

AGREEMENT RE GRS DEFINED BENEFIT PLAN

Among

CITY OF DETROIT

And

GENERAL RETIREMENT SYSTEM OF CITY OF DETROIT

And

GREAT LAKES WATER AUTHORITY

Dated as of December 1, 2015

AGREEMENT RE GRS DEFINED BENEFIT PLAN

THIS AGREEMENT RE GRS DEFINED BENEFIT PLAN entered into as of December 1, 2015, by and among the CITY OF DETROIT (the “City”), a home rule city organized and existing under the constitution and laws of the State of Michigan, the GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT (the “GRS”), a qualified governmental pension plan and trust under Section 414(d) of the Internal Revenue Code, and the GREAT LAKES WATER AUTHORITY (the “Authority”), a municipal authority and public body corporate organized and existing under and pursuant to the provisions of Act No. 233, Public Acts of Michigan, 1955, as amended (“Act 233”).

WITNESSETH:

WHEREAS, a Memorandum of Understanding (the “MOU”) was entered into on September 9, 2014, by the Emergency Manager and the Mayor of the City, the County Executive of each of the Charter County of Macomb, the County of Oakland and the Charter County of Wayne, and the Governor of the State of Michigan, for the purpose of establishing a regional authority pursuant to Act 233 to operate, control and improve both the Water Supply System and Sewage Disposal System owned by the City and presently operated by DWSD (except the City local system infrastructure) and to lease the Water Supply System and Sewage Disposal System (except the City local system infrastructure) from the City for an initial term of forty (40) years; and

WHEREAS, pursuant to the MOU, the City and the Authority have entered into (i) a Regional Water Supply System Lease, dated June 12, 2015 (the “Water Lease”), which provides for the lease by the City to the Authority of the regional assets of the City’s Water Supply System (the “Regional Water System”) for an initial term of forty (40) years, and (ii) a Regional Sewage Disposal System Lease, dated June 12, 2015 (the “Sewer Lease” and together with the Water Lease, the “Leases”), which provides for the lease by the City to the Authority of the regional assets of the City’s Sewage Disposal System (the “Regional Sewer System” and together with the Regional Water System, the “Regional Systems”) for an initial term of forty (40) years; and

WHEREAS, pursuant to the Leases, the Authority will operate the Regional Systems, and the City, acting through DWSD-R (as hereinafter defined), will continue to operate the remaining assets of the City’s Water Supply System and the City’s Sewage Disposal System that provide service directly to retail customers of the City; and

WHEREAS, pursuant to the Plan of Adjustment, the Bankruptcy Order and Section 4.3 of each of the Leases, the Authority is required to pay that portion of the Pension Obligation (as hereinafter defined) allocable to the Regional Systems (the “Authority Pension Obligation”) and the Leases contemplate that the City, the GRS and the Authority will enter into an agreement which will set forth the unfunded actuarial accrued liability (“UAAL”) for the DWSD Pension Pool (as hereinafter defined) and pursuant to which the GRS will agree to provide the Authority with certain actuarial and other reports to enable the Authority to properly manage and pay the Authority Pension Obligation; and

WHEREAS, the Leases will not become effective until the “Effective Date,” which is defined in each of the Leases to be the date on which the conditions set forth in Section 3.2 of each of the Leases have been satisfied, as determined by the Mayor of the City and a supermajority (5/6) vote of the Authority Board; and

WHEREAS, one of the conditions to be satisfied on or before the Effective Date is that the City, the GRS and the Authority will enter into the aforementioned agreement contemplated by Section 4.3 of each of the Leases; and

WHEREAS, the City, the GRS and the Authority desire to enter into this Agreement as contemplated by Section 4.3 of each of the Leases.

## ARTICLE I - DEFINITIONS

SECTION 1.1 Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement and the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning.

(a) “Administrative Expenses” means, for each Fiscal Year, the expenses incurred by GRS in the operation and administration of the GRS Plan, including, without limitation, the following: GRS staff wages and benefits; office rent; furniture and equipment; office supplies and postage; professional services including, without limitation, actuarial, audit, legal, information technology, media relations and data management services; utilities; software subscriptions; and travel and education; but excluding Investment Expenses.

(b) “Agreement” means this Agreement Re GRS Defined Benefit Plan, as it may be amended or supplemented as provided herein.

(c) “Authority Pension Pool” means that portion of the DWSD Pension Pool that is allocated to the Authority.

(d) “Authority’s Address” means 735 Randolph Street, Detroit, Michigan 48226, Attention: Chairperson, or such other address set forth in a written notice from the Authority to the City and GRS.

(e) “Bankruptcy Order” means the order entered (Docket No. 7028) by the United States Bankruptcy Court for the Eastern District of Michigan on August 25, 2014 (In re City of Detroit, Michigan, Debtor, Case No. 13-53846).

(f) “City’s Address” means City of Detroit Water and Sewerage Department, 735 Randolph Street, Detroit, Michigan 48226, Attention: Director, with a copy to City of Detroit, Office of the Mayor, Coleman A. Young Municipal Center, 2 Woodward Avenue, 11<sup>th</sup> Floor, Detroit, Michigan 48226, or such other address or addresses set forth in a written notice from the City to the Authority and GRS.

(g) “DWSD” means the Detroit Water and Sewerage Department, as in existence immediately prior to the Effective Date.

(h) “DWSD-R” means the Detroit Water and Sewerage Department, as in existence on and after the Effective Date.

(i) “DWSD Pension Pool” means that portion of the undivided interest in investments and the pension liabilities of the GRS Plan that is allocated to DWSD retirees, deferred retirees and active vested and non-vested members.

(j) “DWSD-R Pension Pool” means that portion of the DWSD Pension Pool that is allocated to DWSD-R.

(k) “Effective Date” means the date on which the conditions set forth in Section 3.2 of each of the Leases have been satisfied, as determined by the Mayor of the City and a supermajority (5/6) vote of the Board of the Authority.

(l) “Fiscal Year” means the period beginning on July 1 of each year and ending on June 30 of the following year.

(m) “GRS” means the General Retirement System of the City.

(n) “GRS Actuary” means Gabriel Roeder Smith & Company, or such other independent actuary selected by GRS in good standing using actuarial standards of the actuary industry.

(o) “GRS Address” means General Retirement System of the City of Detroit, 500 Woodward Avenue, Suite 3000, Detroit, Michigan 48226, Attention: Executive Director, with a copy to Michael J. VanOverbeke, General Counsel, 79 Alfred Street, Detroit, Michigan 48201, or such other address or addresses set forth in a written notice from GRS to the City and the Authority.

(p) “GRS Plan” means the frozen defined benefit plan of the GRS in effect on the effective date of the Plan of Adjustment.

(q) “GRS 2014 Actuarial Valuation Report” means the report prepared by the GRS Actuary, dated October 27, 2015, and entitled ‘Annual Actuarial Valuation Report of Component II, June 30, 2014.’

(r) “Investment Expenses” means, for each Fiscal Year, the fees and expenses incurred by GRS in investing, managing, and protecting the assets of GRS, including, without limitation, the following: custodial fees; investment advisory or management fees; investment consulting services; investment staff and professionals; and investment legal services, including litigation costs, related to the investment of GRS assets.

(s) “Pension Obligation” means the amounts required to be paid over time by DWSD in respect of the GRS Plan as provided in the Plan of Adjustment and the Bankruptcy Order.

(t) “Plan of Adjustment” means the Eighth Amended Plan of Adjustment of the City as confirmed by order of the United States Bankruptcy Court for the Eastern District of Michigan entered on November 12, 2014 (In re City of Detroit, Michigan, Debtor, Case No. 13-53846).

(u) “Statement of Changes in Fiduciary Net Position by Division” means a detailed accounting statement for GRS and each Division within GRS, including DWSD as a separate Division, as of the end of the Fiscal Year including, but not limited to, the following items, as applicable:

- (i) Beginning Fiscal Year Net Position;
- (ii) Additions: including investment income, interest and dividends, net change in the fair value of investments less Investment Expenses, net securities lending income, and contributions from employers, non-employer contributing entities and employees;
- (iii) Deductions: retirees' pension and annuity benefits, member refunds and withdrawals, Administrative Expenses, and depreciation expenses;
- (iv) Net Increase (Decrease) in Net Position Held in Trust which equals the difference between additions and deductions; and
- (v) End of Fiscal Year Net Position Restricted for Pensions.

## ARTICLE II- OBLIGATIONS OF THE GRS

SECTION 2.1 Unfunded Actuarial Accrued Liability of DWSD Pension Pool.  
Based on the GRS 2014 Actuarial Valuation Report, the UAAL for the DWSD Pension Pool as of June 30, 2014 is \$352,371,000.

### SECTION 2.2 Reports.

(a) For each Fiscal Year, the GRS agrees to provide each of the following to the Authority on or before the March 1 following the end of such Fiscal Year:

(i) A summary annual report that will: (A) commencing with the Fiscal Year ending June 30, 2015, continue to track DWSD retirees, deferred retirees and active and inactive vested and non-vested members, pension benefits paid and pension liabilities accrued separately from other GRS members; and (B) commencing with the Fiscal Year ending June 30, 2016, continue to track DWSD, and then within DWSD to DWSD-R and the Authority, pursuant to written direction from DWSD-R and the Authority, the retirees, deferred retirees and active and inactive vested and non-vested members, pension benefits paid and pension liabilities accrued separately from other GRS members, to enable the Authority to verify the appropriateness of allocations to the Authority. The summary annual report as provided herein shall be based upon the best available data as agreed upon by the parties. Upon discovery of additional information or data which indicates that such retirees, deferred retirees, active and inactive vested and non-vested members, pension benefits paid and pension liabilities accrued should be allocated to DWSD, DWSD-R or the Authority in a different manner than previously

allocated, such additional information or data shall be communicated in writing to GRS, the City and the Authority and the summary annual report shall be revised accordingly.

(ii) A Statement of Changes in Fiduciary Net Position by Division to enable the Authority to verify the appropriateness of allocations to the Authority that will: (A) commencing with the Fiscal Year ending June 30, 2015, continue to track and allocate to DWSD an undivided interest in the investments net of Investment Expenses in the GRS Plan; and, (B) commencing with the Fiscal Year ending June 30, 2016, continue to track and allocate to DWSD, and then within DWSD to DWSD-R and the Authority, an undivided interest in investments net of Investment Expenses in the GRS Plan. Administrative Expenses for purposes of the determination of the Fiduciary Net Position of DWSD, DWSD-R and the Authority shall be allocated as provided in Section 2.3 herein.

(iii) An actuarial study that sets forth as of (A) the Fiscal Year ending June 30, 2015, the undivided interest in investments in the GRS Plan allocated to the DWSD Pension Pool as set forth in the Statement of Changes in Fiduciary Net Position by Division and the actuarial accrued liability and the UAAL for the DWSD Pension Pool, and (B) each Fiscal Year ending on and after June 30, 2016, the undivided interest in investments in the GRS Plan allocated to the DWSD Pension Pool and within the DWSD Pension Pool, the DWSD-R Pension Pool and the Authority Pension Pool, respectively, as set forth in the Statement of Changes in Fiduciary Net Position by Division and the actuarial accrued liability and the UAAL for the DWSD Pension Pool and within the DWSD Pension Pool, the DWSD-R Pension Pool and the Authority Pension Pool, respectively. The GRS Plan benefits and member assets were revised with the Plan of Adjustment and the Bankruptcy Order for the freezing of the benefits and adjustments to the annuity savings plan effective June 30, 2014. The GRS Actuary has provided estimates for the effects of these revisions in the GRS 2014 Actuarial Valuation Report. The GRS Actuary has indicated that the calculation of the actual impact on the revisions will be determined after the Leases become effective on the Effective Date. To the extent that the actual amounts calculated differ from the actuarial accrued liabilities reflected in Section 2.1, the difference shall be adjusted in a future GRS actuarial report and Section 2.1 shall be considered amended accordingly.

(iv) An audit of the Statement of Changes in Fiduciary Net Position by Division expressing an opinion on each divisional column commencing with the Fiscal Year ending June 30, 2015. In lieu of a direct audit opinion on this schedule, the parties may agree in writing to secure an in-relation-to audit opinion on this schedule (in-relation-to the audited financial statement of the GRS) on a regular or occasional basis at any time after the Fiscal Year ending June 30, 2017. The audit firm indicated that the audit of this Statement will be performed after the Leases become effective on the Effective Date. To the extent that the actual net asset amounts as reflected in the final audit report differ from the net assets utilized to determine the UAAL for the DWSD Pension Pool reflected in Section 2.1, the difference shall be adjusted in a future GRS actuarial report and the UAAL provided in Section 2.1 shall be considered amended accordingly.

(b) For each Fiscal Year commencing from and after July 1, 2023, on its normal schedule for determining the current Fiscal Year's contributions to the GRS, the GRS shall provide the Authority with a determination of the UAAL for the Authority Pension Pool

using the market value of assets for the Authority Pension Pool and whether the Authority Pension Pool is funded at 100%. If the Authority Pension Pool is fully funded at 100% or more, no contributions for the current Fiscal Year will be required of the Authority. If the Authority Pension Pool is less than 100% funded, then the Authority shall make such level annual contributions to the GRS as necessary to amortize such shortfall over five (5) years (or such greater period not to exceed ten (10) years as agreed upon by GRS and the Authority) at an interest rate equal to the then current GRS investment return assumption. Except for the additional payments required by this subsection (b), if any, the Authority shall have no further liability whatsoever to the City or the GRS in connection with any other shortfalls that that may occur with respect to the GRS Plan.

(c) The UAAL calculations required to be furnished pursuant to this Agreement shall be calculated by the GRS Actuary using actuarial standards of the actuary industry.

### SECTION 2.3 Administrative Expenses; Investment Expenses.

(a) As provided in the Plan of Adjustment and the Bankruptcy Order, the Pension Obligation includes for each Fiscal Year beginning with the Fiscal Year commencing July 1, 2014 and ending with the Fiscal Year ending June 30, 2023, the annual payment to GRS by DWSD, and by DWSD-R and the Authority as successors in liability to DWSD, of \$2.5 million for Administrative Expenses, and the parties agree that the foregoing \$2.5 million paid to GRS during such period will constitute full payment for all Administrative Expenses that are allocated to and for which DWSD, and DWSD-R and the Authority, as successors in liability to DWSD, will be responsible for paying to GRS during such period. The foregoing \$2.5 Million paid to GRS shall be noted within the DWSD Division (and DWSD-R and the Authority as successors in liability to DWSD) on the Statement of Changes in Fiduciary Net Position by Division as a line item credit with a transfer to the General Division and the General Division shall reflect such corresponding credit.

(b) The parties to this Agreement acknowledge that the foregoing annual payment of \$2.5 Million for the nine-year period ending June 30, 2023 may be more than, or less than, the amount of actual Administrative Expenses otherwise allocable to the DWSD Pension Pool (and within the DWSD Pension Pool to the DWSD-R Pension Pool and the Authority Pension Pool, respectively) in each Fiscal Year. Accordingly, beginning with the Fiscal Year commencing July 1, 2014 and each Fiscal Year thereafter through the Fiscal Year ending June 30, 2023, GRS shall calculate and track the actual annual Administrative Expenses that are allocable to the DWSD Pension Pool (and within the DWSD Pension Pool to the DWSD-R Pool and the Authority Pool, respectively) in accordance with a pro-rata allocation formula based upon the Net Position of each Division within the GRS as approved by the GRS Investment Committee established pursuant to the Plan of Adjustment. During the Fiscal Year commencing July 1, 2024, GRS shall calculate the actual aggregate amount of Administrative Expenses allocable to the DWSD Pension Pool (and within the DWSD Pension Pool, to the DWSD-R Pension Pool and the Authority Pension Pool, respectively) during such nine-year period. In the event that the aggregate amount paid by DWSD, DWSD-R and the Authority pursuant to the Plan of Adjustment is more than the actual aggregate amount of Administrative Expenses allocable to the DWSD Pension Pool (and within the DWSD Pension Pool to the DWSD-R

Pension Pool and the Authority Pension Pool, respectively) during such nine-year period, such amount shall be considered to be the aggregate excess of Administrative Expenses as of June 30, 2023. In the event that the aggregate amount paid by DWSD, DWSD-R and the Authority is less than the actual aggregate amount of Administrative Expenses allocable to the DWSD Pension Pool (and within the DWSD Pension Pool to the DWSD-R Pension Pool and the Authority Pension Pool, respectively) during such nine-year period, such amount shall be considered to be the aggregate shortfall of Administrative Expenses as of June 30, 2023. During the Fiscal Year beginning on July 1, 2023, the City and the Authority shall mutually determine and resolve whether the aggregate excess or shortfall, as the case may be, of Administrative Expenses as of June 30, 2023 shall have any effect on the obligation of DWSD-R and the Authority to make payments to GRS as provided in this Agreement.

(c) Beginning with the Fiscal Year commencing July 1, 2023 and for each Fiscal Year thereafter, DWSD-R and the Authority shall be responsible for paying Administrative Expenses to GRS that are allocated to the DWSD Pension Pool (and within the DWSD Pension Pool to the DWSD-R Pension Pool and the Authority Pension Pool, respectively) as shall be reflected in the Statement of Changes in Fiduciary Net Position by Division in accordance with a pro-rata allocation formula based upon the Net Position of each Division within the GRS as approved by the GRS Investment Committee established pursuant to the Plan of Adjustment. The allocation within the DWSD Pension Pool to the DWSD-R Pension Pool and the Authority Pension Pool shall be based upon a percentage allocation to be agreed upon by DWSD-R and the Authority and provided in writing to GRS.

(d) Beginning with the Fiscal Year commencing July 1, 2015 and for each Fiscal Year thereafter, DWSD-R and the Authority shall be responsible for paying Investment Expenses to GRS that are allocated to the DWSD Pension Pool (and within the DWSD Pension Pool to the DWSD-R Pension Pool and the Authority Pension Pool, respectively) as shall be reflected in the Statement of Changes in Fiduciary Net Position by Division in accordance with a pro-rata allocation formula based upon the Net Position of each Division within the GRS as approved by the GRS Investment Committee established pursuant to the Plan of Adjustment. The allocation within the DWSD Pension Pool to the DWSD-R Pension Pool and the Authority Pension Pool shall be based upon a percentage allocation to be agreed upon by DWSD-R and the Authority and provided in writing to GRS.

(e) Notwithstanding anything to the contrary herein, DWSD (and DWSD-R and the Authority as successors in liability) shall be allocated their respective divisional share of all audit expenses directly attributable to the costs to secure a direct audit opinion or an in-relation-to audit opinion of each division within the Statement of Changes in Fiduciary Net Position by Division. Additionally, DWSD (and DWSD-R and the Authority as successors in liability) shall be separately and directly liable for any special Administrative Expenses incurred and directly related to written requests from DWSD, DWSD-R or the Authority for studies and/or reports not typically generated in the normal course of business. Audit and special Administrative Expenses as outlined in this subsection shall be reflected in the DWSD Division portion of the Statement of Changes in Fiduciary Net Position by Division (and then within DWSD to DWSD-R and the Authority pursuant to written direction from DWSD-R and the Authority).



## ARTICLE III- MISCELLANEOUS

SECTION 3.1 Access to Books and Records of the GRS. Subject to reasonable security and safety regulations and reasonable requirements as to notice, the Authority and its duly authorized agents shall have the right to inspect the books and records of the GRS pertaining to the GRS Plan and the DWSD Pension Pool, the Authority Pension Pool and the DWSD-R Pension Pool.

SECTION 3.2 Amendment to Agreement. This Agreement may be amended from time to time by agreement of the City, the GRS and the Authority. Any such amendment shall not be effective unless the amendment is in writing and is executed by the Mayor of the City and the duly authorized officers of the GRS and the Authority.

SECTION 3.3 Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the City, the GRS and the Authority, as the case may be, at the City's Address, the GRS Address and the Authority's Address, respectively. The City, the GRS and the Authority may by written notice designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

SECTION 3.4 Entire Agreement. This Agreement contains all agreements between the parties with respect to the GRS Plan, and there are no other representations, warranties, promises, agreements or understandings, oral, written or inferred, between the parties, unless reference is made thereto herein.

SECTION 3.5 Severability. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof.

SECTION 3.6 No Assignment. No party to this Agreement may assign this Agreement or any of its rights hereunder.

SECTION 3.7 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute the same instrument.

SECTION 3.8 Waiver. The waiver by the Authority of any breach by the GRS of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

SECTION 3.9 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit the scope or intent of any provision of this Lease.

SECTION 3.10 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance or otherwise, by the laws of the State of Michigan.

SECTION 3.11 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto and their successors.

SECTION 3.12 Effective Date. This Agreement shall become effective on the Effective Date.

[Signature Page Follows]

IN WITNESS WHEREOF, the CITY OF DETROIT, the GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT and the GREAT LAKES WATER AUTHORITY have executed this Agreement by its duly authorized officers as of the day and year first above written.

CITY OF DETROIT

By: 

Its: Mayor

GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT

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

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

GREAT LAKES WATER AUTHORITY

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

Its: Chairperson

And: \_\_\_\_\_

Its: Secretary

IN WITNESS WHEREOF, the CITY OF DETROIT, the GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT and the GREAT LAKES WATER AUTHORITY have executed this Agreement by its duly authorized officers as of the day and year first above written.

CITY OF DETROIT

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

Its: Mayor

GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT

By: Jon Hally

Its: CHAIRMAN

GREAT LAKES WATER AUTHORITY

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

Its: Chairperson

And: \_\_\_\_\_

Its: Secretary

IN WITNESS WHEREOF, the CITY OF DETROIT, the GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT and the GREAT LAKES WATER AUTHORITY have executed this Agreement by its duly authorized officers as of the day and year first above written.

CITY OF DETROIT

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

Its: Mayor

GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT

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

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

GREAT LAKES WATER AUTHORITY

By: Robert J. Daddow

Its: Chairperson

And: David Miller

Its: Secretary