered are immediately due and payable. Termination by Customer within six (6) months of implementation of any Service may result in an early termination Fee assessed by Bank to Customer. Termination by Customer of any Service without thirty-one (31) days' notice to Bank may also result in a Fee assessed by Bank to Customer. Early termination Fees are set forth in the Fee Schedule.

4. **Other Remedies.** If any of the events set forth in **Section I(K)(2)(b)** above shall have occurred, then, in addition to Bank's right to terminate this Master Agreement and/or any Service(s) as set forth in **Section I(K)(2)(b)** above, Bank may take any or all of the following actions, by notice to the Customer, at the same or different times:

(a) Suspend the provision of any Service to Customer until the cause for suspension has been cured, as determined by Bank in its sole discretion.

(b) Modify the terms of any Service;

(c) Require pre-funding of any transactions;

(d) Reduce any ACH credit limit or other limit applicable to a Service; and

(e) Exercise all rights and remedies available to it under this Agreement and applicable Laws.

Bank's exercise of any one or more of such remedies and/or continuance of any Service under this Agreement after the occurrence of any of the events set forth in **Section I(K)(2)(b)** above shall not constitute a waiver by Bank of its right to terminate this Agreement and/or any Service as set forth in **Section I(K)(2)(b)** above.

L. LIABILITY.

1. **Limitations of Liability.** Customer acknowledges that Bank has established the Fees for each Service in contemplation of the limitations on liability described in this Master Agreement. Except as stated otherwise in this Master Agreement, or as the Law may otherwise require, liability and the limitations on liability in regard to a Service, Software and this Master Agreement shall be as follows:

(a) Neither Bank nor Customer will be liable to the other for any consequential, special, punitive, incidental, exemplary, indirect loss or damage incurred or suffered in connection with any Service or Software, the Implementation Agreement or any Separate Agreement, including, but

not limited to, lost revenues, lost profits, loss of business or loss or damage, regardless of knowledge that such loss or damage might be incurred.

(b) Banks' liability, if any, to Customer relating to any Service, Software, the Implementation Agreement and/or any Separate Agreement shall be limited, to the maximum extent permitted by Law, exclusively to actual, foreseeable and provable damages Customer suffered arising directly from Bank's gross negligence or willful misconduct. If Bank has liability to Customer, such liability to Customer shall not exceed: (i) the amount of the Fees for the Service in connection with which Bank's liability arose for the twelve (12) month period prior to the events giving rise to the liability; or (ii) in the event that Customer does not pay Fees for the Service in connection with which Bank's liability arose, then \$100.

(c) Without limiting the generality of the foregoing provisions, neither Bank nor Customer shall be liable for breach of this Master Agreement or acting, failing to act or delay in acting if such breach, act, failure or delay was due to acts, omissions, events and/or circumstances outside of that party's reasonable control, including, but not limited to, any legal constraint (excluding constraint resulting from criminal conviction), interruption of transmission or communication facilities not controlled by the party failing to perform, equipment failure not caused by the gross negligence or willful misconduct of the party failing to perform, strike, lockout or other labor disturbance, war, emergency conditions, earthquake, fire, flood, acts of God, government action, regulatory action or circumstances beyond their reasonable control.

(d) Under no circumstances shall Bank be responsible for any act or omission of Customer or any other person or entity.

(e) For purposes of this **Section I.L.1**, all references to "Bank" shall mean Bank and/or all Bank Third-Party Providers.

2. **Time for Bringing Claims.** Any claim, action, suit or proceeding for damages arising out of or in connection with any Service or this Master Agreement must be brought within the one (1) year from the time the act or omission giving rise to the claim was known or should have been known. However, if the Designated Account is opened or deemed opened in Texas, the applicable limitations period will be two (2) years and one (1) day. Notwithstanding the foregoing, this time period shall not apply to any act or omission involving fraud by the party against whom the claim is being brought.

3. **Notification of Claims.** Customer agrees to immediately notify Bank of any claim by Customer, or any claim that is made to Customer by a third party, where an act or omission by Bank in connection with any Service has caused Customer or such third party to sustain any damages.

4. **Indemnification.** Customer shall Indemnify Bank in connection with: (a) Bank's providing of the Service(s) to Customer, in compliance with this Master Agreement and any applicable Implementation Agreement and/or Separate Agreement; (b) Customer's failure to comply with applicable Legal Requirements; (c) Customer's breach of any provision of this Master Agreement, including, but not limited to, any of the representations or warranties made by Customer in this Master Agreement; (d) any third-party claim that a Customer instruction or other Customer communication contravenes or compromises the rights, title or interest of any third party and/or contravenes any Legal Requirements, court order or other mandate or prohibition with the force or effect of Law, except to the extent the claim arises out of Bank's failure to exercise ordinary care, failure to act in good faith or failure to act in accordance with Customer's instruction or other communication; and/or (e) the tardiness, inaccuracy, incompleteness, content and/or inappropriateness of any data, information, documentation and/or instruction received from or on behalf of Customer.

5. **Cooperation in Loss Recovery Efforts.** In the event of any Losses for which either party may be liable to the other with respect to a Service, each party will undertake reasonable efforts to limit the amount of Losses to itself and to the other party, including but not limited to, undertaking reasonable efforts to cooperate with each other (as permitted by applicable Law) in performing Loss recovery efforts and aiding in the pursuit or defense of a claim against a third party.

M. NOTICES AND GENERAL COMMUNICATIONS.

Except as specifically addressed elsewhere in this Master Agreement, notices and general communications shall be given as follows:

1. **Notices to Bank.** Notices to Bank must be in writing and Customer must send them to Bank in the manner and to the street address or electronic address set forth in the User Guide(s) for the Service.

2. **Notices to Customer.** All notices Bank is required to send to Customer may be sent electronically (when available), or by U.S. mail, mailed from anywhere in the United States, to the last address in Bank's records. Customer must provide an electronic address for receipt of notifications required under this Agreement. Customer shall ensure that Bank has in its records the Customer's most recent street address, electronic address and phone number and that Customer promptly notifies Bank in writing (which includes by updating its profile on Comerica Business Connect™, when applicable) of any changes to this information. If Customer does not have access to Comerica Business Connect™, Customer will request updates be made to Comerica's customer database by contacting their assigned Relationship Manager or Banking Center Manager.

3. **Effective Time.** Notices are deemed given when emailed to the electronic address (or mailed to the applicable street address) as specified above.

4. **General Communications.** General communications that are not amendments to, or notices of termination of, any Service under this Master Agreement may be given by telephone, mail, email and electronic banner messages to Users of internet-based Services.

5. **Instructions.** Customer is responsible for the timeliness, accuracy, completeness, content and/or appropriateness of every instruction transmitted or otherwise communicated to Bank by or on behalf of Customer.

6. **Reliance.** Each party is entitled to rely on notices, instructions and communications received in writing, by electronic means or telephone from a person the recipient reasonably and in good faith believes is an authorized representative of the other party to give the type of notice, instruction or communication received. This right applies to oral notices, instructions and communications whether or not there is independent verification of the actual identity or authority of the person giving the oral notice, instruction or communication. Either party may request that an oral notice, instruction or communication be confirmed in writing, but failure to receive the confirmation will not invalidate the oral notice, instruction or communication. Bank has established procedures for receiving and acting upon oral notices, instructions and communications from its customers. Such procedures were established to ensure consistency in the interpretation of oral notices, instructions and communications from its customers and to ensure Bank provides consistent Services across its customer base. As a result, Bank's understanding and records of oral notices, instructions and communications from Customer shall be conclusive evidence of the actual notice, instruction or communication given, unless evidence to the contrary is presented.

N. GOVERNING LAW, JURISDICTION AND VENUE; REFERENCE PROCEEDING.

1. **Governing Law, Jurisdiction and Venue.** This Master Agreement, Implementation Agreement and/or Separate Agreement and each Service is governed and construed by applicable federal laws and regulations, and where not in conflict with federal law, the laws of the state where the Designated Account is opened or deemed opened, without regard to conflict of law principles. Any litigation arising out of this Master Agreement, Implementation Agreement and/or Separate Agreement shall be brought in a court of competent jurisdiction in the state whose law applies.

2. **Reference Proceeding.** This **Section I.N.2** applies only to Designated Accounts opened or deemed opened in the State of California. If the Designated Account is opened or deemed opened in the State of California, any controversy, dispute or claim regarding the Designated Account, the applicable Service and/or this Master Agreement shall be

resolved by a reference proceeding in accordance with the provisions of Sections 638, et. seq. of the California Code of Civil Procedure, or their successor sections, which shall constitute the exclusive remedy for the resolution of any such controversy, dispute or claim, including whether the dispute is subject to the reference proceeding. The referee in the reference proceeding: (a) shall hear and determine all issues, including but not limited to discovery disputes; (b) is empowered to enter equitable and legal relief, rule on any motion otherwise permissible under the California Code of Civil Procedure; and (c) may issue a decision disposing of all claims which shall be entered by the court as a final, binding and conclusive judgment, subject to appeal. A judicial reference proceeding is a trial decided by a court-appointed referee and not by a jury. Customer understands that without this agreement to submit controversies, disputes and claims for resolution by a reference proceeding, Customer may have a right to a jury trial on such matters, but Customer nevertheless agrees voluntarily to waive that right. Customer agrees that it has brought this provision to the attention of its legal counsel or has had the opportunity to do so.

O. MISCELLANEOUS TERMS.

1. Conflicting Terms.

(a) **Entire Agreement.** This Master Agreement (including any User Guides, Fee Schedules, the Implementation Agreement and any applicable Separate Agreement(s)) represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior oral or written representations, agreements, or other communications, relating to the subject matter of this Master Agreement. The provisions of the various documents that make up the treasury management relationship between Bank and Customer shall, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. However, in the event of a conflict among the agreement documents, the agreement documents will have the following order of precedence as to a Service, unless and only to the extent expressly provided to the contrary elsewhere: (i) this Master Agreement; (ii) the Implementation Agreement; (iii) a Separate Agreement(s), including addenda thereto; (iv) the User Guide(s); and (v) the Fee Schedule for the Service. The most recent Implementation Agreement and/or a Separate Agreement(s) for a Service which is signed or provided to Customer supersedes all prior agreements for the Service.

(b) **Other Agreements.** Customer and Bank will enter into the Implementation Agreement and may enter into other Separate Agreements in connection with the Services. Except as otherwise specified in a Separate Agreement, in the event of a conflict between this Master Agreement and such other agreements, the following terms shall apply:

(i) If the terms of this Master Agreement conflict with the terms of the Deposit Contract, the conflicting term in this Master Agreement shall prevail, but only to the extent of the conflict and only as to the applicable Service.

(ii) If the Service requires the use of Software, the terms of each Software license agreement that Bank provides to Customer shall supersede any conflicting terms regarding the Software and its use that are contained in this Master Agreement, if any.

(iii) If the Service requires Customer to enter into any other Separate Agreement, the conflicting terms in this Master Agreement shall prevail, but only to the extent of the conflict.

2. **Severability.** To the extent possible, each provision of this Master Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision shall be held to be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without rendering invalid, illegal or unenforceable the remainder of any such provision or the remaining provisions of this Master Agreement.

3. **Waiver.** A waiver by either Bank or Customer of any term or provision in this Master Agreement shall not be construed as a waiver of such term or provision at any other time or in any other document.

4. **Assignment.** Customer may not assign or transfer Customer's rights or obligations under this Master Agreement without Bank's prior written consent. Bank will give Customer thirty (30) days prior notice if by contract Bank assigns Bank's rights and obligations under this Master Agreement to a third party who is not Bank's Affiliate. Such notice is not required if the assignment is a result of operation of law due to merger or acquisition if Bank is not the surviving entity/successor.

5. **No Third-Party Beneficiaries.** No other person or entity shall be deemed to be a third-party beneficiary of this Master Agreement.

6. **Headings.** The section headings in this Master Agreement are intended to be for reference purposes only, and shall in no way modify or restrict any of the terms or provisions of this Master Agreement.

7. **Liability for Attorney Fees and Court Costs.** Except as otherwise expressly provided in this Master Agreement, neither party shall be liable to the other for any attorney fees or court costs related to a claim brought in regard to a Service, Software or under this Master Agreement.

8. **Electronic Signature.** Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of the Implementation Agreement, any applicable Separate Agreement(s) and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. This Master Agreement, the Implementation Agreement and any applicable Separate Agreement(s), any other document necessary for the consummation of the transaction contemplated by this Master Agreement, the Implementation Agreement and any applicable Separate Agreement(s) may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on each party as if it were physically executed.

P. JURY TRIAL WAIVER. CUSTOMER AND BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. CUSTOMER AND BANK, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF CONTROVERSY, DISPUTE, CLAIM OR LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MASTER AGREEMENT, THE DESIGNATED ACCOUNT, THE SERVICES, THE IMPLEMENTATION AGREEMENT AND/OR ANY SEPARATE AGREEMENT.

Section II: Provisions Applicable to Specific Services.

By signing an Implementation Agreement with any of the following Services selected or by using any of the following Services, Customer agrees to the terms and conditions for each such Service as set forth below.

Access Methods. Some Services require an Access Method to use the Service. Instructions for accessing the Access Method and the Service are more fully described in the User Guides for the Access Method and the Service. By using a Service that requires an Access Method, Customer agrees to the Service Terms for the Access Method that Customer uses to access the Service and such Service Terms for the Access Method are automatically incorporated into and made a part of the Service Terms for the selected Service.

Alerts. Some Services allow Customer to elect to receive electronic notifications ("Alerts") as an optional feature. All Alerts are subject to the Service Terms for the Treasury Alerts Service and the applicable fees set forth in the Fee Schedule. Customer must select the Treasury Alerts Service in the Implementation Agreement to receive Alerts. The types of electronic notifications that a Customer will receive will be mutually agreed to by Bank and Customer.

A. ACCESS METHODS

August 21, 2023

1. **Comerica Business Connect™ Service.** Comerica Business Connect™ Service is an online portal that provides customers with secure access to their internet based services.

(a) **Services Available Through Comerica Business Connect™.** Comerica Business Connect™ is an Access Method. Customer will only be able to use Comerica Business Connect™ to access the Services available through Comerica Business Connect™ for which Customer has executed an Implementation Agreement and/or Separate Agreement as required by Bank.

(b) **Authorization to Store, Process, Transmit and Make Available.** Bank is authorized to store, process, transmit and make available through Bank's agencies and systems, third-party financial institutions and through Third-Party Providers, information regarding accounts and transactions designated by Customer in connection with a Service.

(c) **Service Availability and Maintenance.** Comerica Business Connect™ and Services accessible through Comerica Business Connect™ will generally be available during the hours described in the User Guides and online screen instructions for Comerica Business Connect™ and the applicable Service. Notwithstanding any provisions in this Master Agreement to the contrary, Bank reserves the right to change the hours without prior notice. Bank does not guarantee that access will be available at all times during the published hours. Access may be interrupted due to scheduled or unscheduled maintenance, or unforeseen circumstances. If Bank deems practical, Bank will provide advance notice on Comerica Business Connect™ of scheduled maintenance.

(d) **Next Business Day.** Customer understands and agrees that certain information and transactions are not processed by Bank until after the close of the Business Day and therefore such information and transactions may not be reported until the next Business Day.

(e) **Accuracy of Customer Information.** Only Customer's designated User(s) for a Service will have the ability to transmit information to Bank using that Service. Customer represents and warrants that all information provided to Bank by its designated Users will be accurate and complete. Customer accepts full responsibility for the accuracy of all such information.

(f) **Use Limitations.** Customer represents and warrants to Bank that Customer: (i) will use Comerica Business Connect™ solely to conduct Customer's business; and (ii) will limit access to Comerica Business Connect™ to those Customer employees who require access to perform their jobs. Any orders, instructions or other communications received by Bank via Comerica Business Connect™, using the Security Procedures applicable to Comerica Business Connect™, will be deemed by Bank as received from Customer.

(g) **Limitation of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, the following limitations apply. Customer agrees that Bank and Third-Party Providers will not be liable for any Losses arising, directly or indirectly, in whole or in part, from any:

(i) inaccurate or incomplete data in the input of an order, instruction or other communication by Customer, or Customer's failure to format any such order, instruction or communication as required by Bank;

(ii) failure by Customer to obtain a confirmation or rejection of an order or instruction;

(iii) cancellation or attempted cancellation by Customer of an order or instruction;

(iv) errors or omissions resulting from Bank's conversion of an order or instruction received from Customer or any Third-Party Provider;

(v) inaccurate or incomplete information received from Customer, another financial institution, or a Third-Party Provider;

(vi) temporary interruptions in Bank's or any other entity's information systems;

(vii) inability to access Comerica Business Connect™, or a Service accessible through Comerica Business Connect™, through the use of the internet or other communications delivery systems; or

(viii) unauthorized use of Comerica Business Connect™, or a Service accessible through Comerica Business Connect™, by Customer or its officers, employees, or third-parties.

2. **Comerica Treasury Payments®**. Comerica Treasury Payments® is an online application that provides Internet-based tools allowing customers access to various services.

(a) **Services Available Through Comerica Treasury Payments®.** Comerica Treasury Payments® is an Access Method. Customer will only be able to use Comerica Treasury Payments® to access the Services available through Comerica Treasury Payments® for which Customer and Bank have signed an Implementation Agreement and/or Separate Agreement.

(b) **Access.** Access to Comerica Treasury Payments® is through Comerica Business Connect™ or Comerica Treasury Mobile®. By using Comerica Treasury Payments® through Comerica Business Connect™ or Comerica Treasury Mobile®, Customer agrees to the Service Terms for such applicable Service, which are incorporated into the Service Terms for Comerica Treasury Payments® by this reference.

(c) **Use Limitations.** Customer represents and warrants to Bank that Customer: (a) will use Comerica Treasury Payments® solely to conduct Customer's business; and (b) will limit access to Comerica Treasury Payments® to those Customer employees who require access to perform their jobs. Customer is responsible for providing instructions to Bank, other financial institutions and any Third-Party Provider who will input account information into Comerica Treasury Payments® or process orders or instructions. Any orders, instructions, or other communications received by Bank via Comerica Treasury Payments®, using the Security Procedures applicable to Comerica Treasury Payments®, will be deemed by Bank as received from Customer.

(d) **Limitation of Liability.** Notwithstanding anything in the Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**, the following limitations apply. Customer agrees that Bank and Bank Third-Party Providers will not be liable for any Losses arising, directly or indirectly, in whole or in part, from any:

(i) inability to access Comerica Treasury Payments®, or a Service accessible through Comerica Treasury Payments®, through the use of the internet or other communications delivery systems; or

(ii) unauthorized use of Comerica Treasury Payments®, or a Service accessible through Comerica Treasury Payments®, by Customer or its officers, employees, or third parties.

3. **Comerica Treasury Mobile®.** Comerica Treasury Mobile® ("Treasury Mobile") is a mobile application that provides customers with access to their internet-based treasury management services via mobile devices.

(a) **Services Available Through Treasury Mobile.** Treasury Mobile is an Access Method. Not all Services are available through Treasury Mobile. If a Service is available through Treasury Mobile, Customer will only be able to use Treasury Mobile to access that Service if: (a) Customer receives the Service from Bank through Comerica Business Connect™; (b) Customer has signed an Implementation Agreement and/or Separate Agreement accepting the Service Terms for the Service; and (c) Customer elects to access the Service through Treasury Mobile.

(b) **Access.**

(i) **Instructions.** Instructions for accessing Treasury Mobile are more fully described in the applicable User Guides for Treasury Mobile, including the Comerica Business Connect™ User Guide and the Comerica Business Connect™ Customer Administration Tool User Guide.

(ii) **Mobile Users.** Customer shall designate to Bank, in the manner described in the applicable User Guide, Implementation

Documents and/or online screens, individuals to be given access to Treasury Mobile (each such individual is a "Mobile User") and each Designated Account and Service to be accessed by Mobile Users through Treasury Mobile. All Mobile Users must be Users of Comerica Business Connect™. If Bank, in its discretion, approves Customer's use of Treasury Mobile, Mobile Users will be able to access Treasury Mobile using their Codes for Comerica Business Connect™. Mobile Users must agree to additional terms and conditions to be granted access to Treasury Mobile. Customer has sole responsibility for each Mobile User's use of Treasury Mobile. Any orders, instructions or other communications received by Bank via Treasury Mobile, using the Security Procedures applicable to Treasury Mobile, will be deemed by Bank as received from Customer. Customer may disable a Mobile User from access to Treasury Mobile in the manner described in the applicable User Guide, Implementation Documents and/or online screens.

(iii) **User's Access Limitations.** A Mobile User must have Customer's permission to access a Designated Account, Service and/or function through Comerica Business Connect™ in order to be permitted access to such Designated Account, Service and/or function through Treasury Mobile. In addition, the extent of a Mobile User's access to Designated Accounts, Services and functions cannot exceed the extent of such Mobile User's access to Designated Accounts, Services and functions through Comerica Business Connect™.

(iv) **General Access Limitations.** Not all Services, products, features or functions that are accessible to Customer or to a User through Comerica Business Connect™ will be available to Customer or to a Mobile User through Treasury Mobile. In addition, the type and quantity of information accessible through a Service via Treasury Mobile may differ from the type and quantity of information accessible through a Service via Comerica Business Connect™.

(c) **Mobile Devices.**

(i) **Compatibility.** Treasury Mobile is not available on all mobile devices. It is Customer's responsibility to communicate to Mobile Users the types of mobile devices that are compatible with Treasury Mobile. Bank shall have no responsibility or liability for any issues relating to the operation, performance and/or Charges associated with Mobile Users' mobile devices.

(ii) **Loss or Theft.** If a mobile device used to access Treasury Mobile has been lost, stolen or compromised in any manner, Customer shall immediately notify Bank's Treasury Management Relationship Services at the phone number set forth in the Customer Administration Tool User Guide and immediately disable the applicable Mobile User's access to Treasury Mobile as further described in the applicable User Guide(s).

(d) **Service Availability and Maintenance.**

(i) The availability of a Service accessible through Treasury Mobile will be subject to the availability of that Service as stated in the User Guide(s) and screen instructions for the applicable Service.

(ii) Treasury Mobile and/or Software may not be available, or may be delayed or impacted, at any time for any reason outside of Bank's reasonable control (such as, but not limited to, telecommunication failure, fire, flood, or interference from an outside force) or that of any Bank Third-Party Service Provider. Bank shall not be liable for any claim, loss or damage arising from or related to Treasury Mobile caused by or arising out of any such unavailability or delay or any non-delivery, misdirected delivery or mishandling of, or inaccurate content in, information and instructions sent through Treasury Mobile.

(e) **Accuracy of Customer Information.** Only authorized Mobile Users for a Service will have the ability to transmit or view information through Treasury Mobile using that Service. Customer represents and warrants that all information provided to Bank by its designated Mobile Users will be accurate and complete. Customer accepts full responsibility for the accuracy of all such information.

(f) **Verification of Transaction Status.** Customer shall have sole responsibility for verifying that any payment order, payment approval,

template, deposit and/or other transaction a Mobile User requests (“**Mobile Request**”) using Treasury Mobile has been received, executed and/or otherwise processed by Bank. Customer can verify the status of a Mobile Request on a computer through the applicable Service within Comerica Business Connect™ or on a mobile device through Treasury Mobile. If a transaction status does not reflect that Bank has received, executed and/or otherwise processed a Mobile Request, as applicable, Customer shall contact Bank for assistance with correcting and/or completing the Mobile Request. Bank shall not be liable for failing to execute a payment order or for otherwise failing to process any other type of Mobile Request when the status of such Mobile Request did not reflect that it had been received, executed and otherwise processed by Bank, as applicable.

(g) **Use Limitations.** Customer represents and warrants to Bank that Customer and each Mobile User: (a) will use Treasury Mobile solely to conduct Customer’s business; and (b) will limit access to Treasury Mobile to those Customer employees who require access to perform their jobs.

(h) **Communications Service Provider Charges.** Customer’s and/or a Mobile User’s communications service provider for Customer’s and/or a Mobile User’s mobile device may impose extra Charges in order to make such mobile device data-capable and to exchange data between Customer’s mobile device and Treasury Mobile. Bank is not responsible for any Charges imposed by any communications service provider.

(i) **Updates.** From time to time, Bank may revise or update Treasury Mobile, Software and/or related material, which may render all prior versions obsolete. If required or requested by Bank, Customer agrees to require Mobile Users to download updated Software in order to continue using Treasury Mobile.

(j) **Notices.** Customer agrees to receive notifications related to Treasury Mobile by electronic or paper means at Bank’s discretion. Bank may rely on the email address and/or postal address Customer provides to Bank for sending notifications. Customer is deemed to have received the notification on the day Bank sends the notification to the email address or postal address provided, as applicable. It is Customer’s responsibility to: (a) update, change or delete any email address(es), postal address(es) or other contact information Customer has provided to Bank in the online administration tool available to Customer’s Administrator through Comerica Business Connect™ (“**Customer Administration Tool**”); (b) ensure that any of Customer’s internal email delivery restrictions support receipt of Bank’s notifications; and (c) to review notifications in a timely manner. Only Customer’s Administrator(s) may update Mobile User information in the Customer Administration Tool.

(k) **Disclaimer of Warranties.** For clarification, the disclaimer of warranties in **Section I.J.2. of this Master Agreement**, extends to Treasury Mobile. Bank does not warrant: (a) against interference with Mobile Users’ use of Treasury Mobile; (b) that the functions contained in, or Services performed or provided by or through, Treasury Mobile, will meet Mobile Users’ and/or Customer’s requirements; (c) that the operation of Treasury Mobile will be uninterrupted or error-free; (d) that defects in Treasury Mobile will be corrected; or (e) that Mobile Users’ mobile devices will not be damaged by Treasury Mobile.

(l) **Limitation of Liability.** Notwithstanding anything in the Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, the following limitations apply. Customer agrees that Bank and Bank’s Third-Party Providers will not be liable for any loss or damage arising, directly or indirectly, in whole or in part, from any:

(i) inability to access Treasury Mobile, or a Service accessible through Treasury Mobile, through the use of a mobile device or any communications delivery systems; or

(ii) unauthorized use of Treasury Mobile, or a Service accessible through Treasury Mobile, by Customer, a Mobile User, or any officer, employee, agent or third party.

B. ANALYTICS AND INFORMATION MANAGEMENT SERVICES

1. **Adjustment Reporting Service.** Comerica’s Adjustment Reporting Service (“**Adjustment Reporting Service**”) through Comerica Business Connect™ is an electronic service that allows Image Cash Letter Deposit Service customers to access daily adjustment information for each adjustment to a check charged against the customers’ designated accounts.

(a) **Access.** The Adjustment Reporting Service is accessible through Comerica Business Connect™. By using the Adjustment Reporting Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for the Adjustment Reporting Service by this reference.

(b) **Image Deposit Service.** The Adjustment Reporting Service is also subject to the terms of Image Services and Cash Letter Deposit Services as set forth in this Master Agreement. By using the Adjustment Reporting Service, Customer also agrees to the Service Terms for Image Services and Cash Letter Deposit Services, which are incorporated into the Service Terms for the Adjustment Reporting Service by this reference.

2. **Comerica Integrated Cash Position Manager® Service.** Comerica Integrated Cash Position Manager® Service (“**ICPM Service**”) provides customers access to information related to their Comerica bank accounts and other Comerica Treasury Management Services such as balance reporting, account transfer, ACH initiation and wire transfer initiation.

(a) **Access.** Customer will access the ICPM Service through Comerica Business Connect™. By using the ICPM Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into and made a part of the Service Terms for the ICPM Service by this reference.

(b) **ICPM Service Generally.**

(i) **Data from Comerica Treasury Information Reporting® Service.** Data from Designated Account balances and transaction information from other Services Customer obtains from Bank is populated from Comerica Treasury Information Reporting® Service. By using the ICPM Service, Customer agrees to the Service Terms for the Comerica Treasury Information Reporting Service® and each other Service used in connection with the ICPM Service. All such Service Terms are incorporated into and made a part of the Service Terms for the ICPM Service by this reference.

(ii) **Data from Other Sources.** Customer may also add its own data and information to the ICPM Service worksheets.

(c) **Information About Non-Deposit Accounts At Bank.** Information about accounts other than Customers’ deposit accounts at Bank, (e.g. loan accounts at Bank and bank accounts at other financial institutions) may be accessible through the ICPM Service, subject to other applicable Service Terms and Separate Agreement(s).

(d) **Standard Worksheets.** Bank provides standard worksheet templates for use with the ICPM Service. In addition, Customer may design worksheets to meet its specific business needs and/or import existing spreadsheet formats, adding definitions to ensure standardized reporting.

(e) **Custom Worksheets.** As an ICPM Service option and subject to additional Fees, Customer may engage Bank to (i) provide consulting services to assist the Customer to create custom worksheet templates (“**Custom Worksheets**”) for use with the ICPM Service (“**ICPM Consulting Service**”) or (ii) create Custom Worksheets for Customer (“**Programming Services**”). If Customer requests Custom Worksheet Services, Customer agrees to the following terms and conditions for the applicable services:

(i) **Consulting Services.** ICPM Consulting Services are provided on an hourly basis at the hourly rate set forth in the Fee Schedule. Customer and Bank shall agree in writing (email acceptable) on the number of ICPM Consulting Services hours to be provided to Customer.

(ii) **Programming Services.**

(A) **Specifications.** Customer and Bank shall agree in writing (email acceptable) regarding the following: the number of Custom Worksheets to be created by Bank, the specifications for each Custom Worksheet, and the form of Custom Worksheets (collectively, the "**Specifications**"). Bank will advise the Customer of the estimated development time, delivery timeframe and development costs for the Custom Worksheets. Bank will contact Customer for written approval (email acceptable) if the actual development time, delivery timeframe and development cost are expected to exceed the estimates provided. The Parties intend that the Custom Worksheets are provided as a Service, as defined under this Master Agreement, and not as products or goods.

(B) **Preparation by Bank.** Bank shall prepare the Custom Worksheets in accordance with the Specifications and provide the Custom Worksheets to Customer for review through the ICPM Service. Bank shall notify the Customer by email when Custom Worksheets are ready for review.

(C) **Review by Customer.** Customer will have fourteen (14) days from the date Bank provides notification that a Customer Worksheet is ready to either accept or reject each Custom Worksheet by responding accordingly to Bank's email notification of the Custom Worksheets' availability for review. Acceptance of the Custom Worksheet shall automatically occur on the fifteenth (15th) day after it is available for review if the Customer does not reject or accept the Custom Worksheet before then.

(D) **Revision and Re-review.** If the Customer rejects the Custom Worksheet before the fifteenth (15th) day, Bank shall contact Customer to review the Specifications and the Customer's reason for rejection. Bank shall, within twenty-one (21) days, either agree that it can cure the defects, or advise Customer that it cannot. If Bank agrees that it can cure the defects, it shall have twenty-one (21) days to cure, re-post Custom Worksheets for acceptance or rejection and notify the Customer of its availability for review. The review period will then begin again as described in **Section 5.2(c).** above. If no defects exist, but Customer has determined that it requires modifications to the Specifications, Bank may accept a written (emails acceptable) change order request to the scope of work and advise Customer of any additional charges for the change order and the approximate date it will be available for review, or Bank may reject the request and Customer shall pay the amount owed for the Custom Worksheets previously provided by Bank that met the original scope of work Specifications.

(E) **Termination.** If Customer terminates a request for Custom Worksheets prior to the delivery date of the Custom Worksheets, Customer agrees to pay Bank for work performed.

(f) **Reporting Tools.** ICPM Service provides several reporting tools that can be used to assist with managing cash positions. Reporting tools are described in the ICPM Service User Guide.

(g) **Self-Service Tools Including Security Tools.** ICPM Service provides on-line self-service tools that eliminate the need to utilize traditional bank channels to facilitate immediate User set-up. In addition, a tool contained within the ICPM Service, allows Customer's Comerica Business Connect™ Administrator to establish entitlements for each User.

3. **Dealer Access System Service.** Comerica's Dealer Access System Service ("**DAS Service**") is an electronic service that provides dealer customers with daily information regarding their floor plan status and allows them to initiate various types of transactions. The DAS Service enables dealers to obtain balance and transaction information for their accounts twenty-four (24) hours a day, seven (7) days a week. Information is available through the internet. The DAS Service also allows the dealer customers to initiate loan requests, pay off loans on specific vehicles, pay off items (interest, curtailments, fees) billed on the month end statements,

make transfers between equity accounts, review the status of requests, and print various reports.

(a) **Access.** The Dealer Access Service is accessible through Comerica Business Connect™. By using the Dealer Access Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for the Dealer Access Service by this reference.

4. **Funds Transfer Wire Advice Service.** Comerica's Funds Transfer Wire Advice Service ("**Wire Advice Service**") permits customers to receive electronic notifications of completed incoming funds transfers on their designated Comerica accounts.

(a) **Access.** The Wire Advice Service is accessible through Comerica Treasury File Reporting® Services. To use the Wire Advice Service, Customer must receive Comerica's Reporting Services. By using the Wire Advice Service through Comerica Treasury File Reporting® Services, Customer agrees to the Service Terms for Comerica's Reporting Services, which are incorporated into the Service Terms for the Wire Advice Service by this reference.

(b) **Funds Transfer Wire Advice.** Bank will provide electronic notifications of completed funds transfers made using the Wire Advice Service via a Bank-defined file format as agreed upon by Customer and Bank.

(c) **Limitation of Liability.** The Wire Advice Service is provided as a convenience to Customer only. Customer may not in any event rely on the receipt, expected receipt or lack of receipt of any electronic notification under this Wire Advice Service. Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**, Bank shall not be liable for: (a) any events arising out of Customer's reliance on the electronic notifications received through this Wire Advice Service; (b) any failure to provide an electronic notification through the Wire Advice Service; (c) any delay in providing an electronic notification through the Wire Advice Service; or (d) the accuracy of an electronic notification provided through the Wire Advice Service.

5. **Image Services.** Comerica's Image Services ("**Image Services**") provide images of checks/deposit tickets, deposited items on designated bank account(s), coupons, invoices and corresponding remittance documents which are delivered to or made available to customers by CD ROM or file transmission. Customers elect the desired combination of these Image Services during service implementation. Specific features of each of these image and delivery options are described in the User Guide for the selected Image Service.

(a) **Incompatible Items.** Bank may reject any and all items for the Image Services which Bank, in its sole discretion, determines are incompatible for imaging and/or processing for the Image Services.

(b) **Billing.** Customer agrees that Bank's count of items imaged and/or processed is final for billing and all other purposes.

(c) **Image Options.** Customer shall make its initial election of items to be imaged during implementation of Image Services. Image options are described in the User Guide(s) for Image Services.

(d) **Delivery Options.** Customer may select to receive the Image Services by CD ROM, Comerica Business Connect™ or file transmission.

(i) **Images on CD ROM.** If Customer elects to receive images on CD ROM, Customer must use Bank's Image Services Software which Bank will provide to Customer. Bank will generally mail the CD ROM to Customer within fourteen (14) days following the applicable account statement cycle or receipt of all input transmission files through the Account Reconciliation Plan Service. Customer will, within fourteen (14) days from the day Bank mails the CD ROM, examine it and notify Bank of any errors or unreadable images. This duty is in addition to the duty of Customer to review its paper account statement for the account in a timely manner as set forth in the Deposit Contract.

(ii) **Images via Comerica Business Connect™.** If Customer elects to receive images via Comerica Business Connect™, Customer

agrees to the Service Terms for Comerica Business Connect™ which are incorporated by reference into the Service Terms for Image Services.

(iii) **Images via File Transmission.** Some Image Services require use of Software. If Customer elects to receive images through the file transmission, Customer may be required to use the Image Services Software which Bank provides for viewing the images.

(e) **Limitation of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, Bank's liability to Customer for the Image Services shall be limited, at Bank's option, to: (a) refund the Fees paid for unreadable images; (b) reproduce the applicable CD ROM; or (c) reproduce only unreadable images. Customer agrees that Bank will have no liability to Customer if it fails to report any errors or unreadable images within fourteen (14) days of Bank mailing the CD ROM to Customer.

(f) **Termination.** Notwithstanding any provision to the contrary contained elsewhere in this Master Agreement, in the event Customer or Bank terminates the Image Services, Customer may continue to use the Image Services Software; provided, Bank shall have no obligation and will not provide support, maintenance, upgrades, or enhancements of any kind to Customer.

6. **Incoming Data Exchange Service for Non-Comerica Accounts.** Comerica's Incoming Data Exchange Service for Non-Comerica Accounts ("Incoming Data Exchange Service") provides customers with account information related to their non-Comerica accounts.

(a) **Access.** The Incoming Data Exchange Service is accessible through Comerica Treasury Information Reporting® and Comerica Treasury File Reporting® Services. To use the Incoming Data Exchange Service, Customer must receive Comerica's Reporting Services. By using the Incoming Data Exchange Service through Comerica Treasury Information Reporting® and/or Comerica Treasury File Reporting® Services, Customer agrees to the Service Terms for Comerica's Reporting Services, which are incorporated into the Service Terms for the Incoming Data Exchange Service by this reference.

(b) **Incoming Data Exchange Service Generally.**

(i) **Accounts.** Customer shall designate in writing one or more Customer bank accounts at other financial institutions ("Non-Comerica Designated Account") for use in conjunction with the Incoming Data Exchange Service, and provide the account number for each such Non-Comerica Designated Account. Bank will set up the Incoming Data Exchange Service to allow for use with each Non-Comerica Designated Account that Bank determines is eligible for use with the Incoming Data Exchange Service. The eligibility of a Non-Comerica Designated Account for use with the Incoming Data Exchange Service shall be determined by Bank in its sole discretion. Any changes to the Non-Comerica Designated Account requested by Customer must be sent to Bank in writing.

(ii) **Provision of Information.** Bank will provide Customer with information regarding Customer's Non-Comerica Designated Account on a periodic basis via balance reporting. Bank has no obligation to reformat any such information.

(c) **Balance Reporting.** The Incoming Data Exchange Service will enable Customer to view prior day and current day reports.

(i) **Prior Day.** Bank will provide information about Customer's Non-Comerica Designated Account from the financial institution's previous business day.

(ii) **Current Day.** Customer may elect to receive information about Customer's Non-Comerica Designated Account as updated by the financial institution throughout its business day.

7. **Loan Management Service.** The Comerica Loan Management Service ("Loan Management Service") allows borrowers to request drawdowns in order to obtain advances against certain of Customer's designated commercial credit facilities ("Designated Loans") with Comerica, select certain permitted interest rates, and make payments on

their Designated Loans via the internet, as well as to obtain history information about the Designated Loans.

(a) **Access.** The Loan Management Service is accessible through Comerica Business Connect™. By using the Loan Management Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for the Loan Management Service by this reference.

(b) **Authorized Representative.** Customer authorizes its Administrator to request, in writing, additions and deletions of Designated Accounts and Designated Loans that can be used with this Loan Management Service; provided, however, the decision as to whether a particular commercial credit facility of Customer with Bank may be a Designated Loan, and therefore available for the Loan Management Service, shall be at Bank's sole discretion. Customer represents, warrants and agrees that any person given authority through the use of the Customer's Administrator's log-in credentials to access the Loan Management Service on behalf of Customer shall be authorized to do so.

(c) **Loan Documents.** Customer acknowledges and agrees that the Designated Loans to which the Loan Management Service relates shall be expressly subject to the terms and conditions of each of the underlying loan documents evidencing, governing, securing or otherwise relating to such Designated Loans (collectively, the "Loan Documents"); and Customer agrees to abide by all terms and conditions of the Loan Documents. Any fees imposed as a result of conditions of the underlying Loan Documents are separate and distinct from those Fees and Charges imposed for this Loan Management Service.

(d) **Loan Advances, Payments and Rate Options.** In addition to the terms and conditions of the applicable Loan Documents, use of the Loan Management Service to request payments, drawdowns/advances, select interest rate options (if applicable) under or in respect of a Designated Loan shall be in accordance with the User Guide for the Loan Management Service. Without limiting the generality of the foregoing, Customer expressly acknowledges and agrees that, subject to the terms and conditions of the applicable Loan Documents, Bank may refuse or decline to make or fund any payment, drawdown or advance under a Designated Loan, notwithstanding any course of conduct or course of dealing.

(e) **Loan Payments.** Customer is responsible for scheduling payments in a timely manner to ensure full and timely payment is made on its loans, including, without limit, any Designated Loans, in accordance with the Loan Documents. Payments will be applied to Customer's Designated Loans in accordance with the applicable Loan Documents. All payments upon, or in respect of, any Designated Loans are to be against Available Funds. Customer shall remain fully liable and responsible for any amounts remaining unpaid and outstanding under or pursuant to the Loan Documents if the Available Funds are insufficient for the repayment in full of such amounts.

(f) **Transaction Timing.** Transactions or requests received outside of the hours stated in the User Guide for the Loan Management Service or on Saturdays, Sundays or Bank holidays, will be deemed received by Bank on the next Business Day.

(g) **Limitation of Liability.** Notwithstanding anything in the Service Terms for the Loan Management Service to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, Bank shall never have liability to Customer for Bank's failure to act on a transaction or request received through the Loan Management Service if Customer does not have sufficient loan availability for a requested drawdown/advance, does not have sufficient Available Funds in the Designated Account for a loan payment, or if any conditions of any of the Loan Documents shall not have been satisfied. Further, Bank shall never have liability for requests that it does not receive or that are incomplete.

(h) **Indemnification.** Notwithstanding anything in the Service Terms for the Loan Management Services to the contrary, Customer acknowledges and agrees that use of the Loan Management Service shall be for Customer's convenience and all risks involved in the use of such procedure shall be borne by Customer, and Customer expressly agrees to Indemnify Bank therefor, except to the extent of Bank's gross negligence

or willful misconduct; provided, however, in no event shall Bank's liability for failing to timely apply payments received through the Loan Management Service exceed the amount of Fees and interest paid/accrued that would not have otherwise accrued had payment been timely applied.

(i) **Conflicting Language.** To the extent that any provision in the Service Terms for the Loan Management Service conflict with or are inconsistent with any provision set forth in any Loan Document(s), the conflicting provisions in the Loan Document(s) shall govern and control.

8. **Mortgage Warehouse Service.** The Mortgage Warehouse Service provides customers with a database used to track their Comerica mortgage warehouse revolving loan or repurchase facility ("Facility"), the mortgage loans funded by the Facility and proceeds from the sale, securitization or other disposition thereof (collectively, "Collateral"), and advances and repayments of the Facility; automatically generates end of day reports; and allows customers to:

- Search for records and run reports;
- Submit funding requests, shipping requests and loan payment details;
- Monitor queues for information, status, Collateral and/or monetary transactions that may or may not require further action;
- Add Collateral, advance on their Facility, and enter outgoing wire funding requests via the Collateral Add Import Template;
- Review incoming wires, attach purchase advice(s) to incoming wire's Funding ID, and provide payment detail via the Payment Import Template;
- Authorize funding requests; Attach .pdf files of documents required by Comerica to collateral IDs;
- Provide Collateral shipping instructions, including legal endorsement instructions, via the Shipping Import Template;
- Provide Bank with instructions for the allocation, application, distribution or other disposition of Collateral from time to time; and
- Provide Bank with other instructions related to the administration of the Facility and Collateral.

(a) **Definitions.**

(i) **Advance Account:** Customer's deposit account at Bank, established for use with the Mortgage Warehouse Service, and used for advances from the Facility and Funding Orders made pursuant to the Service Terms for the Mortgage Warehouse Service. The Advance Account is the default account for Funding Orders.

(ii) **Authorizing Resolution:** The resolutions of the members, board of directors or partners, as applicable, of the Customer certified to Bank which, among other things, authorize one or more Contract Signers, and designate one or more MWS Administrators, which resolutions have been furnished by Customer to Bank, as such resolutions may be updated and/or modified from time to time on written notice to Bank.

(iii) **Contract Signer:** An individual or entity authorized in an Authorizing Resolution to negotiate and procure the Facility from Bank on behalf of the Customer and to execute Loan Documents.

(iv) **Execute:** To carry out a Funding Order to completion. If Bank is also the beneficiary's bank, the term "**Execute**" includes Bank's acceptance of Customer's Funding Order for purposes of the Service Terms for the Mortgage Warehouse Service and of the application of UCC 4A to the transaction.

(v) **Funding Order:** Customer's instruction received and approved by Bank: (a) that is processed through the use of the Mortgage Warehouse Service, and verified in accordance with the Security Procedure; (b) that orders Bank to pay, or causes another institution to pay, a fixed or determinable amount of money to a beneficiary via wire

transfer, whether or not the beneficiary is a third party; and (c) for which Bank is to be reimbursed.

(vi) **Funds Transfer:** The series of transactions, beginning with Customer's request for a Funding Order, made for the purpose of making payment to the beneficiary of the Funding Order (including, if applicable, any subsequent action by a party or third party that may result in further action with respect to the Funding Order), through the acceptance of the Funding Order by the beneficiary's bank for the benefit of the beneficiary of the Customer's Funding Order.

(vii) **Funds Transfer Business Day:** Any Business Day, between the hours communicated to Customer by Bank for the Mortgage Warehouse Service.

(viii) **General Operating Account:** Customer's general purpose deposit account at Bank. Uses of the General Operating Account with the Mortgage Warehouse Service include deposit of proceeds from the sale, securitization or other disposition of Collateral (after repaying fundings from the Facility with respect thereto) pursuant to the Loan Documents; debits for amounts owed by Customer to Bank under the Loan Documents; and credits for payments in excess of the amount required or debits for any shortfall in the required repayment amount.

(ix) **Loan Documents:** The underlying documents evidencing, governing, securing or otherwise relating to the Facility of the Customer to which the Mortgage Warehouse Service relates including but not limited to the Authorizing Resolution.

(x) **Mortgage Warehouse Business Support Specialist:** The individual Bank designates as the Customer's contact for day- to-day operational activities and issues related to the Mortgage Warehouse Service.

(xi) **MWS Administrator:** An administrator designated by Customer in an Authorizing Resolution with authority to designate MWS Users and to assign the "Full" or "Full with wire authorization" access authority levels for MWS Users, together with any replacement administrator designated in an Authorizing Resolution furnished by Customer to Bank or designated by a Contract Signer by written notice to Bank.

(xii) **MWS User:** An individual authorized by an MWS Administrator to use the Mortgage Warehouse Service.

(xiii) **Payment Account:** A cash collateral account set up by Bank, for the benefit of the Customer, used primarily for the deposit of proceeds from the sale of mortgage loans pursuant to the Loan Documents.

(xiv) **Relationship Manager:** The individual Bank designates as the Customer's primary contact for management and service of the banking relationship.

(xv) **UCC 4A:** Article 4A or a version of it such as Chapter 4A or Division 11 of the Uniform Commercial Code, as enacted in the state where the Funding Order is received by Bank and where it is paid.

(b) **Agreement Documents.** The Loan Documents are specifically incorporated by this reference into the Service Terms for the Mortgage Warehouse Service.

(c) **Designated Accounts.** The Advance Account and General Operating Account are each "Designated Account(s)" as defined in this Master Agreement.

(d) **Access to and Administration of the Mortgage Warehouse Service.**

(i) **Access.**

(A) The Mortgage Warehouse Service is accessible through Comerica Business Connect™. By using the Mortgage Warehouse Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for the Mortgage Warehouse Service by this reference.

(B) For purposes of this Mortgage Warehouse Service, the first sentence of **Section II.A.1(f) of this Master Agreement (in the Comerica Business Connect™ Service Terms)** is hereby deleted and replaced with the following: "Customer represents and warrants to Bank that Customer: (a) will use Comerica Business Connect™ solely to conduct Customer's business; and (b) will limit access to Comerica Business Connect™ to those Customer employees, contractors and other third-parties who require access to perform their jobs or conduct their business with Customer."

(C) Each MWS User is, by default, a limited user with inquiry access only. To grant "full" or "full with wire authorization" access to each MWS User, the MWS Administrator must send an email to mwbusinessmail@comerica.com, or otherwise notify Bank in accordance with Bank's instructions. MWS Users with "full" access have authority to give instructions to Bank with respect to the Mortgage Warehouse Service, except that "full" access users do not have authority to authorize Funding Orders requested through Comerica Business Connect™. MWS Users with "full with wire authorization" access have authority to give instructions to Bank with respect to the Mortgage Warehouse Service and, in addition, have authority to authorize Funding Orders requested through Comerica Business Connect™.

(e) Interest Reports and Information. Bank may, in its sole discretion, permit MWS Users to have access to functionality within the Mortgage Warehouse Service that allows MWS Users to view information and reports regarding loan level interest calculations on individual mortgages that are part of Collateral ("Loan Level Interest"). Customer acknowledges and agrees that the information and reports made available through this functionality are for informational purposes only, are provided by Bank "AS IS", and may be inconsistent with the actual interest billing information maintained and used by Bank through its internal systems. As such, Customer agrees that Bank's records and systems for the determination of interest billing on the Facility will be conclusive and binding upon Customer, even if they differ from the information and reports made available through the Mortgage Warehouse Service, and that Bank shall have no liability or responsibility whatsoever to Customer or any third-party for any such information and/or reports. Bank may, in its sole discretion, discontinue Customer's access to this functionality within the Mortgage Warehouse Service, at any time, with or without notice.

(f) Cutoff Times. Cutoff times for submitting a request for an advance are set forth in the Loan Documents. All other cutoff times for the Mortgage Warehouse Service, including cutoff times for pay-downs and collateral shipment requests, shall be as communicated to Customer by Bank. Requests for transactions, instructions and/or communications received by Bank after its established cutoff deadlines for such transactions, instructions or communications, or that are received on non-Business Days will be treated as received on the next Business Day. Bank may change its cutoff times at any time, provided that Bank will attempt to give prior notice of such change, when possible, unless the Law requires otherwise.

(g) Funding By Wire. The provisions of this **Section II.B.6(g)** apply to Funding Orders.

(i) Authorizations. Customer authorizes Bank to: (a) process Customer's Funding Orders by any method Bank deems appropriate that is in accordance with the Service Terms for the Mortgage Warehouse Service; and (b) debit Customer's Advance Account in U.S. Dollars for the U.S. Dollar amount indicated in any Funding Order.

(ii) **Execution of Funding Orders.**

(A) Applicable Rules. Bank may use any means or routes Bank, in Bank's sole discretion, considers suitable to affect Customer's Funding Order. Any portion of a Funding Order may be accomplished through the Federal Reserve wire transfer network or other methods available to Bank. Each Funding Order carried out through a Funds Transfer system will be governed by the Rules of the applicable system, even if Bank is not a member of the system.

(B) **Execution of Funding Orders.** Bank or Bank's designee may Execute any Funding Order received in Customer's name provided it is authorized by Customer and/or complies with the Security Procedure. Each such authorized and/or compliant Funding Order Bank Executes is enforceable and Customer is liable to Bank for payment of the Funding Order and applicable Fees and Charges.

(iii) **Rejection of Funding Orders.** Bank reserves the right to reject any Funding Order with or without cause and will attempt to provide notice of such rejection on the same Funds Transfer Business Day. Notice of rejection will be effective when available to Customer electronically.

(iv) **Cancellation or Amendment of Funding Orders.** Executed Funding Orders cannot be canceled, amended or stopped.

(v) **Funds Transfer Business Day for Accepting Funding Orders.** Bank may accept Funding Orders on a Funds Transfer Business Day in the form and manner Bank designates from time to time. Funding Orders received on non-Funds Transfer Business Days or after the close of a Funds Transfer Business Day will be treated as received on the next Business Day. Customer agrees that Bank may: (a) process Funding Orders from Customer and others in any order Bank chooses; (b) presume that no other financial institution to which, or through which, the Funding Order is sent has an earlier cut-off time than Bank has for accepting Funds Transfers; and (c) use any means or routes Bank, in Bank's sole discretion, considers suitable to effect the Funds Transfer. Bank may modify Bank's Funds Transfer Business Day and cutoff hour at any time and without prior notice.

(vi) **Discovery of Unauthorized Funding Orders and Liability.** Customer agrees to exercise ordinary care on the basis of the information available to Customer to discover any Funding Order which Customer did not make or authorize. Customer agrees to notify Bank of the relevant facts on which a claim for an unauthorized Funding Order is based within a reasonable time, which Customer agrees will not exceed fifteen (15) days from the date a confirmation that the Funding Order was Executed was available to Customer, unless a longer period is permitted under applicable Legal Requirements. Customer agrees to waive any other time period which might otherwise apply for providing such notice to Bank. If Customer fails to notify Bank within the time period stated in this **Section II.B.6(g)(vi)** of an enforceable (complies with the Security Procedure), but allegedly unauthorized Funding Order, Customer agrees that Bank will not be liable for any subsequent similar enforceable Funding Order.

(vii) **Payment and Compensation.** Customer is obligated to pay and Bank shall debit Customer's Advance Account for the amount of each authorized Funding Order. If Customer does not have sufficient Available Funds in the Advance Account when Bank receives the Funding Order and at the time of Execution of the Funding Order, Bank may exercise Bank's rights in **Section I.E.1(b) of this Master Agreement.** The applicable wire transfer Fees and Charges in effect at the time Customer's Funding Order is Executed shall be payable from the Customer's General Operating Account, in accordance with **Section I.D. of this Master Agreement.** Fees charged by the beneficiary bank to the beneficiary are subject to any agreement between the beneficiary and the beneficiary bank.

(viii) **Discrepancies in Funding Order.** If Bank receives a Funding Order and the account number for the designated beneficiary is a valid bank account number, Bank may credit the Funding Order to that account whether or not a beneficiary's name corresponds with the name on the account.

(h) Shipments of Collateral. Customer shall refund Bank for any costs incurred in shipping collateral as more fully provided in the Loan Documents. Customer must provide Bank a UPS or FED Ex billing account number, allowing Bank to perform third-party shipping. The carrier charges will be billed directly to Customer and the shipping transaction fees incurred by Bank will be billed to Customer by Bank.

(i) Limitations of Liability. Notwithstanding anything to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**, the following limitations apply:

- (i) **Limitation of Liability.** Bank will not be liable for:
 - (A) detecting duplicate Funding Orders;
 - (B) detecting errors contained in any Funding Order or communications;
 - (C) duplicate Funding Orders, either given by Customer or which comply with the Security Procedures;
 - (D) determining whether the beneficiary or beneficiary bank is the one Customer intended;
 - (E) any acts or omissions of the beneficiary bank, including but not limited to its failure to: (i) obtain a receipt, (ii) timely credit the beneficiary, and/or (iii) identify the payee/beneficiary to whom it gave payment of the transfer;
 - (F) failure of the funds to reach the intended payee or beneficiary;

(G) Bank's failure or refusal to refund to Customer the amount of the Fees, Charges or Funding Order paid to Bank;

(H) any acts or omissions of Bank related to instructions given to Bank by Customer or any MWS Administrator, MWS User or Contract User in any way related to the Facility, funding and repayment thereof, the Collateral or the Mortgage Warehouse Service; and

(I) lost or misdirected shipments by the carrier for all collateral shipments.

(ii) **Recoverable Damages.**

(A) Bank's liability to Customer, any intended beneficiary or any third party in performing or failing to perform the Mortgage Warehouse Service, if any, will be limited as stated in the Service Terms for the Mortgage Warehouse Service, except if a Funding Order is Executed but is proven not to have complied with the Security Procedure or was not otherwise authorized by Customer, and if Bank receives notification within the period required under **Section II.B.6(g)(vi)** above, Bank's liability and Customer's liability will be governed by the applicable provisions of UCC 4A as modified by the Service Terms for the Mortgage Warehouse Service.

(B) Unless otherwise required by Law, if Bank is liable to Customer for compensable damages that are recoverable under the Service Terms for the Mortgage Warehouse Service for domestic Funds Transfers, Customer agrees that such liability will not exceed the lesser of the amount of the applicable Funding Order, or Customer's actual provable and foreseeable damages.

(j) **Customer Indemnity.** In addition to any other Indemnification obligations under this Master Agreement, Customer shall Indemnify Bank in connection with any third-party allegation that a Funding Order contravenes or compromises the rights, title or interest of any third party and/or contravenes any Legal Requirements, court order or other mandate or prohibition with the force or effect of Law.

(k) **Security Procedures.**

(i) **Notification Regarding Security Procedure**

Inadequacy. For purposes of this Mortgage Warehouse Service, in the event Customer believes that the Security Procedure offered to or selected by Customer is not adequate for the type of communication, transaction and/or transmission Customer intends to conduct with the Mortgage Warehouse Service, or is otherwise not commercially reasonable for any reason, Customer should contact Customer's designated Relationship Manager and designated Mortgage Warehouse Business Support Specialist to determine the alternatives, if any, that may be available to Customer.

(ii) **Notification Regarding Security Procedure**

Compromise. For purposes of this Mortgage Warehouse Service, in the

event Customer believes or suspects that any Security Procedure has been compromised in any manner, or has become known or accessed by an unauthorized person (whether or not employed by Customer), Customer agrees to notify Bank immediately (a) by contacting Customer's designated Relationship Manager and designated Mortgage Warehouse Business Support Specialist; and (b) in writing by sending written notification pursuant to **Section 14.** below.

(l) **Confidentiality of Customer's Information.** For purposes of this Mortgage Warehouse Service, permitted disclosure of information concerning Customer in **Section I.I.1. of this Master Agreement** shall include such disclosures as may be required under the Loan Documents.

(m) **Errors.** Customer shall be responsible for regularly running reports or selecting and reviewing reports that are run by automation to detect errors and verify that data transmissions are accurate. Customer shall notify Bank within fifteen (15) days from the date the report could have been run, or became available to Customer, that data in the report is not accurate.

(n) **Notices To Bank.** Notices to Bank must be: (a) emailed to mwbusinessmail@comerica.com; and/or (b) mailed via US mail to: Comerica Bank, Attn: Mortgage Warehousing, Mail Code 7588, 39200 Six Mile Road, Livonia, MI 48152.

(o) **Conflicting Terms.** For purposes of the Mortgage Warehouse Service, **Section I.O.1(a). of this Master Agreement** is hereby deleted in its entirety and replaced with the following:

"(a) **Entire Agreement.** This Master Agreement (including any Loan Documents, User Guides, Fee Schedules and Implementation Agreement and/or Separate Agreement) represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior oral or written representations, agreements, or other communications, relating to the subject matter of this Master Agreement. The provisions of the various documents that make up the treasury management relationship between Bank and Customer shall, to the extent possible, be interpreted so as to supplement each other and avoid any conflict between them. However, in the event of a conflict among the agreement documents, the agreement documents will have the following order of precedence as to a Mortgage Warehouse Service, unless and only to the extent expressly provided to the contrary elsewhere: (i) this Master Agreement; (ii) the Implementation Agreement and/or Separate Agreement, including addenda; (iii) the User Guide(s); and (iv) the Fee Schedule for the Mortgage Warehouse Service. The most recent Service Terms for the Mortgage Warehouse Service supersedes all prior agreements for the Mortgage Warehouse Service."

(p) **Contingency Plan.** If Customer is unable to access the Mortgage Warehouse Service, Customer should contact its designated Mortgage Warehouse Business Support Specialist. In the event Bank determines that the Mortgage Warehouse Service is not operationally available through Comerica Business Connect™, Bank will advise Customer of a Contingency Plan.

9. **Outgoing Data Exchange Service for Comerica Accounts.**

Comerica's Outgoing Data Exchange Service for Comerica Accounts ("Outgoing Data Exchange Service") provides customer's account information to third parties, including the customer's other financial institutions, as designated by customer.

(a) **Outgoing Data Exchange Service Generally.**

(i) **Provision of Information.** Bank will provide third-parties designated by Customer with information regarding Customer's Designated Account on a periodic basis. Bank has no obligation to reformat any such information.

(ii) **Bank Not Responsible for Third-Party Actions.** Bank assumes no responsibility for the accuracy of information that is reformatted or translated by the receiving party of any or other third-party.

10. **Comerica Reporting Services (Comerica Treasury** Information Reporting®, Electronic Data Interchange Service, Comerica Treasury File Reporting® Services and ICS Deposit Placement Service). Comerica's

Reporting Services ("Reporting Services") provide customers access to data, images, information and reports related to their Comerica banking services through the Comerica Treasury Information Reporting®, Electronic Data Interchange Service, Comerica Treasury File Reporting® Services and/or and ICS Deposit Placement Service.

(a) **Access.** Reporting Services are accessible through Comerica Business Connect™, Comerica Treasury Mobile® or the Electronic Data Interchange Service. By using Reporting Services through Comerica Business Connect™, Comerica Treasury Mobile® or the Electronic Data Interchange Service Customer agrees to the Service Terms for such applicable Service, which are incorporated into the Service Terms for the Reporting Services by this reference.

(b) **Reporting Services Generally.**

(i) **Provision of Information.** Bank will provide Customer information and financial data associated with Customer's Designated Account and/or Services Customer receives from Bank on a periodic basis via balance reporting or bank and special reports.

(ii) **Information about Non-Deposit Accounts at Bank.** Information about accounts other than Customers' deposit accounts at Bank, e.g., loan accounts at Bank, trust accounts at Bank, or securities accounts at Comerica Securities, Inc., if any, may be accessible through the applicable Reporting Service, subject to the terms of any other applicable agreements.

(iii) **Images.** Customer may elect to receive image reporting for certain Reporting Services. Image reporting is subject to Customer's agreement to the Service Terms for Image Services.

(c) **Balance Reporting.** The following are available for balance reporting: prior day balance reporting and current day balance reporting. The information available is more fully described in the User Guide(s) for the Reporting Services.

(i) **Prior Day.** Prior day balance reporting and, through some Access Methods, images of select prior day items are available for Customer's Designated Accounts, including Customer's checking, savings, trust and securities accounts and commercial loans, subject to the terms of any other applicable agreements.

(ii) **Current Day.** Customer may elect to receive current day balance reporting for transactional information including ACH transactions, lockbox, wires, controlled disbursements and account to account transfers. Some current day balance reports are subject to Customer's agreement to the Service Terms for the underlying Service.

(d) **Bank Reports and Special Reports.** Bank may provide certain reports and statements of account activity to Customer relating to transactions on Designated Account over designated time periods in the manner and at the times agreed to by the Parties. Customer will review all reports, data files and/or statements received from Bank upon receipt, and will advise Bank of any missing data within a reasonable time not to exceed ten (10) Business Days from the date Customer first discovered the problem or received information (in electronic, written or oral form) from Bank reflecting the problem, whichever occurs first.

(e) **Statements Service.** Comerica's Treasury Statements Service ("Statements Service") allows commercial customers to receive most of their bank account statements electronically through the Reporting Services. The Statements Service is accessible through Comerica Business Connect™ and Comerica Treasury Information Reporting®. By using the Statements Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into and made a part of the Service Terms for the Reporting Services by this reference.

(i) **Designated Account(s) Subject to Deposit Contract.** Customer acknowledges and agrees that for purposes of **Section 2.24.02 of the Deposit Contract**, or any successor provision, Bank shall be deemed to have made available an Account (as defined in the Deposit Contract) statement to Customer when the statement is made available for viewing electronically via Comerica's Reporting Services. Customer's statement will be available the first Business Day of the month, except for

Business Sweep Accounts which are available the third-Business Day of the month, unless Bank and Customer have agreed otherwise.

(f) **Treasury Returned Items Service.** The Treasury Returned Items Service provides access to images of returned items previously deposited that have been returned unpaid by the drawee financial institution. The images are available through Comerica Treasury Information Reporting®. By using the Treasury Returned Items Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into and made a part of the Service Terms for the Reporting Services by this reference.

(g) **ICS Deposit Placement Service.** The ICS Deposit Placement Service provides the Customer with a means to maximize FDIC insurance coverage. If Customer elects to receive the ICS Deposit Placement Service, Bank will endeavor to place deposits for Customer at participating financial institutions through ICS®, the IntraFi Cash ServiceSM of IntraFi Network LLC pursuant to Separate Agreements between Customer and Bank. Information and reports related to the ICS Deposit Placement Service offered by Bank will be available to Customer through Comerica Business Connect™ and Reporting Services.

(i) To use the ICS Deposit Placement Service, Customer must enter into the ICS Deposit Placement Agreement, Custodial Agreement for ICS Deposit Placement and the ICS Deposit Placement Sweep Acceptance. When Customer enrolls with Bank to receive the ICS Deposit Placement Service, the terms of the ICS Deposit Placement Agreement, Custodial Agreement for ICS Deposit Placement and the ICS Deposit Placement Sweep Acceptance are incorporated into this Master Agreement and the Service Terms for the ICS Deposit Placement Service by this reference.

(ii) In the event of a conflict between the various agreements that govern the ICS Deposit Placement Service, the order of precedence shall be as follows (in order of higher to lower precedence): (1) ICS Deposit Placement Agreement, (2) Custodial Agreement, (3) ICS Deposit Placement Sweep Acceptance, (4) Implementation Agreement, and (5) this Master Agreement.

11. **Treasury Alerts Service.** Treasury Alerts ("Alerts") provide notifications of account activity and events related to Treasury Management product transactions. If Customer agrees to receive and Comerica agrees to provide electronic notifications, the following terms and conditions apply to Alerts:

(a) **Related Agreements.** Customer may use one or more Services in conjunction with Alerts. Customer and Bank must execute an Implementation Agreement and/or Separate Agreement for each Service Customer uses in conjunction with Alerts, and the Service Terms for such Services are incorporated by reference into the Service Terms for Alerts. In the event of a conflict between the terms of this Master Agreement and the terms of a Separate Agreement, the terms of this Master Agreement shall prevail with respect to Alerts.

(b) **Termination.** Alerts will terminate with the termination of the service to which it applies. Customer may terminate Alerts at any time upon giving Bank notice in accordance with this Master Agreement, however, Customer agrees that Customer may continue to receive Alerts for five (5) Business Days after termination while Bank disables the service.

(c) **Accurate Customer Notification Information.** Customer shall provide a correct text message number and/or email address, as applicable and available, to receive the Alerts selected. Customer is solely responsible to provide Bank with timely information should any such text message numbers or email addresses change. Customer is responsible for any technical changes required to support receipt of Alerts. Bank may, if it receives delivery failure notification for an Alert, attempt to contact Customer for updated information; however, Bank shall not be obligated to do so.

(d) **Limitation of Liability.** Bank's sole obligation for Alerts is to send electronic notifications to the text message numbers/email addresses provided by Customer. Notwithstanding anything in the Service Terms for Alerts to the contrary, in addition to the limitations of liability set forth in

Section I.L.1. of this Master Agreement. Bank shall have no liability to Customer if Alerts were transmitted but not received. Bank's liability for failure to timely transmit an Alert shall be limited to the amount of Fees paid by Customer for that electronic notification. However, in no event shall Bank be liable to Customer if failure to timely provide Alerts was through no fault of Bank.

(e) **Telephone Text Messages.** If Customer selects Telephone Text Message notification, Customer warrants that the telephone(s) are either owned by the Customer or the Customer shall be responsible to obtain, in a form acceptable to Bank, the consent of the owner of the telephone, and shall provide this consent to Bank. Customer further agrees that if the owner revokes his/her consent, the Customer shall advise Bank immediately. Customer agrees to assume all liability for any claims made by the owner of the telephone in regard to the receipt of text messages contemplated under this Master Agreement and shall Indemnify and hold Bank, and its Affiliates harmless from any claims and all Losses associated with claims by the owner in regard to said text messages.

(f) **Selection and Type of Notifications.** If Customer has elected to obtain Alerts, Bank may provide such Alerts to Customer in any manner Bank determines is most expeditious (e.g., by telephone, fax, email or regular mail) based on the information provided by Customer.

C. FRAUD PROTECTION SERVICES

1. **Comerica ACH Positive Pay™ Service.** Comerica ACH Positive Pay™ Service ("ACH Positive Pay") allows customers to review and decision ACH Entries that are presented for credit and/or debit to customers' designated bank account(s). Customers' authorized users will have the ability to accept or reject ACH Entries before they post to Customer's account; download ACH Entry activity; and/or manage, accept or reject decision parameters. Any Entry not decisioned by Bank's stated cutoff time will automatically default to the customer's predetermined default decision ("accept all" or "reject all") and processing will continue accordingly. Entries accepted will post to the customer's designated account. Entries rejected will be returned to the Originator of the Entry as an unauthorized Entry.

(a) **Access.** ACH Positive Pay is accessible through Comerica Business Connect™. By using ACH Positive Pay through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for ACH Positive Pay by this reference.

(b) **Nacha Rules.** All capitalized terms used but not defined in the Service Terms for ACH Positive Pay shall have the meanings ascribed to them in the Nacha Rules.

(c) **Customer Elections.** Before using ACH Positive Pay, Customer shall: (i) designate to Bank each User of ACH Positive Pay and their respective access rights; (ii) select one or more cut-off times (each, a "Cut-Off Time"); and (iii) establish a default decision ("accept all" or "reject all") ("Default Decision") for all ACH Entries. In addition, Customer may elect a dual control option for decisioning ACH Entries, which requires a second User to approve decisions made by other Users before they are submitted to Bank.

(d) **Decisioning.** Customer shall review ACH Entries presented for credit and/or debit to Customer's Designated Account(s) and provided to Customer for decisioning through ACH Positive Pay. Customer shall confirm or update decisions with respect to such ACH Entries in accordance with the User Guide for ACH Positive Pay. Customer's Default Decision will be applied to ACH Entries that are not: (i) updated prior to the designated Cut-Off Time; or (ii) if the Customer elects the dual control option, approved prior to the designated Cut-Off Time.

(e) **Rejected Entries.** Rejected Entries shall be deemed unauthorized by Customer and shall be returned to the Originating Depository Financial Institution as "Not Authorized" and will be subject to the Nacha Rules.

(f) **Stop Payment.** Customer agrees not to use ACH Positive Pay as a means to stop payment of any ACH Entry that Customer initially authorized the Originator to process.

(g) **Receipt of ACH Credit Entries.** Customer agrees to update its records to reflect the Originator's payment having been received as of a date that is no later than the Settlement Date as required by Nacha Rules.

(h) **Entries Excluded From ACH Positive Pay.** Not all ACH Entries can be reviewed or decisioned through ACH Positive Pay. The following types of ACH Entries will not be presented to Customer through ACH Positive Pay and are not subject to Default Decisions. Any disputes regarding these ACH Entries must be raised with Customer's assigned Bank Relationship Officer.

(i) ACH Entries originated by Bank, or on Bank's behalf, for Bank's benefit or that of any Affiliate.

(ii) Reversal Entries.

(i) **Insufficient Funds.** Nothing in the Service Terms for ACH Positive Pay shall require Bank to pay any Accepted ACH Entry that is a debit if Customer does not have sufficient Available Funds, including overdraft protection if applicable, in the applicable Designated Account.

(j) **Indemnification.** Customer agrees to Indemnify Bank in connection with Bank rejecting or accepting any Entry in accordance with Customer's instructions and the Service Terms for ACH Positive Pay. Customer shall Indemnify Bank in connection with Bank's compliance with Customer's instructions and the Service Terms for ACH Positive Pay. Customer further understands and agrees that any Entry that is returned as unauthorized under the Service Terms for ACH Positive Pay does not affect Customer's liability for amounts that may be owed to the Originator of the Entry, including liability for penalties and interest that result from the rejection of a debit Entry.

2. **Positive Pay Service.** Comerica's Positive Pay Service ("Positive Pay Service") is a fraud prevention solution that compares checks presented for payment at Comerica against a customer's check issue file, providing the customer the opportunity to return checks deemed suspect. Customers may elect to receive notification of suspect checks or to view suspect checks and, as an option, check images.

(a) **Access.** The Positive Pay Service is accessible through Comerica Business Connect™. By using the Positive Pay Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for the Positive Pay Service by this reference.

(b) **Implementation and Activation.** The Positive Pay Service will be made available to Customer and maintenance fees shall begin once implementation is complete. However, Bank shall have no obligation to compare checks presented for payment against Customer's check issue file unless Customer's Positive Pay Service is in "active" status. Customer may request Bank to activate or deactivate the Positive Pay Service by sending a written request to Bank in accordance with the terms of the User Guide for the Positive Pay Service and such request will become effective within a reasonable time after Bank receives the notice.

(c) **Data Transmission.** Customer will transmit to Bank all check issue information as required by the User Guide(s) for the Positive Pay Service before checks are issued, unless the Parties agree in writing to a different method. If the Positive Pay Service has been activated and Customer does not transmit check issue information to Bank as required by the User Guide, Bank will present a list of all checks to the Customer for a pay or return decision. If Customer does not respond to Bank with a pay or return decision by the cutoff time specified in the User Guide for Positive Pay Service, the "Return All" default will apply, unless Customer has selected a "Pay All" default in accordance with **Section II.C.2(g)** below. Customer agrees to have checks prepared in accordance with Bank's requirements, including the Service Terms and the Deposit Contract. Customer agrees to change check format if requested by Bank.

(d) **Authority to Honor Checks.** Except with respect to stop payment and voided check issue records requested by Customer, Bank has full authority to honor all checks as follows:

(i) **Default.** By default, Bank shall honor all checks that match by serial number and amount to the corresponding check issue records on file.

(ii) **Payee Match Option.** The Payee Match option of the Positive Pay Service compares the payee name provided to Bank on the check issue file to the name typed on the payee line of the check.

If Customer elects to receive and Bank agrees to provide the Payee Match option to Customer, Bank will honor all checks that match the corresponding check issue records on file by: (a) serial number and amount; and (b) payee name, as instructed by Customer.

(e) **Notification of Unmatching Items.** Bank will make reasonable efforts to report to Customer any check serial numbers that do not match the corresponding check issue records on file ("Suspect Item Notification") by the designated time each Business Day and in accordance with Customer's instructions.

(f) **Return All Default Action.** The default disposition for checks on the Suspect Item Notification shall be "Return All." With a "Return All" default, any checks that are on the Suspect Item Notification that are in fact fraudulent or otherwise not intended to be authorized payment by Customer will not be paid, even if Customer fails to review and advise Bank not to pay such checks, in accordance with the schedule set forth in the User Guide(s) for the Positive Pay Service.

(g) **Opt-Out of "Return All" Action:** Notwithstanding the fraud prevention benefit of a "Return All" default, Customer may opt-out of the "Return All" default for checks on the Suspect Item Notification by making such request to Bank in writing and signing the amendment to Positive Pay Services for "Pay-All" Default prior to setting up the Positive Pay Service or making the default disposition change to "Pay All." Upon receipt of Customer's written request, Bank may agree to provide Customer with the "Pay All" default until such a time as Customer requests in writing the "Return All" default. Customer acknowledges that with a "Return All" default, any checks that were on the Suspect Item Notification that in fact were fraudulent or otherwise not intended to be authorized payments made by Customer will not be paid by Bank, even if Customer fails to review and advise Bank not to pay such checks in accordance with the schedule set forth in the User Guide(s) for the Positive Pay Service. Customer further acknowledges that the "Pay All" default will not provide any fraud detection benefits in the event (i) Customer fails to timely review and advise Bank as to whether to pay or not pay each check listed on the Suspect Item Notification; and (ii) any such checks were in fact fraudulent or not intended to be authorized payments made by Customer. Customer agrees that if Bank provides a "Pay All" default to Customer and Customer at any time thereafter fails to timely notify Bank to not pay any one or more checks listed in the Suspect Item Notification, that Customer will, notwithstanding any duties or liability that Bank may otherwise have had in regard to such checks: (1) assume all responsibility, liability and losses in regard to the payment of all checks on the Suspect Item Notification as if Customer had timely reviewed and advised Bank that all checks on the Suspect Item Notification were duly authorized by Customer and properly payable; and (2) Indemnify Bank in connection with any claim including any claim made by Customer or a third party that the payment of any one or more checks on the Suspect Item Notification by Bank was unauthorized by Customer because of fraud or otherwise.

(h) **Waiver.** Bank's acceptance of check issue information after the designated deadline shall in no way be deemed a waiver by Bank of the deadline or this Master Agreement.

D. PAYABLES

1. **Account to Account Transfer® Service.** Comerica's Account to Account Transfer® Service ("Account to Account Transfer® Service") allows customers to transfer funds between commercial and, in some instances, personal deposit accounts at Bank.

(a) **Access.** The Account to Account Transfer® Service is accessible through Comerica Treasury Payments® and/or Comerica Integrated Payables™ Service. By using the Account to Account Transfer® Service through Comerica Treasury Payments® or Comerica Integrated Payables™ Service, Customer agrees to the Service Terms for Comerica Treasury Payments® and/or Comerica Integrated Payables™ Service, as applicable, and such terms are incorporated into and made a part of the Service Terms for the Account to Account Transfer® Service by this reference.

(b) Processing.

(i) **Funds Transfer Processing.** Customer must transmit funds transfer instructions to Bank by Bank's cutoff time set forth in the applicable User Guide(s) for the Account to Account Transfer® Service (which may be the User Guide for the applicable Access Method). Bank may process instructions received after the cutoff time or on non-Business Days on the next Business Day.

(ii) **Comerica Treasury Payments®.** If Customer elects to receive the Account to Account Transfer® Service through Comerica Treasury Payments®, account transfers are limited to common ownership of the Designated Accounts involved in the transfer.

2. **Account Reconciliation Plan.** Comerica's Account Reconciliation Plan ("ARP") is an automated service which organizes paid and outstanding check and/or deposit information, allowing customers to efficiently and economically reconcile their bank accounts. The ARP provides the systematic itemization of all debits and/or credits for a specific time period determined by the customers and a reconciliation of the account's final balance.

(a) **Additional Services May Be Required.** To use ARP, Customer may be required to subscribe to the Positive Pay Service. By using ARP through the Positive Pay Service, Comerica agrees to the Service Terms for the Positive Pay Service and such terms are incorporated into and made a part of the Service Terms for ARP by this reference.

(b) **Reports and Statements; Discrepancies.** Bank may provide certain reports and statements of account activity to Customer relating to debit and credit transactions on a Designated Account over designated time periods in the manner and at the times agreed to by the Parties. Customer will review all reports and/or data files received from Bank upon receipt, and will advise Bank of any missing data within a reasonable time not to exceed ten (10) Business Days from the date Customer first discovers the problem or receives information (in electronic, written or oral form) from Bank reflecting the problem, whichever occurs first.

(c) **Waiver.** Bank's acceptance of check issue information after the deadline designated in the User Guide(s) for the ARP shall in no way be deemed a waiver by Bank of the deadline.

(d) **No Duty to Identify Duplicates or Errors.** Bank assumes no duty to identify and/or return duplicate checks, checks with duplicate serial numbers, mis-encoded items, or checks lacking an encoded serial number unless Customer has also elected to receive Bank's Positive Pay Service, in which case Bank's obligations shall be in accordance with the Service Terms for the Positive Pay Service.

3. **ACH Origination Services.** Comerica's ACH Origination Service ("ACH Service") is an electronic payment method utilizing the nationwide ACH Network for the collection and disbursement of payments. Customers may originate consumer, business, or intra company electronic payment entries using the ACH Service.

(a) **Access.** The ACH Service is accessible through Comerica Business Connect™, Comerica Treasury Payments®, Comerica Treasury Mobile®, Comerica Integrated Payables™ Service, Comerica Integrated Payables Web™ Service, Comerica Easy Pay™ Service, the Electronic Data Interchange Service, and/or SFTP (Direct Send). By using the ACH Service through any of the aforementioned Access Methods or other Services, Customer agrees to the Service Terms for each such applicable Access Method or other Service, which are incorporated into the Service Terms for the ACH Service by this reference.

(b) **Definitions.** All capitalized terms used but not defined in the Service Terms for ACH Service shall have the meanings ascribed to them in the Nacha Rules.

(c) Applicable Legal Requirements.

(i) **Customer's Obligations.** Customer agrees to be bound by the Nacha Rules. Customer shall not initiate any ACH transaction until Customer familiarizes itself with the Legal Requirements applicable to the ACH Service. The duties of Customer set forth in the Service Terms for ACH Service in no way limit the requirements of complying with all

applicable Legal Requirements. Any Fines for a violation of any Legal Requirements applicable to the ACH Service caused by an act or omission of Customer may be assessed against Customer.

(ii) **Provision of Rules.** Bank will provide Customer with one (1) copy of the Nacha Rules and/or provide Customer with instructions on obtaining electronic access to the Nacha Rules, as well as information where Customer may obtain additional copies of the Nacha Rules. Bank shall have no further obligation to provide Nacha Rules or any other Legal Requirements to Customer, or to identify to Customer its specific obligations as an Originator of ACH Entries or otherwise, under the Nacha Rules or any other Legal Requirements.

(d) Entry Processing.

(i) **By Customer.** Customer may only originate credit and/or debit Entries that comply with Bank's Security Procedures, the Service Terms for the ACH Service, and Legal Requirements. Customer agrees to initiate only the type(s) of Entry(ies) that Bank has authorized Customer to originate to business entities and/or consumers through the ACH Service. To be eligible for processing, Entries must comply with formatting and other requirements described in the User Guide(s) for the ACH Service and the Nacha Rules.

(ii) **By Bank.** Bank, acting as Originating Depository Financial Institution ("ODFI"), may process Entries to Receiving Depository Financial Institutions ("RDFI") directly or through any mechanism selected by Bank. Bank will process, transmit, and settle for the Entries received from Customer which comply with the terms of this Master Agreement, including the Security Procedures, in a timely manner and in accordance with the Nacha Rules. Bank shall have no obligation to transmit Entries if Customer is in default of any of its obligations under this Master Agreement.

(e) **Authorization.** Customer authorizes Bank to act as Customer's agent for the ACH Service. Customer authorizes Bank to originate ACH Entries on behalf of Customer to Receivers' accounts based upon the instructions provided by Customer.

(i) **Receiver Authorizations.** Before Customer initiates any credit or debit Entry, Customer will obtain from Receiver proper authorization for the Entry in accordance with the Nacha Rules and other Legal Requirements. An authorization must be readily identifiable as either an ACH credit or an ACH debit authorization and must clearly and conspicuously state the terms of the authorization in order that the Receiver understands the authorization to which he, she or it is agreeing. Customer agrees, represents and warrants that it will initiate no Entry after the termination or revocation of a Receiver's authorization.

(ii) **Consumer Debit Authorizations.** All debits to Consumer Accounts must be authorized by the consumer in writing and must be signed or similarly authenticated by the consumer, as permitted by the Nacha Rules, with the exception of Entries for RCK, ARC, TEL, and BOC, which are addressed below. For debit Entries, other than RCK, ARC, TEL and BOC Entries, Customer must be able to provide the consumer with a hard copy of the consumer's authorization. Except with respect to POP, TEL, and Single-Entry WEB entries, the authorization must (a) specify that the Receiver may revoke the authorization; and (b) contain information regarding the manner in which the authorization can be revoked.

(iii) **TEL Entries.** If Customer is permitted to make TEL Entries, it must make an audio recording of the consumer's oral authorization or provide the Receiver with written notice confirming the oral authorization prior to the Settlement Date of the Entry. At Bank's request, Customer must be able to provide a copy of the written notice or duplicate audio recording of the oral authorization to Bank for its use or for the use of the RDFI requesting the information. The authorization must be readily identifiable as an authorization and its terms must be clear and readily understandable. The authorization must contain the following minimum information: (a) the date on or after which the ACH debit to the Receiver's account will occur; (b) the amount of the transaction; (c) the Receiver's name; (d) a telephone number for Receiver inquiries that is answered during normal business hours; (e) the date of the Receiver's oral authorization; and (f) a statement by Customer that the authorization obtained from the Receiver is for a Single-Entry ACH debit.

(iv) **ARC, BOC and RCK Entries.** If Customer is permitted to make ARC, BOC and RCK Entries, authorization consists of: (a) notice from Customer to the Receiver, before Customer's receipt of Receiver's source document or the item, that Customer's receipt of the source document (for ARC and BOC Entries) or item (for RCK entries) constitutes authorization of the Entry in accordance with the terms of the source document or item; and (b) Customer's receipt of the source document or item.

(v) **Retention and Presentment of Authorizations.**

Customer must obtain and retain an original or copy of a signed or authenticated written authorization from each Receiver, and readily and accurately reproducible records evidencing any other form of authorization from each Receiver. The record of authorization must be retained by Customer for a period of at least two (2) years following the termination or revocation of the authorization from the applicable Receiver. Customer, upon Bank's request, must present the original, copy, or other accurate record of the Receiver's authorization to Bank for its use or for use by the RDFI within five (5) Banking Days of Bank's request. Under the Nacha Rules, Bank's liability related to unauthorized Entries may extend beyond the mandatory two (2) year retention period for authorization records. Customer agrees and understands that it is solely responsible for establishing a record retention program that is appropriate for maintaining authorizations relating to each Entry that it originates using the ACH Services. Bank shall have no liability for any Losses associated with Customer's breach of any warranty under the Agreement or the Nacha Rules, and Customer agrees to fully Indemnify Bank.

(f) **Prenotifications.** If Customer chooses to originate a non-dollar Prenotification Entry to verify the accuracy of a Receiver's routing and account numbers, Customer agrees not to initiate live dollar Entries to that account until at least three (3) Banking Days following the Settlement Date of the Prenotification Entry. Prenotifications will be provided to Bank in the format provided in the Nacha Rules. If the Prenotification results in a rejection, return or Notification of Change, Customer will research the problem and make any necessary corrections before transmitting another Entry. If Customer chooses not to send Prenotification Entries to verify the accuracy of a Receiver's account, Customer is solely responsible for any Entries that are misrouted to incorrect accounts.

(g) Customer Representations and Warranties.

(i) **Customer Representations and Warranties.** Customer represents and warrants to Bank that:

(A) All Entries will be complete, accurate, and authorized, and comply in all respects with the Nacha Rules and all other Legal Requirements;

(B) Customer shall obtain written authorizations from Receivers for credit and/or debit Entries to those Receivers' accounts at participating financial institutions;

(C) Receiver authorizations shall comply with the Nacha Rules and specifically authorize Customer to release to Bank all information concerning Receivers that may be required by Bank to enable Bank to recover erroneous funds transfers;

(D) Customer shall cease initiating Entries for a Receiver's account(s) immediately upon Customer's receiving actual or constructive notice of the termination or revocation of the Receiver's authorization, and Bank shall not be liable for Customer's unauthorized transmission of such Entries;

(E) Customer will retain all documentation as required by the Nacha Rules and other Legal Requirements;

(F) All Entries will comply with, and be transmitted or otherwise delivered to Bank in accordance with, the formatting and other requirements set forth in the User Guide(s) for the ACH Service; and

(G) Customer will protect the security and integrity of ACH data through its lifecycle and ensure that they have policies, procedures and systems in place that will enable compliance with the ACH Security Framework.

(ii) **Additional Representations and Warranties.** In addition, Customer is deemed to make the same representations and warranties to Bank that Bank makes under the Nacha Rules and other Legal Requirements to other participating financial institutions in the ACH system, including foreign ACH system, with respect to Entries originated by Customer.

(iii) **Warranties for Origination of WEB Entries.** If Customer obtains authorization from a Receiver over the internet, Customer represents and warrants that:

(A) Customer utilizes a commercially reasonable fraudulent transaction detection system to screen each WEB Entry;

(B) Customer employs commercially reasonable methods of authentication to verify the identity of the Receiver;

(C) Customer takes commercially reasonable steps to verify that routing numbers are valid;

(D) Customer takes commercially reasonable steps to complete account validation when an account is used for the first time and for subsequent changes made to the account number; and

(E) Customer conducts annual audits to ensure that the financial information it obtains from consumers is protected by security practices and procedures that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage, (ii) personnel and access controls to protect against unauthorized access and use, and (iii) network security to ensure secure capture, storage, and distribution.

(h) **Entry Limits.**

(i) **Entry Limits.** Bank may establish a daily dollar limit on the total dollar amount of Entries Customer may transmit to Bank each day. However, Customer agrees that any such daily dollar limit established by Bank is not to be deemed a Security Procedure. The total dollar amount of Entries transmitted by Customer to Bank each day will not exceed the lesser of collected and available balances in Customer's Designated Account(s) or the daily dollar limit established by Bank.

(ii) **Exceeding Entry Limits.** Customer agrees that if an Entry(ies) exceeds such dollar limit and Bank processes such Entry(ies), Customer shall be liable to Bank for such Entry(ies), and Customer authorizes Bank to charge Customer's Designated Account.

(i) **On-Bank Entries.** An Entry accepted for debit or credit to an account maintained with Bank shall be debited or credited, as applicable, to the Receiver's account in the amount of and on the effective date contained in the Entry.

(j) **International ACH Entries.**

(i) **Accounts Located Outside U.S.** Customer must obtain Bank's written consent prior to initiating an ACH transaction when the Receiver's account is located in a country other than U.S. Bank may decline to provide such consent in its sole discretion.

(ii) **International ACH Entries.** If Customer transmits International ACH Transactions ("IAT Entries"), as defined in the Nacha Rules, the following additional terms and conditions shall apply:

(A) International ACH Transactions may be subject to different rules, including without limitation return reasons and return time periods, under the Nacha Rules, Legal Requirements of the foreign jurisdiction in which the Receiver of the International ACH Transaction is located, or other Legal Requirements;

(B) Customer acknowledges and agrees that Customer is solely responsible for determining and complying with applicable requirements relating to the Entry including, but not limited to, Receiver authorization, notification in change of amounts of recurring debits, record keeping and other matters

under the Legal Requirements of the foreign jurisdiction in which the Receiver of the International ACH Transaction is located; and

(C) Customer is responsible to Bank for all costs, losses or fees incurred by Bank or Bank's ACH processor(s) in completing an International ACH Transaction, including any costs, losses, or fees associated with conversion of funds to or from U.S. Dollars.

(k) **Rejected or Returned Entries.**

(i) **Rejected Entries.** Bank reserves the right to reject, without liability, any Entry with or without cause. Bank will notify Customer of any such rejection. Customer may remake and transmit such an Entry to Bank, but Bank will not remake any Entry.

(ii) **Returned Entries.**

(A) Bank will debit or credit, as applicable, Customer's Designated Account for each Return. If a debit Entry is returned for any reason, Customer agrees to and will immediately reimburse Bank with sufficient Available Funds to cover the amount of such Entry. In the event a credit Entry is returned for any reason, Bank will redeposit or reverse the amount of such Entry to the Designated Account to the extent the amount of such Entry was debited from the Designated Account, or take such action as Bank and Customer may agree upon. Bank has no obligation to credit Customer's Designated Account with interest in the amount of any returned Entry Bank has debited from the Designated Account.

(B) Unless Customer has elected the automated re-deposit option for insufficient or non-collected funds, any Entry that is returned for any reason by an ACH Operator will be credited or debited, as applicable, back to Customer. Bank will notify Customer by the end of the first Business Day following the Business Day of Bank's receipt of the Return. Bank will not have any obligation to retransmit a Return provided Bank complied with the Service Terms for ACH Service with respect to the original Entry. However, if Customer remakes and/or retransmits a returned Entry, Bank will process it as a new Entry.

(iii) **Re-Deposit Option.** If Customer has elected the automated re-deposit option for insufficient or non-collected funds, Bank will re-submit returned debit Entries no more than one (1) time. If after the re-submitted debit Entry is returned for any reason, Bank will treat the returned Entry in same manner described in **Section 11.2(a)** above. Customer agrees to pay for this option in accordance with the Fee Schedule provided by Bank. In addition, Customer agrees to and does Indemnify Bank for amounts claimed by Receiver as a result of Bank re-depositing the returned Entry based upon Customer's selection of the re-deposit option.

(l) **Cancellations and Amendments.** Customer has no right to cancel or amend any Entry after Bank or Bank's agent has received the Entry. If Customer requests a cancellation of an Entry, Bank will use reasonable efforts to cancel the Entry but will not be liable if it fails to do so. A request to amend an Entry will be treated as a cancellation of the original Entry and it is Customer's responsibility to remake and submit the Entry.

(m) **Reversals.** If Customer requests a reversal of an Entry in compliance with the Security Procedures and the Nacha Rules, Bank will process the reversal request pursuant to the Nacha Rules. In initiating a Reversing Entry for an Erroneous Entry or File, Customer warrants that it has initiated the Reversing Entry within five (5) Banking Days following the Settlement Date of the Erroneous Entry and within twenty-four (24) hours of discovery of the error. Customer also warrants that the account holder of a Reversing Entry has been notified of the reversal, and the reason for the reversal, no later than the Settlement Date of the Reversing Entry. Customer understands that Bank makes no representations or warranties regarding the outcome of such reversal requests. Further, Bank will not be liable to Customer or any other person or entity regardless of whether or not the REDI affects the reversal request. For both Reversing Entries and

Files, Customer shall Indemnify Bank and all Parties of the transaction(s), regardless of whether the RDFI effects the Reversing Entry or File.

(n) **Notification of Change.** Customer will not send an Entry containing erroneous Receiver or RDFI information for which Customer has received a Notification of Change ("NOC") indicating the erroneous information. If Bank receives a NOC from the ACH Operator, Bank will notify Customer no later than two (2) Banking Days of the Settlement Date of the NOC. Customer understands that the Nacha Rules require Customer to act on a NOC within six (6) Banking Days of receiving a NOC or before initiating another Entry to the same Receiver's account, whichever occurs later.

(i) **Refused NOC.** If the NOC is incorrect, Customer will either notify Bank or generate and deliver a refused NOC to Bank within fourteen (14) calendar days after Customer receives the NOC. The Nacha Rules require Bank to transmit a refused NOC to its ACH Operator within fifteen (15) calendar days of Bank's receipt of the NOC.

(ii) **Erroneous Entry Data.** Customer understands that by submitting an Entry to Bank with erroneous Receiver or RDFI information that such Entry would not have otherwise contained had Customer complied with the applicable NOC, that:

(A) Customer is authorizing Bank to change such information in that Entry and each subsequent Entry originated by Customer containing the same erroneous information on Customer's behalf and in accordance with the applicable NOC before submitting the Entry to the ACH Operator. Customer understands that although Bank is permitted to make such change on Customer's behalf, Bank has no obligation to do so. Notwithstanding any action by Bank in accordance with this **Subsection 14.2(a)**, Customer remains solely responsible for correcting Entries in accordance with an NOC as required by the Nacha Rules. For clarification, a waiver of any right to enforce Customer's breach of warranty with respect to an Entry does not waive any current or future right of Bank to enforce such right.

(B) Customer may be subject to Fines as well as termination, as set forth in the Nacha Rules and this Master Agreement. Customer shall Indemnify Bank on demand for any Fines resulting from Customer's violations of the Nacha Rules, and any such Fines shall be immediately due and payable.

(o) **Bank Reservation of Rights.**

(i) **Bank Reservation of Rights.** Bank reserves the right to:

(A) Process Entries or Files in any sequence, arrangement, or method which Bank, in Bank's sole discretion, deems reasonable;

(B) Be deemed to have accepted Entries only when Bank distributes the Entries to the ACH Operator;

(C) Suspend, reject or accept any or all Entries which do not meet all of the requirements described in the Service Terms for ACH Services;

(D) Suspend, reject or accept any or all Entries if Customer does not have sufficient Available Funds in the Designated Account required, or Customer has previously failed to reimburse Bank for any amounts owing to Bank;

(E) Reject or accept any or all Entries if Customer is in default of any term or provision of these ACH Service Terms and/or this Master Agreement;

(F) Reject or accept any or all Entries if Bank, in Bank's sole and absolute discretion, determines that Customer or Customer's third-party processor does not meet Bank's risk requirements as such requirements may change from time to time; and

(G) To pass on to Customer any Fine assessed by Nacha because of Customer's acts or omissions.

(ii) **Termination Right.** Bank may immediately terminate or suspend the ACH Service, if Bank, in Bank's sole discretion, determines that Customer is in breach of the Nacha Rules or if Bank determines termination is necessary to protect and keep Bank in good standing with Nacha, the Nacha members and/or as an ODFI.

(p) **Settlement Date.**

(i) **Provisional Credit.** Bank's payment of any debit Entry, returned credit Entry or credit Reversal to Customer's Designated Account is provisional until Bank receives final settlement for the payment through a Federal Reserve Bank. If Bank does not receive final settlement, Bank will reverse the provisional credit.

(ii) **Offsetting Charge for Credit Entries.** Funds for a credit Entry will be debited (deducted) from Customer's Designated Account on the Customer's requested Effective Entry Date unless: (a) Bank requires earlier payment; or (b) the date specified is earlier than the Banking Day of processing. For standard credit Entries, the Effective Entry Date is generally one (1) or two (2) Banking Days following the Banking Day of processing.

(iii) **Offsetting Credit for Debit Entries.** The Settlement Date is established by the receiving ACH Operator. The Settlement Date for Bank is also the date that funds will be credited to the Customer's Designated Account. The Settlement Date is generally the Effective Entry Date unless (a) the date specified is earlier than the Banking Day of processing as established by the Originating ACH Operator; or (b) Customer is not enabled for Same Day ACH ("SDA") processing, in which case the scheduled Settlement Date will be the next Banking Day following the Banking Day of processing. For standard debit Entries, the Effective Entry Date is generally one (1) Banking Day following the Banking Day of processing.

(iv) **Same Day ACH Entries.** ACH Entries that are eligible for SDA under the Nacha Rules, contain a current or stale Effective Entry Date and are received and verified prior to the designated submission deadline will be handled as an SDA transaction, unless Bank has agreed to disable SDA processing at Customer's request or Bank has disabled SDA processing in its own discretion. All ACH Entries will be processed at the earliest available time. Therefore: (a) mixed batches containing eligible and ineligible SDA Entries may occur resulting in split settlement of the batch; and (b) suspended batches may settle as SDA Entries if released on or after the Entry Effective Date; and (c) ACH Entries received, with a current day Effective Date, on accounts not enabled for SDA will be held until after the last SDA window.

(v) **Other Entries.** Returns, NOCs and TRC/TRX Entries will be settled at the earliest opportunity, which is generally no later than the first Business Day following the processing date.

(q) **Provisional and Final Payment.** Customer, Customer's third-party processor, and Customer's agents acknowledge receipt of notice that Entries may be transmitted through the ACH, that payment of an Entry by the RDFI to the Receiver is provisional until receipt by the RDFI of final settlement for such Entry, and that if such settlement is not received the RDFI will be entitled to a refund from the Receiver of the amount credited and Customer will not be deemed to have paid the Receiver the amount of the Entry.

(r) **Third-Party Vendors.** If Customer transmits Entries through a third-party vendor ("Third-Party Vendor"), the Third-Party Vendor is Customer's agent. Bank is not responsible for the acts or omissions of the Third-Party Vendor. Customer agrees to Indemnify Bank in connection with any acts or omissions of the Third-Party Vendor. Customer agrees that the Security Procedure established between the Third-Party Vendor and Bank is commercially reasonable.

(s) **Third-Party Sender.** Customer shall immediately notify Bank in writing if Customer is, or at any time becomes, a Third-Party Sender of ACH Entries on behalf of Customer's customers or any third party. To use the ACH Service as a Third-Party Sender, Customer must enter into a Separate Agreement for the Third-Party Sender Service with Bank.

(t) **Data Retention.** In addition to complying with the retention requirements for authorizations in **Section II.D.3.(e)(v)**, Customer shall retain data on file adequate to permit remaking of Entries for one (1) year following the date of their transmittal by Bank as provided herein, and shall provide such data to Bank upon its request. Customer is responsible to retain all items, source documents and records of authorization in accordance with the Nacha Rules.

(u) **Audit.** Upon reasonable notice from Bank to Customer, Bank shall have the right to inspect Customer's books and records and to make on-site visits to any and all Customer locations with regard to; (a) all information deemed by Bank to be necessary or pertinent to Customer's use of ACH Service provided by Bank; and (b) compliance with the Nacha Rules. Information subject to Bank's right of inspection shall include all information maintained by Customer with respect to Customer's customers and clients that is materially related to Customer's ACH transaction activity conducted through Bank under the Service Terms for ACH Service.

(v) **ACH Nacha Format Service.** As an option, Customer may elect to initiate ACH entries by originating, creating and/or delivering to Bank Nacha formatted files for processing. Customer should consult the most current edition of the Nacha Rules to ensure Customer is using the most up to date Nacha file format.

4. **ACH Receiver Services.** Comerica's Automated Clearing House Receiver Service ("ACH Receiver Service") offers (i) ability to use a Uniform Identification Payment Code ("UPIC") for receiving ACH credits and/or (ii) ACH Receiver Reports that provide information about ACH Credits and ACH Debits posted to designated bank accounts held at Comerica Bank. If Customer elects to receive and Bank agrees to provide the ACH Receiver Services, Customer shall select one (1) or more of the following options during the implementation process:

(a) **UPIC Service.** The following terms apply if Customer elects to receive UPIC Service:

(i) **Assignment of UPIC.** Bank will assign and provide to Customer a UPIC for each Customer Designated Account. The UPIC may be used in place of Bank assigned account number for each Designated Account for purposes of receiving ACH credits to each Designated Account. The purpose of a UPIC is to avoid the Customer's need to provide its Bank assigned account number to those from whom Customer expects to receive ACH credits.

(ii) **Amendment to the Deposit Contract.** The Deposit Contract governing each Designated Account for which Bank provides a UPIC is amended to add the following language:

"All references in the Deposit Contract to "account number" shall include the UPIC number assigned under the Service Terms for ACH Receiver Services."

(iii) **Liability.** Notwithstanding any provisions to the contrary in this Master Agreement, Bank's liability for providing Customer with a UPIC is no greater or different than Bank's liability for providing Customer with an account number for its Designated Account.

(iv) **User Guide.** ACH Receiver Services are listed in the User Guide for ACH Services.

(v) **Fees.** Customer agrees to pay the Fees for the use of UPIC as set forth in the Fee Schedule. A fee is charged for each ACH credit posted to the Designated Account that identifies the UPIC assigned to Customer for the Designated Account as the beneficiary Account.

(b) **ACH Receiver Reports.** The following terms apply if Customer elects to receive ACH Receiver Reports:

(i) **Access.** ACH Receiver Reports will be transmitted to Customer via a Comerica Treasury Management delivery channel or an approved Secure File Transfer Protocol. Customer must provide to Bank criteria needed to setup the ACH Receiver Services and inform Comerica of any changes to protocol licenses or delivery access. Some Access Methods may require Customer to sign an Implementation Agreement and/or Separate Agreement to use the Access Method.

(ii) **Provision of Information.** Bank will provide information about ACH debits and ACH credits posted to Designated Accounts. Reports will be made available the Business Day after each Business Day on which an ACH debit or ACH credit is posted or is received for posting to a Designated Account. Information generally contained in ACH Receiver Reports is: effective entry date, entry amount, Originator, ACH addenda data and other fields required in the NACHA formatted file in accordance with the NACHA Rules, files and reports not distributed in a NACHA format will have data included as designed at the time of setup.

(iii) **Liability.** Bank shall have no liability for delay in providing or its failure to provide ACH Receiver Reports. Customer shall not be obligated to pay for ACH Receiver Reports Bank failed to provide or for reports provided more than three (3) Business Days late.

(iv) **User Guides.** ACH Receiver Reports are listed in the User Guide for ACH Services.

5. **Check Issue Service.** Comerica's Check Issue Service ("Check Issue Service") allows customers to direct Bank to create and forward checks drawn on customer's checking account(s) to designated payees in accordance with the customer's instructions.

(a) **Additional Service(s) Required.** To use the Check Issue Service, Customer must receive the Comerica Integrated Payables™ Service and/or Comerica Integrated Payables Web™ Service. By using the Check Issue Service with Comerica Integrated Payables™ Service and/or Comerica Integrated Payables Web™ Service, Customer agrees to the Service Terms for the Comerica Integrated Payables™ Service and/or Comerica Integrated Payables Web™ Service, as applicable, and such applicable terms are incorporated into and made a part of the Service Terms for the Check Issue Service by this reference.

(b) **Accounts.** Customer shall direct Bank to create check(s) drawn against a checking account held by Customer at Bank ("Checking Account") through the use of the Check Issue Service. For purposes of the Check Issue Service and the creation of checks under the Service Terms for the Check Issue Service, Customer designates Bank and its agents and employees as agents of Customer with the limited authority to affix the authorized signature of an Authorized Signer to checks requested by Customer under the Service Terms for the Check Issue Service. For purposes of the Service Terms for the Check Issue Service, "create" means to print a check requested by Customer using a Customer approved check template, with payment information provided by Customer, and to affix the signature provided by Customer on a check drawn against a Checking Account. Customer must instruct Bank to affix an Authorized Signature of an Authorized Signer, as such terms are defined in the Deposit Contract governing the Checking Account, to the checks requested under the Service Terms for the Check Issue Service.

(c) **Authorization.** To utilize this Check Issue Service, Customer authorizes Bank to affix Customer's authorized signature to checks created pursuant to the Service Terms for the Check Issue Service. Customer agrees that checks created as a result of Bank's receipt of instructions through the Check Issue Service are deemed authorized under the terms of the agreement governing the Checking Account on which the checks are to be drawn.

(d) **Processing Limits.** If more than one (1) check request is received from Customer or other customers of Bank, Bank may process the requests in any order it elects. For purposes of the Service Terms for the Check Issue Service, forwarding a created check means to mail it by U.S. first class mail or give it to a national courier that personally delivers packages, depending on whether Customer chooses to expedite a payment. Notwithstanding the foregoing, Bank will use commercially reasonable efforts to create checks for check requests received by Bank by the cut-off time specified in the applicable User Guide(s) for the Check Issue Service on the same Business Day, and to forward them on the same Business Day. Bank does not guarantee that checks will be created and/or forwarded on the same Business Day on which they are requested even if the request is received by Bank on or before the cut-off time specified in the applicable User Guide(s) for the Check Issue Service. If a check is not created on the same Business Day that it is received by Bank,

it will be created on the next Business Day unless the delay is otherwise excused.

(e) **Changes to Checking Accounts.** Customer will promptly notify Bank, in accordance with the applicable User Guide(s), of any changes to authorized signature, logo, return address, account closure or other changes affecting any Checking Account or the negotiability of the checks created under the Service Terms for the Check Issue Service.

(f) **Duties.**

(i) **Duties of Bank.** Provided that Bank receives Customer's check request in accordance with the requirements set forth in the applicable User Guide(s), Bank's only duties are those specifically set forth in the Service Terms for the Check Issue Service. Checks will be forwarded in the manner agreed upon by Bank and Customer.

(ii) **Duties of Customer.** Customer will notify Bank at least two (2) Business Days prior to making any request for five hundred

(500) or more checks on any Business Day. Failure to notify Bank in accordance with the Service Terms for the Check Issue Service may result in a delay in the creation and/or forwarding of Customer's requested checks.

(g) **Check Stock.**

(i) **Approval of Mock-Up.** Customer shall provide to Bank any approved trademark, logo and/or brand name ("Marks") it wishes to include on its check stock template. Bank will design a check stock template mock-up containing the specifications provided by Customer. Bank shall provide the check stock template mock-up to Customer for review and approval. Customer shall have thirty (30) days to advise Bank of any changes to the check stock template. If after thirty (30) days Customer has not informed Bank of any changes to be made to the check stock template, it will be deemed accepted by Customer. If Customer does advise Bank of changes to the check template within thirty (30) days, Bank will implement such changes and return the check template mock-up to Customer for review and approval. Customer shall have thirty (30) days to advise Bank of any changes to the amended check template.

(ii) **Customer Liability.** Bank shall have no liability for any mistakes, errors or requests for changes to any check template after Customer has approved the template. If Customer discovers a mistake or error on a check after approving the check template, Customer may instruct Bank to continue using such checks or request a new check template mock-up at Customer's expense.

(iii) **Customer's Marks.** Customer hereby grants to Bank a limited, revocable, nontransferable license to reproduce and use its Marks solely for the purpose of and in connection with the Service Terms for the Check Issue Service. Bank's reproduction and use of Customer's Marks, and all goodwill established thereby and/or associated therewith, shall inure exclusively to the benefit of Customer, and Bank acquires no goodwill or other legal rights or interests in Customer's Marks other than the right to use Customer's Marks in connection with the provision of services pursuant to the Service Terms for the Check Issue Service.

(h) **Limitations of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**, Bank shall have no liability to Customer, or any intended payee, if a check created under the Service Terms for the Check Issue Service is returned undeliverable or unpaid because of any reason other than Bank's gross negligence or willful misconduct. Customer understands that Bank undertakes no duty in providing this Check Issue Service to determine if funds are available in the Checking Account at the time a check is forwarded. Bank's liability for failure to timely forward a requested check within one (1) Business Day following receipt of a request received in accordance with the requirements set forth in the applicable User Guide(s) (if such failure is not excused for any reason set forth in **Section I.L.1(c) of this Master Agreement**) is limited to the amount of any late fees, penalties or interest incurred by Customer that is imposed by the payee on Customer in payee's ordinary course of business, but in no event will Bank's liability

exceed 10% of the face amount of the requested check or \$100, whichever is less.

(i) **Positive Pay.** As an option, and subject to the Fees and Charges set forth in the applicable Fee Schedule, Customer may request Bank to create check issue files for checks created by Bank under the Service Terms for the Check Issue Service and the Positive Pay Service on Customer's Comerica Bank, Comerica Bank & Trust, NA, or Comerica Bank Canada accounts. Bank will use commercially reasonable efforts to create and deliver the check issue file to the Positive Pay Department before a check created under the Service Terms for the Check Issue Service is presented for payment. However, Bank shall have no responsibility or liability for any Losses arising out of the untimely delivery of a check issue file. Customer is responsible for selecting its default actions for checks issued under this Check Issue Service accordingly. If Customer selects this option, Customer is subject to and agrees to the Service Terms for the Positive Pay Service.

6. **Check Services.** Comerica's Check Services ("Check Services") allow customers to stop payment of checks, inquire as to the status of checks or request information as to their deposit account(s) at Bank via Comerica Treasury Payments® and Comerica Integrated Payables™.

(a) **Additional Service(s) Required.** To use the Check Services, Customer must receive the Comerica Integrated Payables™ Service and/or Comerica Treasury Payments® Service. By using the Check Issue Service with Comerica Integrated Payables™ Service and/or Comerica Treasury Payments® Service, Customer agrees to the Service Terms for the Comerica Integrated Payables™ Service and/or Comerica Treasury Payments® Service, as applicable, and such applicable terms are incorporated into and made a part of the Service Terms for the Check Issue Service by this reference. Customers who elect to use Check Services via Comerica Treasury Payments® may also view check images and transaction history regarding their designated accounts.

(b) **Stop Payment Orders.**

(i) **Effectiveness of Stop Payment Orders Through Comerica Treasury Payments®.** A stop payment order placed through Comerica Treasury Payments® Check Services is a "writing" for purposes of the Uniform Commercial Code. Unless (1) Bank agrees to some other time period; or (2) Customer requests, and Bank accepts, the cancellation of a stop payment order, Customer's stop payment order will remain effective for six (6) months, twelve (12) months, twenty-four (24) months or sixty (60) months, from the first Business Day following Bank's acceptance of the stop payment order based on Customer's selection when the stop payment order is placed.

(ii) **Effectiveness of Stop Payment Orders Through Comerica Integrated Payables™ or Other Service.** A stop payment order placed through Comerica Integrated Payables™ Check Services is a "writing" for purposes of the Uniform Commercial Code. Unless (a) Bank agrees to some other time period; or (b) Customer requests, and Bank accepts, the cancellation of a stop payment order, Customer's stop payment order will remain effective for six (6) months from the first Business Day following Bank's acceptance of the stop payment order.

(iii) **Contingency Plan for Transmission of Stop Payment Order.** If either the Check Services or the Access Method Customer uses to access Check Services is inoperative, Customer will transmit stop payment order(s) by such other means as Bank may direct, and such instructions will remain subject to the Service Terms for Check Services as if they were entered without a Contingency Plan.

(iv) **Reasonable Time to Act.** Notwithstanding Customer's receipt of a confirmation, Customer agrees that Bank must be afforded a reasonable time, which will not be less than one (1) full Business Day, in which to act on any stop payment order. Customer understands that placing a stop payment order on a check may not relieve Customer's obligation on the check or the underlying obligation.

(v) **Standard of Care.** Bank will exercise good faith and ordinary care in implementing Customer's instructions under the Check Services.

(c) Limitation of Liability. Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**, Bank will not be liable for stop payment orders involving duplicate check numbers issued by Customer.

(d) Indemnification. In addition to any other Indemnification obligations under this Master Agreement, Customer shall Indemnify Bank in connection with Bank's refusal to pay any check on which Customer has placed a stop payment order, or if Bank pays any check on which: (a) Customer has released Customer's stop payment order; (b) the stop payment order has expired; (c) the stop payment order has been improperly or inaccurately entered by Customer; or (d) the stop payment order has not been entered in a timely manner.

7. **Comerica Integrated Payables™ Service.** Comerica Integrated Payables™ Service ("Integrated Payables Service") provides customers with access to a transaction-based service that enables them to direct Bank and/or its agents to transmit payment requests drawn on customers' designated Bank account(s) or Comerica Commercial Card™ account(s) by file delivery.

(a) Services Available Through Integrated Payables. Customer will only be able to use the Integrated Payables Service to access and use the payment types available through the Integrated Payables Service ("IP Payment Types") that Customer has selected in the Implementation Agreement and/or agreed to in a Separate Agreement as required by Bank. By selecting an IP Payment Type in the Implementation Agreement and/or a Separate Agreement or by using Integrated Payables Service with an IP Payment Type, Customer acknowledges that it has reviewed the Service Terms for the applicable IP Payment Type (including those contained within a Separate Agreement, where applicable), Customer agrees to the Service Terms for the applicable IP Payment Type, and such applicable terms for the IP Payment Type are incorporated into and made a part of the Service Terms for the Integrated Payables Service. IP Payment Types available for use with the Integrated Payables Service include: (i) Comerica Commercial Card™ for Vendor Payments; (ii) ACH Services; (iii) Check Services; (iv) Check Issue Service; (v) Treasury Management Wire Transfer Service; and (vi) Multibank Payment Request Service.

(b) Access. Customer may access the Integrated Payables Service via SFTP.

(c) Authorization to Store, Process, Transmit and Make Available. Customer authorizes Bank to act as its agent for the Payment Type(s) Customer initiates using the Integrated Payables Service. Bank is authorized to store, process, transmit and make available through Bank's agencies and systems, third party financial institutions and Third-Party Providers, information regarding accounts and transactions designated by Customer in connection with the Integrated Payables Service.

(d) Acknowledgments and Confirmations. By default, Bank will provide Customer with one (1) or more acknowledgements and confirmations (each a "Notice") for payments made by Customer using this Integrated Payables Service. Customer may elect to opt out from receipt of any or all of these Notices. In the event Customer elects to opt-out from the receipt of any or all of these Notices, Customer releases and holds Bank harmless from any liability as a result of this request.

(e) Payment Instructions. For all payment instructions transmitted to Bank using the Integrated Payables Service, files must contain all mandatory fields as further described in the applicable User Guide(s). Failure to include any mandatory field, or the submission of an invalid mandatory field, will result in the payment request being rejected and a notice of such rejection will be sent to Customer via the Integrated Payables Service as agreed upon by Customer and Bank. At Customer's option, Bank will provide a confirmation to Customer via the Integrated Payables Service indicating the payment has been successfully processed or forwarded for processing. It is Customer's responsibility to contact Bank at the phone number provided in the applicable User Guide(s) if Customer does not receive a confirmation or rejection of a payment that it requested.

(f) Next Business Day. Customer understands and agrees that certain information and transactions are not processed by Bank until after

the close of the Business Day and therefore such information and transactions may not be reported by the Integrated Payables Service until the next Business Day.

(g) Use Limitations. Customer represents and warrants to Bank that Customer: (a) will access and use the Integrated Payables Service solely to conduct Customer's business; and (b) will limit access to the Integrated Payables Service to those Customer employees and agents who require access to perform their jobs. Customer is responsible for providing instructions to Bank, other financial institutions and any Third-Party Provider who will input account information into the Integrated Payables Service or process orders or instructions. Any orders, instructions or other communications received by Bank via the Integrated Payables Service, using the Security Procedures applicable to the Integrated Payables Service, will be deemed by Bank as received from Customer.

(h) Limitation of Liability. Notwithstanding anything in the Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, the following limitations apply. Customer agrees that Bank and Third-Party Providers will not be liable for any loss or damage arising, directly or indirectly, in whole or in part, from any:

(i) inaccurate or incomplete data in the input of an order, instruction, or other communication by Customer, or Customer's failure to format any such order, instruction or communication as required by Bank;

(ii) failure by Customer to obtain a confirmation or rejection of an order or instruction;

(iii) cancellation or attempted cancellation by Customer of an order or instruction;

(iv) errors or omissions resulting from Bank's conversion of an order or instruction received from Customer or any Third-Party Provider;

(v) inaccurate or incomplete information received from Customer, another financial institution, or a Third-Party Provider;

(vi) temporary interruptions in Bank's or any other entity's information systems;

(vii) inability to access the Integrated Payables Service, or a Service accessible through the Integrated Payables Service, through the use of the internet or other communications delivery systems; or

(viii) unauthorized use of the Integrated Payables Service, or a Service accessible through the Integrated Payables Service, by Customer or its officers, employees, agents, or third parties.

8. **Comerica's Vendor Payment Registration Assistance Service for Integrated Payables Service.** Comerica's Vendor Payment Registration Assistance Service ("IP Registration Assistance Service") is an optional service for customers who elect Comerica Commercial Card™ as a payment type for Integrated Payables Service. The purpose of the Registration Assistance Service is to register customer's vendors to support payments by Comerica Commercial Card.

(a) Additional Services Required. To use the IP Registration Assistance Service, Customer must receive the Integrated Payables Service and must sign the Comerica Card Solutions Terms (Service Agreement Included). By using the IP Registration Assistance Service with Comerica Integrated Payables™ Service, Customer agrees to the Service Terms for the Comerica Integrated Payables™ Service, and such terms are incorporated into and made a part of the Service Terms for the IP Registration Assistance Service by this reference.

(b) Authorization. Customer authorizes Bank to contact Customer's designated vendors in furtherance of migration of such vendors to process payments via Customer's designated Comerica Commercial Card Vendor Card (as defined in the User Guide) ("Vendor Card"), as applicable.

(c) Vendor Registration Assistance Responsibilities.

(i) Bank will assist Customer in registering vendors for accepting Vendor Card for payments. Bank reserves the right to limit the number of vendors included in the Registration Assistance Service. Bank

will provide to Customer the period during which Bank will provide the Registration Assistance Service.

(ii) Customer shall provide complete and updated contact information for each vendor in the vendor registration file. Bank must be able to rely solely on the vendor contact name and phone number information that Customer provides. If, however, incomplete or outdated vendor contact information is provided by the Customer, Bank may, at its discretion, attempt to: (a) take steps to contact the vendor to determine on Customer's behalf the department and individual who is to receive Payment Information (defined below); or (b) identify the appropriate department and individual by conducting a basic internet search.

(iii) Upon receipt of Customer's vendor registration file that includes all the information requested by Bank for the Registration Assistance Service, Bank will contact each vendor contact person using the name and telephone number provided by Customer.

(iv) Bank will make at least two (2) attempts to reach the appropriate department and individual based upon the information Customer provided or that Bank obtained directly from the vendor or by doing a basic internet search for the vendor during the Registration Assistance Service period.

(v) Bank will provide Customer with confirmation periodically of each vendor's status to receive payment by Vendor Card. Bank does not guarantee that any vendor will accept payment by Vendor Card.

(vi) If a vendor agrees to receive payments from Customer via Vendor Card, Bank will provide the vendor with a Vendor Card account number, expiration date and card verification code.

(vii) The information Bank provides to the vendor in accordance with **Section 3.6** shall be collectively referred to as "Payment Information".

(viii) If for any reason the vendor is unable to use that Payment Information to receive payment, Bank assumes no liability. The vendor must contact Customer directly for error resolution.

(ix) By authorizing a Vendor Card payment, Customer agrees that the Payment Information is correct.

(d) **Limitation of Liability.** Notwithstanding anything in the Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**.

(i) Bank assumes no liability for any errors in vendor registration if: (a) vendor registration is conducted by anyone other than Bank; or (b) registration information and Payment Information is validated by Customer.

(ii) Bank assumes no liability for the actions of Customer or the vendor.

9. **Comerica Integrated Payables Web™ Service.** Comerica Integrated Payables Web™ Service ("Integrated Payables Web Service") is a payment service that includes internet-based software and tools ("IPW Software") allowing customers to access various services to initiate and send payments and track, export, and reconcile transactions. Customers may also elect to receive assistance with setting up and/or migrating their vendors from check payments to ACH or Comerica Commercial Card™ payments.

(a) **Services Available Through Integrated Payables Web Service.**

(i) **Payment Types.** Customer will only be able to use the Integrated Payables Web Service to access and use the payment types available through the Integrated Payables Web Service ("IPW Payment Types") that Customer has selected in the Implementation Agreement and/or agreed to in a Separate Agreement required by Bank. By selecting an IPW Payment Type in the Implementation Agreement or by using Integrated Payables Web Service with an IPW Payment Type, Customer acknowledges that it has reviewed the Service Terms for the applicable IPW Payment Type (including those contained within a Separate Agreement, where applicable), Customer agrees to the Service Terms for the applicable IPW Payment Type, and such applicable terms for the IPW Payment Type are incorporated into and made a part of the Service Terms

for the Integrated Payables Web Service. IPW Payment Types available for use with the Integrated Payables Web Service include: (i) Comerica Commercial Card™ for Vendor Payments; (ii) ACH Services; (iii) Check Issue Service; (iv) Treasury Management Wire Transfer Service; and (v) Multibank Payment Request Service.

(ii) **Vendor Registration Assistance Services.** In addition, Customer may receive the following additional Vendor Registration Assistance Services by selecting this option in the Implementation Agreement. By selecting Vendor Registration Services in the Implementation Agreement or by using Vendor Registration Services Integrated Payables Web Service with an IPW Payment Type, Customer acknowledges that it has reviewed the Service Terms for the applicable IPW Payment Type (including those contained within a Separate Agreement, where applicable), Customer agrees to the Service Terms for the applicable IPW Payment Type, and such applicable terms are incorporated into and made a part of the Service Terms for the Integrated Payables Web Service. Additional obligations of the Parties with respect to the Vendor Registration Assistance Services are set forth in the User Guide for Integrated Payables Web Service.

(A) **ACH Vendor Registration Assistance Services.** If Customer selects and/or uses this Service, Bank will implement a campaign to migrate Customer's designated vendors from receiving payments by check to receiving electronic payments via ACH. Customer shall provide Bank with a list of its designated vendors with complete and updated contact information for each such vendor. Customer authorizes Bank to contact Customer's vendors in furtherance of the ACH payment migration campaign. Customer authorizes Bank to automatically convert check payment instructions to ACH electronic payment instructions for registered vendors.

(B) **Comerica Commercial Card™ Vendor Registration Assistance Services.** If Customer selects and/or uses this Service, Bank will provide Customer with assistance in migrating Customer's designated vendors from receiving payments by check to receiving payments via Comerica Commercial Card™ payments. Customer shall provide Bank with a list of its designated vendors with complete and updated contact information for each such vendor. Customer authorizes Bank to contact Customer's vendors in furtherance of the Comerica Commercial Card™ payment migration campaign. Bank's obligations with respect to the Commercial Card™ Vendor Registration Assistance Services are conditioned upon Customer maintaining a Comerica Card Solutions Service Agreement with Bank ("Card Agreement"). Customer must provide Bank with advance notice of its intent to terminate the Card Agreement with Bank. Upon termination of the Card Agreement by Customer, Bank will work with Customer to evaluate alternative payment types for the affected vendors.

(b) **Access.** Customer may access the Integrated Payables Web Service through Comerica Business Connect™ or via SFTP. By using the Integrated Payables Web Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into and made a part of the Service Terms for the Integrated Payables Web Service by this reference.

(c) **Authorization.**

(i) **Third-Party Providers.** For purposes of the Service Terms for the Integrated Payables Web Service, all references to "Bank" shall include Bank's Third-Party Providers.

(ii) **Generally.** Customer authorizes Bank to act as its agent for the Payment Type(s) Customer initiates using the Integrated Payables Web Service. Bank is authorized to store, process, parse, format, generate, transmit, route and make available through Bank's agencies, systems, third-party financial institutions and/or Third-Party Providers, payment files and records, information regarding accounts, and transactions designated by Customer.

(iii) **Duplicates.** In the event Bank detects a duplicate payment file submitted by Customer, Bank is hereby authorized to automatically

suspend processing such duplicate files until further instruction from Customer. Bank will notify Customer of such detected duplicate files. However, for clarification, the foregoing shall not impose on Bank any responsibility to detect duplicate files. For every payment file that is submitted to Bank through the Integrated Payables Web Service, the system will automatically perform duplicate file checking. The system will compare the submitted payment file with all past payment files processed for Customer to check for any possible matches based on the total dollar amount and the total number of payment records in the file. If a match is detected, processing of the submitted payment file is automatically suspended. Bank will visually inspect both the submitted payment file and the matching duplicate file to verify if the payment records in the two (2) files are truly identical. Bank will review the Payee Names, Payment Numbers, Payment Amounts, and Payment Dates in both files. Once the review has been completed, if the submitted file is not identical to the previously processed matching files, the file will be released for processing. In the event that the submitted file is a duplicate file, Bank will contact Customer and inquire if the file should be released or cancelled out of the system. Bank reserves the right to make reasonable changes to the duplicate file checking process.

(d) Orders and Payment Instructions.

(i) **Customer's Responsibility.** Customer is responsible for providing instructions to Bank and any other financial institutions that will input account information into the Integrated Payables Web Service, or process orders or instructions.

(ii) **File Formats.** Customer shall provide Bank with a sample payment data file and corresponding record layout prior to receiving the Integrated Payables Web Service. For all payment instructions transmitted to Bank using the Integrated Payables Web Service, files must conform to the sample payment data file that Customer provides to Bank, and that Bank approves. Failure to conform to the sample payment data file will result in the payment request being rejected and a notice of such rejection will be sent to Customer by Integrated Payables Web Service as agreed upon by Customer and Bank. Bank will provide a confirmation to Customer via the Integrated Payables Web Service once the payment has been successfully processed. It is Customer's responsibility to contact Bank at the phone number provided in the applicable User Guide if Customer did not receive a confirmation or rejection of a payment that it requested.

(iii) **Notifications.** Bank will electronically notify Customer of file processing status.

(iv) **Data Storage.** Bank will store Customer's payment data information in its database for archival. The most recent twelve (12) months of payment history will be available to Customer via the Integrated Payables Web Service.

(e) Customer's Additional Representations and Warranties.

(i) **Customer Representations and Warranties.** Customer represents and warrants to Bank that Customer:

(A) will limit access to and usage of the Integrated Payables Web Service and related documentation, including the User Guide for the Integrated Payables Web Service (collectively "Documentation") to those Users who are authorized to use the Integrated Payables Web Service and who require access to the Integrated Payables Web Service to perform their jobs;

(B) will use the Integrated Payables Web Service and Documentation solely to conduct its business and solely in the ordinary course of its business operations;

(C) will ensure that Users or permitted agents will use the Integrated Payables Web Service only in accordance with the Documentation;

(D) and shall not do, or attempt to do, nor permit any other person or entity to do any of the following:

(E) use any Proprietary Property for any purpose, at any location or in any manner not specifically authorized by the Service Terms for the Integrated Payables Web; or

(F) make any or retain any copy of any Proprietary Property except as specifically authorized by the Service Terms for the Integrated Payables Web; or

(G) create or recreate the source code for the Integrated Payables Web Service, or re-engineer, reverse engineer, decompile or disassemble the IPW Software; or

(H) modify, adapt, translate or create derivative works based upon the IPW Software or Documentation, or combine or merge any part of the IPW Software or Documentation with or into any other software or documentation; or

(I) refer to or otherwise use any Proprietary Property as part of any effort either (i) to develop a program having any functional attributes, visual expressions or other features similar to those of IPW Software, or (ii) to compete with Bank; or

(J) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Property, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Property made by Customer;

(K) sell, market, license, sublicense, distribute or otherwise grant to any person or entity, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Property provided by Bank;

(L) use the IPW Software to conduct any type of service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any person or entity, whether on a fee basis or otherwise; or

(M) share screen shots of the IPW Software with any person(s) who is not a User.

(ii) **No Guarantees.** Customer represents that Bank has made no guarantees, warranties or representations about the security or reliability of using the internet as a means of obtaining access to the Integrated Payables Web Service.

(f) Limitation of Liability. NOTWITHSTANDING **SECTION I.I.2.1(b) OF THIS MASTER AGREEMENT**, EXCEPT FOR A THIRD-PARTY CLAIM FOR INFRINGEMENT UNDER **SECTION I.H.1(b)(vi) OF THIS MASTER AGREEMENT**, BANK'S TOTAL LIABILITY UNDER THESE INTEGRATED PAYABLES WEB SERVICE TERMS SHALL UNDER NO CIRCUMSTANCES EXCEED THE FIRST SIX (6) MONTHS FEES ACTUALLY PAID BY CUSTOMER TO BANK UNDER THESE INTEGRATED PAYABLES WEB SERVICE TERMS.

10. Comerica's Vendor Payment Registration Assistance Service for Integrated Payables Web Service.

Comerica's Vendor Payment Registration Assistance Service for Integrated Payables Web ("IPW Registration Assistance Service") is an optional service for customers who elect ACH and/or Comerica Commercial Card™ as a payment type(s) for the Integrated Payables™ Web Service. The purpose of the IPW Registration Assistance Service is to register customer's vendors to support payments by ACH and/or Comerica Commercial Card™.

(a) Additional Services Required. To use the IPW Registration Assistance Service, Customer must receive the Integrated Payables Web Service and one or more of the following: (a) Comerica Commercial Card Service™; and/or (b) ACH Services. By using the IPW Registration Assistance Service, Customer agrees to the Service Terms for the Integrated Payables Web Service, the Service Terms for ACH Services (if applicable) and the terms and conditions of the Comerica Commercial Card™ Service Agreement (if applicable).

(b) Authorization.

(i) Customer authorizes Bank to contact Customer's designated vendors in furtherance of migration of such vendors to process payments via ACH drawn against Customer's Designated Account and/or via Customer's designated Comerica commercial card ("Vendor Card") which can include single-use virtual cards or assigned Vendor Cards, as applicable.

(ii) For purposes of the Service Terms for IPW Registration Assistance Services, all references to "Bank" shall include Bank's Third-Party Providers.

(c) Vendor IPW Registration Assistance Responsibilities.

(i) Bank will assist Customer in registering vendors for accepting ACH and/or Vendor Card for payments. Bank reserves the right to limit the number of vendors included in the IPW Registration Assistance Service. Bank will provide to Customer the period during which Bank will provide the IPW Registration Assistance Service.

(ii) Customer will provide complete and updated contact information for each vendor in the vendor registration file. Bank must be able to rely solely on the vendor contact name and phone number information that Customer provides. If, however, incomplete or outdated vendor contact information is provided by the Customer, Bank may, at its discretion, attempt to: (A) take steps to contact the vendor to determine on Customer's behalf the department and individual who is to receive Payment Information (defined below); or (B) identify the appropriate department and individual by conducting a basic internet search.

(iii) Upon receipt of Customer's vendor registration file that includes all the information requested by Bank for the IPW Registration Assistance Service, Bank will contact each vendor contact person using the name and telephone number provided by Customer.

(iv) Bank will make at least two (2) attempts to reach the appropriate department and individual based upon the information Customer provided or that Bank obtained directly from the vendor or by doing a basic internet search for the vendor during the IPW Registration Assistance Service period.

(v) Bank will provide Customer with confirmation periodically of each vendor's status to receive payment by ACH and/or Vendor Card. Bank does not guarantee that any vendor will accept payment by ACH and/or Vendor Card.

(vi) If a vendor agrees to receive payments from Customer via ACH and/or Vendor Card: (A) for ACH transactions, vendor will register and provide an account number and routing instructions using the Integrated Payables portal; (B) for single-use virtual card transactions, vendor will register and receive Vendor Card account information using the Integrated Payables portal; (C) for assigned Vendor Card transactions, vendor will register using the Integrated Payables portal. Bank will provide the vendor with a Vendor Card account number, expiration date and card verification code.

(vii) The information Bank provides to the vendor, and vendor provides in accordance with **Section 9.(c)(vi)** shall be collectively referred to as "**Payment Information**".

(viii) If for any reason vendor is unable to use that Payment Information to receive payment, Bank assumes no liability. The vendor must contact Customer directly for error resolution.

(ix) By authorizing a Vendor Card payment, Customer agrees that the Payment Information is correct.

(d) Limitation of Liability. Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**.

(i) Bank assumes no liability for any errors in vendor registration if: (A) vendor registration is conducted by anyone other than Bank; or (B) registration information and Payment Information is validated by Customer.

(ii) Bank assumes no liability for the actions of Customer or the vendor.

11. Controlled Disbursement Service. Comerica's Controlled Disbursement Service ("Controlled Disbursement Service") is a solution offering businesses and government agencies greater control over general disbursements. The Controlled Disbursement Service provides customers same-day notification of the amount of disbursements clearing that day via Comerica Bank's information reporting systems. Required funds are drawn from a predetermined funding account so that customers know exactly what charges to expect on a given day. The Controlled Disbursement Service enables customers to better manage funds for optimal return, minimizing idle balances in their accounts.

(a) Definitions. For purposes of Service Terms for the Controlled Disbursement Service: "**Funding Bank**" means Comerica Bank; "**Disbursing Bank**" shall mean Comerica Bank and Trust, N.A. Funding Bank and Disbursing Bank are collectively referred to as "Bank."

(b) Opening and Maintaining Accounts. Customer will complete and execute deposit account documents requested to open: (a) a controlled disbursement account drawn on Disbursing Bank ("Disbursement Account"); and (b) a commercial demand deposit checking account held at Funding Bank ("Funding Account").

(c) The Disbursement Account.

(i) Deposits. The Disbursement Account is intended to be a zero balance account, meaning no deposits, including ACH credits or incoming wire transfers for credit, are to be made directly into the Disbursement Account. However, if from time to time an incoming deposit is received, the Disbursing Bank may accept the deposit and, at its option, transfer such deposit to the Funding Account.

(ii) Debits. Only check transactions (checks drawn against the Disbursement Account) and ACH debits are expected to occur in connection with the Disbursement Account. While the Disbursing Bank may accept drawn down wires against the Disbursement Account, it is under no obligation to do so, and such transactions will not be reported under the Controlled Disbursement Service. The only type of transactions intended for the Disbursement Account are checks drawn by Customer on the Disbursement Account and ACH debits. The Customer should not initiate wires of any kind, ACH credits or any other types of credit transactions from the Disbursement Account, nor direct others to initiate such transactions against the Disbursement Account.

(iii) Guaranteed or Standard Presentment. Bank will determine, based on risk rating, if Customer will be setup with guaranteed or standard presentment and will notify Customer in writing of the presentment type.

(d) Customer Authorization. Customer authorizes and directs Bank to act on its behalf and as its agent, as Bank in its sole discretion deems necessary or advisable, in performing the Controlled Disbursement Service. Without limiting the foregoing, Customer expressly authorizes Bank to obtain access, from time to time, to all records of the Disbursement Account. Customer hereby authorizes Funding Bank to disclose to Disbursing Bank such information concerning Customer's affairs as Funding Bank may deem appropriate.

(e) Check Numbers. Customer will not at any time issue more than one (1) check with any given check number. If check number duplication occurs, Customer will pay Disbursing Bank its reasonable Fees for any resultant extra or special processing.

(f) Presentment. Upon presentment of any check drawn on the Disbursement Account for certification, Bank may, at its sole discretion, offer to issue to the party presenting such check a cashier's check in an amount not to exceed the dollar value of the presented check.

(g) Report of Incoming Debits. Disbursing Bank will, on each Business Day, inform Funding Bank of the total aggregate amount of all checks and other debits, net of adjustments ("Total Clearings"), and other Charges ("Items") to be posted to the Disbursement Account. Provided that such information is made available to Bank, Bank will make this

information available to Customer each day not later than the time established in the User Guide for the Controlled Disbursement Service.

(h) The Funding Account. Customer agrees not to close the Funding Account without the express written consent of Bank. Customer agrees to maintain sufficient Available Funds in the Funding Account to fund each authorized debit effected by Bank for the purpose of transferring funds to Disbursing Bank for credit to the Disbursement Account. Bank is authorized to debit the Funding Account in an amount equal to an estimate of the following day's Total Clearings and to transfer funds in that amount to Disbursing Bank for credit to the Disbursement Account. If the balance in Customer's Funding Account is insufficient to cover the Total Clearings, Customer authorizes Bank to transfer funds from any of Customer's accounts at Bank to reimburse Bank for the deficit. Overdrafts which may be allowed by Bank, in its sole and absolute discretion, shall be an obligation of the Customer. Bank is not obligated to allow such overdrafts and may discontinue allowing overdrafts without prior notice to Customer, even if such action would cause items from the Disbursement Account to be returned unpaid.

(i) Daily Dollar Limit. A daily dollar limit for the Total Clearings ("Dollar Limit") may be established by Bank, in its sole discretion, from time to time with respect to the Disbursement Account. The Disbursing Bank will have no obligation to pay Items in excess of the Dollar Limit. Bank may, at any time, either orally or in writing, notify Customer of any change made by Bank in the Dollar Limit, and Customer agrees that any such notice shall, for all purposes, be deemed reasonable notice. Establishment of the Dollar Limit should not be interpreted or construed by Customer as a commitment or agreement by Bank to provide any credit or loans to Customer, nor an agreement or commitment to debit the Funding Account if doing so would create a negative collected balance.

(j) Unavailable Funds. At its sole discretion, Bank may advance funds to cover all or part of the daily Total Clearings upon demand. Customer agrees to pay to Bank any amount so advanced plus interest and fees as stated in the applicable Deposit Contract, this Master Agreement, or as otherwise agreed in writing by Customer and Bank.

(k) Special Circumstances. Customer acknowledges that Bank may at times be unable to provide a report of the Customer's Total Clearings early enough for Customer to make a complete and accurate funding of the Funding Account. Customer, nevertheless, agrees to fund the Funding Account based on an estimate by Bank of the Total Clearings and to be liable for any deficit.

(l) Return of Unpaid Items. Funding Bank reserves the right, in its sole discretion, to instruct Disbursing Bank to return unpaid any or all Items presented for payment against the Disbursement Account in the event that: (a) there are insufficient Available Funds on deposit in the Funding Account by the established deadline to fund the actual or estimated Total Clearings; (b) debits cannot be posted because the Disbursement Account or Funding Account is frozen, blocked, closed or because of any other condition; or (c) any communications failure or other condition prevents Funding Bank from monitoring Customer's Dollar Limit and/or the Items presented for payment at Disbursing Bank.

(m) Stop Payment Orders. Customer may issue stop payment orders on Items drawn on the Disbursement Account in accordance with the terms of Funding Bank's and Disbursing Bank's procedures. Bank's obligations with respect to such an order shall be limited to conveying such order to the Disbursing Bank promptly, through such intermediaries including Affiliates, in enough time to give the Disbursing Bank a full Business Day in which to act on any stop payment order. Funding Bank or Disbursing Bank shall not be liable for payment of any Item under a stop payment order during such time.

(n) Disbursing Bank's Duties, Limitation of Liability and Customer Indemnification. For avoidance of doubt, the limitation of liability and indemnification provisions in **Section I.L. of this Master Agreement** apply to both Disbursing Bank and Funding Bank. Funding Bank shall not be liable for any acts or omissions of Disbursing Bank. Customer agrees that Disbursing Bank's liability for the Controlled Disbursement Service shall be limited to the same extent as that of Funding Bank. Customer further agrees to Indemnify Disbursing Bank for the Controlled Disbursement Service and its performance of the duties described in the Service Terms for the Controlled Disbursement Service to the same extent as Customer is obligated to Indemnify Funding Bank.

12. Comerica Treasury Payments Integrated Payables™ Service. Comerica Treasury Payments Integrated Payables™ Service ("Treasury Payments Integrated Payables Service Schedule") provides customers with access to a transaction based service that enables them to direct Bank and/or its agents to transmit payment requests drawn on customers' designated Bank account(s) by file delivery.

(a) Services Available Through Comerica Treasury Payments Integrated Payables™. Customer will only be able to use the Comerica Treasury Payments Integrated Payables™ Service to access and use the payment types available through the Comerica Treasury Payments Integrated Payables™ Service ("Payment Types") that Customer has selected in the Implementation Agreement and/or agreed to in a Separate Agreement as required by Bank. By selecting a Payment Type in the Implementation Agreement and/or a Separate Agreement or by using the Treasury Payments Integrated Payables Service, Customer acknowledges that it has reviewed the Service Terms for the applicable Payment Type (including those contained within a Separate Agreement, where applicable), Customer agrees to the Service Terms for the applicable Payment Type, and such applicable terms for the Payment Type are incorporated into and made a part of the Service Terms for the Treasury Payments Integrated Payables Service. Payment Types available for use with the Treasury Payments Integrated Payables Service currently include: (i) Treasury Management Wire Transfer; and (ii) Account to Account Transfer.

(b) Access. Customer may access and use the Treasury Payments Integrated Payables Service through Comerica Treasury Payments®. By using the Treasury Payments Integrated Payables Service with Comerica Treasury Payments®, Customer agrees to the Service Terms for Comerica Treasury Payments® and such terms are incorporated into and made a part of the Service Terms for the Treasury Payments Integrated Payables Service by this reference.

(c) Authorization. Customer authorizes Bank to act as its agent for the Payment Type(s) Customer initiates using the Treasury Payments Integrated Payables Service. Bank is authorized to store, process, transmit and make available through Bank's agencies and systems, third party financial institutions and Third-Party Providers, information regarding accounts and transactions designated by Customer in connection with the Treasury Payments Integrated Payables Service.

(d) Acknowledgments and Confirmations. By default, Bank will provide Customer with one (1) or more acknowledgements and confirmations (each a "Notice") for payments made by Customer using this Treasury Payments Integrated Payables Service. Customer may elect to opt out from receipt of any or all of these Notices. In the event Customer elects to opt-out from the receipt of any or all of these Notices, Customer releases and holds Bank harmless from any liability as a result of this request.

(e) Payment Instructions. For all payment instructions transmitted to Bank using the Treasury Payments Integrated Payables Service, files must contain all mandatory fields as further described in the applicable User Guide(s). Failure to include any mandatory field, or the submission of an invalid mandatory field, will result in the payment request being rejected and a notice of such rejection will be sent to Customer via the Treasury Payments Integrated Payables Service as agreed upon by Customer and Bank. At Customer's option, Bank will provide a confirmation to Customer via the Treasury Payments Integrated Payables Service indicating the payment has been successfully processed or forwarded for processing. It is Customer's responsibility to contact Bank at

the phone number provided in the applicable User Guide(s) if Customer does not receive a confirmation or rejection of a payment that it requested.

(f) **Next Business Day.** Customer understands and agrees that certain information and transactions are not processed by Bank until after the close of the Business Day and therefore such information and transactions may not be reported by the Treasury Payments Integrated Payables Service until the next Business Day.

(g) **Use Limitations.** Customer represents and warrants to Bank that Customer: (a) will access and use the Treasury Payments Integrated Payables Service solely to conduct Customer's business; and (b) will limit access to the Treasury Payments Integrated Payables Service to those Customer employees and agents who require access to perform their jobs. Customer is responsible for providing instructions to Bank, other financial institutions and any Third-Party Provider who will input account information into the Treasury Payments Integrated Payables Service or process orders or instructions. Any orders, instructions or other communications received by Bank via the Treasury Payments Integrated Payables Service, using the Security Procedures applicable to the Treasury Payments Integrated Payables Service, will be deemed by Bank as received from Customer.

(h) **Limitation of Liability.** Notwithstanding anything in the Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, the following limitations apply. Customer agrees that Bank and Third-Party Providers will not be liable for any loss or damage arising, directly or indirectly, in whole or in part, from any:

(i) inaccurate or incomplete data in the input of an order, instruction, or other communication by Customer, or Customer's failure to format any such order, instruction or communication as required by Bank;

(ii) failure by Customer to obtain a confirmation or rejection of an order or instruction;

(iii) cancellation or attempted cancellation by Customer of an order or instruction;

(iv) errors or omissions resulting from Bank's conversion of an order or instruction received from Customer or any Third-Party Provider;

(v) inaccurate or incomplete information received from Customer, another financial institution, or a Third-Party Provider;

(vi) temporary interruptions in Bank's or any other entity's information systems;

(vii) inability to access the Integrated Payables Service, or a Service accessible though the Treasury Payments Integrated Payables Service through the use of the internet or other communications delivery systems; or

(viii) unauthorized use of the Treasury Payments Integrated Payables Service, or a Service accessible though the Treasury Payments Integrated Payables Service, by Customer or its officers, employees, agents, or third parties.

13. **Electronic Data Interchange Service.** Comerica's Electronic Data Interchange Service ("EDI Service") provides electronic data transfer of business information through Bank's ACH, Lockbox, and/or Treasury Management Wire Transfer Services. Payment related remittance data is attached to the customer's payment transactions in standardized formats established by the Accredited Standards Committee (ASC) of the American National Standards Institute (ANSI). The EDI Service offers three options: Origination, Receipt, and Translation, each of which is described below.

(a) **Definitions.** All capitalized terms used but not defined in the Service Terms for the EDI Service shall have the meanings ascribed to them in the Nacha Rules.

(b) **Service Options.** Customer may elect to receive one or more of the following EDI Service options within the EDI Service:

(i) **EDI Origination Service.** The EDI Origination Service allows addenda records to be passed containing payment remittance information attached to wires and/or originated ACH Entries to transfer through the wire and ACH Direct Send processes to Beneficiary/Receiver accounts. This option requires Customer to use ACH Services and/or Treasury Management Wire Transfer Service. By using the EDI Service with ACH Services and/or Treasury Management Wire Transfer Service, Customer agrees to the Service Terms for ACH Services and/or Treasury Management Wire Transfer Service, as applicable, and such applicable terms are incorporated into and made a part of the Service Terms for the EDI Service by this reference

(ii) **EDI Receipt Service.** The EDI Receipt Service provides payment related remittance information for incoming wire, lockbox and/or ACH items sent to Bank. The data can be communicated in an electronic transmission or online through Comerica Treasury Payments® or Comerica Integrated Payables™. This option requires Customer to use Comerica Treasury Payments® and/or Comerica Integrated Payables™. By using Comerica Treasury Payments® and/or Comerica Integrated Payables™, Customer agrees to the Service Terms for Comerica Treasury Payments® and/or Comerica Integrated Payables™, as applicable, and such applicable terms are incorporated into and made a part of the Service Terms for the EDI Service by this reference. Customer may elect to receive a hardcopy advice by fax or hard copy sent via mail the next Business Day after Bank receives the data.

(iii) **EDI Translation Service.** The EDI Translation Service provides the translation of data to and/or from Customer's own proprietary format, ANSI, Bank Administration Institute (BAI) or flat file standard formats to and/or from the EDI standard file format.

(c) **Processing Data Transmissions.** Customer may originate or receive data transmissions that consist of financial information; provided such transmissions comply with Bank's processing requirements and Security Procedures for this EDI Service that are set forth in the Service Terms for the EDI Service. Failure to comply with the processing requirements and Security Procedures will relieve Bank of any obligation to process any transmission submitted or received as part of this EDI Service.

(d) **Limitation of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, Bank will not have a duty to interpret the content of any data transmitted to it for or on Customer's behalf, except to the limited extent, if any, expressly required by the Service Terms for the EDI Service. The legal relationships between Customer and its trading partners will be governed by the terms of the EDI contracts between Customer and its trading partners and will not be binding on Bank. Bank will not have a duty to know or enforce the terms of any agreement between Customer and its trading partners.

14. **Multibank Payment Request Service.** Comerica's Multibank Payment Request Service ("Multibank Service") permits customers to relay instructions through Bank to other financial institutions to transfer funds from an account held by the customer at that institution. Each such instruction is a "Request".

(a) **Additional Services Required.** To use the Multibank Service, Customer must receive the Comerica Integrated Payables™ Service and/or Comerica Integrated Payables Web™ Service. By using the Multibank Service with Comerica Integrated Payables™ Service and/or Comerica Integrated Payables Web™ Service, Customer agrees to the Service Terms for the Comerica Integrated Payables™ Service and/or Comerica Integrated Payables Web™ Service, as applicable, and such applicable terms are incorporated into and made a part of the Service Terms for the Multibank Service by this reference.

(b) **Authorization.** Customer must provide each financial institution to which Bank sends Requests using the Multibank Service with express, written authorization to act on payment Requests that Bank sends to such institution under the Multibank Service. At Bank's request, Customer will provide Bank with a copy of any such written authorization to another institution.

(c) **Format.** Bank has no duty to act on a Customer's Request if: (a) for Requests submitted via the Comerica Integrated Payables™ Service, such Request does not comply with Bank's format specifications in the Comerica Integrated Payables™ Service User Guide(s); and (b) for Requests submitted via Comerica Integrated Payables Web™ Service, such Request does not comply with the format agreed upon between Customer and Bank in the Service Terms for the Comerica Integrated Payables Web™ Service. Customer authorizes Bank to reformat Requests as necessary for processing. However, Bank has no duty to reformat a Request, or to transmit Requests to other financial institutions, if the Request does not comply strictly with the format specifications, is defective, incomplete, or erroneous, or otherwise is inconsistent with the Service Terms for the Multibank Service.

(d) **Authority.** Bank may act on any Request using the Multibank Service as Bank considers appropriate, notwithstanding (a) any error, omission, defect, or lack of clarity in the terms of the Request; or (b) that the Request appears to duplicate one or more other Requests made using the Multibank Service.

(e) **Requests.** Upon receipt of Customer's Request, Bank will transmit Customer's Request to the designated financial institution, subject to the terms of this Master Agreement and the Business Day schedules for Bank, SWIFT, and such other financial institution. Bank will take reasonable steps to assure that a Request that Customer properly transmits to Bank is transmitted to the financial institution designated by Customer, but Bank has no responsibility for any act or omission by such financial institution, including any failure of funds to reach the intended payee. For clarification, a Request made by Customer using the Multibank Service is not a "Payment Order" as that term is defined in the Service Terms for the Treasury Management Wire Transfer Service.

(f) **Changes and Cancellations.** If Customer wishes to cancel or amend a Request made using the Multibank Service, Customer must contact the financial institution to which the Request is directed and act in accordance with that institution's procedures.

15. Real-Time Payment Service. Comerica's Treasury Management Real-Time Payment Service ("RTP Service") allows customers to originate real-time Payment Messages, Payment Message Responses and Payment-related Messages to participating receiving financial institutions in the United States. Comerica will transact real-time Payment Messages, Payment Responses and Payment-related Messages via the RTP® network owned and operated by The Clearing House ("TCH") or similar networks at its sole discretion. Real-time Payment Messages are only available for transactions between U.S. based accounts at financial institutions participating in the RTP® network.

(a) **Access.** The RTP Service is accessible through Comerica Treasury Payments®. By using the RTP Service with Comerica Treasury Payments®, Customer agrees to the Service Terms for Comerica Treasury Payments® and such terms are incorporated into and made a part of the Service Terms for the RTP Service by this reference.

(b) **RTP System Rules.** The RTP Service is subject to the Real-Time Payments Participation Rules and Real-Time Payments Operating Rules as issued and amended from time to time by TCH (collectively, "RTP System Rules"). By using the RTP Service, Customer agrees to comply with the then current version of the RTP System Rules.

(c) **Definitions Specific to RTP Service.** Unless otherwise defined in the Service Terms for RTP Service the words, phrases and definitions used but not defined in the Service Terms for RTP Service shall have the meaning ascribed to them in RTP System Rules.

(d) **Authorizations and Service Offerings.**

(i) **Method.** Customer authorizes Bank to process Customer's Payment Messages, Payment Message Responses and Payment-related Messages by any method Bank deems appropriate.

(ii) **Transfer of Funds.** Customer authorizes Bank to transfer funds in accordance with the Service Terms for the RTP Service.

(iii) **All Payment Orders.** For all Payment Instructions Customer submits to Bank, Customer authorizes Bank to debit Customer's

Designated Account in U.S. Dollars for the U.S. Dollar amount indicated in Customer's Payment Instruction.

(iv) **Fees.** Customer authorizes Bank to debit Customer's Designated Account for Bank's Real-Time Payment Services Fees and Charges, as applicable.

(v) **Fraud Monitoring.** Customer acknowledges that fraud detection software will be used with the RTP Service and may cause delays in the processing of Payment Messages. Payment Messages suspected for fraud and authorized outside of standard banking hours may be held over to the next Business Day.

(vi) **Returns.** Customer acknowledges that RTP Payments are final and irrevocable and that Receivers are under no obligation to return the funds received including funds related to an erroneous RTP Payment or an RTP Payment made in response to a fraudulent Request for Payment. The Request for Return of Funds message can be used to correct various errors between the Parties to a funds transfer. In addition to the Indemnification obligations in **Section L.4 of the Master Agreement**, Customer agrees to Indemnify Bank in connection with all Losses related to the RTP Payment and the request.

(vii) **Cancellations and Delays.** Customer acknowledges that Payment Messages and other messages may be rejected or delayed for any reason including, when necessary for risk management, fraud review, legal compliance or other reasons; and Bank shall have no liability to Customer for any rejections or delays. Bank will provide notification of such action through standard reporting channels.

(viii) **Requests for Payment.** Bank's RTP Service permits Customers to deliver Request for Payment messages electronically to third parties who have RTP capabilities available to them through their financial institution. Customer acknowledges and agrees that if it requests Bank to send a Request for Payment Message: (A) the Request for Payment Message will only be made to request payment for a current sale or transaction or amount due, owed or otherwise agreed to be paid to Customer; (B) Customer shall not engage in deception of any kind to induce the Message Receiver to make a Payment; (C) Customer will not use language in a Request for Payment Message that could reasonably be perceived by the Message Receiver as threatening or intimidating; (D) Customer will not send the Request for Payment Message or subsequent messages within a timeframe that could reasonably be perceived by the Message Receiver as harassing; and (E) Customer shall provide Bank with information and documentation to support its Request for Payment and its compliance with Legal Requirements within five (5) Business Days of receiving a request from Bank, unless a shorter time is required for Bank to timely respond to a Message Receiving Participant in compliance with the RTP Rules. Customer shall be responsible for all Losses incurred by Bank in connection with Customer's Request for Payment Messages.

(e) **Discovery of Unauthorized Payment Orders and Liability.** Bank will provide an acknowledgement of each Payment Message processed through the RTP® network. Customer agrees to exercise ordinary care on the basis of the information available to Customer to discover any payment which Customer did not make or authorize. Customer agrees to notify Bank of the relevant facts for an unauthorized RTP Payment within a reasonable time, which Customer agrees will not exceed thirty (30) days from the earlier of: (i) the date Bank sent or otherwise provided confirmation that the Payment Message was processed through the RTP® network; or (ii) the date a statement was sent showing that the RTP Payment was debited or drawn on the Designated Account. Customer agrees to waive any other time period which might otherwise apply for providing such notice to Bank. If Customer fails to notify Bank within the time period stated in this **Section 5** of an enforceable, but allegedly unauthorized Payment Message, Customer agrees that Bank will not be liable for any subsequent similar enforceable, but allegedly unauthorized, Payment Message.

(f) **Amount of Payment Order and Fees.** Customer is obligated to pay and Bank shall debit Customer's Designated Account for the amount of each authorized Payment Instruction at the time Customer's Payment Message is originated. If Customer does not have sufficient Available Funds in the Designated Account when Bank receives the Payment

Instruction and at the time the Payment Message is originated, Bank may exercise Bank's rights in **Section E.1(b) of the Master Agreement** in addition to any other rights available under applicable Legal Requirements.

(g) **Limitations of Liability.** Notwithstanding anything in the Agreement to the contrary, in addition to the limitations of liability set forth in **Section L.1 of the Master Agreement**, the following limitations apply:

(i) **Limitation of Liability.** Bank will not be liable for:

(A) detecting duplicate Payment Instructions, Payment Messages, Payment Message Responses, or Payment-Related Messages;

(B) detecting errors contained in any Payment Instructions, Payment Messages, Payment Message Responses, or Payment-Related Messages;

(C) determining whether the Receiver or Receiving Participant is the one Customer intended;

(D) any acts or omissions of the Receiving Participant, including but not limited to its failure to: (i) sending an acknowledgement, (ii) timely credit the Receiver, and/or (iii) identify the Receiver to whom it gave Payment Message;

(E) failure of the funds to reach the intended payee or Receiver;

(F) Bank's failure or refusal to refund to Customer the amount of the Fees, Charges or Payment Instruction paid to Bank, unless Bank has obtained a refund of the Payment Message; and/or

(G) any Customer transaction or request that is improper, illegitimate, deceptive, threatening, intimidating, or harassing.

(ii) **Recoverable Damages.**

(A) Bank's liability to Customer, any intended beneficiary or any third party in performing or failing to perform the RTP Service described in the RTP Service Terms, if any, will be limited as stated in the Master Agreement, except if a Payment Message that is subject to is originated but is proven not to have complied with the Security Procedure or was not otherwise authorized by Customer, and if Bank receives notification within the period required under **Section 5** above, Bank's liability and Customer's liability will be governed by the applicable provisions of Article 4A or a version of it (such as Chapter 4A or Division 11) of the Uniform Commercial Code, as enacted in the state where the Payment Order is received by Bank and where it is paid, as modified by the Service Terms for the RTP Service.

(B) Unless otherwise required by Law, if Bank is liable to Customer for compensable damages that are recoverable under the Service Terms for the RTP Service for Payment Messages, Payment Response Messages, and Payment-Related Messages, Customer agrees that such liability will not exceed the lesser of the amount of the Payment Instruction for which Bank debited Customer's Designated Account, or Customer's actual provable and foreseeable damages.

(h) **Representations and Warranties.** Customer is deemed to make the same representations and warranties to Bank that Bank makes under the RTP Rules and other Legal Requirements to other participating financial institutions in the RTP System with respect to each transaction and request made by Customer. In addition, Customer represents and warrants that:

(i) each transaction and request submitted through the RTP Service: (A) is made in accordance with the RTP System Rules; and (B) does not violate applicable Legal Requirements; and

(ii) each time that Customer requests Bank to submit a Request for Payment, the request (A) is made for a legitimate purpose (as defined by the RTP Rules); and (B) is not part of a fraudulent scheme to

induce a payment; harassing, or otherwise unlawful including violations of prohibitions on unfair, deceptive, or abusive acts or practices established by applicable Legal Requirements.

(i) **Customer Indemnity.** In addition to any other Indemnification obligations under the Service Terms for the RTP Service, Customer shall Indemnify Bank in connection with any third-party allegation that a Payment Message contravenes or compromises the rights, title or interest of any third party and/or contravenes any Legal Requirements, court order or other mandate or prohibition with the force or effect of Law.

(j) **Limitations.** Customer shall not originate Payment Messages on behalf of third parties. Customer acknowledges that the amount of each RTP Payment is subject to limitations established by Customer and by the RTP System Rules.

16. **Comerica's Returned Items Service.** Comerica's Returned Items Service ("Returned Items Service") provides image replacement documents or original returned checks that were previously deposited to an account, and offers the options listed below in regard to those returned items.

(a) **Providing the Service.** Bank will provide to Customer an image of each returned item that had been previously deposited to a Designated Account. In addition, Bank will provide, at Customer's election: (a) fax notification or telephone notification of returned items; (b) electronic transmissions containing specific information about the returned items; (c) duplicate advices with images of returned items by mail or fax, and/or Bank will re-present one (1) time every item that meets the re-presentation criteria made available by Bank and selected by Customer.

(b) **Available Options.** To receive the Returned Items Service, Customer shall select one (1) of the following options, and in addition may elect additional features that Bank may offer from time to time. Bank will image all returned items that were previously deposited to Customer's Designated Account and perform one (1) or more of the following options, as selected by Customer, on the Business Day following Bank's receipt of proper notification that an item was returned by the drawee financial institution.

(i) **Re-present Returned Items Based on Predetermined Criteria.** If Customer selects this option, Bank will cause each returned item that meets Customer's predetermined criteria to be re-presented to the drawee bank one (1) time. Returned items that will not be re-presented are those that do not meet the Federal Reserve criteria for re-presentation, e.g., items returned with a designation such as "account closed" or "deceased payee". If the re-presented item is paid, credit to the Designated Account will be posted in accordance with the terms of the Deposit Contract governing the Designated Account. If a returned item is returned a second time, Bank will charge such item to the Designated Account to which it was originally deposited unless Customer instructs Bank to charge such item to another account. Customer agrees that if it elects to re-present an item, which includes the re-presentation of that item to the drawee bank, such action could affect Customer's ability to collect the item from the maker due to the passage of time or otherwise. Customer understands and accepts this risk and hereby releases Bank from any liability, loss or damages whatsoever, resulting from any default procedures or proceeding caused by the re-presenting of such returned items.

(ii) **Fax Notification of Returned Items (First Return and/or Second Return).** Each Business Day on which Bank receives a returned item for the Designated Account, Bank will fax a copy of the front and back of each returned item to Customer at the fax number designated by Customer. Bank's only duty is to fax the notification to the number provided by Customer. If Bank fails to receive a confirmation indicating delivery of the fax, Bank may, but shall not be under any obligation to, attempt to fax the notification an additional time.

(iii) **Telephone Notification of Returned Items.** Each Business Day on which Bank receives a returned item for the Designated Account, Bank will telephone Customer at the number designated by Customer and provide information about each returned item. Bank's only duty is to make the telephone call and provide the return item information, and, if the call is answered by a recording, to leave a message to call Bank

and the telephone number to call. If there is no answer, Bank has no further duty.

17. **Treasury Management Wire Transfer Service.** Comerica's Treasury Management Wire Transfer Service ("Wire Service") allows customers to receive funds from senders and originate funds transfers, including payments, to beneficiaries in the U.S. and authorized foreign countries. Comerica will transact funds transfers via Fedwire, SWIFT, or similar networks at its sole discretion. Funds transfers are not available to or from all countries, including countries subject to U.S. regulatory restrictions.

(a) **Access.** The Wire Service is accessible through Comerica Treasury Payments® and/or Comerica Treasury Mobile®. By using the Wire Service with Comerica Treasury Payments® and/or Comerica Treasury Mobile®, Customer agrees to the Service Terms for Comerica Treasury Payments® and/or Comerica Treasury Mobile®, as applicable and such terms are incorporated into and made a part of the Service Terms for the Wire Service by this reference.

(b) **Additional Services May Be Required.** Bank may provide the Wire Service through the Comerica Integrated Payables™ Service, Comerica Integrated Payables Web™ Service and/or Electronic Data Interchange Service. By using the Wire Service with the Comerica Integrated Payables™ Service, Comerica Integrated Payables Web™ Service and/or Electronic Data Interchange Service, Customer agrees to the Service Terms for such Service, and such terms are incorporated into and made a part of the Service Terms for the Wire Service by this reference.

(c) **Definitions Specific to Wire Service.** Unless otherwise defined in this Master Agreement, capitalized words, phrases and definitions used in the Service Terms for the Wire Service have the meaning ascribed to them in UCC 4A. To the extent any of the definitions of terms described below conflict with the definitions ascribed to them elsewhere in the Service Terms for the Wire Service, the definitions below shall prevail as to the Wire Service.

(i) **Authorized Account:** The Designated Account that Customer designates in the Payment Order which Bank may debit, draw on or otherwise receive payment for processing a Payment Order. If there are insufficient Available Funds in an Authorized Account, Bank may exercise its rights in **Section I.E.1(b.) of this Master Agreement.**

(ii) **Execute:** To carry out a Payment Order to completion. If Bank is also the beneficiary's bank, the term "Execute" includes Bank's acceptance of Customer's Payment Order for purposes of the Service Terms for the Wire Service and of the application of UCC 4A to the transaction.

(iii) **Fedwire:** The Federal Reserve wire transfer network.

(iv) **Funds Transfer:** The series of actions, beginning with Customer's request for a Payment Order through the Execution of the Payment Order, including, if applicable, the cancellation, reversal, adjustment or delay in posting of the Payment Order; or any other subsequent action by a third party that may result in further action with respect to the Payment Order.

(v) **Funds Transfer Business Day:** Any day, between the wire processing hours stated in the User Guide(s) for the Wire Service, excluding Saturday, Sunday and federal holidays on which Bank, the Federal Reserve Banks and SWIFT are open for purposes of conducting funds transfers.

(vi) **Payment Order:** Customer's instruction received and approved by Bank: (a) that is processed through the use of the Wire Service, or verified in accordance with the Security Procedure selected by Customer for use when the Wire Service is not operational for a majority of Bank's customers, including Customer; (b) that orders Bank to pay, or causes another institution to pay, a fixed or determinable amount of money to a beneficiary, whether or not the beneficiary is a third party; and (c) for which Bank is to be reimbursed for processing the Payment Order.

(vii) **SWIFT:** Society for Worldwide Interbank Financial Telecommunication.

(viii) **UCC 4A:** Article 4A or a version of it such as Chapter 4A or Division 11 of the Uniform Commercial Code, as enacted in the state where the Payment Order is received by Bank and where it is paid.

(d) **Authorizations.**

(i) **Method.** Customer authorizes Bank to process Customer's Funds Transfers by any method Bank deems appropriate.

(ii) **Transfer of Funds.** Customer authorizes Bank to transfer funds in accordance with these Wire Service Terms and the User Guide(s) for the Wire Service.

(iii) **International Payment Orders.** Unless otherwise instructed by Customer, which instruction Bank may require to be in writing, Customer's Payment Orders for payment outside of the U.S. will be converted by Bank into the local currency of the beneficiary bank ("Local Currency") at the then prevailing rate of exchange offered by Bank in Detroit, Michigan. Should Bank elect not to convert Customer's Payment Order into the Local Currency, or should Bank accept Customer's request not to convert Customer's payment into the Local Currency, Customer's Payment Order will be processed in U.S. Dollars.

(iv) **All Payment Orders.** For all Payment Orders, Customer authorizes Bank to debit Customer's Authorized Account in U.S. Dollars for the U.S. Dollar amount indicated in Customer's Payment Order or, if Customer has indicated payment in a Local Currency, Customer authorizes Bank to debit Customer's Authorized Account for the U.S. Dollar equivalent at Bank's then prevailing rate of exchange.

(v) **Fees.** In addition, Customer authorizes Bank to debit Customer's Authorized Account for Bank's wire transfer Fees and Charges, as applicable. If required by Law, Bank will advise Customer of Charges that may be deducted from the Payment Order amount by intermediary banks and the beneficiary bank.

(e) **Execution of Payment Orders.**

(i) **Applicable Rules.** Bank may use any means or routes Bank, in Bank's sole discretion, considers suitable to affect Customer's Funds Transfer. Any portion of a domestic Funds Transfer may be accomplished through Fedwire or other methods available to Bank. An international Funds Transfer may be accomplished through any transfer system(s) Bank selects. Each Funds Transfer carried out through a Funds Transfer system will be governed by the Rules of the applicable system, even if Bank is not a member of the system.

(ii) **Execution of Payment Orders.** Bank or Bank's designee may Execute any Payment Order, cancellation or stop payment of a Payment Order received in Customer's name provided it is authorized by Customer and/or complies with the Security Procedure. Each such authorized and/or compliant Payment Order Bank Executed is enforceable and Customer is liable to Bank for payment of the Payment Order and applicable Fees and Charges.

(f) **Rejection of Payment Orders.** Bank reserves the right to reject any Payment Order with or without cause and will attempt to provide notice of such rejection on the same Funds Transfer Business Day. Notice of rejection will be effective when transmitted electronically, provided by phone or mailed.

(g) **Cancellation or Amendment of Payment Orders.** If Bank receives a cancellation or stop payment instruction for a Payment Order not yet Executed, Bank may, but is not obligated to, cancel the Execution of the Payment Order. An attempt to amend a Payment Order will operate as a cancellation instruction of the original Payment Order and the giving of a new Payment Order. Executed Payment Orders cannot be canceled, amended or stopped.

(h) **Funds Transfer Business Day for Accepting Payment Orders.** Bank may accept Payment Orders on a Funds Transfer Business Day in the form and manner Bank designates from time to time. Funds Transfer communications received on non-Funds Transfer Business Days or after the close of a Funds Transfer Business Day will be treated in the manner described in the applicable User Guide(s) and/or online screen instructions for the Wire Service. Customer agrees that Bank may: (a) process Funds

Transfers from Customer and others in any order Bank chooses; (b) presume that no other financial institution to which, or through which, the Funds Transfer is sent has an earlier cut-off time than Bank has for accepting Funds Transfers; and (c) use any means or routes Bank, in Bank's sole discretion, considers suitable to effect the Funds Transfer. Bank may modify Bank's Funds Transfer Business Day and cutoff hour at any time and without prior notice.

(i) **Discovery of Unauthorized Payment Orders and Liability.**

Unless Customer requests otherwise, subject to applicable Fees and Charges, Bank will send a confirmation of each Executed Payment Order. Customer agrees to exercise ordinary care on the basis of the information available to Customer to discover any Funds Transfer which Customer did not make or authorize. Customer agrees to notify Bank of the relevant facts on which a claim for an unauthorized Payment Order is based within a reasonable time, which Customer agrees will not exceed thirty (30) days from the earlier of: (a) the date Bank sent or otherwise gave confirmation that the Payment Order was Executed; or (b) the date a statement was sent showing that the Payment Order was debited or drawn on the Authorized Account. Customer agrees to waive any other time period which might otherwise apply for providing such notice to Bank. If Customer fails to notify Bank within the time period stated in this **Section 8** of an enforceable (complies with the Security Procedure), but allegedly unauthorized Payment Order, Customer agrees that Bank will not be liable for any subsequent similar enforceable Funds Transfer.

(j) **Payment and Compensation.**

(i) **Amount of Payment Order and Fees.** Customer is obligated to pay and Bank shall debit Customer's Authorized Account for the amount of each authorized Payment Order and the applicable wire transfer Fees and Charges in effect at the time Customer's Payment Order is Executed. If Customer does not have sufficient Available Funds in the Authorized Account when Bank receives the Payment Order and at the time of Execution of the Payment Order, Bank may exercise Bank's rights in **Section I.E.1(b). of this Master Agreement.** Customer also understands and agrees that for international wires, in addition to Bank's Fees and Charges, each bank through which the Payment Order is sent for final delivery to the beneficiary bank may deduct fees from the wired funds and the beneficiary bank may also deduct fees prior to paying the funds to the beneficiary. Fees charged by the beneficiary bank to the beneficiary are subject to any agreement between the beneficiary and the beneficiary bank.

(ii) **Compensation to Customer.** If Bank owes compensation to Customer in the form of penalty or interest, it will be payable at the Federal Funds rate published by the Federal Reserve Bank of New York for each of the days for which interest is payable computed on the basis of a year of three hundred sixty (360) days.

(k) **Limitations of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, the following limitations apply:

(i) **Limitation of Liability.** Bank will not be liable for:

(A) detecting duplicate Payment Orders;

(B) detecting errors contained in any Payment Order or Funds Transfer communication;

(C) duplicate Payment Orders, either given by Customer or which comply with the Security Procedures;

(D) determining whether the beneficiary or beneficiary bank is the one Customer intended;

(E) any acts or omissions of the beneficiary bank, including but not limited to its failure to: (i) obtain a receipt, (ii) timely credit the beneficiary, and/or (iii) identify the payee/beneficiary to whom it gave payment of the transfer;

(F) failure of the funds to reach the intended payee or beneficiary; and/or

(G) Bank's failure or refusal to refund to Customer the amount of the Fees, Charges or Payment Order paid to Bank, unless Bank has determined that Payment Order has been effectively stopped and Bank has obtained a refund of the Payment Order and/or indemnifications Bank deems adequate.

(ii) **Recoverable Damages.**

(A) Bank's liability to Customer, any intended beneficiary or any third party in performing or failing to perform the Wire Service, if any, will be limited as stated in this Master Agreement, except if a Payment Order is Executed but is proven not to have complied with the Security Procedure or was not otherwise authorized by Customer, and if Bank receives notification within the period required under **Section 8** above, Bank's liability and Customer's liability will be governed by the applicable provisions of UCC 4A as modified by the Service Terms for the Wire Service.

(B) Unless otherwise required by Law, if Bank is liable to Customer for compensable damages that are recoverable under the Service Terms for the Wire Service for domestic Funds Transfers, Customer agrees that such liability will not exceed the lesser of the amount of the Payment Order for which Bank debited Customer's Authorized Account, or Customer's actual provable and foreseeable damages.

(C) Bank's liability for international Funds Transfers will be limited to the amount of the U.S. Dollar equivalent of the amount of the international Payment Order at the prevailing rate of exchange established at Bank at the time Bank accepted the Payment Order. If Bank is instructed to initiate a Payment Order denominated in a foreign currency, and such Funds Transfer cannot be completed, Bank's obligation will be limited to crediting the Authorized Account for any funds returned to Bank by Bank's correspondents and/or the beneficiary bank and, pending such return, any obligation Bank has to credit the Authorized Account will be suspended.

(l) **Customer Indemnity.** In addition to any other Indemnification obligations under this Master Agreement, Customer shall Indemnify Bank in connection with any third-party allegation that a Payment Order contravenes or compromises the rights, title or interest of any third party and/or contravenes any Legal Requirements, court order or other mandate or prohibition with the force or effect of Law.

(m) **Termination.** The Wire Service may be terminated by either party without prior notice. However, upon termination a notice will be given to the other party as soon as practical, but in no event more than five (5) Funds Transfer Business Days after the effective termination date.

(n) **Notices.** Unless otherwise stated in this **Section 13** or required by applicable Legal Requirements, all notices required or permitted to be given in relation to the Wire Service may be given to Customer by any commercially reasonable means (e.g., telephone, regular mail, facsimile or other electronic means at the phone number or addresses Bank has for Customer). All notices required or permitted to be given to Bank may be given by registered mail, return receipt requested, by personal delivery or facsimile at Bank's address or fax number stated in the User Guide(s) for the Wire Service. All notices will be effective when actually received or two (2) Funds Transfer Business days after transmitting or mailing, whichever occurs first.

E. RECEIVABLES

1. **ACH Origination Services.** See Service Terms for ACH Origination Services in **Section II.D.3 of this Master Agreement.**

2. **ACH Receiver Services.** See Service Terms for ACH Receiver Services in **Section II.D.4 of this Master Agreement.**

3. **Cash Letter Deposit Service.** Comerica's Cash Letter Deposit Services allow customers to periodically deliver cash letters with acceptable items (individually "Cash Letter" collectively "Cash Letters") to Bank for processing and deposit.

(a) **Cash Letter Processing.** The Cash Letter Deposit Services applies to Cash Letter deposits delivered to Bank through electronic image Cash Letter delivery ("Image Cash Letter Deposit Service") as described below. Bank reserves the right to refuse to process a Cash Letter in total or any item contained in the Cash Letter that does not meet the requirements described in the Service Terms for the Cash Letter Deposit Services.

(i) **Image Cash Letter Delivery and Processing.** The Image Cash Letter Deposit Service allows Customer to make deposits to Customer's Designated Account by transmitting to Bank an electronic file with the images of the checks that Customer wishes to deposit ("Image Cash Letter") via Secure File Transfer Protocol ("SFTP"). The following terms apply to the Image Cash Letter Deposit Service:

(A) If Customer is a depository institution: (i) Bank will accept and process electronic images in accordance with and subject to the Electronic Check Clearing House Organization's ("ECCHO") rules; and (ii) Customer agrees to become a member of ECCHO and to remain a member of ECCHO while exchanging Image Cash Letters with Bank.

(B) Except as otherwise agreed, only checks and drafts drawn or payable through U.S. financial institutions are acceptable items for inclusion in an Image Cash Letter. If Bank allows Customer to include Canadian checks and drafts in an Image Cash Letter, they may be sent in either USD/CAD or CAD/CAD. Details for preparation and delivery of Image Cash Letters are set forth in the User Guide for Cash Letter Deposit Services.

(C) The transmission of check images and electronic deposit slips must be of a type and in a form acceptable to Bank as described in the User Guide for Cash Letter Deposit Services or other material Bank provides Customer in conjunction with the Image Cash Letter Deposit Service.

(D) Unless prohibited by Law, Customer will be liable to Bank to the same extent that Bank is liable under Legal Requirements, including the possibility of consequential damages to the maker/drawer of the original check that Customer imaged and transmitted to Bank electronically, to any intermediary financial institution and to the paying bank/financial institution, if:

i) any check that Customer imaged and transmitted to Bank is re-presented after payment has been made on such check by the financial institution on which it was drawn or payable through.

ii) any check that Customer imaged and transmitted to Bank is not of the quality that Bank has advised Customer that it requires or is not of such higher standard of quality required by Legal Requirements, and as a result, the image, Substitute Check (as defined by applicable Legal Requirements) or Image Replacement Document (as defined by applicable Legal Requirements) that Bank placed into the banking system for payment was not of the quality that Bank requires or of such higher standard of quality required by Legal Requirements.

iii) the maker/drawer of a check that Customer imaged and transmitted to Bank suffered a loss that could have been prevented if the original check had been presented for clearing and payment. For example: the amount of the original check was \$10 but that amount was altered to read \$100 before Customer imaged and transmitted such check to Bank. The maker's/drawer's account was debited for \$100 or such check was returned for non-sufficient funds but would not have been returned had the amount read \$10. In such case, Customer will be liable if the outcome would not have occurred if (i) the altered check was presented in its original form (not imaged), and (ii) the alteration would have been detected.

(E) Customer agrees to keep the original imaged and transmitted checks in a secure place until they are destroyed and to adopt check destruction policies, procedures, and practices designed to prevent re-presentation of checks already presented for deposit.

(F) The Image Cash Letter Deposit Service requires the use of a Security Procedure as set forth in the User Guide(s) for the Cash Letter Deposit Services. By using the Image Cash Letter Deposit Service, Customer agrees that the Security Procedure is commercially reasonable for the type, size and volume of deposit transactions Customer will conduct using the Image Cash Letter Deposit Service.

(G) By using the Image Cash Letter Deposit Service, Customer warrants to Bank that:

- i) Customer is entitled to enforce the check;
- ii) the signatures on the check are authentic and authorized;
- iii) the check has not been altered;
- iv) Customer will not cause or allow any other person or entity to re-present any check that Customer has imaged and transmitted to Bank for deposit unless Bank has advised Customer that Bank was unable to process the image or give Customer credit for such check. Generally, Bank will advise Customer within one (1) Business Day, but in no event more than two (2) Business Days following Bank's receipt of Customer's transmission of checks if Bank was not able to process or credit Customer's Designated Account for a particular check; and
- v) with respect to each check imaged and transmitted to Bank, that (1) Customer has submitted the image in the format and with such associated check information that Bank may specify from time to time, (2) the check accurately represents all of the information on the front and back of the original check, and that all such information is legible on the check, and (3) no person will receive presentment of the original check, its legal equivalent, or a paper or electronic representation of the original check or its legal equivalent, such that that person will be asked to make a payment based on a check that that person has already paid.

(H) Bank reserves the right to transmit a check for payment or create a Substitute Check or Image Replacement Document for presentment directly or indirectly through the banking check clearing system for final presentment to the financial institution on which such check was drawn or was payable through. If Bank advises Customer that Bank was not able to process Customer's imaged check or give Customer credit for the check for any reason other than "account closed" or "refer to maker" or "stop payment", Customer may image the item and transmit it in a deposit to Bank or deliver the paper item to Bank for deposit. Bank recommends, although Bank does not require, that Customer destroy the original check within ten (10) days of Customer's Designated Account being credited for such check to reduce the possibility and risk that such check will re-enter the banking system process.

(I) The Service Terms will not relieve Customer of any obligation imposed by Law, contract, or otherwise regarding the maintenance of records or from employing adequate audit, accounting and review practices. Customer shall retain and provide to Bank, at its request, all information necessary to remake or reconstruct any deposit, transmission file or entry for at least two (2) Business Days following the date that Bank credited Customer's Designated Account for a deposit made using the Image Cash Letter Deposit Service.

(J) Except as provided in the Deposit Contract or otherwise agreed between Customer and Bank, deposits made using the Image Cash Letter Deposit Service will be made available to Customer on the first Business Day after the day that Bank receives such deposits. Deposits received through the Image Cash Letter Deposit Service will be deemed received on the day indicated on the electronic receipt acknowledgement that Bank sends to Customer unless that day is a non-Business Day. In such case, the deposits will be deemed received on the first Business Day thereafter.

4. **Cash Vault Service.** Comerica's Cash Vault Service ("Cash Vault Service") expedites incoming cash flow by providing credit for daily deposits. The customer sends an armored courier to a designated vault or processing center. As an enhancement, customers may also elect to receive the Cash Order Service, which is provided by Bank to supply the Customer with necessary coin and currency.

(a) **Processing Requirements.** Bank will designate the applicable cash vault(s) and/or processing center(s) to be used by Customer in connection with the delivery of its cash, coin and/or check deposits to Bank ("Shipments"), and for pick-up of Customer's cash and/or coin orders to Bank ("Orders").

(b) **Deposit Processing Service.** Customer acknowledges receipt of the deposit processing requirements contained in the User Guide for the Cash Vault Service ("Deposit Processing Requirements") and agrees to prepare its cash, coin and/or check deposits in the manner set forth therein. Bank's representatives may accept delivery of Customer's Shipments containing items for deposit. Only armored couriers may deliver Shipments, or pick up Orders, at cash vaults. Bank reserves the right to not process, or to delay processing, Shipments that are not prepared in accordance with the Deposit Processing Requirements. Bank's receipt for any Shipment, including a non-conforming Shipment, will not be deemed proof of its receipt of the contents listed in an inventory or deposit ticket that accompanies the Shipment, nor shall Bank's acceptance be deemed a waiver of its rights under this Master Agreement or the Deposit Contract governing the Designated Account. All Shipments are subject to Bank's count which shall be deemed final and the deposit itself is subject to the terms of the Deposit Contract governing the Designated Account to which the deposit is made. Customer assumes full responsibility for the timeliness of delivery of its Shipment and the accuracy, completeness and content of the Shipment, including information it furnishes to Bank with respect to the Shipment.

(i) **Processing of Items for Deposit.** Shipments consisting of coin and/or currency will be provisionally credited on the Business Day of receipt by Bank; provided the delivery arrives before Bank's established deadline. Shipments consisting of checks will be credited in accordance with the Deposit Contract. All deposits received will be subject to verification by Bank within the time frames established by Bank.

(ii) **Discrepancies and Adjustments.** Discrepancies shall be reported in a timely manner in accordance with the procedures set forth in the User Guide(s) for the Cash Vault Service. Failure to timely report discrepancies will be deemed a waiver of the claim and Customer holds Bank harmless for any Losses Customer incurs in regard to the applicable Shipment. If after receiving timely notification, Bank determines that contents of the Shipment are missing or otherwise do not contain all items indicated on the accompanying deposit listing tapes or deposit slips, Bank will make an adjusting entry to the Designated Account and will provide Customer with an advice if there is an adjustment. The advice information will be mailed unless Customer has elected to receive a fax report containing this information.

(c) **Cash Order Service.** Customer agrees to place Orders for cash and/or coin in accordance with Bank's procedures outlined in the User Guide for Cash Vault Services. Customer authorizes Bank to charge the Designated Account for the Order on the Business Day Bank gives the cash and/or coin to Customer's armored courier. If there are not sufficient Available Funds for the Order, Bank is not obligated to give any portion of the Order to the armored courier. Bank reserves the right to limit the amount of Orders and will advise Customer of the limit. Bank reserves the right to reduce or increase the limit upon giving Customer three (3)

Business Days prior notice. Such notice may be given by Bank in any manner Bank reasonably determines is expedient. Customer agrees that it will not place an Order for more than its then current cash order limit.

(i) **Verification.** Customer agrees that it will have two (2) or more employees and/or agents jointly verify the contents of the received Order.

(ii) **Discrepancies.** Discrepancies shall be reported in a timely manner in accordance with the procedures set forth in the User Guide(s) for the Cash Vault Service. Failure to timely report discrepancies will be deemed a waiver of the claim and Customer holds Bank harmless for any Losses Customer incurs in regard to the applicable Order.

5. **Comerica Business Deposit Capture® Service.** The Comerica Business Deposit Capture® Service ("BDC Service") allows customers to scan images of checks, deposit items for electronic delivery into their Comerica account and consolidate deposit information from multiple locations.

(a) **Access.** Customer will access the BDC Service through Comerica Business Connect™. By using the BDC Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into and made a part of the Service Terms for the BDC Service by this reference. If Customer elects to utilize the BDC Service with a mobile deposit feature, Customer will also access the BDC Service through Comerica Treasury Mobile®. By using the BDC Service with a mobile deposit feature, Customer agrees to the Service Terms for Comerica Treasury Mobile®, which are incorporated into and made a part of the Service Terms for the BDC Service by this reference.

(b) **Service.** Customer may deposit checks using the BDC Service only to Designated Accounts that have been set up by Bank to accept electronic deposit slips and electronic images of checks. The transmission of check images and electronic deposit slips must be of a type and form acceptable to Bank, which is described in the User Guide(s) or other material that Bank provides to Customer in conjunction with the BDC Service.

(c) **Type of BDC Service Subscription.** Customer will select only one of the following options for the BDC Service:

(i) **Business Deposit Capture® Desktop (BDCD):** Provides access to the Business Deposit Capture® Desktop application through Comerica Business Connect™ to capture deposits on a workstation via a scanner.

(ii) **Business Deposit Capture Desktop with Mobile (BDCDM):** Provides access to the Business Deposit Capture Desktop application through Comerica Business Connect™ to capture deposits on a workstation via a scanner and provides access to the Business Deposit Capture Mobile application through Comerica Treasury Mobile® to capture deposits on a mobile device.

(iii) **Business Deposit Capture Mobile Only (BDCMO):** Provides access to the Business Deposit Capture Mobile application through Comerica Treasury Mobile® to capture deposits on a mobile device.

(iv) **Business Deposit Capture Mobile with Limited Desktop Access and Mobile Approver (BDCML):** Provides access to the Business Deposit Capture Mobile application through Comerica Treasury Mobile® to capture deposits on a mobile device. In addition, it provides access to the Business Deposit Capture Desktop through Comerica Business Connect™ application to approve mobile deposits and access reporting.

(d) **General Availability of Funds Deposited.** Except as provided in the Deposit Contract, deposits made using the BDC Service will be made available to Customer for all purposes on the first Business Day after the day that Bank receives such deposits. Deposits received through the BDC Service will be deemed received on the day indicated on the electronic receipt acknowledgement that Bank sends to Customer unless that day is a non-Business Day. In such case, the deposits will be deemed received on the first Business Day thereafter.

(e) **Liability.** Unless prohibited by Law, Customer will be liable to Bank to the same extent that Bank is liable under Legal Requirements, including the possibility of consequential damages to the maker/drawer of the original check that Customer imaged and transmitted to Bank electronically, to any intermediary financial institution and to the paying bank/financial institution, if:

(i) any check that Customer imaged and transmitted to Bank is re-presented after payment has been made on such check by the financial institution on which it was drawn or payable through.

(ii) any check that Customer imaged and transmitted to Bank is not of the quality that Bank has advised Customer that it requires or is not of such higher standard of quality required by Legal Requirements, and as a result, the image, Substitute Check (as defined by Law) or Image Replacement Document (as defined by Law or check clearinghouse Rules) that Bank placed into the banking system for payment was not of the quality that Bank requires or of such higher standard of quality required by Legal Requirements.

(iii) the maker/drawer of a check that Customer imaged and transmitted to Bank suffered a loss that could have been prevented if the original check had been presented for clearing and payment. For example: the amount of the original check was \$10 but that amount was altered to read \$100 before Customer imaged and transmitted such check to Bank. The maker's/drawer's account was debited for

\$100 or such check was returned for non-sufficient funds but would not have been returned had the amount read \$10. In such case, Customer will be liable if the outcome would not have occurred if (i) the altered check was presented in its original form (not imaged), and (ii) the alteration would have been detected.

(f) **Risk Mitigation.**

(i) **Controls.** Due to the inherent risk of fraud or loss in connection with the BDC Service, Customer agrees to the following risk mitigation controls as a condition of using the BDC Service:

(A) Keep the original imaged and transmitted checks in a secure place until they are destroyed.

(B) Adopt check destruction policies, procedures, and practices designed to prevent re-presentation of checks already presented for deposit.

(C) Track processing of scanned checks, prior to their destruction, in order to avoid duplicate deposits.

(D) Refrain from depositing demand drafts or remotely created checks through the BDC Service unless approved by Bank in a separate agreement.

(ii) **Restrictive Endorsements.** Bank recommends that Customer endorse checks with a restrictive endorsement containing language such as "for remote deposit only" or "for mobile deposit only"; provided Bank is under no obligation to verify such restrictive endorsement is applied. If Customer does not include a restrictive endorsement on a check deposited using the BDC Service and Customer or a third party deposits or attempts to deposit, a paper copy of the same check at another financial institution, Customer shall Indemnify Bank for any Losses incurred by Bank in connection with the deposit or attempted deposit of such check. To satisfy Customer's Indemnification obligations under this paragraph Bank may; (i) debit Customer's Designated Accounts and if such Designated Accounts do not have sufficient available funds to cover the amounts owed, then Bank may debit other accounts of Customer at Bank, or (ii) set off against any amounts Bank owes to Customer.

(g) **Equipment.** Customer agrees to use the type of equipment and telecommunication services in connection with the BDC Service that Bank may specify from time to time. Failure to use the specified equipment and/or telecommunications services may impact Customer's ability to use, or affect the quality of, the BDC Service. Any equipment that Bank may order on Customer's behalf in connection with the BDC Service shall be covered by a separate agreement executed by Customer and Bank's scanner service provider. Bank makes no representations or warranties

concerning, and has no responsibility or liability for, any equipment or services that Bank does not provide to Customer under a written agreement. Any equipment that Bank gives to Customer to use during a testing or pilot period of the BDC Service is not to be shared by Customer with any other person or entity without Bank's prior written consent, which may be conditioned upon the third party's agreement to contractual terms that are acceptable to Bank.

(h) **Security Procedures.** The BDC Service requires the use of a Security Procedure as set forth in the User Guide(s) for the BDC Service and/or in the online screen instruction for the BDC Service.

(i) **Warranties.** By using the BDC Service, Customer warrants to Bank that Customer will not cause or allow any other person or entity to re-present any check that Customer has imaged and transmitted to Bank for deposit unless Bank has advised Customer that Bank was unable to process the image or give Customer credit for such check. Generally, Bank will advise Customer within one (1) Business Day, but in no event more than two (2) Business Days following Bank's receipt of Customer's transmission of checks if Bank was not able to process or credit Customer's Designated Account for a particular check. Customer warrants to Bank, with respect to each check imaged and transmitted to Bank, that (a) Customer has submitted the image in the format and with such associated check information that Bank may specify from time to time, (b) the check accurately represents all of the information on the front and back of the original check, and that all such information is legible on the check, and (c) no person will receive presentation of the original check, its legal equivalent, or a paper or electronic representation of the original check or its legal equivalent, such that that person will be asked to make a payment based on a check that that person has already paid.

(j) **Image Quality.** Bank reserves the right to transmit a check for payment or create a Substitute Check or Image Replacement Document for presentment directly or indirectly through the banking check clearing system for final presentment to the financial institution on which such check was drawn or was payable through. If Bank advises Customer that Bank was not able to process Customer's imaged check or give Customer credit for the check for any reason other than "**account closed**" or "**refer to maker**" or "**stop payment**", Customer may attempt to redeposit such item using the BDC Service, or in the manner that Customer would have if Customer did not have the BDC Service. Bank recommends, although Bank does not require, that Customer destroy the original check within ten (10) days of Customer's Designated Account being credited for such check to reduce the possibility and risk that such check will re-enter the banking system process.

(k) **Maintenance of Records.** This Master Agreement will not relieve Customer or Bank of any obligation imposed by Law, contract, or otherwise regarding the maintenance of records or from employing adequate audit, accounting and review practices. Customer shall retain and provide to Bank, at its request, all information necessary to remake or reconstruct any deposit, transmission file or entry for at least two (2) Business Days following the date that Bank credited Customer's Designated Account for a deposit made using the BDC Service.

(l) **Bank's Proprietary Property.**

(i) **Acknowledgement and Restriction on Use.** Customer acknowledges that the User Guides Bank provides to Customer are Proprietary Property of Bank. Copying of the User Guide(s) is strictly prohibited without Bank's prior written consent. Customer shall not acquire any proprietary interest or rights in the BDC Service as a result of using the BDC Service, and Customer shall not allow any other entity or person to use the BDC Services without Bank's prior written consent.

(ii) **Disabling of Proprietary Property Upon Termination.**

Upon termination of the BDC Service, Customer will destroy any of Bank's Proprietary Property regarding the BDC Service and will take such action as necessary to insure that Customer cannot use the BDC Service. Customer agrees to provide to Bank, at its request, a written affidavit executed by one of Customer's authorized officers, certifying the destruction or disabling of such Proprietary Property.

(m) **Return of Equipment Upon Termination.** Customer's termination of this Master Agreement under **Section I.K.1. of this Master Agreement**

shall be deemed effective only after Customer returns any equipment that Bank provided in connection with the BDC Service.

6. **Comerica Easy Pay™ Service.** Comerica Easy Pay™ Service (“Easy Pay Service”) is an electronic payment solution that provides customers with a suite of electronic payment options to enable customers’ clients (“**Payers**”) to make electronic payments. Electronic payment options may include the internet, mobile application, interactive voice response system or a live agent call center.

(a) **Electronic Payment Options.**

(i) **Applicable Payment Options.** The electronic payment options and processing features that Bank will provide to Customer shall be mutually agreed to by the Parties. Bank may make additional electronic payment options and processing features available to Customer from time to time. Customer may select such additional options and features and Bank agrees to provide such options and features, as mutually agreed to by the Parties upon Easy Pay Service implementation. After receiving notice of Bank’s offering of additional options or features and their pricing, Customer shall provide Bank a written request in the event that Customer would like to select such options or features. Bank agrees to provide such options and features within a mutually agreed-upon amount of time after receiving from Customer the written notice and all other information which Bank, in its sole discretion, determines is necessary to provide such options or features. Customer may cancel electronic payment options and processing features by giving Bank thirty (30) days’ written notice.

(ii) **Credit/Debit Card Acceptance.** In the event that Customer elects to accept credit/debit card payments, Customer must arrange for merchant card services either through Bank or a merchant service provider acceptable to Bank. A Separate Agreement is required for merchant card services through Bank.

(iii) **Automated Clearing House.** In the event that Customer elects to use ACH as a payment option, Customer must elect to receive ACH Services in the Implementation Agreement.

(b) **Technology Requirements.** Bank and Customer shall mutually agree on the file formats and transmittal standard that Customer will use in conjunction with the Easy Pay Service. Any changes to the agreed upon file formats and transmittal standards must be agreed to in writing by the Parties. If Customer requests, and Bank agrees, to provide technology related assistance, the Parties shall enter into a Separate Agreement for such assistance.

(c) **Customer Obligations.** Customer shall:

(i) Ensure that all data, information and instructions Customer supplies to Bank in connection with the Easy Pay Service shall be accurate and complete.

(ii) Only provide Easy Pay Service Access Codes to Users that are authorized to input payment instructions received from Payers.

(iii) Directly manage any and all claims or allegations by Payers related to or arising out of the Easy Pay Service.

(iv) Not utilize or permit Payers to utilize the Easy Pay Service to conduct illegal or fraudulent activity.

(v) Verify the identity of any Payer prior to submitting a payment through the Easy Pay Service.

(vi) Timely post payments, when applicable.

(vii) Not present any terms that are inconsistent with the Agreement for the Easy Pay Service.

(viii) Identify and obtain from its Payers all authorizations and consents related to the use of the Easy Pay Service that are required by the Agreement and applicable Legal Requirements.

(ix) Provide an easily accessible and conspicuously noticeable privacy policy on each of its owned, operated or controlled websites that: (a) complies with the applicable privacy Laws governing notice to Payers; (b) discloses usage of third-party technology to collect and use data in

connection with the Easy Pay Service; and (c) is consistent with industry standards and provides Payers access to a user choice mechanism.

(x) Deliver through a real-time process or electronic delivery, a file containing current information associated with a Payer, which may include but is not limited to a first name or last name, other legal name, account number assigned by Customer (“**Billing Account Number**”), payment due date, amount due, email address, phone number, mobile phone number and statement mailing date.

(d) **Limitation of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section 1.L.1. of this Master Agreement.**

(i) In the event that Bank fails to accurately process a Payer’s received payment transaction, Bank’s total liability shall be limited to correcting and/or reversing the applicable error, and in the event that Bank cannot correct and/or reverse the applicable error, Bank’s liability shall be limited to any actual, provable damages directly arising out of the applicable error; provided, however, that in no event shall Bank’s liability exceed the amount of the applicable payment transaction.

(ii) In the event that Bank fails to timely process a Payer’s received payment transaction, Bank’s total liability shall be limited to processing the applicable payment transaction by the next Business Day, and in the event that Bank cannot process the applicable payment transaction by the next Business Day, Bank’s liability shall be limited to any actual, provable damages directly arising out of the applicable error; provided, however, that in no event shall Bank’s liability exceed thirty dollars (\$30).

(iii) Bank (and Bank’s Third-Party Service Provider) shall not be liable to Customer for any Losses relating to or arising out of any content that Customer or Payers provide for inclusion in the Easy Pay Service.

(e) **Customer’s Marks.**

(i) If requested to do so by Customer, during the term of this Master Agreement, Bank (and Bank’s Third-Party Service Provider) shall have the right and license to use any names, registered and unregistered trademarks, service marks, trade names, service names, trade dress, copyrights, logos, images, graphics and brand designs as provided by Customer to Bank as they now exist or may be modified during the term hereof (collectively, “Marks”) solely for the purpose of and in connection with the Easy Pay Service. By providing Customer’s Marks to Bank, Customer: (a) represents and warrants to Bank that it has all rights needed to use Customer’s Marks and that Comerica (and all third parties that Comerica may allow to use Customer’s Marks to fulfill the purposes of the Agreement) may use the Customer’s Marks as contemplated under this Section; (b) grants to Bank a limited, revocable, nontransferable license to reproduce and use the Customer’s Marks solely for the purpose and in connection with the Agreement. Subject to and consistent with applicable Legal Requirements, Bank shall comply with the standards established by Customer and provided to Bank in writing in advance with respect to the form of Customer’s Marks and their usage. Bank’s reproduction and use of the Customer’s Marks, and all goodwill established thereby and/or associated therewith, shall inure exclusively to the benefit of Customer, and Bank acquires no goodwill or other legal rights or interests in the Customer’s Marks other than the right to use the Customer’s Marks in connection with this Master Agreement. Subject to the foregoing, each of the Parties hereto is and shall remain the owner of all rights, title and interest in and to its Marks as the same now exist or as they may hereafter be modified. Any and all rights to Marks not herein specifically granted and licensed to the other party are reserved by the party owning such rights.

(ii) In no event shall Bank be liable for any Losses directly or indirectly arising out of infringement or alleged infringement of the Marks or any patent, copyright, trademark, trade secret or other proprietary right by any materials, images, information, processes or designs furnished by Customer.

(iii) In addition to the Indemnification obligations in **Section 1.L.4. of this Master Agreement**, Customer shall Indemnify Bank in

connection with actual or alleged infringement of any Mark furnished by Customer to Bank in connection with the Easy Pay Service.

(f) **Feedback.** Customer agrees that Bank may use any suggestions or other feedback relating to the Easy Pay Service ("Feedback") that is provided to Bank without restriction.

(g) **Suspension and Termination.**

(i) If at any time Bank reasonably suspects that Customer or any Payer is: (a) involved in any illegal or fraudulent activity; (b) infringing or misappropriating intellectual property; or (c) causing a security or integrity issue to the Easy Pay Service, including by unauthorized access or intentional interference, Bank may immediately suspend activity for the Customer or the applicable Payer.

(ii) In the event of termination of the Easy Pay Service, Bank will provide, at Customer's request, and upon payment of a Fee mutually agreeable to Bank and Customer, data related to the Easy Pay Service provided to Customer and historical payment information related to the Easy Pay Service provided to Customer.

(h) **Payer Agreements.** As part of the Easy Pay Service, Customer will be required to enter into an agreement between the Customer and each Payer ("Payer Agreement"). The Payer Agreement shall:

(i) Obligate the Payer to ensure, represent and warrant, that all data, information, instructions and representations that it transmits are accurate and complete;

(ii) Obligate the Payer to use the Easy Pay Service in compliance with all applicable Legal Requirements;

(iii) Notify Payer of its and Bank's privacy disclosures;

(iv) Obtain the Payer's express consent for Bank to transfer any consumer data that the Payer provides in connection with the use of the Easy Pay Service to Bank's Third-Party Provider or to otherwise give Bank's Third-Party Provider access to the consumer data for purposes of providing the Easy Pay Service; and

(v) Not contain any terms that are inconsistent with the Agreement for the Easy Pay™ Service.

7. **Comerica Integrated Receivables® Service.** The Comerica Integrated Receivables® Service ("Integrated Receivables Service") consolidates data, images and information from various incoming payment and depository services offered by Bank into a central online repository for customer access, storage and analysis. Payment Reassociation is an optional enhancement designed to provide straight-through-processing (STP) for receivables by automatically matching incoming electronic and paper payments to open invoice remittance details from a company's accounts receivables (A/R) system and paying customer remittance emails.

(a) **Access.** The Integrated Receivables Service is accessible through Comerica Business Connect™. By using the Integrated Receivables Service through Comerica Business Connect™, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for Integrated Receivables Service by this reference.

(b) **Payment Channels.** A "Payment Channel" is the underlying Service or other means that: (a) Customer uses to receive payments and/or other deposits to Customer's Designated Account(s), such as ACH, wire transfer or lockbox; and/or (b) Bank uses to obtain the data, images and information about such payments and/or other deposits, which Bank makes available to Customer through the Integrated Receivables Service. Customer's Payment Channels shall be selected in the Implementation Agreement and/or Separate Agreement(s). Bank may, from time to time, make available additional Payment Channels. To add additional Payment Channels to Customer's Integrated Receivables® Service, Customer shall provide a written request to Bank's Treasury Management Services Department. Bank may require Customer to execute an Implementation Agreement and/or Separate Agreement to use the Integrated Receivables Service with a selected Payment Channel, and Customer's use of the

Integrated Receivables Service with such Payment Channel shall be subject to the Service Terms for such Payment Channel and/or a Separate Agreement(s).

(c) **System Features And Functionality.** The Integrated Receivables Service shall provide Customer with access to a central online repository, archive, and integration point for Payment Channel data, images and information ("System"). The System will connect Customer selected Payment Channels and allow consolidation, reporting and online decisioning capabilities for Customer's receivables associated with such selected Payment Channel(s). Specific features and functionality of Customer's Integrated Receivables Service shall be agreed to by Bank and Customer in the Implementation Documents for the Integrated Receivables Service. All data, images and information reported through the Integrated Receivables® Service are reported after such data, images and information are captured through the Payment Channel after final settlement of the incoming payment.

(i) **Data Consolidation.** The System will aggregate data from the Payment Channels selected by Customer in the Implementation Documents for the Integrated Receivables Service and/or requested by Customer in accordance with **Section 2.** above.

(ii) **Automation.** The System will enable the automation of payment posting and Customer payment decision workflows for research and action.

(iii) **Data and Image Storage.** The System will enable Customer to retrieve data, images and information for the duration of the retention period requested by Customer and agreed to by Bank in the Implementation Documents for the Integrated Receivables Service. Bank shall have no obligation to retain data, images and/or information beyond the retention period agreed to by Bank and Customer in the Implementation Documents for the Integrated Receivables Service.

(iv) **Data Retrieval.** Customers can search and view data and images, create reports, and download images and data.

(v) **Reports.** Customer may run such other reports as are described in the User Guide for the Integrated Receivables Service.

(d) **Service Availability.** The Integrated Receivables Service will be available during the hours set forth in the User Guide for the Integrated Receivables Service.

(e) **Limitations of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1. of this Master Agreement**, in the event that, through no fault of Customer, its agents, including telecom and internet carriers, or any public internet or telecom carriers, used by either party, the Integrated Receivables Service is not accessible for more than five (5) consecutive Business Days during any rolling thirty (30) day period, Bank's liability to Customer shall be limited to refunding to Customer, on a pro rata basis, the monthly fee paid for the number of consecutive days the Integrated Receivables® Service was not available to Customer.

(f) **HIPAA Compliance.** To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate, Customer and Bank shall enter into a Business Associate Agreement prior to or concurrent with the date upon which Bank provides a Service and/or Payment Channel subject to HIPAA. Customer shall be responsible for notifying Bank if Bank is Customer's Business Associate. If Bank determines that Bank is providing a Service(s) and/or a Payment Channel(s) requiring a Business Associate Agreement, Bank shall provide, and Customer shall execute, a Business Associate Agreement.

8. **Classic Lockbox Service and Classic Plus Lockbox Service.** Comerica's Classic Lockbox Service and Classic Plus Lockbox Service (collectively the "Classic Lockbox Service") are for businesses with a low volume of invoice-based payments. The Classic Lockbox Service accelerates the conversion of receivables into available funds by reducing mail, processing and deposit float. Remittances are sent by check to a specially numbered post office box using a unique zip code.

Bank collects the mail, processes the remittances and deposits the funds to the customer's account. Invoices, remittance information and correspondence are forwarded to the customer if requested as an optional feature to the Classic Lockbox Service. The Classic Lockbox Service is offered to customers with monthly volumes of 100 or less items. The Classic Plus Lockbox Service is offered to customers with monthly volumes of more than 100 but less than 300 items.

(a) Lockbox. Bank will provide Customer with a post office address to a post office box designated by Bank for the Classic Lockbox Service ("Lockbox"). Customer will have its payors send payments to the Lockbox.

(b) Customer's Agent. Customer authorizes Bank to act as its agent to: (a) rent the Lockbox at the appropriate postal facility; (b) have custody of the keys or combinations for the Lockbox; (c) have unrestricted and exclusive access to the Lockbox; and (d) collect the mail from the Lockbox to be processed by Bank.

(c) Processing of Items Received in Lockbox. Bank will open all mail and process the items received in the Lockbox in accordance with the procedures described in the Implementation Agreement and/or Separate Agreement and the User Guide(s) for the Classic Lockbox Service. Substantial compliance by Bank with the procedures in the Service Terms for Classic Lockbox Service shall be deemed to constitute the exercise of ordinary and reasonable care by Bank.

(d) Indemnification. Customer shall Indemnify Bank in connection with claims by third-parties which directly or indirectly arise from the handling of, processing, and credit given for remittance items processed and/or deposited under the Service Terms for Classic Lockbox Service.

(e) Limitations of Liability. Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**.

(i) Customer understands and agrees that for the purpose of accepting and processing the items that are received in the Lockbox, Bank is acting as the agent for Customer. Bank will not be liable for acting pursuant to a court order, garnishment, tax levy or similar process in regard to any item processed in accordance with the Service Terms for Classic Lockbox Service.

(ii) Bank will not be liable to Customer or to any third party for any currency, coin or non-check payments received in the Lockbox.

(f) Termination. Upon the effective date of termination of the Lockbox Service and Classic Plus Lockbox Service, any items remaining in the Lockbox shall be processed in accordance with the Service Terms for Classic Lockbox Service except as prohibited under any applicable Law. In the event Bank is unable to process the items in the Lockbox according to the Service Terms for Classic Lockbox Service because items are received in the Lockbox following the effective termination of the Classic Lockbox Service, Bank may return all items to Customer at Customer's expense or, at Bank's option, close the Lockbox and return the items in the Lockbox according to the post office's policies and procedures, and, in either event, Bank's obligations under this the Service Terms for Classic Lockbox Service will terminate.

(g) HIPAA Compliance. To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement prior to or concurrent with the date upon which Bank provides a product or service subject to HIPAA.

9. Lockbox for Remittance Basis Loans Service. Comerica's Lockbox for Remittance Basis Loans Service ("Remittance Basis Lockbox Service") is a lockbox service for businesses with a low volume of high-dollar invoice payments that accelerates reduction of customer's debt secured by a cash collateral account designated in a security agreement between Comerica and the customer. Remittances to the customer are sent by check to a specially numbered post office box using a unique zip code, accessed only by Comerica's Lockbox Department.

Comerica collects the mail, processes the remittances and deposits the funds to the cash collateral account. Invoices, remittance information and correspondence are forwarded to the Customer or other party designated by Customer.

(a) Lockbox. Bank will provide Customer with a post office address to a post office box designated by Bank ("Lockbox"). Customer will have its payors send payments to the Lockbox.

(b) Customer's Agent. Customer authorizes Bank to act as its agent to: (a) rent the Lockbox at the appropriate postal facility; (b) have custody of the keys or combinations for the Lockbox; (c) have unrestricted and exclusive access to the Lockbox; and (d) collect the mail from the Lockbox to be processed by Bank.

(c) Processing of Items Received in Lockbox. Bank will open all mail and process the items received in the Lockbox in accordance with the procedures described in the Service Terms for the Remittance Basis Lockbox Service. Substantial compliance by Bank with the procedures in the Service Terms for the Remittance Basis Lockbox Service shall be deemed to constitute the exercise of ordinary and reasonable care by Bank.

(d) Implementation Documents. The account to which funds will be deposited shall be known as the "Cash Collateral Account," or other designation as described in the applicable security agreement entered between Customer and Bank ("Security Agreement"). All deductions to pay for Fees and Charges of maintaining the Cash Collateral Account and/or the Remittance Basis Lockbox Service shall be charged to a Designated Account other than the Cash Collateral Account, i.e., General Operating Account.

(e) Indemnification. Customer shall Indemnify Bank in connection with claims by third-parties which directly or indirectly arise from the handling of, processing, and credit given for remittance items processed and/or deposited under the Service Terms for the Remittance Basis Lockbox Service.

(f) Limitations of Liability. Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**.

(i) Customer understands and agrees that for the purpose of accepting and processing the items that are received in the Lockbox, Bank is acting as the agent for Customer. Bank will not be liable for acting pursuant to a court order, garnishment, tax levy or similar process in regard to any item processed in accordance with the Service Terms for the Remittance Basis Lockbox Service.

(ii) Bank will not be liable to Customer or to any third party for any currency, coin or non-check payments received in the Lockbox.

(g) Termination.

(i) Notwithstanding the termination provision contained in this Master Agreement, the Service Terms for the Remittance Basis Lockbox Service may not be terminated without the prior written consent of Bank. Customer agrees that Bank shall only be obligated to terminate this Remittance Basis Lockbox Service when Bank is paid in full on all indebtedness owing to Bank as described in the Security Agreement and Fees and Charges owed under the Service Terms for the Remittance Basis Lockbox Service.

(ii) Upon the effective date of termination of the Remittance Basis Lockbox Service under this Master Agreement, any items remaining in the Lockbox shall be delivered to Customer at Customer's expense and any funds remaining in the Cash Collateral Account shall be transferred to any other account of Customer at Bank which is mutually agreeable to both Parties unless such transfer would be prohibited under any applicable Law. In the event Bank is unable to process the items in the Lockbox according to the Service Terms for the Remittance Basis Lockbox Service because: (a) Bank's legal counsel has advised that such acts may be deemed prohibited under applicable Law; or (b) items are received in the Lockbox following the effective termination of the Remittance Basis Lockbox Service under this Master Agreement, Bank may return all items to Customer at Customer's expense or, at Bank's option, close the

Lockbox and return the items in the Lockbox according to post office's policies and procedures and, in either event, Bank's obligations under the Service Terms for Remittance Basis Lockbox Service will terminate.

(iii) If Customer desires to continue the use of the Remittance Basis Lockbox Service described in these Service Terms after Bank is paid in full on all indebtedness owing to Bank as described in the Security Agreement, Customer must execute a new Implementation Agreement and/or Separate Agreement as Bank may require.

(h) **HIPAA Compliance.** To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement prior to or concurrent with the date upon which Bank provides a product or service subject to HIPAA.

10. **Lockbox Plus™ Coupon Dominion of Funds (DOF) Service.** Comerica Lockbox Plus™ Coupon Dominion of Funds (DOF) Service ("Lockbox DOF Service") accelerates reduction of customer's debt secured by a cash collateral account designated in a security agreement between Comerica and the customer. Remittances to the customer are sent by check to a specially numbered post office box using a unique zip code, accessed only by Comerica's Lockbox Department. Comerica collects the mail, processes the remittances and deposits the funds to the cash collateral account. Invoices, remittance information and correspondence are forwarded to the customer or other party as designated in the implementation documents.

(a) **Access.** If Customer elects to access or use the optional Retail Lockbox feature of the Lockbox DOF Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for Lockbox Plus Coupon Service by this reference.

(b) **Lockbox.** Bank will provide Customer with a post office address to a post office box designated by Bank for the Lockbox DOF Service ("Lockbox"). Customer will have its payors send payments to the Lockbox.

(c) **Customer's Agent.** Customer authorizes Bank to act as its agent to: (a) rent the Lockbox at the appropriate postal facility; (b) have custody of the keys or combinations for the Lockbox; (c) have unrestricted and exclusive access to the Lockbox; and (d) collect the mail from the Lockbox to be processed by Bank.

(d) **Processing of Items Received in Lockbox.** Bank will open all mail and process the items received in the Lockbox in accordance with the procedures described in the Service Terms for the Lockbox DOF Service. Substantial compliance by Bank with the procedures in the Service Terms for the Lockbox DOF Service shall be deemed to constitute the exercise of ordinary and reasonable care by Bank.

(e) **Accounts.** The account to which funds will be deposited shall be known as the "Cash Collateral Account," or other designation as described in the applicable security agreement entered between Customer and Bank ("Security Agreement"). All deductions to pay for Fees and Charges of maintaining the Cash Collateral Account and/or the Lockbox DOF Service shall be charged to a Designated Account other than the Cash Collateral Account, i.e., General Operating Account.

(f) **Indemnification.** Customer shall Indemnify Bank in connection with claims by third-parties which directly or indirectly arise from the handling of, processing, and credit given for remittance items processed and/or deposited under the Service Terms for the Lockbox DOF Service.

(g) **Limitations of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**.

(i) Customer understands and agrees that for the purpose of accepting and processing the items that are received in the Lockbox, Bank is acting as the agent for Customer. Bank will not be liable for acting pursuant to a court order, garnishment, tax levy or similar process in regard to any item processed in accordance with the Service Terms for the Lockbox DOF Service.

(ii) Bank shall not be liable to Customer or to any third party for any currency, coin or other non-check payments received in the Lockbox.

(h) **Termination.**

(i) Notwithstanding the termination provision contained in this Master Agreement, the Service Terms for the Lockbox DOF Service may not be terminated without the prior written consent of Bank. Customer agrees that Bank shall only be obligated to terminate this Lockbox DOF Service and Service Terms for Lockbox DOF Service when Bank is paid in full on all indebtedness owing to Bank as described in the Security Agreement and Fees and Charges owed under the Service Terms for Lockbox DOF Service.

(ii) Upon the effective date of termination of the Service Terms for Lockbox DOF Service, any items remaining in the Lockbox shall be delivered to Customer at Customer's expense and any funds remaining in the Cash Collateral Account shall be transferred to any other account of Customer at Bank which is mutually agreeable to both Parties, unless such transfer would be prohibited under any applicable Law. In the event Bank is unable to process the items in the Lockbox according to the Service Terms for Lockbox DOF Service because: (a) Bank's legal counsel has advised that such acts may be deemed prohibited under applicable Law; or (b) items are received in the Lockbox following the effective termination of the Service Terms for Lockbox DOF Service, Bank may return all items to Customer at Customer's expense or, at Bank's option, close the Lockbox and return the items in the Lockbox, according to post office's policies and procedures and, in either event, Bank's obligations under the Service Terms for Lockbox DOF Service will terminate.

(iii) If Customer desires to continue the use of the Lockbox DOF Service described in these Service Terms after Bank is paid in full on all indebtedness owing to Bank as described in the Security Agreement, Customer must execute a new Implementation Agreement and/or Separate Agreement and such other documents Bank may require.

(i) **HIPAA Compliance.** To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement prior to or concurrent with the date upon which Bank provides a product or service subject to HIPAA.

(j) **Security Procedures.** Security Procedures for viewing images and reporting through Comerica Business Connect™, receiving files from Bank, and transmitting files to Bank through the use of SFTP and Comerica Data Vault™, are fully described in the applicable User Guides. Generally, the differences in Security Procedures are:

(i) Comerica Business Connect™ requires the use of a security token, customer IDs, and passwords as described in the User Guide(s) for the Lockbox DOF Service.

(ii) SFTP requires the use of an ID, password and specified IP address.

(iii) Comerica Data Vault™ requires the use of Software that generates a password that is only known to the Software.

11. **Lockbox Plus™ Coupon Service.** Comerica Lockbox Plus™ Coupon Service ("Lockbox Plus Coupon Service") accelerates the conversion of receivables into available funds by reducing mail, processing and deposit float. Remittances can be by check accompanied by a payment coupon or electronic payment with coupon type data. Bank collects the paper mail (checks and coupons) and/or electronic payments (with data), processes the remittances and deposits the funds to customer's designated account.

(a) **Access.** If Customer elects to access or use the optional Retail Lockbox feature of the Lockbox Plus Coupon Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into the Service Terms for Lockbox Plus Coupon Service by this reference.

(b) **Lockbox.** Bank will provide Customer with a post office address to a post office box designated by Bank for the Lockbox Plus Coupon Service ("Lockbox"). Customer will have its payors send payments to the Lockbox.

(c) **Customer's Agent.** Customer authorizes Bank to act as its agent to: (a) rent the Lockbox at the appropriate postal facility; (b) have custody of the keys or combinations for the Lockbox; (c) have unrestricted and exclusive access to the Lockbox; and (d) collect the mail from the Lockbox to be processed by Bank.

(d) **Processing of Items Received in Lockbox.** Bank will open all mail and process the items received in the Lockbox in accordance with the procedures described in the Service Terms for the Lockbox Plus Coupon Service. Substantial compliance by Bank with the procedures in the Service Terms for the Lockbox Plus Coupon Service shall be deemed to constitute the exercise of ordinary and reasonable care by Bank.

(e) **Indemnification.** Customer shall Indemnify Bank in connection with claims by third-parties which directly or indirectly arise from the handling of, processing, and credit given for remittance items processed and/or deposited under the Service Terms for Lockbox Plus Coupon Service.

(f) **Limitations of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**.

(i) Customer understands and agrees that for the purpose of accepting and processing the items that are received in the Lockbox, Bank is acting as the agent for Customer. Bank will not be liable for acting pursuant to a court order, garnishment, tax levy or similar process in regard to any item processed in accordance with the Service Terms for Lockbox Plus Coupon Service.

(ii) Bank shall not be liable to Customer or to any third party for any currency, coin or other non-check payments received in the Lockbox.

(g) **Termination.** Upon the effective date of termination of the Service Terms for the Lockbox Plus Coupon Service, any items remaining in the Lockbox shall be processed in accordance with this Master Agreement except as prohibited under any applicable Law. In the event Bank is unable to process the items in the Lockbox according to the Service Terms for Lockbox Plus Coupon Service, Bank may return all items to Customer at Customer's expense or, at Bank's option, close the Lockbox and return the items in the Lockbox according to post office's policies and procedures and in either event, Bank's obligations under these Service Terms for Lockbox Plus Coupon Service will terminate.

(h) **HIPAA Compliance.** To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement prior to or commensurate with the date upon which Bank provides a product or service subject to HIPAA.

(i) **Security Procedures.** Security Procedures for viewing images and reporting through Comerica Business Connect™, receiving files from Bank, and transmitting files to Bank through the use of SFTP and Comerica Data Vault™, are fully described in the applicable User Guides. Generally, the differences in Security Procedures are:

(i) Comerica Business Connect™ requires the use of a security token, customer IDs, and passwords as described in the User Guide(s) for the Lockbox Plus Coupon Service.

(ii) SFTP requires the use of an ID, password and specified IP address.

(iii) Comerica Data Vault™ requires the use of Software that generates a password that is only known to the Software.

12. **Wholesale Lockbox Service.** Comerica's Wholesale Lockbox Service ("Wholesale Lockbox Service") is a traditional lockbox service for businesses with a low volume of high-dollar invoice payments. The Wholesale Lockbox Service accelerates the conversion of receivables into available funds by reducing mail, processing and deposit float. Remittances are sent by check to a specially numbered post office box using a unique zip code. Bank collects the mail, processes the remittances and deposits the funds to the customer's account. Invoices, remittance information and correspondence are forwarded to the customer.

(a) **Lockbox.** Bank will provide Customer with a post office address to a post office box designated by Bank for the Wholesale Lockbox Service ("Lockbox"). Customer will have its payors send payments to the Lockbox.

(b) **Customer's Agent.** Customer authorizes Bank to act as its agent to: (a) rent the Lockbox at the appropriate postal facility; (b) have custody of the keys or combinations for the Lockbox; (c) have unrestricted and exclusive access to the Lockbox; and (d) collect the mail from the Lockbox to be processed by Bank.

(c) **Processing of Items Received in Lockbox.** Bank will open all mail and process the items received in the Lockbox in accordance with Service Terms for the Wholesale Lockbox Service. Substantial compliance by Bank with the procedures in the Service Terms for Wholesale Lockbox Service shall be deemed to constitute the exercise of ordinary and reasonable care by Bank.

(d) **Indemnification.** Customer shall Indemnify Bank in connection with claims by third-parties which directly or indirectly arise from the handling of, processing, and credit given for remittance items processed and/or deposited under the Service Terms for Wholesale Lockbox Service. **Limitations of Liability.** Notwithstanding anything in this Master Agreement to the contrary, in addition to the limitations of liability set forth in **Section I.L.1 of this Master Agreement**.

(i) Customer understands and agrees that for the purpose of accepting and processing the items that are received in the Lockbox, Bank is acting as the agent for Customer. Bank will not be liable for acting pursuant to a court order, garnishment, tax levy or similar process in regard to any item processed in accordance with the Service Terms for Wholesale Lockbox Service.

(ii) Bank will not be liable to Customer or to any third party for any currency, coin or non-check payments received in the Lockbox.

(e) **Termination.** Upon the effective date of termination of the Service Terms for Wholesale Lockbox Service, any items remaining in the Lockbox shall be processed in accordance with the Service Terms for Wholesale Lockbox Service except as prohibited under any applicable Law. In the event Bank is unable to process the items in the Lockbox according to the Service Terms for Wholesale Lockbox Service because items are received in the Lockbox following the effective termination of the Service Terms for Wholesale Lockbox Service, Bank may return all items to Customer at Customer's expense or, at Bank's option, close the Lockbox and return the items in the Lockbox according to the post office's policies and procedures, and, in either event, Bank's obligations under the Service Terms for Wholesale Lockbox Service will terminate.

(f) **HIPAA Compliance.** To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement prior to or concurrent with the date upon which Bank provides a product or service subject to HIPAA.

F. HEALTHCARE RECEIVABLES

1. **Comerica Healthcare Receivables Automation™ Service.** Comerica Healthcare Receivables Automation™ Service ("HRA Service") is a healthcare information processing service designed to allow customers to automate their healthcare payment processing in a more efficient and effective manner.

(a) Additional Services Required. To use the HRA Service, Customer must also receive one or more of the following Services, subject to the applicable Service Terms: (a) Image Services; (b) Wholesale Lockbox Service; and/or (c) ACH Origination Service. By using the HRA Service with Image Services, Wholesale Lockbox Service and/or ACH Origination Services, Customer agrees to the Service Terms for such Service, and such terms are incorporated into and made a part of the Service Terms for the HRA Service by this reference.

(b) Access. The HRA Service is accessible through Comerica Business Connect™. By using the HRA Service, Customer agrees to the Service Terms for Comerica Business Connect™, which are incorporated into and made a part of the Service Terms for the HRA Service by this reference.

(c) HRA Service Deliverable Options. Customer may select the specific HRA Service deliverables it requests during HRA Service implementation.

(d) Liability. Bank will provide the HRA Service based upon the information provided by Customer. Bank will not independently verify the information submitted. Notwithstanding anything in this Master Agreement to the contrary, in addition to the Limitations of Liability set forth in **Section 1.L.1. of this Master Agreement**, Bank shall not be liable for any errors, costs or liabilities arising from Bank's performance of the HRA Service to the extent such errors, costs or liabilities arose from Bank's reliance on the information provided by Customer.

(e) HIPAA Compliance. To the extent HIPAA may apply, Bank and Customer agree to take all necessary steps to comply with HIPAA. Where Customer is a Covered Entity (as defined by HIPAA) and/or Bank is a Covered Entity or Business Associate (as defined by HIPAA), Customer and Bank shall enter into a Business Associate Agreement prior to or concurrent with the date upon which Bank provides a product or service subject to HIPAA.

G. ADDITIONAL SERVICES

Bank may make other Services available. Such Services will be subject to the Service Terms for such Services.

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AUT Last Name:

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Enrollment ID: CEF

TMOS Name: Sophia Whitehurst

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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Comerica Bank (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Comerica Bank:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows: To contact us by email send messages to your TM Officer or Relationship Manager.

To advise Comerica Bank of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to your TM Officer or Relationship Manager and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Comerica Bank

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to your TM Officer or Relationship Manager and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Comerica Bank

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to your TM Officer or Relationship Manager and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Comerica Bank as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Comerica Bank during the course of your relationship with Comerica Bank.