

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Concerned Pastors for Social Action, et al., Case No. 16-cv-10277

Plaintiffs,

Hon. David M. Lawson

v.

Nick A. Khouri, et al.,

Defendants.

STIPULATION AND NOTICE

Plaintiffs and Defendants in the above-captioned matter, along with the other parties to the Settlement Agreement in the above-captioned matter (collectively, the “Settling Parties”), have agreed to modify the terms of the Settlement Agreement in this case, ECF No. 147-1, PageID.7349, as amended by orders of this Court. *See* ECF Nos. 164, PageID.8053; 174, PageID.8710; 192, PageID.9835; 208, PageID.10345; 211, PageID.10381.

The Settlement Agreement requires the City of Flint (City) to replace lead and galvanized steel service lines at households served by the Flint Water System by January 1, 2020. Settlement Agmt. (Agmt.) ¶¶ 8, 20, ECF No. 147-1, PageID.7365, 7371. On February 12, 2019, the Settling Parties filed a Stipulation proposing to modify certain terms of the Settlement Agreement (the “2019

Stipulation”), and the Court approved those modifications. *See* ECF Nos. 207, PageID.10325; 208, PageID.10345.

The 2019 Stipulation requires the City to prioritize its service line excavations and replacements (if necessary) at addresses most likely to have lead or galvanized steel service lines using addresses provided to the City by Plaintiffs on two lists, the 2019 Excavation List and the Model Update List (the “2019 Lists”). *See* ECF No. 208 ¶ 3, PageID.10346-10347. The City was required to complete excavations and, if necessary, replacements of service lines at addresses on the 2019 Lists by January 1, 2020. *Id.*

On May 18, 2020, following the City’s invocation of Section XIV of the Settlement Agreement (Force Majeure), the Parties filed a Stipulation providing notice that the Parties had agreed to stay the City’s deadline for completing the required service line excavations and replacements and associated public outreach efforts due to the coronavirus pandemic. *See* ECF No. 214, PageID.10391.

On May 29, 2020, the City instructed the contractors and program manager for the service line replacement program to resume service line excavation and replacement work, subject to certain social distancing practices and other mitigation measures to protect public health.

Based on the above facts and circumstances, the Settling Parties thus agree and stipulate to the following:

1. The City will complete excavations of the approximately 2,500 remaining service lines at replacement eligible homes, and replace those made of lead or galvanized steel, by November 30, 2020.¹ For purposes of the Settlement Agreement (as amended) and this Stipulation, completion of an excavation or service line replacement includes completion of restoration work at the address. For the subset of these 2,500 homes that appear on the 2019 Lists, the City shall complete the required excavations and replacements for those homes by October 31, 2020. By November 30, 2020, the City will also complete an excavation and service line replacement (if necessary) for any resident who gives the City permission to conduct a service line excavation or replacement by the deadline in Paragraph 4 below (September 18, 2020) and who resides at an address that has not yet responded to the City's requests for permission, or at an address where City records indicate a resident has declined a service line excavation or replacement.

The purposes of this extension are to (1) provide the City with additional time to complete the required service line excavation and replacement work that was temporarily halted as a result of the coronavirus pandemic; and (2) ensure that the City has time to both undertake additional efforts to notify Flint residents of

¹ The City shall make best efforts to complete all excavation and replacement work (excluding restoration work) by October 16, 2020.

their right to a service line excavation and replacement and obtain consent for this work from as many Flint residents as possible. This amended deadline will supersede any previously applicable timeframe for the completion of service line excavation and replacement under the Settlement Agreement, including but not limited to those included in Paragraphs 19, 20(c), and 33 of the Settlement Agreement and in Paragraph 3 of the 2019 Stipulation. This amended deadline (November 30, 2020) may be further extended by agreement of all Settling Parties and without seeking further approval from the Court. Nothing in this Stipulation shall obligate State Parties to provide funding beyond the \$97 million of Allocated and Reserve Monies provided by the Settlement Agreement, ECF No. 147-1, for excavations or service line replacements conducted by the City pursuant to the Settlement Agreement as modified by this Stipulation and the 2019 Stipulation, ECF No. 208.

2. The obligation to complete an excavation and replacement (if necessary) at a specific address under Paragraph 1 above will be deemed complete, even if the City has not conducted an excavation at that address, if: (i) the City has completed all outreach activities as to that address required by Paragraph 15 of the Settlement Agreement, as modified on July 19, 2018, and as further modified by Paragraphs 14 and 15 of the 2019 Stipulation and Paragraphs 5 and 6 below, including by documenting and reporting to Plaintiffs all such outreach activities as

described in Paragraph 6 of the 2019 Stipulation (ECF No. 208) and Paragraphs 5 and 6 below; and either (ii) the resident has not provided consent to the City to complete the work as of the date when the City stops accepting consent forms pursuant to Paragraph 4 below; or (iii) the City has not been able to schedule a time to complete the excavation and/or replacement work, despite having completed the outreach activities required by Paragraph 6 below.

3. Within 14 days after the City completes all excavations and replacements (excluding restoration) required by the 2019 Stipulation, the City will provide Plaintiffs with a list of all addresses on the 2019 Lists at which the City has completed an excavation and/or replacement. For each address, the City will provide the informational elements listed in Paragraph 6.i and 6.ii of the 2019 Stipulation. At that time, the City will also provide Plaintiffs with a list of all addresses on the 2019 Lists where the resident declined to have their service line excavated and/or replaced, and a list of all addresses on the 2019 Lists where the City was otherwise unable to obtain permission from the resident to conduct an excavation despite undertaking all required outreach activities as to that address. Within 14 days of when the City completes restoration work at all eligible addresses, the City shall provide a list of all homes where restoration has been completed.

4. The City will allow residents to participate in the service line replacement program by providing the City with consent to complete an excavation and service line replacement (if necessary) at their household for as long as practicable, and at least through September 18, 2020. The City will provide the parties with at least 21 days' written notice before the City intends to stop accepting consent forms. For any household that has granted the City permission to complete an excavation and service line replacement (if necessary) before or on the date on which the City stops accepting consent forms² pursuant to this Paragraph, the City will complete an excavation and, if necessary, replacement at the household by November 30, 2020. Pursuant to Paragraph 18 of the Settlement Agreement, the City will continue to maintain a list of all residents who have completed a consent form for service line excavation and replacement and will promptly provide that list to Plaintiffs within seven days of a request for the list.

5. The City will conduct additional outreach to residents at all addresses that have not responded to the City's written and/or in-person request for permission to conduct a service line excavation or replacement. In every outreach element conducted pursuant to this Paragraph, the City will include language

² A "consent form," also referred to by the parties as an "opt-in form," is a form created by the City that Flint residents can complete to give the City permission to conduct a service line excavation at their household.

explaining that if a resident submitted a consent form to the City prior to March 15, 2019, the resident must resubmit a new consent form to the City. The required outreach under this Paragraph shall include, at minimum: (i) a mailing to these addresses, notifying residents that they can participate in the Service Line Replacement Program by providing the City with consent and providing information about how to provide consent to the City; (ii) a press release; (iii) a press conference to be held by the Mayor; and (iv) revising the City's Service Line Replacement Program webpage. In advance of the press conference, the City will undertake best efforts to ensure that local media, including TV and radio stations, are present to promote earned media coverage of the event. The City shall complete outreach elements (ii), (iii), and (iv) required by this Paragraph no later than August 15, 2020. The City shall complete outreach element (i) required by this Paragraph no later than August 21, 2020. The City shall include, in its reports submitted under Paragraph 6 of the 2019 Stipulation, the date and recipient address of any mailing sent under this Paragraph.

6. For addresses where the resident has given the City permission to conduct an excavation and replacement (if necessary), the City shall undertake reasonable efforts to schedule a time with the resident to complete the work at that address. These reasonable efforts shall include, at minimum: (i) three in-person outreach attempts, and (ii) one telephone call to the resident if the City has a

contact phone number for the household. For all addresses requiring more than one in-person attempt, at least one attempt shall be made during the evening (after 5 p.m.) or on a weekend (Saturday or Sunday). For any address at which the first in-person contact attempt is unsuccessful, the City shall leave a door hanger with information explaining that the City is trying to contact the resident to schedule a time to conduct the excavation and replacement (if necessary) and providing information about how the resident can schedule the work. In submitting reports under Paragraph 6.v of the 2019 Stipulation, the City shall include a list of addresses where the resident has not responded to an attempt by the City to schedule an excavation or replacement (if necessary), the date and time of any in-person outreach conducted pursuant to this Paragraph during the reporting period, and the result of any such outreach, including documentation confirming a door hanger was left after the first unsuccessful in-person attempt and confirming whether a phone call was made, including the date, time, and result.

7. With each monthly report required under Paragraph 6 of the 2019 Stipulation, the City shall provide (i) an updated list of all addresses where the resident and/or property owner declined to have their service line excavated and/or replaced, (ii) an updated list of all addresses where the City was otherwise unable to obtain permission from the resident and/or property owner to conduct an

excavation despite undertaking all required outreach activities as to that address; and (iii) an updated list of all homes where restoration has been completed.

8. All provisions in the Settlement Agreement, as modified by the Court, that are applicable to the City's service line replacement program, including but not limited to the obligations in Paragraphs 34 through 39 of the Settlement Agreement, as further clarified by ECF No. 192, remain in full force and effect until the City has completed its obligations required by this Stipulation.

9. There is a dispute among the parties concerning the duration of State Parties' obligations under Paragraphs 39 and 59 of the Settlement Agreement to provide filter replacement cartridges and tap water test kits to the City. The parties will confer to attempt to resolve this dispute. The parties reserve all rights to raise arguments and defenses concerning the duration of State Parties' obligations under Paragraphs 39 and 59 of the Agreement.

Dated: August 13, 2020

Respectfully submitted,

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Counsel for the City of Flint

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I electronically filed the foregoing Stipulation and Notice with the Clerk of the Court using the ECF system.

Dated: August 13, 2020

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