

**KAREGNONDI WATER AUTHORITY  
ACTING IN GENESEE COUNTY, MICHIGAN**

**RESOLUTION NO. 2011-01**

**A RESOLUTION ADOPTING A MODEL CAPACITY CONTRACT FOR THE  
KAREGNONDI WATER AUTHORITY**

At a special meeting of the Karegnondi Water Authority Board, acting in Genesee County, Michigan, held on February 8, 2011, at 10:00 a.m., local time.

**PRESENT:** John Postulka (Vote by Proxy for Dayne Walling); Jamie Curtis; Dale Kerbyson;  
John Freeman, Greg Alexander

**ABSENT:** Delrico Loyd

**EXCUSED:** Dayne Walling; Amy Planck

The following preamble and resolution were offered by Trustee Jamie Curtis and seconded by Trustee Dale Kerbyson.

**PREAMBLE**

**WHEREAS**, ARTICLE VII of the Articles of Incorporation of the Karegnondi Water Authority ("KWA") require the members of the Incorporating Board of the KWA to adopt a Capacity Contract to be executed with any entity or entities wishing to acquire capacity from the KWA.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

The Incorporating Board hereby approves the attached Capacity Contract to be executed with any entity or entities wishing to acquire capacity from the KWA.

**NOW, THEREFORE, BE IT FUTHER RESOLVED THAT:**



The Capacity Contract attached hereto and incorporated herein by reference may be modified by the Chief Executive Officer and the Attorney appointed to represent the KWA as long as the intent of the Capacity Contract adopted this day is not modified to diminish the authority of the KWA Board or its ability to accomplish its purpose as set forth in Article III of the Articles of Incorporation.

VOICE VOTE: Motion carried on unanimous voice vote.

RESOLUTION DECLARED ADOPTED.

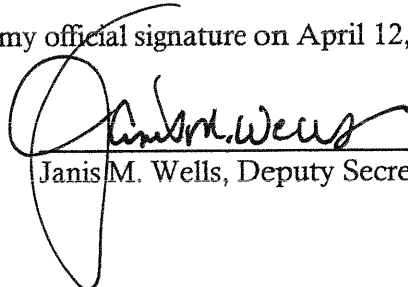
  
Dayne Walling, Chairman

  
Amy Planck, Secretary

STATE OF MICHIGAN     }  
                                      } ss  
COUNTY OF GENESEE    }

I, Janis M. Wells, Deputy Secretary of the Karegnondi Water Authority Board, do hereby certify the foregoing is a true and complete copy of a resolution adopted by the Karegnondi Water Authority Board, acting in the City of Lapeer, at a regular meeting held on February 8, 2011, and that public notice of said meeting was given pursuant to Act 267 of the Michigan Public Acts of, as amended, including in the case of a special or rescheduled meeting, notice by publication or posting at least eighteen (18) hours prior to the time set for the meeting.

IN WITNESS WHEREOF, I have affixed my official signature on April 12, 2011.

  
Janis M. Wells, Deputy Secretary



## RAW WATER SUPPLY CONTRACT

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

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

#### RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE I**

### **INTRODUCTORY PROVISIONS; DEFINITIONS**

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

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

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

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

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

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

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

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

## **ARTICLE II**

### **CONSTRUCTION AND ISSUANCE OF BONDS**

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

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

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

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

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

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

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

### **ARTICLE III**

#### **CAPACITY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV** **OPERATING REQUIREMENTS**

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

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

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

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

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

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

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

**Section 4.07. Points of Delivery.**

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

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

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

**Section 4.08. Metering Equipment.**

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

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

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

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

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

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

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

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

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

**Section 4.10. Access.**

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

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

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

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

**Section 4.11. Availability of Water.**

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

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

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

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

## ARTICLE V

### FISCAL

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

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

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

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

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

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

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

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

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

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

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

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

**Section 5.05. Payments by Buyer.**

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VI**

### **MISCELLANEOUS PROVISIONS AND SPECIAL CONDITIONS**

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

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

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

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

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

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

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

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

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

## **ARTICLE VII**

### **GENERAL PROVISIONS**

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

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

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

**Section 7.04. Option to Cancel.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Buyer, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Authority, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

**THE AUTHORITY BOARD**

By: \_\_\_\_\_  
Dayne Walling, Chairman of the Authority

**ATTEST:**

\_\_\_\_\_, Secretary of the Authority

(OFFICIAL SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Kevin Kilby, General Counsel for the Authority

**BUYER**

By: \_\_\_\_\_,  
\_\_\_\_\_, Chairperson/Mayor

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, Clerk/Secretary

(OFFICIAL SEAL)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_,  
\_\_\_\_\_, General Counsel for the Buyer

**EXHIBITS**

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

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**EXHIBIT A**  
**POINT(S) OF WITHDRAWAL AND DELIVERY**

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

**Section 2. Point or Points of Withdrawal.**

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

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

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

**Section 3. Point or Points of Delivery.**

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

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

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**EXHIBIT B**  
**RENTAL FEE**

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

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

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

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

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

**ORIGINAL CAPACITY PURCHASED**

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

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

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

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**EXHIBIT C**  
**CAPACITY/VOLUME FOR EXEMPT PURPOSES PURCHASED**

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

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

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

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

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

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

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

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

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

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

Buyer:

Authority Board:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Its:

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# **EXHIBIT D** **HOW CAPACITY AND THE PAYMENT THEREOF SHALL BE CALCULATED**

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

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

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

## **Section 4. Example.**

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

### **Step 1. Determine the Number of Units Purchased.**

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

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

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

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

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

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

### **Step 4. Calculate the total owed by each municipality.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**EXHIBIT E**  
**OPERATING CONDITIONS**

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

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

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

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

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

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

**Section 4. Water availability from the Point of Withdrawal.**

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

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

**Section 5 Terms, conditions and limitation on Water availability.**

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

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

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

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

**EXHIBIT F**  
**SYSTEM DEVELOPMENT SCHEDULE**

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

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

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

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

