

## EMERGENCY LOAN AGREEMENT

This emergency loan agreement is dated April 29, 2015, and is between the LOCAL EMERGENCY FINANCIAL ASSISTANCE LOAN BOARD, a Michigan state board (the "Board"), and the CITY OF FLINT, a Michigan public body corporate (the "City").

A financial emergency currently exists within the City under the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.151 to 141.1575 ("Act 436").

To assist in the resolution of its financial emergency, on behalf of the City and with the approval of the City's governing body (the "City Council"), the emergency manager of the City appointed under section 9 of Act 436 (the "Emergency Manager") asked for an emergency loan from the State of Michigan in the amount of \$7,000,000.00 (the "Emergency Loan") under the Emergency Municipal Loan Act, 1980 PA 243, as amended MCL 141.931 to 141.942 ("Act 243").

The parties acknowledge that the Emergency Loan is necessary and in the best interests of the City.

The parties therefore agree as follows:

1. **Emergency Loan Terms.** (a) The Board shall authorize a loan from the State of Michigan to the City, and the City shall borrow from the State of Michigan, \$7,000,000.00, with the proceeds payable to the City on April 29, 2015. The Emergency Loan is a general obligation of the City.

(b) The principal amount outstanding under the Emergency Loan will bear interest at the rate of 2.09% per year, except as provided in section 15(a). Interest will be computed on the basis of actual number of days elapsed in a calendar year.

(c) The City shall issue notes evidencing the Emergency Loan, with the notes substantially in the form as attachment A (the "Note"). The Note will be for a term of up to 15 years.

2. **Repayment.** (a) The City shall make an initial payment of interest only then owing on December 1, 2015. After the initial payment and until the Emergency Loan is repaid, the City shall make a payment of principal and interest then owing on each June 1, and a payment of interest only then owing on each December 1, with a date of final maturity of June 1, 2030.

(b) As additional security for the repayment, the City hereby pledges and assigns to the repayment of principal of or interest on the Emergency Loan, the State Treasurer's right to withhold delinquent payments due on the Emergency Loan from both of the following:

- (1) state payments owed to the City under the Glenn Steil State Revenue Sharing Act of 1971, 1971 PA 140, as amended, MCL 141.901 to 141.921 ("Act 140"); and
- (2) the City's portion of the revenue generated by the local community stabilization share tax levied under the Use Tax Act, 1937 PA 94, as amended, MCL 205.91 to 205.111, and payable by the Michigan Department of Treasury ("Treasury") to the Local Community Stabilization Authority created under the Local Community Stabilization Authority Act, 2014 PA 86, MCL 123.1341 to 123.1362, for distribution to the City and other governmental entities.

3. **Loan Proceeds.** (a) The City shall use the proceeds of the Emergency loan to reduce the City's general fund deficit by first using the proceeds to repay a cash advance from the City's sewer fund, and then using any remaining proceeds in a manner consistent with the two-year budget for the City imposed by the Emergency Manager.

(b) As required by section 3a of Act 243, the City shall not use the proceeds of the Emergency Loan to finance any costs associated with a special assessment or a special assessment district established after August 1, 2012.

4. **City Certifications.** The City states all of the following:

- (1) that a deficit is projected for the City's general fund in the City's fiscal year ending June 30, 2015;
- (2) that Treasury has acted upon a request by the City to issue tax anticipation notes or revenue sharing notes under the Revised Municipal Finance Act, 2001 PA 34, as amended, MCL 141.2101 to 141.282 ("Act 34");
- (3) that as of April 17, 2015, the state equalized value of real and personal property within the City is less than the state equalized valuation of real and personal property within the City in the immediately preceding year; and
- (4) that the City has fully complied with all statutory requirements concerning use of the uniform chart of accounts and audits.

5. **Five-Year Plan.** (a) The Board acknowledges that the City has submitted a five-year plan that has been approved by the Emergency Manager exercising the powers of the City Council under Act 436 and that will balance future City expenditures with anticipated City revenues (the "Five-Year Plan").

(b) Each year after 2015, before the adoption of a new budget for a fiscal year for the City, the City shall update the Five-Year Plan for a new five-year period. Each Five-Year Plan must balance future City expenditures with anticipated City revenues.

(c) By September 30, 2015, and by each following March 31 and September 30, the City shall submit to the Board an evaluation of the City's performance against the original Five-Year Plan and the Five-Year Plan then effective.

6. **Professional Assistance.** (a) As required by section 7(1)(a) of Act 243, the City shall employ a full-time professional administrator or contract with a person with expertise in municipal finance and administration to direct or participate directly in the management of the City's operations until otherwise ordered by the Board.

(b) The parties acknowledge that the position of city administrator created by Order No. 3 issued by the Emergency Manager on April 10, 2015 (the "City Administrator") satisfies the requirements of section 6(a).

(c) If a vacancy in the position of City Administrator occurs, the City shall fill the vacancy within 120 days, with the approval of a receivership transition advisory board for the City if a receivership transition advisory board is in place for the City under section 23 of Act 436, or the approval of the State Treasurer if no receivership transition advisory board is in place. A vacancy must be filled

with an individual that meets qualifications included in a job description adopted by a receivership transition advisory for the City, if a receivership transition advisory board is in place for the City under section 23 of Act 436, or the by the State Treasurer if no receivership transition advisory board is in place. To identify qualified candidates to potentially fill a vacancy in the position of City Administrator, the City shall use a professionally recognized search firm approved by a receivership transition advisory board for the City if a receivership transition advisory board is in place for the City under section 23 of Act 436, or by the State Treasurer if no receivership transition advisory board is in place. The City may not terminate the City Administrator without the prior approval of a receivership transition advisory board for the City, if a receivership transition advisory board is in place for the City under section 23 of Act 436, or the State Treasurer if no receivership transition advisory board is in place.

7. **Reports.** (a) Beginning on September 30, 2015, and on each following December 31, March 31, June 30, and September 30, the City shall submit to the Board, in a form prescribed by the State Treasurer, all of the following:

- (1) a statement of actual Revenues received by the City in the previous quarter and in the current fiscal year to date;
- (2) a statement of total Revenues estimated to be received by the City in the current fiscal year;
- (3) a statement of Expenditures made and encumbrances entered into by the City in the previous quarter and in the current fiscal year to date;
- (4) a statement of Revenues that were estimated to be received and Expenditures that were estimated to be made by the City during the current fiscal year and through the end of the last quarter; and
- (5) a balance sheet indicating whether total estimated City Expenditures for the current fiscal year and for the last quarter exceed the total estimated City Revenues for the current fiscal year and for the last quarter, respectively.

(b) For purposes of this section 7 and section 8, "Expenditure" and "Revenue" mean those terms as defined in sections 2c and 2d of the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 to 141.440a ("Budget Act").

8. **Budget.** (a) The City shall adopt and adhere to a budget for each City fiscal year consistent with applicable law and the ordinances described in section 13 (collectively the "Fiscal Stability Ordinances") and in fiscal years 2015-2016 and 2016-2017 the two-year budget for the City imposed by the Emergency Manager. If a receivership transition advisory board is in place for the City, each City budget and any City budget amendment must be approved by the receivership transition advisory board. Each budget must comply with all of the following:

- (1) be prepared, presented, and adopted in compliance with the Budget Act and 1963 (Ex Sess) PA 43, as amended, MCL 141.411 to 141.415; and
- (2) be based upon a forecast of monthly cash demands necessary to satisfy the Expenditures authorized in the budget, with an appropriation not being a mandate to spend.

(b) If a shortfall in anticipated Revenue occurs in any City fund, the City shall reduce budgeted Expenditures in the adopted annual budget on a timely basis as provided under the Budget

Act and, the Fiscal Stability Ordinances, and any applicable orders of the Emergency Manager, so that the City may close the fiscal year with a balanced budget. For purposes of this section 8(b), "a timely basis" means the time period necessary to adjust budgeted Expenditures or budgeted Revenues, or both, so as to preclude an Expenditure being made for which adequate Revenues are unavailable or are projected to be unavailable.

(c) The City shall not close a fiscal year with an operating deficit in any fund according to the uniform minimum standards of and guidelines for financial accounting and reporting standards for state and local governments issued by the Government Accounting Standards Board ("GASB"), including GASB's hierarchy of generally accepted accounting principles for state and local governments ("Generally Accepted Accounting Principles"), unless both of the following occur:

- (1) the fund in which the operating deficit occurred had a sufficient beginning balance to offset the deficit consistent with the Budget Act; and
- (2) the financial statements of the City indicate that the sufficient beginning balance fairly represents the financial position of the City according to an independent auditor in a qualified or unqualified opinion using Generally Accepted Accounting Principles and the professional standards and guidance included in government accounting standards issued by the Comptroller General of the United States ("Generally Accepted Government Auditing Standards").

(d) The City shall do all of the following:

- (1) submit to the Board the general appropriations act of the City and any amendments adopted under the Budget Act;
- (2) submit to the Board before adoption any budget change in its 2015-2016 fiscal year or any amendment to the general appropriations act of the City for the 2015-2016 fiscal year; and
- (3) submit to the Board before adoption any budget for a City fiscal year after the 2015-2016 fiscal year or the general appropriations act of the City for a fiscal year after the 2015-2016 fiscal year.

9. **Audits.** (a) For each City fiscal year ending after the effective date of this agreement, the City shall retain, with the approval of the State Treasurer, a recognized independent certified public accounting firm to perform an annual audit of the City (an "Independent Auditor"). The parties acknowledge that the City has retained an Independent Auditor as of the effective date of this agreement and the Independent Auditor retained by the City is hereby approved by the State Treasurer. If the City fails to retain an Independent Auditor in compliance with this section 9(a) or the annual audit required under this section 9 is not completed, the State Treasurer shall conduct the audit or appoint a firm to perform the audit, with the cost paid by City. The City may continue to retain the auditor under contract with the City to perform an annual audit of the City on the effective date of this agreement for the remainder of the City's agreement with that auditor, but that agreement may not be renewed or extended without the approval of the State Treasurer.

(b) The annual audit required under this section 9 shall:

- (1) comply with Generally Accepted Government Auditing Standards;
- (2) include an opinion as to whether the City's financial statements for the fiscal year were prepared in accordance with Generally Accepted Accounting Principles;

- (3) state whether the audit of the City's financial statements was made in accordance with Generally Accepted Government Accounting Standards and accordingly included tests of the City's accounting records and other auditing procedures as considered necessary under the circumstances;
- (4) disclose any fiscal irregularities, including defalcations, misfeasance, nonfeasance, or malfeasance identified by the Independent Auditor;
- (5) note the nature and extent of any variations from Generally Accepted Accounting Principles reflected in the City's financial statements; and
- (6) comply with the requirements of the Budget Act and other applicable law.

(c) The Independent Auditor shall prepare a report of the auditing procedures applied in each annual audit using Treasury Form 496 or any successor form.

(d) The City shall require the Independent Auditor to transmit upon completion a copy of the annual audit and the audit procedures report required under section 9(c) to the City Council and the State Treasurer.

(e) The City shall make available for inspection and duplication all records required by the Independent Auditor to perform the annual audit required under this section. The City shall make its officers and employees available to, and shall cooperate with, the Independent Auditor to facilitate timely completion of the annual audit by the Independent Auditor.

10. **Retirement System Obligations.** The City shall do all of the following:

- (1) comply with the Municipal Employees Retirement Act of 1984, 1984 PA 427, as amended, MCL 38.1501 to 38.1555, (the "Retirement Act");
- (2) make timely payments to the Michigan Employees Retirement System ("MERS") created by former 1945 PA 135 and continued and restated under the Retirement Act; and
- (3) fully satisfy all City obligations to MERS under the Retirement Act and any agreement between the City and MERS.

11. **Water and Sewers.** (a) The City shall not decrease rates the City charges for water or sewer services without the prior written approval of the State Treasurer or a prior written determination by the State Treasurer that the City's water and sewer system are financially stable.

(b) The City shall not terminate its participation in the Karegnondi Water Authority (the "KWA") before the KWA water supply system, including the pipeline being constructed by the KWA from Lake Huron to the City, is operational with all required regulatory approvals effective. The City also shall comply with the KWA financing contract between the City, Genesee County, and the State of Michigan dated August 1, 2013.

(c) The City shall not enter into an agreement with the Detroit Water and Sewerage Department, or any successor entity, including the Great Lakes Water Authority, without the prior written approval of the State Treasurer.

12. **District Court Consolidation.** The City shall implement the memorandum of understanding with Genesee County dated April 13, 2015 providing for the consolidation of the 67th District Court and the 68th District Court beginning on January 2, 2016, consistent with section 8134(4) of the Revised Judicature Act of 1961, 1961 PA 236, as amended, MCL 600.8134(4). The City shall take all action necessary to approve and implement the consolidation described in this section 12.

13. **Fiscal Stability Ordinances.** The City shall comply with City Ordinances 3851 to 3856 each adopted March 1, 2015, and City Ordinance 3866, adopted on April 24, 2015.

14. **Emergency Manager Orders.** The City shall comply with each provision of an order issued by the Emergency Manager that remains effective, including an order issued on or after April 29, 2015.

15. **Noncompliance; Remedies.** (a) Consistent with section 7(2) of Act 243, if the State Treasurer determines that the City is not in compliance with sections 5(c), 6, 7, or 8(c), the State Treasurer may modify the terms of the Emergency Loan to require a higher interest rate or to accelerate the repayment of the loan. If the State Treasurer determines that the City is otherwise not in compliance with this agreement, the City hereby consents to withholding by the State Treasurer of some or all of the state payments otherwise owed to the City under Act 140 until the State Treasurer determines that the City is in compliance with this agreement.

(b) If the City does not pay principal or interest, or both, when due under the Note, the State Treasurer may declare all amounts under the Note to be due and payable immediately, without notice or demand. The City hereby waives presentment, demand, notice of dishonor, protest, and notice of non-payment with respect to the Note.

16. **Due Dates.** If a due date under this agreement falls on a Saturday, Sunday, or legal holiday, then the due date will be the next day that is not a Saturday, Sunday, or legal holiday.

17. **Governing Law.** The laws of the State of Michigan, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this agreement.

18. **Entire Agreement.** This agreement constitutes the entire understanding between the parties as to the Emergency Loan and supersedes all other agreements, whether written or oral, between the parties.

19. **Non-assignment.** No party may assign any of that party's rights or delegate any of that party's obligations under this agreement without the prior written consent of the other party. Any purported assignment or delegation in breach of this section 19 will be void.

20. **End Date.** This agreement ends upon the repayment in full by the City of all amounts due under this agreement.

21. **Modification; Waiver.** No amendment to this agreement will be effective unless it is in writing and signed by the parties. Unless prohibited by Act 243, the State Treasurer may waive a provision of this agreement not relating to the payment of principal and interest on the Emergency Loan if the State Treasurer determines that the City demonstrates good cause for the waiver. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective

unless it is in writing and signed by the State Treasurer, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.


22. **Severability.** If any provision of this agreement is held to be unenforceable, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). If an unenforceable provision is modified or disregarded under this section 22, the rest of the agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

23. **Counterparts.** If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together with will constitute one instrument.

The parties are signing this agreement on the date stated in the introductory clause.


LOCAL EMERGENCY FINANCIAL ASSISTANCE  
LOAN BOARD

By:

  
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N. A. Khouri  
State Treasurer

CITY OF FLINT

By:

  
\_\_\_\_\_  
Gerald Ambrose  
Emergency Manager