

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

CONCERNED PASTORS FOR SOCIAL  
ACTION, et al.,

Plaintiffs,

v.

Case No. 16-10277

Hon. David M. Lawson

NICK A. KHOURI, et al.,

Defendants.

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**STIPULATION REGARDING PLAINTIFFS' FIFTH MOTION TO  
ENFORCE SETTLEMENT AGREEMENT**

On November 1, 2022, Plaintiffs Concerned Pastors for Social Action, Melissa Mays, American Civil Liberties Union of Michigan, and Natural Resources Defense Council filed a motion to enforce the Settlement Agreement (Agreement) against Defendants City of Flint and City Administrator (together, the City). Pls.' Fifth Mot. to Enforce Settlement Agmt., ECF No. 242. Plaintiffs allege, and the City does not dispute, that the City has violated and is violating the Agreement by (1) failing to complete the remaining required service line excavations and replacements by the Court-ordered deadline of September 30, 2022; (2) failing to track and maintain records of the addresses where the City has completed restoration; (3) neglecting to timely provide monthly reports, including cumulative lists of all addresses where the City has completed restoration; and

(4) failing to complete the remaining required restoration work.

Plaintiffs and the City have agreed that the relief detailed below is appropriate to partially remedy the City's violations and enforce the Settlement Agreement in this case.<sup>1</sup> Accordingly, Plaintiffs and the City hereby stipulate to the Court's entry of an order granting in part Plaintiffs' Fifth Motion to Enforce Settlement Agreement, leaving the Motion open, and providing that:

1. The City of Flint shall complete excavations and replace service lines made of lead or galvanized steel (excluding restoration) at all 31,578 replacement eligible homes appearing on the "2022 Replacement Eligible Homes List," which has been agreed to and exchanged among the Settling Parties, as quickly as practicable and by no later than August 1, 2023. *See* April 14, 2022 Order Modifying the Settlement Agmt. ("April 2022 Order") ¶ 1, ECF No. 237, PageID.11071.

2. For addresses where the City has scheduled an excavation and/or replacement, the day before each scheduled excavation and/or replacement, the City shall make a telephone call to the resident at whose address an excavation is scheduled if the City has a contact phone number for the household. This caller shall remind the resident of the scheduled excavation and/or replacement and inform the resident that if they are not home at the scheduled time, the City will be

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<sup>1</sup> State Defendants do not object to this relief.

unable to complete the work and the resident will be required to reschedule. This reminder shall be conveyed through a voicemail if the resident does not answer the call. The City shall maintain a log documenting these calls, including the address(es) the calls concerned and whether the caller spoke to the resident or left a voicemail, and shall provide this log to Plaintiffs upon request.

3. For addresses where the City has scheduled an excavation and/or replacement with a resident, but the resident is not home at the time of the scheduled excavation and/or replacement, the City must undertake reasonable efforts to reschedule the work at that address. These reasonable efforts shall include, at minimum:

- a. If the City has not yet completed the minimum post-consent scheduling attempts required by Paragraph 6 of the August 24, 2020 Court order modifying the Agreement (“August 2020 Order”), ECF No. 217, Page ID.10413, the City must complete those attempts.
- b. The City must leave a door hanger (i) with information explaining that the City was unable to complete a scheduled excavation and/or replacement because the resident was not home and that the resident must reschedule with the City, and (ii) providing information about how the resident can reschedule the work. The City shall take a photo

of every door hanger it leaves to document compliance with this provision and provide those photos to Plaintiffs upon request.

- c. The City must make at least two telephone calls to the resident if the City has a contact phone number for the household, one of which must occur the same day as the scheduled excavation and the second of which must occur between one and seven days after the scheduled excavation. The caller shall attempt to reschedule the work with the resident, and shall inform the resident that this is the City's second-to-last or last attempt (as applicable) to reschedule, but that the resident may contact the City to schedule another time to complete the work. The caller shall convey this information by voicemail if the resident does not answer. The City shall maintain a log documenting these calls and the address(es) the calls concerned, including whether the caller spoke to the resident or left a voicemail, whether the caller successfully rescheduled the work, and the date of the rescheduled work (if applicable), and shall provide this log to Plaintiffs upon request.
- d. If the City does not have a contact phone number for the household, the City must complete an additional two in-person outreach attempts to reschedule the excavation and/or replacement beyond the minimum

number of attempts required by Paragraph 6 of the August 2020 Order. The City shall document these attempts and provide reporting to Plaintiffs as described in Paragraph 6 of the August 2020 Order.

If a resident who has given the City permission to conduct an excavation and replacement (if necessary) at their address contacts the City to reschedule an excavation and/or replacement at any time before the City completes the work described in Paragraph 1 of this order, the City must schedule a time with the resident to complete work at that address. The City shall maintain a log documenting any requests it receives from residents to reschedule excavations and/or replacements, including the address(es) those communications concerned, whether the work was rescheduled, and if so, the date it was rescheduled for, and shall provide this log to Plaintiffs upon request.

4. Within 14 days of when the City determines that it has completed the excavations and replacements required by Paragraph 1, the City shall provide to the other Settling Parties the notification, written statement, and supporting information described in Paragraph 3 of the April 2022 Order. In addition to the information listed in that Paragraph, the City shall include the following spreadsheet:

- a. City unable to complete scheduled excavation. All addresses, including Parcel IDs, where the resident provided consent to conduct

an excavation and where the City scheduled an excavation and/or replacement, but where the City has been unable to complete an excavation and/or replacement despite having completed the outreach required by Paragraphs 2 and 3 of this order and Paragraph 6 of the August 2020 Order. This spreadsheet shall include, for each address, the dates and times of at least three in-person post-consent outreach attempts to schedule the excavation and/or replacement, one of which occurred during the evening (after 5 p.m.) or on a weekend (Saturday or Sunday); the date and time of a phone call confirming the excavation and/or replacement time with the resident 24 hours in advance (if applicable); the date and time the excavation and/or replacement was scheduled to occur; the dates and times of at least two phone calls attempting to reschedule the excavation and/or replacement (if applicable); and the dates and times of at least two in-person attempts to reschedule the excavation and/or replacement (if applicable).

5. As soon as practicable, and by no later than May 1, 2023, the City shall compile and provide to Plaintiffs an Excel spreadsheet listing all previously excavated addresses on the 2022 Replacement Eligible Homes List at which either of the following is true: (i) the City has contemporaneous documentation indicating

that it completed restoration at that address, including the date(s) of restoration; or (ii) the requirements of Paragraph 16.b below have been met. A data entry or entries identifying the date(s) of restoration at an address in the City's Cityworks system shall be considered "contemporaneous documentation" of restoration at the address under this Paragraph and Paragraphs 16 and 17 below only if the entry or entries are created contemporaneously with the completion of restoration at that address and indicate completion of both hard and soft surface restoration. No later than seven days after submitting that list to Plaintiffs, the City shall propose a modification of the deadline in Paragraph 1 of the August 2020 Order for the City to complete all restoration work required under the Agreement (as modified). The proposed deadline must be as soon as practicable. The City's proposal shall be accompanied by a revised Restoration Plan (described in Paragraph 12 below) explaining the basis for the City's proposed deadline.

6. Within seven days of the date the City proposes a modified restoration deadline, the Settling Parties shall meet and confer to attempt in good faith to agree on whether the City's proposal is a reasonable modification of the deadline in Paragraph 1 of the August 2020 Order for the City to complete all remaining required restoration work described in Paragraph 2 of the April 2022 Order. If the Settling Parties reach an agreement to modify the City's restoration-completion deadline, no later than 14 days after the City proposes the modified restoration

deadline, the Settling Parties shall jointly file a Stipulation specifying the agreed-upon modification for the Court's approval. If the Settling Parties are unable to reach an agreement following good-faith negotiations, then the parties shall submit, no later than 28 days after the City proposes a modified restoration deadline, simultaneous supplemental briefs asking the Court to set the soonest practicable deadline for the City to complete all remaining required restoration work described in Paragraph 2 of the April 2022 Order.

7. For each address where the City completes a service line excavation and/or replacement between September 1, 2022, and March 1, 2023, the City shall complete restoration by June 30, 2023, or 60 days after reopening of the asphalt plant or plants the City uses, whichever is later. For each address where the City completes a service line excavation and/or replacement on or after March 2, 2023, the City shall complete restoration by the last day of the fourth month following the month when the City either excavated the service line or completed a replacement at that address, whichever is later.

8. Paragraphs 5, 6, and 7 above shall supersede Paragraph 6 of the April 2022 Order.

9. Within 14 days of when the City determines that it has completed all required restoration work described in Paragraph 2 of the April 2022 Order, the

City shall provide to the other Settling Parties the notice, written statement, and documentation described in Paragraph 7 of the April 2022 Order.

10. The City shall continue performing excavations, replacements, and restoration until the cold weather conditions it identifies in Paragraphs 11.c and 12.d below prevent further work and notify Plaintiffs within three business days if it determines that it must cease excavation, replacement, and/or restoration work for the winter. Beginning on February 15, 2023, the City shall submit bi-weekly updates to Plaintiffs regarding when it expects that the weather conditions it identifies in Paragraphs 11.c and 12.d below will occur such that it can resume excavation, replacement, and/or restoration work, as applicable. The City shall begin performing excavations, replacements, and restoration in 2023 within two weeks of when weather conditions permit.

11. The City shall create a detailed written plan for completing the remaining excavation and replacement work described in Paragraph 1 above (“Service Line Replacement Plan”) and provide that Plan to all other parties by January 24, 2023, or within 14 days of this Order, whichever is later. The Service Line Replacement Plan shall describe the steps the City will take to complete the remaining excavation and replacement work (excluding restoration) required by the Agreement as quickly as practicable, and no later than August 1, 2023. This

description must include, but is not limited to, how the City is anticipating and planning for the following factors:

- a. Securing and maintaining an adequate inventory of materials necessary for service line replacements, including planning for how to address materials shortages, supply chain delays and challenges, and changes in prices of needed materials.
- b. Maintaining sufficient labor to complete the required work as quickly as practicable, including how many crews the City will maintain and what rate of excavations those crews can complete per week.
- c. Weather-related work disruptions, including both seasonal work stoppage for the winter and short-term disruptions caused by inclement weather. The Plan shall describe the specific weather conditions that will trigger seasonal work stoppage for the winter, and the specific conditions that will allow work to resume following seasonal stoppage for the winter.
- d. Resident cooperation with scheduling excavations and replacements, including what efforts the City will make to conduct outreach and coordinate with residents to ensure that excavations and replacements are completed as scheduled.

- e. If excavation work remains along major roads, the Plan must list the addresses of those excavations and explain the City's plans and schedule for obtaining any necessary road-closure permits and completing those excavations.
  - f. If excavation work remains at any of the 253 addresses the City shared with Plaintiffs on December 10, 2018, and identified as flagged by Michigan's State Historic Preservation Office (SHPO), the Plan must describe how the City will complete those excavations, including ensuring it has the appropriate permits and support from any necessary archaeologists to complete the work by August 1, 2023.
  - g. Completing outreach as quickly as practicable and no later than January 24, 2023.
12. The City shall create a detailed written plan for identifying and completing the remaining restoration work required by the Agreement ("Restoration Plan") and provide that Plan to all other parties by January 24, 2023, or within 14 days of this Order, whichever is later. The Restoration Plan shall describe how the City will meet the deadlines in Paragraph 7 above, including how it will coordinate between its project management and construction contractors to ensure that the appropriate work orders are timely issued. The Restoration Plan shall also describe the steps the City will take to complete the remaining

restoration work required by the Agreement as quickly as practicable, including identifying the remaining scope of that work. The description in the Plan must include, but is not limited to, how the City is anticipating and planning for the following factors:

- a. Work needed to identify as quickly as practicable how many and which previously excavated addresses still require restoration. To the extent the City plans to visually inspect homes (in accordance with Paragraph 16.b below) to help it identify which addresses still require restoration, the Plan must provide a timeline for completing these visual inspections, including the total number of homes it will inspect; how many addresses the City plans to inspect weekly; the number of staff who will perform visual inspections; how many hours per week those staff will perform the inspections; and how many homes those staff can inspect per eight-hour day. The City shall consider and document in the Plan what additional resources, if any, it can marshal to finish identifying the scope of remaining restoration work.
- b. Securing and maintaining an adequate inventory of materials necessary for restorations (e.g., asphalt, concrete, and topsoil), including planning for how to address materials shortages, supply

- chain delays and challenges (including seasonal closure of the asphalt plant or plants the City uses), and changes in the prices of materials;
- c. Maintaining sufficient labor to complete the required work as quickly as practicable, including how many restoration crews the City will maintain and how many addresses those crews can restore per week;
  - d. Weather-related work disruptions, including both seasonal work stoppage for the winter and short-term disruptions caused by inclement weather. The Plan shall describe the specific weather conditions that will trigger seasonal work stoppage for the winter, and the specific conditions that will allow work to resume following seasonal stoppage for the winter;
  - e. Outreach to residents to ensure cooperation with scheduling, if applicable;
  - f. If restoration work remains along major roads, the Plan must list the addresses of those restorations and explain the City's plans and schedule for obtaining any necessary road-closure permits and completing those restorations;
  - g. If restoration work remains at any of the 253 addresses the City shared with Plaintiffs on December 10, 2018, and identified as flagged by Michigan's State Historic Preservation Office (SHPO), the Plan must

describe how the City will complete those restorations, including ensuring it has the appropriate permits and support from any necessary archaeologists to complete the work by any applicable deadline.

13. The City shall provide Plaintiffs weekly reports every Wednesday until it has completed excavations and service line replacements at all eligible addresses. These reports shall specify which specific seven-day period the data cover. These reports shall include the total number of excavations and/or replacements the City has scheduled with residents for the upcoming seven days (Thursday to Wednesday), as well as the addresses where this work has been scheduled.

14. With each monthly status report required under Paragraph 6 of the March 26, 2019 Court order modifying the Agreement (“March 2019 Order”), ECF No. 208, Page ID.10348, and Paragraph 7 of the 2020 Order, the City shall provide the following information, current as of the 21st day of the month in which the report is submitted:

- a. The total number of addresses where the City has performed the final consent attempt, as required by Paragraph 15 of the March 2019 Order, during the reporting period, including at how many addresses the City obtained consent to conduct work.

- b. The number of service line replacements the City can perform based on the current total number of parts in its materials inventory.
- c. The informational elements described in Paragraph 6.i and 6.ii of the 2019 Order.

The City shall also provide the informational elements described in sub-paragraphs (a), (b), and (c) above on the 14th day of each month. The data covered by reports submitted on the 14th day of the month shall cover at least the two-week period ending on the 7th day of the month of the report. If the 14th day of the month falls on a day that is not a business day, then the City shall submit its report on the first business day thereafter. The City's obligations to produce monthly reports and reporting on the 14th day of each month shall terminate 30 days after the Completion of Service Line Replacement.

15. With each monthly status report required by Paragraph 6 of the March 2019 Order, the City shall provide Plaintiffs the following information related to its current inventory of materials needed for service line replacements:

- a. The number of service line replacements the City can perform based on the current total number of parts in its materials inventory.
- b. The date(s) or projected date(s), if any, when the City (including any of its contractors) is scheduled to receive additional service line replacement materials based on orders accepted by suppliers,

including specific information about the exact parts (and quantities) the City is scheduled to receive; and

- c. A description of the City's and State's efforts to obtain additional required materials, including a list of any potential suppliers or fabricators the City or State communicated with in the previous month and the results of those communications. The City must communicate at least twice per month with the State to obtain the information necessary to fulfill the reporting requirements in this Paragraph.

16. Demonstrating Completion of Restoration Obligations. The City's obligations under the Agreement, as modified, to restore the lawn, curb, sidewalk, and driveway at an address shall apply only to damage related to service line excavations and replacements completed by the City.

- a. The City must demonstrate completion of its obligations under Paragraph 2 of the April 2022 Order as to an address by producing contemporaneous documentation of completed restoration at that address, unless it uses the method permitted by Paragraph 16.b below and the restoration occurred before November 1, 2022.
- b. If the City lacks contemporaneous documentation of completed restoration at an address, the City may instead demonstrate compliance with its obligations under Paragraph 2 of the April 2022

Order by using in-person visual inspections. Such visual inspections must, at a minimum, follow the procedures described in (i), (ii), and (iii) below. The City shall educate any person performing these inspections about the requirements of this Paragraph. The City may use alternative methods of visual inspection only upon written agreement by all parties memorialized in a stipulation filed with the Court.

- i. Visual inspection criteria. The City must verify, as part of the in-person visual inspection of that address, that all of the following criteria are true: (a) no asphalt, concrete, or other debris remains; (b) the address has a complete, uniform sidewalk with no gaps or holes, and the sidewalk is uniform in both grade and alignment; (c) the address has a complete, uniform driveway with no gaps or holes, and the driveway is uniform in both grade and alignment; (d) the address has a complete, uniform curb, with no gaps or missing pieces, and the curb has a uniform grade and alignment; (e) the lawn is free of holes or trenches and is of a uniform grade, with no visible depressions; (f) any visible topsoil on the greenbelt or lawn is free of debris and the greenbelt or lawn has a consistent and

uniform plant cover; and (g) the water shut-off valve is flush with the surface of the lawn and does not pose a tripping hazard.

- ii. Photo documentation. The City shall take a photo or photos sufficient to document the condition of the lawn, sidewalk, driveway, curb, and any other areas relevant to the City's visual inspection. The City shall maintain these photos and must provide them to Plaintiffs upon request.
- iii. Reporting. The City must provide Plaintiffs with the reporting as to the address described in Paragraph 17 below.

17. Paragraph 7.iii of the August 2020 Order is superseded by this Paragraph. With each monthly report required under Paragraph 6 of the March 2019 Order, the City shall provide an Excel spreadsheet listing, in separate tabs (or in a single tab with indicators to distinguish each category described in a, b, c.i, c.ii, and c.iii below):

- a. All previously excavated addresses where the City has contemporaneous documentation of completed restoration, including the date(s) of restoration.

- b. All previously excavated addresses where the City's records indicate restoration is still required, without the need for a visual inspection to confirm the address's restoration status; and
- c. All previously excavated addresses where the City has no contemporaneous documentation of completed restoration, noting which of the following categories each address falls into: (i) City confirmed by an in-person visual inspection complying with Paragraph 16.b above that restoration was completed, including the date of the inspection; (ii) City confirmed by an in-person visual inspection complying with Paragraph 16.b above that restoration is still needed, including the date of the inspection; (iii) determination of whether restoration is still needed pending a visual inspection or further records review by the City.

18. With each monthly report required under Paragraph 6 of the March 2019 Order, the City shall provide Plaintiffs with any emails the City received during the reporting period from residents concerning the visual inspections described in Paragraph 16.b. The City must also provide Plaintiffs with a log documenting all calls from residents or property owners to the City concerning the visual inspections described in Paragraph 16.b during the reporting period. The log must include both calls when a City staff member (or one of the City's contractors)

answered the phone and spoke with the caller and voicemails, and must include the address(es) the call concerned.

19. The Court will hold open Plaintiffs' Fifth Motion to Enforce the Settlement Agreement so that it may resolve the remaining disputed issues following a hearing scheduled for February 15, 2023.

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There remains a dispute between Plaintiffs and the City concerning whether additional procedures are appropriate to remedy the City's violations of its obligations to track and maintain records of the addresses where it completed restoration work. In particular, Plaintiffs and the City dispute whether and what kind of notice to residents of the results of the City's visual inspections (described in Paragraph 16 above) is appropriate. Plaintiffs requested that the Court order the City to:

- leave a door hanger notifying the resident when, as a result of the City's visual inspection (described in Paragraph 16 above), the City determines that all of the criteria in Paragraph 16.b.i. are met and the City will not be completing future restoration at the resident's address;
- take a photo of every door hanger it leaves to document compliance with this notice provision and provide those photos to Plaintiffs upon request; and

- provide proposed language for the door hangers described above to Plaintiffs for their review and approval within seven days of the Court's order granting this relief. The language must include a City phone number and email address that the resident may use to contact the City if the resident disagrees with the City's determination or has questions. Plaintiffs may propose edits to the proposed door hanger until 14 days after the City provides the proposed language. If the City objects to any of Plaintiffs' proposed edits, the parties shall meet and confer to achieve language for the door hanger that is acceptable to all parties.

Plaintiffs and the City plan to address this remaining disputed relief at the hearing scheduled for February 15, 2023.

Dated: January 19, 2023

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2023, I electronically filed the foregoing Stipulation and Notice with the Clerk of the Court using the ECF system.

Dated: January 19, 2023

/s/ Adeline S. Rolnick

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