

AGREEMENT

**GREAT LAKES WATER AUTHORITY
AND
CITY OF PONTIAC WASTEWATER TREATMENT FACILITY DRAINAGE DISTRICT
AND
CLINTON RIVER WATER RESOURCE RECOVERY FACILITY DRAINAGE DISTRICT**

This **INDUSTRIAL PRETREATMENT PROGRAM AGREEMENT** ("Agreement"), is made and entered in as of this 27th day of August, 2019 (the "Effective Date"), between the GREAT LAKES WATER AUTHORITY, a Michigan public body corporate, whose principal place of business is located at 735 Randolph, Detroit, Michigan 48226 ("GLWA"), and the CITY OF PONTIAC WASTEWATER TREATMENT FACILITY DRAINAGE DISTRICT ("COPWTFDD"), a Michigan statutory public corporation pursuant to Chapter 20 of Act 40 of the Michigan Public Acts of 1956, as amended, MCL 280.1 et seq., (the "Drain Code"), by and through the CITY OF PONTIAC WASTEWATER TREATMENT FACILITY DRAINAGE BOARD ("COPWTF Drainage Board"), whose address is 1 Public Works Drive, Waterford, Michigan 48328 and the CLINTON RIVER WATER RESOURCE RECOVERY FACILITY DRAINAGE DISTRICT ("CRWRRFDD"), a Michigan statutory public corporation pursuant to Chapter 20 of the Drain Code, by and through the CLINTON RIVER WATER RESOURCE RECOVERY FACILITY DRAINAGE BOARD ("CRWRRF Drainage Board"), whose address is 1 Public Works Drive, Waterford, Michigan 48328. This Agreement is to provide for the COPWTFDD and CRWRRFDD's administration and implementation of the Industrial Pretreatment Program ("IPP") for portions of the Clinton-Oakland Sewage Disposal System ("COSDS"). In this Agreement, the COPWTFDD and CRWRRFDD may be collectively referred to as the "Drainage Districts." Further, the GLWA, COPWTFDD and CRWRRFDD may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the GLWA presently administers and implements the IPP, pursuant to the Regional Sewerage Disposal System Lease between GLWA and the City of Detroit (the "Lease"); and

WHEREAS, GLWA has amended its IPP Rules and Regulations and is currently seeking Michigan Department of Environment, Great Lakes, and Energy ("EGLE") approval; and

WHEREAS, in 1964 Oakland County, in accordance with Act 185 of the Michigan Public Acts of 1957, as amended, MCL 123.731 et seq. ("Act 185"), and Act 342 of the Michigan Public Acts of 1939, as amended, MCL 46.171 ("Act 342"), established the Clinton-Oakland Sewage Disposal System ("COSDS") which provided for the construction of certain trunk sewers and pumping facilities, sewer interceptors and the connections thereof to the interceptors and treatment facilities of other systems in the County and/or of the City of Detroit

to serve certain Oakland County communities within the Clinton-Oakland Sewage Disposal System District (the "COSDS District");¹ and

WHEREAS, in September 2009, the COSDS entered into a District Compliance Agreement ("DCA") with the EGLE whereby the COSDS agreed to eliminate sanitary sewer overflows ("SSOs") and to provide System capacity by developing a COSDS Master Plan that would identify long-range capacity needs of the COSDS and potential projects; and

WHEREAS, Oakland County, on behalf of the COSDS, entered into a contract with the Oakland-Macomb Interceptor Drain Drainage District, a Michigan statutory public corporation pursuant to Chapter 21 of the Drain Code ("OMIDDD") dated September 1, 2009, whereby the OMIDDD agreed to provide wastewater transportation and disposal services to the County to transport sewage from the COSDS District to the City of Detroit for treatment and disposal sufficient to meet the total maximum allowable flow limit of the municipalities served by the System; and

WHEREAS, OMIDDD, through its Drainage Board, entered into a wastewater services contract with the City of Detroit, dated October 22, 2009, whereby the City of Detroit agreed to provide wastewater transportation, treatment and disposal services to the OMIDDD with a maximum flow limit from the System and, among other things, with the stipulation that the City of Detroit agree to accept no less than 70% of all Instantaneous Flow (as defined in a "Letter of Understanding" with the City of Detroit, dated October 22, 2009) from the COSDS District as it existed in 2009; and

WHEREAS, since January 1, 2016, GLWA has provided sewage treatment disposal services to the OMIDDD (and indirectly the COSDS District), pursuant to the Lease; and

WHEREAS, GLWA is the operator of a publicly owned treatment works (hereinafter referred to as the "GLWA POTW") previously operated by the City of Detroit, and is required by state and federal law and its National Pollutant Discharge Elimination System ("NPDES") Permit to have an IPP. As part of its IPP and pursuant to the Lease, GLWA enforces the IPP Rules that comply with applicable state and federal laws ("GLWA POTW IPP Rules"); and

WHEREAS, pursuant to the Drain Code, the COPWTFDD was established on May 15, 2012, to acquire from the City of Pontiac the City of Pontiac Wastewater Treatment Facility ("COPWTF"), a publicly owned treatment works serving the City of Pontiac through the City of

¹ The Board of Supervisors of the County of Oakland (now known as the Board of Commissioners of the County of Oakland), by Miscellaneous Resolution No. 4342, adopted June 22, 1964, established the COSDS. Subsequently, the County entered into the Amended COSDS Contract, dated January 11, 1967 ("1967 Contract"), for the establishment and construction of the COSDS for the purpose of disposing wastewater from the Waterford Township, Avon Township, West Bloomfield Township, Independence Township, Orion Township, and Pontiac Township. The 1967 Contract, was then amended in 1969 ("COSDS-Paint Creek Interceptor" contract) and 1972 ("COSDS - Gibson-Avon Arm" contract). The 1967 COSDS Contract was superseded by the 2013 COSDS Inter-Municipal Contract, dated April 1, 2013, and the COSDS District currently includes the following Oakland County municipalities: Auburn Hills, Independence Township, Lake Orion Village, Orion Township, Oakland Township, Oxford Village, Oxford Township, Rochester, Rochester Hills, Waterford Township, West Bloomfield Township, and City of Lake Angelus.

Pontiac-Oakland County Sewage Disposal System (a separate Act 342 sewage disposal system operated and maintained by the County), and which was also available to serve the COSDS; and

WHEREAS, pursuant to the Drain Code, the CRWRRFDD was established on February 28, 2017 to acquire and construct the Clinton River Water Resource Recovery Facility ("CRWRRF"), as improvements to the existing COPWTF. For purposes of this Agreement, the COPWTF and the CRWRRF shall collectively be referred to as the "Drainage District POTW"; and

WHEREAS, the Drainage District POTW is required by state and federal law and its NPDES Permit to have an IPP. As part of its IPP, the Drainage Districts enforce the IPP Rules that comply with applicable state and federal laws ("Drainage Districts POTW IPP Rules"); and

WHEREAS, prior to the establishment of the CRWRRFDD, the COSDS entered into a contract with the COPWTFDD dated April 1, 2013, to provide wastewater treatment and disposal services for a portion of the COSDS District as depicted and described in **Exhibit A** (the "Drainage District POTW Diversion Service Area"). The majority of the wastewater flow within the Drainage District POTW Diversion Service Area is treated at the Drainage District POTW; and

WHEREAS, the CRWRRFDD has agreed to operate and maintain the Drainage District POTW on behalf of the COPWTFDD; and

WHEREAS, the Drainage Districts are presently seeking EGLE's approval for its IPP Rules and Regulations for the Drainage District POTW; and

WHEREAS, as part of the COSDS' diversion facilities, the COSDS Perry Street Pump Station diverts a percentage of the wastewater flow from certain communities within the GLWA POTW service area to the Drainage District POTW for treatment that results in overlapping service areas for the GLWA POTW and the Drainage District POTW; and

WHEREAS, the designated agents for both the GLWA POTW and the Drainage District POTW have the authority to: (1) enforce IPP Rules; (2) collect Industrial Waste Control charges ("IWC Charges") (collected by GLWA) and industrial pretreatment program fees ("IPP Fees") (collected by the Drainage Districts) from nondomestic users; and (3) collect surcharges for the recovery of incremental operation, maintenance and replacement costs of treating high-strength wastewater ("Surcharges") within their respective service areas; and

WHEREAS, because there is an overlap between the Drainage District POTW Diversion Service Area and the GLWA POTW service area as depicted and described in **Exhibit A**, the Parties desire to establish an understanding regarding the enforcement authority for the most stringent IPP Rules and the collection of IWC Charges, IPP Fees and Surcharges; and

WHEREAS, this Agreement is necessary in order to promote the public health, safety and welfare and to ensure the enforcement of IPP Rules and the collection of IWC Charges and Surcharges are appropriate and sufficient to properly administer each, the GLWA POTW's and

the Drainage District POTW's IPP Rules and to ensure that the IWC Charges, IPP Fees and Surcharges are fairly and equitably distributed among system users; and

WHEREAS, the Parties have control authority for the IPP, and the Drainage Districts shall act in cooperation with GLWA for administration of the IPP; and

WHEREAS, the Parties have agreed that the Drainage Districts shall assume lead responsibility for the administration and implementation of the IPP within the area depicted in **Exhibit A**; and

WHEREAS, the Drainage Districts agree to continue to be bound by and comply with the procedures set forth in the Drainage Districts' IPP Manual of Procedures, as may be amended; and

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28, Act 342, Act 233, and the Urban Cooperation Act of 1967, being MCL 124.501, et. seq. (the "Act 7 of 1967"), authorizes a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common and which each might exercise separately.

THEREFORE, in consideration of the premises and the covenants of each other, the Parties hereto agree as follows:

1. **Purpose**. The purpose of this Agreement is to set forth the terms for the administration and implementation of IPP Rules, the collection of IWC Charges, IPP Fees and the allocation of Surcharges within the Drainage District POTW Diversion Service Area.
2. **Lead Enforcement of IPP Rules**. The Drainage District POTW shall have lead enforcement authority of the Parties' IPP Rules within the Drainage District POTW Diversion Service Area. The Drainage District POTW shall administer and implement the more stringent of the Parties' IPP Rules. Nothing in this paragraph shall be construed in any way as negating GLWA's ability to enforce its IPP Rules within the Drainage District POTW Diversion Service Area. Within the COSDS District outside of the Drainage District POTW Diversion Service Area, the GLWA shall continue to have sole enforcement of its IPP Rules.
3. **Lead Enforcement Responsibilities**. Upon issuance of the industrial user permit by the CRWRRFDD in the name of both Parties, the Drainage District POTW shall administer the IPP Rules within the Drainage District POTW Diversion Service Area pursuant to the City of Pontiac Sewer Use Ordinance adopted by City of Pontiac as Ordinance No. 2350 on November 30, 2017 ("City of Pontiac SUO"), as may be amended, and the corresponding sewer use ordinances adopted by the relevant local units of government as required by the City of Pontiac SUO with respect to discharges to the Drainage District POTW. The Drainage District POTW responsibilities include, but are not limited to:

- a. Identify any nondomestic User or Premises, as defined by the City of Pontiac SUO, that contributes, causes or permits the contribution, introduction or discharge of wastewater into the Drainage District POTW, whether intentional or unintentional, and whether directly or indirectly; identify the character and volume of the discharges from those Users or Premises; notify those Users or Premises of applicable pretreatment standards and requirements; and receive and analyze reports and other notifications submitted by those Users or Premises in accordance with the City of Pontiac SUO or other applicable pretreatment laws and regulations.
- b. Deny or impose conditions on discharges from each User or Premises to the Drainage District POTW or GLWA POTW that do not meet the standards and requirements of the City of Pontiac SUO, or other applicable pretreatment laws and regulations, or that may cause the Drainage District POTW or GLWA POTW to violate either Parties' NPDES permit.
- c. Require Users and Premises to comply with all applicable standards and requirements under the City of Pontiac SUO, or other applicable pretreatment laws and regulations.
- d. Take random samples, conduct inspections and surveillance activities and monitoring of each User or Premise, and take such other actions to independently assess and ensure compliance with the City of Pontiac SUO or other applicable pretreatment laws and regulations.
- e. Enter any Premise from which there may be a source of discharge to the Drainage District POTW or GLWA POTW for the purposes authorized by the City of Pontiac SUO or other applicable pretreatment laws and regulations.
- f. Immediately and effectively halt or prevent any discharge that might present an imminent endangerment to public health or welfare; and also to halt or prevent any discharge that might endanger the environment, pass-through, or interfere with Drainage District POTW or GLWA POTW treatment processes, or cause the Drainage District POTW or GLWA POTW to violate either Parties' NPDES Permit, consistent with the requirements and procedures applicable to halting or preventing any such discharge as provided by the City of Pontiac SUO or other applicable pretreatment laws and regulations.
- g. Control discharges to the Drainage District POTW and GLWA POTW from each User or Premises through nondomestic user permits issued by the Drainage Districts in the name of both Parties. The Drainage Districts shall implement and carry out all activities required to comply with any public wastewater security policies, requirements or regulations.
- h. If, during the administration and implementation of the IPP in the Drainage District POTW Diversion Service Area, GLWA incurs fines or penalties from a

permitting agency as a result of the Drainage District POTW's violation of its permit due to the gross negligence of the Drainage District POTW's agents, contractors, or employees, the Drainage Districts shall be liable for any actual fines or penalties incurred by GLWA.

- i. Take enforcement action against any User or Premises under the City of Pontiac SUO or other applicable pretreatment laws and regulations including the authority to immediately and independently investigate, enforce, and prosecute (administratively or judicially, and civilly or criminally) any violation of the City of Pontiac SUO, or of any notice, order, permit, decision or determination promulgated, issued or made thereunder, and to otherwise implement the requirements of the City of Pontiac SUO and other applicable pretreatment laws and regulations.
 - j. Provide annual reports summarizing IPP activity to GLWA and EGLE.
4. Communication. There shall be an open and direct line of communication established and maintained between the Parties regarding IWC Charges, IPP Fees, Surcharges, and IPP Rules enforcement in order to promote the handling of both routine and emergency situations in a timely and cooperative manner according to the circumstances as they exist or become known. Each Party will designate one or more liaisons for such purposes, and will notify the other Party of such designee(s). The liaisons shall also be used for purposes of communicating and coordinating specific needs, plans, instructions, issues, concerns and other matters relating wastewater treatment operations.
 5. IWC Charges and IPP Fees. To account for the majority of wastewater flow from the Drainage District Diversion Service Area that is diverted to the Drainage District POTW (and therefore not treated at the GLWA POTW) as depicted and described in **Exhibit A**, GLWA agrees to collect IWC Charges only from the nondomestic users outside of the Drainage District POTW Diversion Service Area. The Drainage District POTW will collect IPP Fees from nondomestic users within the Drainage District POTW Diversion Service Area. For fiscal year 2020, GLWA will collect an administrative fee of 25% of the total IWC Charges as established by the GLWA Board rate schedule, from each tributary community within the Drainage District POTW Diversion Service Area, as depicted in **Exhibit A**. Beginning fiscal year 2021, this administrative fee will be adjusted annually based on the IWC Charges and the cost of service study.
 6. Surcharges for Exceeding Discharge Limitations within Drainage District POTW Diversion Service Area. Any discharge that exceeds the applicable POTW limitations resulting in additional costs ("Surcharge") shall be assumed to be uniformly mixed with the overall sewage stream and then proportionally split at the COSDS Perry Street Pump Station diversion chamber. The Surcharges shall be allocated based on the diversion flow measured at the diversion chamber including the QA/QC of the meter data.
 7. Default. The term "Event of Default" means, whenever used in this Agreement, the occurrence of any one of the following events on or after the Effective Date:

- a. The Drainage Districts' failure to follow the IPP Manual of Procedures, as may be amended.
 - b. The Drainage Districts' failure to fully perform and comply with the IPP Rules, regulations and ordinances.
 - c. GLWA's failure to fully perform and comply with the terms and obligations set forth in this Agreement.
8. Remedies.
- a. In an Event of Default, as defined herein, GLWA, subject to the Dispute Resolution process provided herein, shall have all rights and remedies available to GLWA at law or in equity.
 - b. In an Event of Default, as defined herein, the Drainage Districts, subject to the Dispute Resolution process provided herein, shall have all rights and remedies available to the Drainage Districts at law or in equity.
9. Expenses. Each Party shall each bear their own expenses incurred by them in connection with the transaction contemplated by this Agreement, including without limitation, consultants' fees, legal fees and accounting fees, whether or not such transaction is consummated.
10. Insurance. The CRWRRFDD shall maintain commercial general liability and public officials liability insurance covering all operations of the Drainage District POTW with limits of \$11,000,000 per occurrence and \$12,000,000 aggregate. Such insurance shall be written on an "occurrence" basis, shall name "Great Lakes Water Authority" as an additional insured and shall provide that the insurer give GLWA not less than thirty (30) days written notice prior to the cancellation or modification of such policy. The CRWRRFDD shall, upon request of GLWA, deliver to GLWA copies of the policy or evidence of insurance.
11. No Conflict. The Parties acknowledge that the terms in this Agreement (i) do not violate any Applicable Law; (ii) do not require the consent, approval, clearance, waiver, order or authorization of any Person; and (iii) do not conflict with, or result in any breach of, or default or loss of any right under (or an event or circumstance that, with notice or the lapse of time, or both, would result in a default), or the creation of any encumbrance pursuant to, or cause or permit the acceleration prior to maturity of any amounts owing under any indenture, mortgage, deed of trust, lease or other agreement.
12. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of this Agreement.
13. Dispute Resolution. The Parties agree that any and all claims alleging a breach of this Agreement or with respect to the subject matter of this Agreement shall first be submitted to an alternative dispute resolution process. Such an alternative dispute resolution process

may include, but is not limited to, facilitation, binding arbitration, or non-binding arbitration. The Parties shall agree upon the form and procedures for the agreed upon alternative dispute resolution process. If the matter is not resolved through an alternative dispute resolution process, or if the Parties cannot agree upon the form and procedures for the alternative dispute resolution process, the Parties may, after a period of ninety (90) days from submission to an alternative dispute resolution process, seek legal recourse in a court of competent jurisdiction. For claims requiring immediate relief to prevent irreparable harm, either Party may seek relief directly from a court of competent jurisdiction without submitting the matter to the alternative dispute resolution process.

14. Agreement Approval; Effective Date. This Agreement shall become effective upon approval by resolution of GLWA Board and by approvals of the COPWTF Drainage Board and CRWRRF Drainage Board. The Effective Date of this Agreement shall be the date that this Agreement is approved by the GLWA Board or the Drainage Districts' Boards whichever is later and that date shall be reflected in the opening paragraph of this Agreement. Implementation of an effective agreement will be on a date as mutually agreed by the parties.
15. Term; Termination. The Parties agree that terms and obligations under this Agreement shall begin upon the issuance of the industrial user permit by the CRWRRFDD in the name of both Parties, and shall run concurrent with the contract between OMIDDD and the City of Detroit (now assigned and assumed by GLWA) dated October 22, 2009. The Parties shall coordinate the timing of the issuance of said permits. In the event that the term set forth in the October 22, 2009 contract is extended by automatic renewal or amendment between the parties to that contract then this Agreement shall automatically extend to coincide with said term without further action of the Parties. The Parties agree and understand that this Agreement may be terminated by the request of a state or federal regulatory agency with authority to regulate GLWA's NPDES Permit or the Drainage Districts' NPDES Permit. The Parties further agree that any Party may unilaterally terminate this Agreement upon notice to the other Parties at least 180 days prior to the effective date of the termination. Notices of termination shall be personally delivered or sent by certified mail, return receipt requested, and shall be considered delivered to a party on the date of receipt as represented by the return receipt or by a proof of personal service.
16. Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural, number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
17. Reservation of Rights; Governmental Function. This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. In

addition, the Parties maintain that the obligations set forth in this Agreement will be in the exercise or discharge of a governmental function.

18. **Severability.** If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision of persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.
19. **Notices.** Except with respect to notices of termination, all correspondence and written notices shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the U.S. Postal Service. Except as otherwise expressly provided for herein, any and all correspondence, invoices, and/or any other written notices required, permitted or provided for under this Agreement are to be delivered to the following:

GREAT LAKES WATER AUTHORITY Chief Executive Officer 735 Randolph Detroit, Michigan 48226	CITY OF PONTIAC WASTEWATER TREATMENT FACILITY DRAINAGE BOARD Oakland County Water Resources Commissioner 1 Public Works Drive Waterford, Michigan 48328	CLINTON RIVER WATER RESOURCE RECOVERY FACILITY DRAINAGE BOARD Oakland County Water Resources Commissioner 1 Public Works Drive Waterford, Michigan 48328
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20. **Binding Contract; Assignment; and Amendments.** This Agreement will be binding upon and for the benefit of the Parties hereto and their respective assigns, subject to any assignment requiring the prior written consent of the non-assigning Party by an amendment to this Agreement signed by all Parties, and the assignor binding the assignee to the terms and provisions of this Agreement.
21. **Captions.** The section headings or titles and/or all section numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
22. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties. This Agreement shall not be changed or supplemented orally and may be amended only by written agreement of the Parties.
23. **Recitals.** The recitals shall be considered an integral part of the Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties' duly authorized officers and representatives as evidenced by the following signatures.


GREAT LAKES WATER AUTHORITY

By: 
Sue F. McCormack
Chief Executive Officer

Approved by the GLWA Board of Directors on:
10/9/19
Date


Approved as to form by GLWA General Counsel: 10/11/19
 Lavonda Jackson

CLINTON RIVER WATER RESOURCE RECOVERY FACILITY DRAINAGE BOARD

By: 
Jim Nash
Chairperson

Approved by the Drainage Board on:
August 27, 2019
Date

CITY OF PONTIAC WASTEWATER TREATMENT FACILITY DRAINAGE BOARD

By: 
Jim Nash
Chairperson

Approved by the Drainage Board on:
August 27, 2019
Date