

EM SUBMISSION NO.: EME 4182014

PRESENTED: 7/28/14

ADOPTED: 8/4/14

BY THE EMERGENCY MANAGER:

Resolution Authorizing Easement Agreement and Payment to Consumers Energy for an Easement of Underground Grounding Wire/Electrical Grounding Mat

The Department of Public Works and Utilities requires construction, maintenance and operation of an underground grounding wire/electrical grounding mat and a 6 foot tall chain link fence at the Water Plant; and


The Department of Public Works and Utilities requires an easement from Consumers Energy Company to perform the construction, maintenance, and operation of the underground grounding wire/electrical grounding mat and 6 foot tall chain link fence; and

The Department of Public Works and Utilities is requested to pay a fee of \$4,054.40 and enter into an easement agreement with Consumers Energy for said easement. The funding for this request will be appropriated from the following account number: 591-545.300-801.000.

IT RESOLVED That appropriate City Officials are authorized to enter into the Easement Agreement and make payment to Consumers Energy Company for the easement in the amount not to exceed \$4,054.40. Funding will come from 591-545.300-801.000.

APPROVED AS TO FORM:

APPROVED AS TO FINANCE:



Peter M. Bade, Chief Legal Officer



Jerry Ambrose, Finance Director

EM DISPOSITION:

ENACT ✓ FAIL _____

DATED 8-4-14



Darnell Earley, Emergency Financial Manager

RESOLUTION STAFF REVIEW

Date: July 18, 2014

Agenda Item Title: Resolution Authorizing the Easement Agreement and Payment to Consumers Energy for an Easement of Underground Grounding Wire/Electrical Grounding Mat

Prepared by:
Utilities Department

Summary of Proposed Action:

The Department of Public Works and Utilities Water Plant has upgraded its facility so that it can be placed into full operation using the Flint River as a primary drinking water source and then then convert to KWA delivered lake water when available.

A part of the necessary upgrades is an easement strip to complete the construction, maintenance and operation of an underground grounding wire/electrical grounding mat and a 6 foot tall chain link fence.

Consumers Energy Company has provide the needed easement to the Department of Public Works and Utilities. The cost of the easement is \$4,054.40. The accompanying Easement Agreement details the terms.

Financial Implications:
None

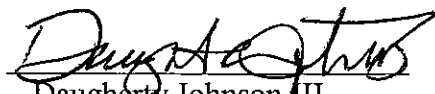
Pre-encumbered?: Yes ___ No x Requisition:

Account No. 591-545.300-801.000

Other implications (i.e. collective bargaining):

Staff Recommendation: Recommend Approval

Staff Person


Daugherty Johnson III
Utilities Administrator

Consumers Energy

A CMS Energy Company

Real Estate Department
One Energy Plaza
Jackson, MI 49201-2276



July 11, 2014

City of Flint
Attention: Mr. Darnell Earley
1101 South Saginaw Street
Flint, MI 48502

RE: Genesee MI 13320, Easement

Enclosed is a copy of the Easement for existing underground grounding wire/electrical grounding mat and a 6-foot tall chain link fence. Please review this document. Sign and date the bottom of this letter and return it to Consumers Energy Company (CE), along with a check in the amount of \$4,054.40 within 30 days from the date of this letter. Included in this amount is the consideration due of \$4,000.00, recording fees of \$20.00, and transfer tax of \$34.40.

Upon receipt of the above and the proof of insurance stated in Paragraph #9 of the attached proposed easement agreement, we will send you a copy of the executed easement and send the original for recording. After recording, we will send you the original easement. A self-addressed stamped envelope is enclosed for your convenience.

After 30 days this offer is null and void.

If you have any questions concerning this offer, please contact me at (517) 788-0038.

Sandy Wigent
Consumers Energy Company
Att: Sandy Wigent, EP7-457
One Energy Plaza
Jackson, MI 49201

REVIEWED AND ACCEPTED ON BEHALF OF THE CITY OF FLINT

Darnell Earley

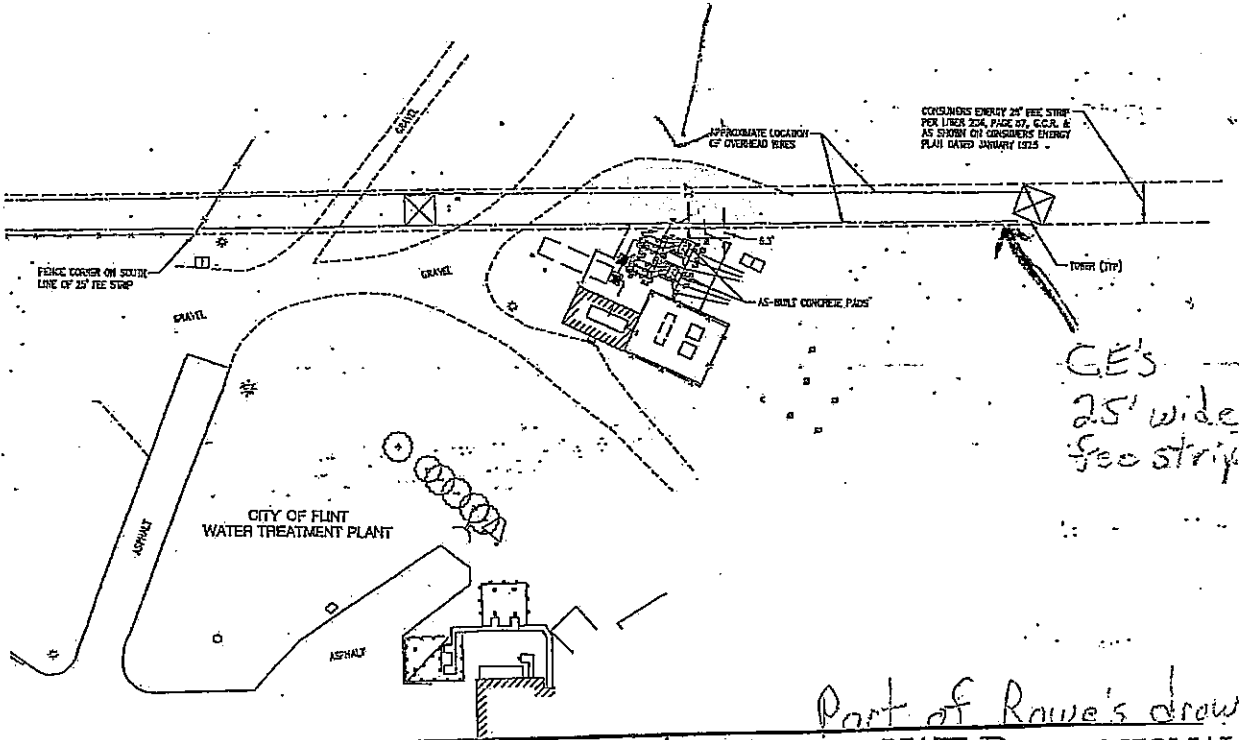
Name
Emergency Manager

Title
August 4, 2014

Date

City of Flint's Proposed Plan For Substation (NOT Final)

Genesee MI 13320
Esmt to City of Flint
Aprox location
of easement



CONSUMERS ENERGY 25' FEE STRIP
FOR LINES 204, PAGE 27, C.C.R. 6
AS SHOWN ON CONSUMERS ENERGY
PLAN DATED JANUARY 1975

APPROXIMATE LOCATION
OF OVERHEAD WIRE

FOUR CORNER ON SOUTH
LINE OF 25' FEE STRIP

GE'S
25' wide
fee strip

DESIGN A STEP
THE FEE
LAND 1
SECTION
ON THE
RIGHT S.
ONE-ON
EJECT A

C-11, B
FOUND B
SUSC
HERE
HOW
SAY

C-12, B
FOUND 2
SUSC
HERE
HOW
SAY

Part of Rowe's drawing

SHT# 1 OF 1

REVISIONS

PREPARED FOR
**CITY OF FLINT
WATER TREATMENT PLANT**
CONSUMERS ENERGY 25' FEE STRIP
SECTION 32, T8N-R7E, GENESSEE COUNTY, MICHIGAN



**ROWE PROFESSIONAL
SERVICES COMPANY**

The ROWE Building
540 S. Saginaw St., Ste. 200; P. O. Box 3748
Flint, MI 48502

O: (810) 341-7500
F: (810) 341-7573
www.towepsc.com

PLAN DATE:	APRIL 1, 2014
PROJECT MGR:	JHR
REVIEWER:	JHR
SCALE:	1" = 50'

EASEMENT

Genesee MI 13320

THIS INDENTURE is made as of _____, 2014, between Consumers Energy Company, a Michigan corporation (formerly known as Consumers Power Company), a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201, Grantor, and The City of Flint, a Michigan municipal corporation, 1553 East Stewart Avenue, Flint, Michigan 48505, Grantee.

WITNESSETH: Grantor, for and in consideration of the sum of \$4,000.00, does hereby release and QUIT-CLAIM to Grantee, its successors and assigns forever, an easement for an underground grounding wire/electrical grounding mat and a 6 foot tall chain link fence in a 10 foot wide strip of land situated in the Northwest quarter of Section 32, Town 8 North, Range 7 East, City of Flint, Genesee County, Michigan (the "Easement Strip") being more particularly described as follows:

Part of the Northwest ¼ of Section 32, Town 8 North, Range 7 East, City of Flint, Genesee County, Michigan, described as beginning at a point on the South line of an existing 25 foot wide strip of land as recorded in Liber 236, Page 87, Genesee County Records which is the following two (2) courses from the Northwest corner of said Section 32, 1) S00°44'08"E, along the West line of said Section 32, 1350.74 feet to the South line of said 25 foot wide strip of land, and 2) N88°40'33"E, parallel with the North, East & West 1/8 line of said Section 32 and along the South line of said 25 foot wide strip of land, 1653.10 feet to the POINT OF BEGINNING; thence continuing N88°40'33"E, along the South line of said 25 foot wide strip of land 65.00 feet; thence N01°19'27"W, 10.00 feet; thence S88°40'33"W, parallel with the South line of said 25 foot wide strip of land, 65.00 feet; thence S01°19'27"E, 10.00 feet to the point of beginning (Parcel ID No. 47-32-152-001).

This easement is conveyed solely for the construction, maintenance and operation of an underground grounding wire/electrical grounding mat and a 6 foot tall chain link fence (hereinafter "Grantee's Facilities").

This easement is given by Grantor subject to the following express conditions and reservations:

1. This easement is non-exclusive. Grantor reserves to itself, and to its successors and assigns, the right to use said Easement Strip for any purpose, including but not limited to the construction, operation, and maintenance of electric and gas facilities, as well as the right to allow others to use the Easement Strip in any manner that does not unreasonably interfere with Grantee's use pursuant to this Easement. Grantor shall not be responsible for damage to Grantee's Facilities resulting from Grantor's use of its land.

2. Construction and maintenance of Grantee's Facilities shall comply with the following conditions, limitations, and requirements:

- a. Grantee shall contact the Utility Communications System (Miss Dig), phone number (800) 482-7171, prior to performing any excavation on the Easement Strip, in accordance with Michigan Compiled Law 460.701 et seq., as amended by Public Act 174 of 2013 and any future amendments.
- b. Following any construction or maintenance work within the Easement Strip, Grantee shall repair any damage to the Easement Strip and restore the Easement Strip as nearly as is practicable to the condition in which it existed prior to such damage.
- c. Spoils shall not be stored, even temporarily, under the electric lines without Grantor's authorization.

3. Grantee shall perform all work on the Easement Strip in compliance with all federal, state, and local laws respecting such work, including but not limited to the acquisition of soil erosion and sedimentation control permits. Grantee is

responsible for determining whether any such licenses or permits are required. Upon request, Grantee shall provide copies of all such permits to Grantor.

4. Grantee's Facilities shall maintain a minimum clearance of 20 feet from Grantor's electric lines.

5. Grantee shall install permanent above-ground markers identifying the route of Grantee's Facilities along the entire route thereof across Grantor's land and adjacent to each of Grantor's facilities.

6. Grantee shall not: a) erect any buildings or structures on Grantor's land, b) store any materials or fill in, on, or under said land, either temporarily or permanently, c) permanently change the grade on grantor's land, or d) plant any trees on Grantor's land.

7. Grantee shall, to the fullest extent allowable by law, indemnify, defend, and hold Grantor harmless from claims for injuries or damages to persons or property or both arising directly or indirectly out of the use of Grantor's land pursuant to this Easement, including but not limited to claims arising out of Grantee's negligence, Grantor's and Grantee's concurrent negligence, or any other person's negligence, excepting only Grantor's sole negligence. The terms of this paragraph shall survive the term or termination of this easement.

8. Grantee shall require all of its contractors and the subcontractors of such contractors who perform work on Grantor's fee strip to assume all liability for and protect, indemnify, and save Grantor, its successors and assigns, harmless from and against all action, claims, demands, judgments, losses, expenses of suits or actions and attorney fees, for any type of injury to or death of any person or persons and loss or damage to the property of any person or persons whomsoever, including the parties hereto and their agents, contractors, subcontractors, and employees, arising in connection with or as a direct or indirect result of the rights and privileges hereby granted. The provisions of this paragraph shall apply to each and every such injury, death, loss and damage, however caused, whether due, or claimed to be due, to Grantee's negligence, Grantor's negligence, the negligence of any such contractor or subcontractor, the negligence of both parties or the combined negligence of either or both of the parties hereto and any one or more of said contractors or subcontractors, the negligence of any other person, or otherwise, excepting only Grantor's sole negligence. The provisions of this paragraph shall survive the term or termination of this easement.

9. Grantee shall, at its own expense, procure, maintain and keep in effect during the term of this Easement, a Commercial General Liability Insurance Policy, satisfactory to Grantor in form and substance, with a minimum combined bodily injury and property damage single limit of \$1,000,000 per occurrence. Such policies shall include Grantor as an additional insured, be primary and noncontributory to any insurance maintained by Grantor and shall also include coverage for explosion, collapse and underground property damage hazards (commonly known as "XCU"). At the time this Easement is executed, Grantee shall provide Grantor with a Certificate of Insurance evidencing such insurance coverage as provided for herein and evidence of any renewals thereof. Grantee shall be required to submit to Consumers Energy Company a standard industry ACORD Form Certificate of Liability Insurance or any other form approved by Consumers' Corporate Insurance Department. Grantee shall notify Grantor in writing immediately upon Grantee's receipt of any notice of cancellation of the insurance coverage required in this Easement. Further, it shall be the responsibility of Grantee to ensure that Grantee's contractors procure, maintain and keep in effect during the term of any construction, or any maintenance periods thereof, a Commercial General Liability Insurance policy equivalent to that described above. Such insurance shall also name Grantor as an additional insured. With respect to damage to Grantee's and its contractors' property used on Grantor's land, Grantee and its contractors hereby agree to waive its rights of recovery against Grantor and if such property is insured to waive the insurer's rights to subrogation. It is expressly understood that the obtaining of the insurance as is herein provided, shall in no way limit or release Grantee's liability under the indemnity provisions as provided herein. All information sent to Grantor pursuant to this paragraph shall contain the designation "Genesee MI 13320" and shall be sent to Consumers Energy Company's Real Estate Department's Easement Grant Coordinator.

10. In the event that Grantee's use of Grantor's land pursuant to this Easement at any time results in the presence on or under Grantor's land (which shall include but not be limited to the groundwater underlying Grantor's land) of contaminants, hazardous waste, hazardous substances or constituents, or toxic substances, as currently or hereafter defined in applicable laws, Grantee shall, without cost to Grantor, promptly take: 1) all actions that are required by any federal, state, or local governmental agency or political subdivision, and 2) all actions that are necessary to restore Grantor's land to the condition existing prior to the introduction of such contaminants, hazardous waste, hazardous substances or constituents, or toxic substances, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. The actions required by Grantee shall include, but not be limited to: a) the investigation of the environmental condition of Grantor's land, b) the preparation of any feasibility studies, reports, or remedial plans required by law or governmental policy, and c) the performance of cleanup, remediation, containment, operation, maintenance, monitoring, or restoration work, whether on or off Grantor's land. Grantee shall proceed continuously and diligently with such investigatory and remedial actions. Grantee shall promptly provide to Grantor, free of charges, copies of all test results and reports generated in connection with the above activities and copies of all reports submitted to any governmental entity. No cleanup, remediation, restoration, or other work required by this paragraph shall require or result in the imposition of any limitation or restriction on the use of Grantor's land,

without Grantor's prior written approval and permission.

11. Grantee shall indemnify, defend, and hold Grantor, its officers, employees, agents, affiliates, and parent corporation, harmless from and against any and all losses, liabilities, claims, damages, payments, actions, recoveries, settlements, judgments, orders, costs, expenses, attorney fees, penalties, fines, encumbrances, and liens arising out of: a) the presence on or beneath Grantor's land, including but not limited to the groundwater underlying Grantor's land, of contaminants, hazardous waste, hazardous substances or constituents, or toxic substances, as currently or hereafter defined in applicable laws, as a result of use of Grantor's land pursuant to this Easement; b) Grantee's violation or alleged violation of any federal, state, or local law related directly or indirectly to Grantee's exercise of the rights herein granted; or c) Grantee's failure to comply with the terms and conditions of this Easement. The provisions of this paragraph shall survive the term or termination of this easement.

12. This easement is granted subject to any licenses, leases, easements, or other interests in the land previously granted by Grantor or its predecessors in title and to any such interests reserved to other parties in instruments granted to Grantor or its predecessors in title, whether or not of record, including but not limited to the rights and interests given the City of Flint in a certain lease dated February 8, 1955. Grantee is solely responsible for complying with any applicable requirements, including notice and consent requirements, of such licenses, leases, easements, and other interests.

13. Grantor shall not be required to incur any cost or expense as a result of the use of Grantor's land pursuant to this Easement.

14. Grantee's acceptance of this Easement shall be deemed an acceptance of the terms and conditions of this grant.

15. The covenants and agreements set forth in this Easement shall run with the land and be binding upon and inure to the benefit of the respective successors and assigns of the parties.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed in its corporate name and by its duly authorized representative as of the day and year first above written.

Consumers Energy Company

AS TO FORM
MSW

By: _____

Its _____

Acknowledged before me in Jackson County, Michigan, on _____, 2014, by _____, of Consumers Energy Company, a Michigan corporation, for the corporation.

Notary Public
_____ County, Michigan
Acting in _____ County
My commission expires: _____

Prepared by:
Mary Jo Weindorf (P75376)
Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201

Return recorded instrument to:
Consumers Energy Company
Business Services – Real Estate
Attn: Karen Malewitz, EP7-465
One Energy Plaza
Jackson, Michigan 49201