

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

**RESOLUTION NO. 2014-01**

A RESOLUTION APPROVING THE FIRST ADDENDUM  
TO THE RAW WATER SUPPLY CONTRACT BETWEEN THE  
KAREGNONDI WATER AUTHORITY AND THE CITY OF FLINT DATED JUNE  
28, 2013, AND EFFECTIVE ON OCTOBER 1, 2013

At a meeting of the Karegnondi Water Authority Board, acting in Genesee  
County, Michigan, held on February 19, 2014, at 2:00 p.m., local time.

PRESENT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ABSENT: \_\_\_\_\_  
\_\_\_\_\_

The following preamble and resolution were offered by  
\_\_\_\_\_ and seconded by \_\_\_\_\_:

**PREAMBLE**

**WHEREAS**, the Karegnondi Water Authority Board, by Resolution 2013-  
01, approved a Raw Water Supply Contract between the Karegnondi Water  
Authority and the City of Flint, which is dated June 28, 2013, and effective on  
October 1, 2013 (hereinafter "Water Contract") ; and



**WHEREAS**, the KWA Incorporating Board, KWA Authority Board, and the City of Flint have agreed to modify the Water Contract by approving a written addendum pursuant to ARTICLE VII, Section 7.20 of the Water Contract; and

**WHEREAS**, the main purpose of the proposed written addendum is to allow the KWA to issue bonds for the construction of the water transmission main and all appurtenants thereto;

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

The Incorporating Board hereby approves the First Addendum, attached hereto and incorporated herein by reference, to the Water Contract ("First Addendum").

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

The KWA Authority Board hereby approves the First Addendum to the Water Contract.

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

The Chief Executive Officer and the Attorney appointed to represent the KWA may modify the First Addendum as long as the intent of the First Addendum adopted this day is not modified to diminish the authority of the KWA Board or its ability to accomplish the main purpose of the First Addendum.

ROLL CALL  
VOTE:

---

---

---



**RESOLUTION 2014-01 DECLARED ADOPTED.**

\_\_\_\_\_  
Printed Name: Dayne Walling  
Its: Chairperson of the Incorporating  
and Authority Board

\_\_\_\_\_  
Printed Name: Steve Montle  
Its: Secretary

STATE OF MICHIGAN    }  
                                  } ss  
COUNTY OF GENESEE }

I Steve Montle, 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 Genesee County, at a regular meeting held on February 19, 2014, and that public notice of said meeting was given pursuant to Act 267 of the Michigan Public Acts of 1976, 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 this \_\_\_\_  
day of \_\_\_\_\_.

\_\_\_\_\_  
Printed Name: Steve Montle  
Its: Secretary

*Prepared by  
Janis M. Wells, Deputy Secretary*



**FIRST ADDENDUM TO  
RAW WATER SUPPLY CONTRACT BETWEEN THE KAREGNONDI WATER  
AUTHORITY AND THE CITY OF FLINT DATED JUNE 28, 2013, AND  
EFFECTIVE ON OCTOBER 1, 2013**

**THIS FIRST ADDENDUM** ("Addendum") to the **RAW WATER SUPPLY CONTRACT BETWEEN THE KAREGNONDI WATER AUTHORITY AND THE CITY OF FLINT DATED JUNE 28, 2013, AND EFFECTIVE ON OCTOBER 1, 2013** (hereafter the "Contract") is entered into effective \_\_\_\_\_, by and between the Karegnondi Water Authority, a Michigan Public Authority created pursuant to Act 233 of the Michigan Public Acts of 1955, as amended (hereinafter "KWA"), whose address is G-4610 Beecher Road, Flint, Michigan 48532 and the City of Flint, a municipal corporation, of the State of Michigan (hereinafter "Flint"), whose address is 1101 South Saginaw Street, Flint, Michigan 48502. KWA and Flint are sometimes hereafter each referred to as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Parties entered into a Raw Water Supply Contract, dated the 28<sup>th</sup> day of June, 2013, and effective on October 1, 2013;

**WHEREAS**, the Parties have agreed to enter into this Addendum for the purpose of modifying the Recitals; ARTICLE I, Section 1.02(6); ARTICLE I, Section 1.02(18); ARTICLE II, Section 2.04; ARTICLE II, Section 2.05; ARTICLE II, Section 2.07; ARTICLE VI, Section 6.06; and EXHIBIT A, Section 2(b) of the Contract.

**NOW THEREFORE**, it is hereby agreed by the Parties as follows:

**1. Amendment to the RECITALS of the Contract.** Add the following recital to the RECITALS of the Contract:

**WHEREAS**, the Parties hereto acknowledge and agree that the intake system and the property where the two (2) pump systems may be acquired, constructed, is owned by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended.

**2. Amendment to the RECITALS of the Contract.** Add the following recital to the RECITALS of the Contract:

**WHEREAS**, the Parties hereto acknowledge and agree that the intake system and the property where the two (2) pump systems may be acquired and constructed was acquired and purchased by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended, and the County Agency shall be provided with a credit for the purchase and construction of the property and intake as annually in an amount equal to the



aggregated debt service of the County of Genesee's Water Supply System Revenue Bonds (Limited Tax General Obligation) Series 2013 (the "County Bonds") as more fully set forth in Exhibit A to this addendum. The County Bonds were issued in the original principal amount of Thirty-Five Million Dollars (\$35,000,000.00).

**3. Amendment to ARTICLE I, Section 1.02(6) of the Contract.**  
ARTICLE I, Section 1.02(6) of the Contract is hereby deleted in its entirety and replaced with the following:

- (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 to be applied to debt service as determined by the Authority 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 or as determined by the Authority and the proportionate amount of any contingency funds, 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.

**4. Amendment to ARTICLE I, Section 1.02(18) of the Contract.**  
ARTICLE I, Section 1.02(18) of the Contract is hereby deleted in its entirety and replaced with the following:



- (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. Notwithstanding anything in this Contract to the contrary, the intake system and the property where the two (2) pump systems may be acquired, constructed, and owned by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended, through the issuance of the County Bonds.

5. **Amendment to ARTICLE II, Section 2.04 of the Contract.** ARTICLE II, Section 2.04 of the Contract is hereby deleted in its entirety and replaced with the following:

**Section 2.04. Construction of the System.** The Authority agrees to use its best efforts to issue System Development Bonds, payable from and/or 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.

6. **Amendment to ARTICLE II, Section 2.05 of the Contract.** ARTICLE II, Section 2.05 of the Contract is hereby deleted in its entirety and replaced with the following:

**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/or any other lawful sources.

7. **Amendment to ARTICLE II, Section 2.07 of the Contract.** ARTICLE II, Section 2.07 of the Contract is hereby deleted in its entirety and replaced with the following:

**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 may establish appropriate custodial and/or trust accounts to hold the debt service and the proceeds from bond sales and shall 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, if any, 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. Notwithstanding anything to the contrary in this Contract, to the extent the County of Genesee, or its County Agency, finances the acquisition, construction of the intake facility or the property where the two (2) pump stations are located in the amount of Thirty-Five Million (\$35,000,000.00) through the issuance of the County Bonds and makes the same available to the Authority for the duration of this Contract, the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended, shall be credited yearly in an amount equal to its bond payment with interest and fees thereby receiving a full credit for the amount paid for the intake and the property where the two (2) pumping stations are located. Once the County Bonds have been redeemed in their entirety and the County Agency has received a credit in an aggregate amount equal to the aggregate debt service of the County Bonds, as fully set forth in Exhibit A to this addendum, the County

Agency shall transfer the property, intake, and all structures, fixtures, and assets located on the property to the Karegnondi Water Authority. Further, the parties hereto expressly agree that the County Agency will receive an annual payment credit equal to the aggregate debt service on the County Bonds.

**8. Amendment to ARTICLE III, Section 3.04 of the Contract.** ARTICLE III, Section 3.04 of the Contract is hereby deleted in its entirety and replaced with the following:

**Section 3.04** The Buyer expressly agrees that the Authority is responsible for furnishing Water to the Buyer and it may take several years after the execution of this Contract before Water is made available to the Buyer. Understanding that the goal of the Authority is to provide Water that benefits both the Authority, the Buyer, and the future needs of the Buyer, the Buyer shall pay to the Authority a good faith one-time fee of not less than thirty-two thousand three hundred dollars (\$32,300.00) per Unit of Water purchased after October 1, 2013, but prior to October 31, 2013.

Additionally, to show its continued good faith, 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 Water is made available to the Buyer. Said payments shall be made in monthly installments. The good faith payments are being used to secure a Water supply for the Buyer. As such, Buyer agrees that it is not entitled to any interest on the good faith payments made to the Authority. The good faith payments shall be credited to the Buyer, after Water is made available to the Buyer, over a time period determined by the Authority Board, not to exceed the term of this Contract. Said credits shall be applied to the monthly invoice sent to the Buyer by the Authority.

After Water is made available to the Buyer, the Buyer shall pay the cost per Unit per year for Water or the cost 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. The actual payment amount will be ultimately determined by the total number of Units sold and the amount of Units available for purchase. See Exhibit D. If the Authority determines after the System is designed and the estimated costs are confirmed that the anticipated cost of construction of the System will exceed the funds and assets from the proceeds of the County Bonds and bonds issued by the Authority and secured by a Contract between the City of Flint, the County of Genesee and the



Authority dated as August 1, 2013, the Buyer shall have the right to cancel this Contract pursuant to Section 7.04 of this Contract.

**9. Amendment to ARTICLE VI, Section 6.06 of the Contract.** ARTICLE VI, Section 6.06 of the Contract is hereby deleted in its entirety and replaced with the following:

**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 to the extent authorized by law through the levy of taxes, water system revenues collected from its customers, or from any other lawful source.

**10. Amendment to ARTICLE VII, Section 7.04(b) of the Contract.** ARTICLE VII, Section 7.04(b) of the Contract is hereby deleted in its entirety and replaced with the following:

- (b) If the Authority Board determines that the cost of constructing the System will exceed the maximum amount provided in Section 3.04, provided, however, this right to cancel must be exercised before the Authority issues any System Development Bonds.

**11. Amendment to EXHIBIT A, Section 2(b) of the Contract.** EXHIBIT A, Section 2(b) of the Contract is hereby deleted in its entirety and replaced with the following:

- (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. Further the Point of Withdrawal may be acquired, constructed and designed by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended. The County Agency will agree to make the intake facility available to the Authority.

**12. Notices.** Any notice, demand, or communication required, permitted or desired to be given under this Addendum shall be deemed effectively given pursuant to ARTICLE VII, Section 7.24 the Contract.

**13. Headings.** The headings of the sections set forth in this Addendum are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Addendum.

**14. Complete Agreement.** This Addendum, the Contract and any additional or supplementary documents incorporated by specific reference contain all of the terms and conditions agreed upon by the Parties and no other agreements, oral or otherwise, regarding the subject matter of this Addendum or any part thereof shall have any validity or bind either of the Parties.

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

**16. Waiver.** No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by the Chairperson of the Incorporating Board of the Karegnondi Water Authority and by Mayor or Emergency Manager, or both upon the Flint City Council or Emergency Manager's approval, whichever is applicable.

**17. Construction.** This Addendum has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the Parties. This Addendum therefore shall not be construed against either Party.

**18. Amendment.** This Addendum may not be amended or modified except for by written agreement signed by both Parties.

**19. Certification of Authority to Sign Addendum.** The persons signing on behalf of each of the Parties certify by their signatures that they are authorized to sign the Addendum on behalf of such Party and that this Addendum has been authorized by such Party.

**20. Remainder of Contract.** Except as modified by this Addendum, the terms of the Contract shall remain in full force and effect.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Addendum to be executed and delivered by their respective duly authorized representatives as of the day and year first above written.

**KAREGNONDI WATER AUTHORITY**

By: \_\_\_\_\_  
Dayne Walling, Chairperson of the Incorporating Board

**ATTEST:**

\_\_\_\_\_  
(OFFICIAL SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Kevin K. Kilby, Counsel for the Karegnondi Water Authority

**CITY OF FLINT**

By: \_\_\_\_\_  
Dayne Walling, Mayor

**CITY OF FLINT**

By: \_\_\_\_\_  
Darnell Earley, Emergency Manager

**ATTEST:**

\_\_\_\_\_  
Inez Brown, Clerk of the City of Flint

(OFFICIAL SEAL)

APPROVED AS TO FORM:

By: \_\_\_\_\_

\_\_\_\_\_ Counsel for Flint

**This 1<sup>st</sup> Addendum was prepared by:**

McGraw Morris P.C.

Attorney Kevin Kilby (P68599)

2075 West Big Beaver Road

Suite 750

Troy, Michigan 48084

(248) 502-4000

kkilby@mcgrawmorris.com

N:\GCDC\2155-1019 (Karegnondi Water Authority)\Water Supply Contract\1st Addendum to Water Supply Contract with Flint draft  
February 4 2014 (EXECUTION COPY).doc





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

**RESOLUTION NO. 2014-02**

A RESOLUTION APPROVING THE FIRST ADDENDUM  
TO THE WATER PURCHASE CONTRACT BETWEEN THE  
KAREGNONDI WATER AUTHORITY AND THE GENESEE COUNTY DRAIN  
COMMISSIONER, AS COUNTY AGENCY, PURSUANT TO ACT 342 OF THE  
MICHIGAN PUBLIC ACTS OF 1939, AS AMENDED DATED AUGUST 16, 2013,  
AND EFFECTIVE ON OCTOBER 1, 2013

At a meeting of the Karegnondi Water Authority Board, acting in Genesee  
County, Michigan, held on February 19, 2014, at 2:00 p.m., local time.

PRESENT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_  
\_\_\_\_\_

The following preamble and resolution were offered by  
\_\_\_\_\_ and seconded by \_\_\_\_\_:

**PREAMBLE**

**WHEREAS**, the Karegnondi Water Authority Board, by Resolution 2013-  
02, approved a Water Purchase Contract between the Karegnondi Water  
Authority and the Genesee County Drain Commissioner, as County Agency,



pursuant to Act 342 of the Michigan Public Acts of 1939, as amended, which is dated August 16, 2013, and effective on October 1, 2013 (hereinafter "Water Contract") ; and

**WHEREAS**, the KWA Incorporating Board, KWA Authority Board, and the Genesee County Drain Commissioner, as County Agency, have agreed to modify the Water Contract by approving a written addendum pursuant to ARTICLE VII, Section 7.19 of the Water Contract; and

**WHEREAS**, the main purpose of the proposed written addendum is to allow the KWA to issue bonds for the construction of the water transmission main and all appurtenants thereto;

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

The Incorporating Board hereby approves the First Addendum, attached hereto and incorporated herein by reference, to the Water Contract ("First Addendum").

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

The KWA Authority Board hereby approves the First Addendum to the Water Contract.

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

The Chief Executive Officer and the Attorney appointed to represent the KWA may modify the First Addendum as long as the intent of the First Addendum adopted this day is not modified to diminish the authority of the KWA Board or its ability to accomplish the main purpose of the First Addendum.



ROLL CALL  
VOTE:

---

---

---

**RESOLUTION 2014-01 DECLARED ADOPTED.**

\_\_\_\_\_  
Printed Name: Dayne Walling  
Its: Chairperson of the Incorporating  
and Authority Board

\_\_\_\_\_  
Printed Name: Steve Montle  
Its: Secretary

STATE OF MICHIGAN    }  
                                      } ss  
COUNTY OF GENESEE }

I Steve Montle, 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 Genesee County, at a regular meeting held on February 19, 2014, and that public notice of said meeting was given pursuant to Act 267 of the Michigan Public Acts of 1976, 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 this \_\_\_\_  
day of \_\_\_\_\_.

\_\_\_\_\_  
Printed Name: Steve Montle  
Its: Secretary

*Prepared by  
Janis M. Wells, Deputy Secretary*





**FIRST ADDENDUM TO  
WATER PURCHASE CONTRACT BETWEEN THE KAREGNONDI WATER  
AUTHORITY AND THE GENESEE COUNTY DRAIN COMMISSIONER, AS  
COUNTY AGENCY, PURSUANT TO ACT 342 OF THE MICHIGAN PUBLIC  
ACTS OF 1939, AS AMENDED, DATED AUGUST 16, 2013, AND EFFECTIVE  
ON OCTOBER 1, 2013**

THIS FIRST ADDENDUM ("Addendum") to the WATER PURCHASE CONTRACT BETWEEN THE KAREGNONDI WATER AUTHORITY AND THE GENESEE COUNTY DRAIN COMMISSIONER, AS COUNTY AGENCY, PURSUANT TO ACT 342 OF THE MICHIGAN PUBLIC ACTS OF 1939, AS AMENDED, DATED August 16, 2013, AND EFFECTIVE ON OCTOBER 1, 2013 (hereafter the "Contract") is entered into effective \_\_\_\_\_, by and between the Karegnondi Water Authority, a Michigan Public Authority created pursuant to Act 233 of the Michigan Public Acts of 1955, as amended (hereinafter "KWA"), whose address is G-4610 Beecher Road, Flint, Michigan 48532 and the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended (hereinafter "County Agency"), whose address is G-4610 Beecher Road, Flint, Michigan 48532. KWA and GCDC are sometimes hereafter each referred to as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Parties entered into a Water Purchase Contract, dated the 16<sup>th</sup> day of August, 2013, and effective on October 1, 2013;

**WHEREAS**, the Parties have agreed to enter into this Addendum for the purpose of modifying the Recitals; ARTICLE I, Section 1.02(17); and ARTICLE II, Section 2.06 of the Contract.

**NOW THEREFORE**, it is hereby agreed by the Parties as follows:

**1. Amendment to the RECITALS of the Contract.** Add the following recital to the RECITALS of the Contract:

**WHEREAS**, the Parties hereto acknowledge and agree that the intake system and the property where the two (2) pump systems may be acquired, constructed, is owned by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended.

**2. Amendment to the RECITALS of the Contract.** Add the following recital to the RECITALS of the Contract:

**WHEREAS**, the Parties hereto acknowledge and agree that the intake system and the property where the two (2) pump systems may be acquired and constructed was acquired and purchased by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended, and the County Agency shall be provided with a credit for the purchase and construction of the property and intake as annually in an amount equal to the aggregated debt service of the County of Genesee's Water Supply System Revenue Bonds (Limited Tax General Obligation) Series 2013 (the "County Bonds") as more fully set forth in Exhibit A to this Addendum. The County Bonds were issued in the original principal amount of Thirty-Five Million Dollars (\$35,000,000.00).

**3. Amendment to ARTICLE I, Section 1.02(17) of the Contract.** ARTICLE I, Section 1.02(17) of the Contract is hereby deleted in its entirety and replaced with the following:

- (17) **"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. Notwithstanding anything in this Contract to the contrary, the intake system and the property where the two (2) pump systems may be acquired, constructed, and owned by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended, through the issuance of the County Bonds.

**4. Amendment to ARTICLE II, Section 2.06 of the Contract.** ARTICLE II, Section 2.06 of the Contract is hereby deleted in its entirety and replaced with the following:

**Section 2.06 Title of System.** 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 used to provide Water capacity to the Buyer. The Buyer pursuant to this Contract shall only have rights to the amount of Water purchased. Notwithstanding anything to the contrary in this Contract, the Buyer at its sole expenses, with the full faith and

credit of Genesee County as security, has agreed to finance, acquire, design and construct the intake facility and acquire the property where the two (2) pump stations will be located through the issuance of the County Bonds.

The parties hereto express agree that the County Agency will receive an annual payment credit equal to the aggregate debt service on the above described bonds.

The Buyer hereby agrees that it shall receive a credit in an annual amount equal to the aggregate debt service of the County Bonds, as fully set forth in Exhibit A to this addendum. Upon the bonds being redeemed in their entirety, the Buyer agrees that it will have been reimbursed for the intake, the property, and any physical assets located on the property and it shall thereafter transfer ownership of the property, intake, and all assets, buildings and fixtures located on the property to the Karegnondi Water Authority. If the Buyer fails to deed the property, intake, and assets located on the property to the Karegnondi Water Authority within three (3) months after the bonds have been redeemed, or at a mutually agreed upon date and time after the bonds have been redeemed, or after it is brought to the attention of the Buyer that is required to deed the property, intake, and assets located on the property to the Karegnondi Water Authority, then the Buyer shall pay to the City of Flint in a lump sum payment of \$35,000,000.00 within sixty (60) days as a penalty and not as payment for the property.

Buyer further agrees to maintain the property and cooperate fully with the Karegnondi Water Authority, including, but not limited to, allowing authorized employees of Karegnondi Water Authority onto the property and access to any building or equipment deemed to be in the interest of the Karegnondi Water Authority.

**5. Amendment to ARTICLE III, Section 3.04 of the Contract.** ARTICLE III, Section 3.04 of the Contract is hereby deleted in its entirety and replaced with the following:

**Section 3.04** The Buyer expressly agrees that the Authority is responsible for furnishing Water to the Buyer and it may take several years after the execution of this Contract before Water is made available to the Buyer. Understanding that the goal of the Authority is to provide Water that benefits both the Authority, the Buyer, and the future needs of the Buyer, the Buyer shall pay to the Authority a good faith one-time fee of not less than thirty-two thousand three



hundred dollars (\$32,300.00) per Unit of Water purchased after October 1, 2013, but prior to October 31, 2013.

Additionally, to show its continued good faith, 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 Water is made available to the Buyer. Said payments shall be made in monthly installments. The good faith payments are being used to secure a Water supply for the Buyer. As such, Buyer agrees that it is not entitled to any interest on the good faith payments made to the Authority. The good faith payments shall be credited to the Buyer, after Water is made available to the Buyer, over a time period determined by the Authority Board, not to exceed the term of this Contract. Said credits shall be applied to the monthly invoice sent to the Buyer by the Authority.

After Water is made available to the Buyer, the Buyer shall pay the cost per Unit per year for Water or the cost 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. The actual payment amount will be ultimately determined by the total number of Units sold and the amount of Units available for purchase. See Exhibit D. If the Authority determines after the System is designed and the estimated costs are confirmed that the anticipated cost of construction of the System will exceed the funds and assets from the proceeds of the County Bonds and bonds issued by the Authority and secured by a Contract between the City of Flint, the County of Genesee and the Authority dated as August 1, 2013, the Buyer shall have the right to cancel this Contract pursuant to Section 7.04 of this Contract.

**6. Amendment to ARTICLE VII, Section 7.04(b) of the Contract.** ARTICLE VII, Section 7.04(b) of the Contract is hereby deleted in its entirety and replaced with the following:

- (b) If the Authority Board determines that the cost of constructing the System will exceed the maximum amount provided in Section 3.04, provided, however, this right to cancel must be exercised before the Authority issues any bonds for the construction of the System.

**7. Notices.** Any notice, demand, or communication required, permitted or desired to be given under this Addendum shall be deemed effectively given pursuant to ARTICLE VII, Section 7.23 the Contract.

8. **Headings.** The headings of the sections set forth in this Addendum are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Addendum.

9. **Complete Agreement.** This Addendum, the Contract and any additional or supplementary documents incorporated by specific reference contain all of the terms and conditions agreed upon by the Parties and no other agreements, oral or otherwise, regarding the subject matter of this Addendum or any part thereof shall have any validity or bind either of the Parties.

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

11. **Waiver.** No waiver of any of the obligations contained herein shall be effective for any purpose unless the same shall be in writing signed by the Chairperson of the Incorporating Board of the Karegnondi Water Authority and by the Genesee County Drain Commissioner, as County Agency, pursuant to Act 342 of the Michigan Public Acts of 1939, as amended.

12. **Construction.** This Addendum has been prepared and negotiations have occurred in connection with said preparation pursuant to the joint efforts of the Parties. This Addendum therefore shall not be construed against either Party.

13. **Amendment.** This Addendum may not be amended or modified except for by written agreement signed by both Parties.

14. **Certification of Authority to Sign Addendum.** The persons signing on behalf of each of the Parties certify by their signatures that they are authorized to sign the Addendum on behalf of such Party and that this Addendum has been authorized by such Party.

15. **Remainder of Contract.** Except as modified by this Addendum, the terms of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed and delivered by their respective duly authorized representatives as of the day and year first above written.

**KAREGNONDI WATER AUTHORITY**

By: \_\_\_\_\_  
Dayne Walling, Chairperson of the Incorporating Board

**ATTEST:**

\_\_\_\_\_  
(OFFICIAL SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Kevin K. Kilby, Counsel for the Karegnondi Water Authority

**GENESEE COUNTY DRAIN COMMISSIONER, AS COUNTY AGENCY**

By: \_\_\_\_\_  
Jeff Wright, Drain Commissioner of Genesee County

**ATTEST:**

\_\_\_\_\_  
(OFFICIAL SEAL)

APPROVED AS TO FORM:

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

**This 1<sup>st</sup> Addendum was prepared by:**  
McGraw Morris P.C.  
Attorney Kevin Kilby (P68599)  
2075 West Big Beaver Road  
Suite 750  
Troy, Michigan 48084  
(248) 502-4000  
kkilby@mcgrawmorris.com