

## **ARBITRATION SETTLEMENT AGREEMENT**

THIS ARBITRATION SETTLEMENT AGREEMENT ("AGREEMENT") entered into on August \_\_, 2020, by and between the DETROIT WATER AND SEWERAGE DEPARTMENT ("DWSD"), a department of the City of Detroit (the "City"), and the GREAT LAKES WATER AUTHORITY ("GLWA"), a municipal authority and public body corporate organized and existing under and pursuant to the provisions of Act No. 233, Public Acts of Michigan, 1955, as amended ("Act 233").

### **WITNESSETH:**

WHEREAS, the City owns a Water Supply System (the "Water System"); and

WHEREAS, the Parties have entered into schedules to a Regional Water Supply System Lease, dated June 12, 2015 (as Schedules have been amended, the "Water Lease"), which provides for the lease by the City to GLWA of the regional assets of the Water System (the "Regional Water System") for an initial term of forty (40) years; and

WHEREAS, the Water Lease contains Schedule A, reflecting the Real Property and Personal Property that comprise the Leased Water Facilities; and

WHEREAS, Schedule A may be amended by the mutual agreement of the DWSD Director and the GLWA Chief Executive Officer and Chairperson; and

WHEREAS, pursuant to the Water Lease, GLWA is operating the Regional Water System, and the City, acting through DWSD, continues to operate the remaining assets of the Water System (the "Local Water System") that provide water service to Retail Water Customers; and

WHEREAS, the Parties have also entered into a Water and Sewer Services Agreement, dated June 12, 2015 (the "WSSA"), relating to the provision of water service to those individual customers located within and outside the City that receive water service directly from the Detroit Local Water Facilities (the "Retail Water Customers"); and

WHEREAS, the Water Lease and the WSSA became effective on January 1, 2016 (the "Effective Date"); and

WHEREAS, the Parties filed Notices of Arbitration, related to whether Schedule A of the Water Lease needed to be amended based on actual use of watermains within the City of Detroit; and

WHEREAS, the Parties agreed to mapping and modeling criteria for determining whether a watermain is a part of the Regional Water System or the Local Water System or a candidate for decommissioning; and

WHEREAS, pursuant to modeling, the Parties have identified watermains for reallocation from the Regional Water System to the Local Water System (Exhibit 1-A); and

WHEREAS, the Parties agree that Fieldwork Verification is necessary to determine whether the watermain reallocated to the Local Water System are actually used for Local Water System; and

WHEREAS, pursuant to the modeling, the Parties have identified watermain candidates for decommissioning because they are not necessary for Regional Water System or Local Water System water services (Exhibit 1-B); and

WHEREAS, the Parties agree that Fieldwork Verification is necessary to determine which watermain shall be decommissioned because they are no longer necessary for Regional Water System or Local Water System water services; and;

WHEREAS, GLWA sought to exclude specific Leased Water Facilities from any calculations used to determine the annual volumes, maximum day demands, or peak hour demands for water supplied to Retail Water Customers from the City, alleging because they are not connected to Detroit Local Water Facilities for the Fiscal Year 2020 charges; and

WHEREAS, the City filed a Notice of Arbitration disputing GLWA's authority to exclude these specific Leased Facilities from any calculations used to determine the annual volumes, maximum day demands or peak hour demands for water supplied to Retail Water Customers, alleging that these Leased Water Facilities were connected to Detroit Local Water Facilities; and

WHEREAS, the Parties agreed to forego the exclusion of specific Leased Water Facilities from any calculations used to determine the annual volumes, maximum day demands or peak hour demands for water supplied to Retail Water Customers from the City in the Fiscal Year 2020 charges and the Parties proceeded with the Arbitration process set forth in the Water Lease and WSSA; and

WHEREAS, the Parties desire to amicably resolve these Arbitrations through this Agreement.

In consideration of the mutual agreements described herein, the Parties agree to the following:

**1. Definitions.** Except as otherwise provided in this Agreement, including the preambles hereto, all terms which are defined in the Water Lease and the WSSA shall all have the same meanings, respectively, in this Agreement as such terms are given in the Water Lease and the WSSA. For purposes of this Agreement only, additional definitions are as follows:

- a. **Fieldwork Verification:** The process by which the Parties confirm, based on actual use, whether Leased Water Facilities shall be (i) reallocated to the City or (ii) decommissioned by GLWA. Fieldwork Verification conclusions are final, unless the Parties mutually agree to revisit the conclusions. Each Party shall pay its own costs for Fieldwork Verification, including closing and opening valves on their respective Water Systems.

b. ***Contracted Services Costs:*** Amounts paid to a contractor by a Party to maintain, repair, or improve a watermain, including watermain break repairs and manhole repairs.

## **2. Reallocation of Watermains.**

a. The Parties agree to reallocate watermains to the Local Water System as depicted in Exhibit 1-A.

b. The Parties shall amend Schedule A of the Water Lease, upon execution of this Agreement to reflect the reallocation of the watermains. As the Parties complete Fieldwork Verification, the Parties agree to amend Schedule A, as necessary, to reflect the watermains reallocated between the Parties.

c. If Fieldwork Verification determines that a watermain's actual use supports the Regional Water System or a watermain should be decommissioned, DWSD shall be reimbursed by GLWA for all Contracted Services Costs for the watermain and GLWA shall be responsible for any future costs associated with the watermain. If Fieldwork Verification confirms that a watermain's actual use supports the Local Water System, DWSD shall reimburse GLWA for all Contracted Services Costs for the watermain from January 1, 2017 to the date of execution of Agreement as outlined in Paragraph 4, Costs for Decommissioning of Watermains.

d. Beginning in FY 2022, pursuant to Section 3.1(b)(i)(C) of the Water and Sewer Services Agreement and until the Local Water System is master metered, the reallocated watermains shall be used in the calculation of Non-revenue Water, using best available data and Prudent Utility Practices.

## **3. Decommissioning of Watermains.**

a. Based on Fieldwork Verification conclusions, GLWA shall be responsible for decommissioning all watermains, as preliminarily depicted in Exhibit 1-B and maybe revised pursuant to the Fieldwork Verification, that are not necessary for the Regional Water System or the Local Water System.

b. As the Parties complete Fieldwork Verification and watermains are decommissioned, the Parties agree to amend Schedule A of the Water Lease, as needed, to remove the decommissioned watermains.

c. GLWA shall give 90 days' notice to the DWSD before decommissioning watermains.

d. Before the end of the 90-day notice period, DWSD shall cut and cap all connections along the decommissioned watermain and reconnect all Retail Water Customers accounts and fire hydrants and related appurtenances, at its

expense, from the decommissioned watermain to a watermain which is a part of the Local Water System.

**4. Costs for Decommissioning of Watermains.**

a. From January 1, 2017 and until the execution of this Agreement, GLWA has expended [\$397,065.31] in Contracted Services Costs on watermains that are now reallocated to the Local Water System ("Reimbursement Amount"). As GLWA decommissions watermains in the City of Detroit, GLWA shall invoice DWSD at 50% of the contracted costs to decommission watermains, until the Reimbursement Amount is exhausted. DWSD shall have 30 days to reimburse GLWA for the contracted costs to decommission watermains. Upon exhaustion of the Reimbursement Amount and except DWSD's allocation of common-to-all costs, DWSD shall not have any reimbursement responsibilities for decommissioning watermains.

b. Fieldwork Verification may decrease or increase the Reimbursement Amount. So long as the amount of the Reimbursement Amount reflects the total amount of Contracted Services Costs on water mains reallocated to the Local Water System, further approval by the Parties' governing bodies is not required.

c. To the extent possible and where the decommissioning will not be unreasonably delayed, the Parties shall coordinate the decommissioning of mains with road infrastructure projects and seek reimbursement for decommissioning or relocation of the watermain from the entity with roadway jurisdiction.

**5. Personal Property (Watermain Servicing Equipment).** As GLWA replaces Personal Property, which aids in operating and maintaining watermains, DWSD may request a transfer of the Personal Property from GLWA. If mutually agreed, the Personal Property shall be transferred "AS IS" from GLWA to DWSD.

**6. Removing or Adding Retail Water Customers, Fire Hydrants and Related Appurtenances Connected to the Regional Water System.**

a. Except for Leased Water Facilities and Leased Sewer Facilities, DWSD agrees, at DWSD's expense, to remove all Retail Water Customers, fire hydrants and related appurtenances connected to the Regional Water System, unless, as mutually agreed, it is not feasible to remove a specific Retail Water Customer, fire hydrant or related appurtenance due to cost effectiveness, technical feasibility, or the configuration of the Local Water System. However, age, size, condition or turbidity of Local Water System watermains shall not be a basis

for DWSD to assert that it is not feasible to remove Retail Water Customers, fire hydrants and related appurtenance connected to the Regional Water System.

b. DWSD's removal of Retail Water Customers, fire hydrants and related appurtenances connected to the Regional Water System may be completed as a part of its asset management program. DWSD shall share its asset management program with GLWA so that the removal of these connections from the Regional Water System can be coordinated.

c. If GLWA replaces an existing Regional Water System watermain, as a part of its asset management program, then DWSD agrees to remove Retail Water Customers, fire hydrants and related appurtenances connected to the Regional Water System at DWSD's expense. GLWA shall share its asset management program with DWSD so that the removal of these connections from the Regional Water System can be coordinated.

d. DWSD's removal of Retail Water Customers, fire hydrants and related appurtenances connected to the Regional Water System shall be completed within ten (10) years of execution of this Agreement, which may be extended by mutual agreement between the Parties.

e. DWSD understands that until the Retail Water Customers, fire hydrants or related appurtenances are permanently disconnected, the connections shall be counted as an active connection for determining the City's Non-revenue Water calculation.

f. DWSD's removal of Retail Water Customers, fire hydrants and related appurtenances connected to the Regional Water System shall include cutting and capping the connection and providing written documentation of the removal to GLWA.

g. DWSD shall not connect any new Retail Water Customers, fire hydrants and related appurtenances to the Regional Water System without GLWA's written approval.

**7. Board Approval; Execution of the Agreement and Dismissal of Arbitrations.** Upon the full execution of this Agreement, the Parties shall submit a notice to the Arbitrators that these Arbitrations are dismissed with prejudice.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the DETROIT WATER AND SEWERAGE DEPARTMENT ON BEHALF OF THE CITY OF DETROIT and the GREAT LAKES WATER AUTHORITY have executed this Agreement by their duly authorized officers as of the day and year first above written.

**DETROIT WATER AND SEWERAGE  
DEPARTMENT**

By: \_\_\_\_\_  
Its: Director

Approved as to Form:

By: \_\_\_\_\_  
Its: DWSD General Counsel

**GREAT LAKES WATER AUTHORITY**

By: \_\_\_\_\_  
Its: Chief Executive Officer

Approved as to Form:

By: \_\_\_\_\_  
Its: GLWA General Counsel