

DIRECTOR AND GENERAL MANAGER EMPLOYMENT AGREEMENT

This Director and General Manager Employment Agreement (Agreement) is effective July 1, 2012 between the Board of Commissioners (Employer) of the Lansing Board of Water and Light (LBWL), and J. Peter Lark, (Employee). It is pursuant to the power and duty under article 5, chapter 2 of the City Charter of the City of Lansing "to appoint a Director who shall be responsible to the Board for carrying out the duties assigned by the Board and shall serve at its pleasure." On July 24, 2012 the Board affirmatively voted to re-appoint J. Peter Lark as the Board's Director and General Manager for a five (5) year term. This Employment Agreement delineates the employment terms between the parties:

I. EMPLOYMENT

The Employer agrees to employ the Employee for five (5) years in an at-will employment relationship. The Employee will perform the duties described in Paragraph III of this Agreement, as well as any other duties that may be assigned to him by the LBWL. The Employee accepts such employment upon all of the terms and conditions set forth in this Agreement.

II. TERM

The term of employment under this Agreement shall be effective July 1, 2012 (Commencement Date), and shall terminate on June 30, 2017 as provided in section 8.1 of the Board's Rules of Administrative Procedure, and unless terminated sooner in accordance with Paragraph VI. The Employee's employment will be terminated at the time that this Employment Agreement terminates, and the date that this occurs will be referred to as the Separation Date. Any and all compensation and benefits will cease effective on the Separation Date, except as otherwise specifically provided by this Agreement or by law. The period between the Commencement Date and Separation Date shall be referred to as the Contract Period.

III. DUTIES AND OBLIGATIONS

- A. The Employee, as the Director and General Manager of the LBWL, agrees and promises to perform and discharge, well and faithfully, the duties assigned to him by the Employer for the conduct of the LBWL business. Those duties shall include those generally assigned to the Director and General Manager of a municipal utility under the general supervision, direction and advice of the Employer. The Employee agrees to perform those duties necessary to meet the expectations and goals of the Employer as established from time to time by the Employer. Employee shall report directly to the Board of Commissioners.
- B. During his employment as Director and General Manager, Employee shall be subject to, uphold and enforce all rules, policies, and procedures applicable to the non-bargaining employees of the LBWL, except to the extent there is a separate policy or procedure that applies only to Board of Commissioner employees.

- C. The Employee shall devote such time, attention, and energies to the business of the LBWL as is necessary for the Employee to satisfactorily perform his duties as Director and General Manager, and it is intended that the Employee work on a full-time basis. During his employment as Director and General Manager, Employee shall not serve on the board of directors or hold an office in a company or organization that presents any conflict of interest with the LBWL or materially affects the performance of the Employee's duties.
- D. The Employer shall review and evaluate the performance of the Employee at least once per year during the Contract Period. During the Contract Period, the Employee shall provide to the Employer specific and prioritized goals and objectives, and the Employer may add to, modify, delete and/or re-prioritize those goals and objectives, at the Employer's sole discretion. The goals and objectives should generally be attainable within the time limitations as specified, and the annual operating and construction forecasts and appropriations provided.

IV. COMPENSATION

Employee shall receive the compensation described below.

- A. Base Salary. Employee shall be paid a Base Salary equivalent to an annual gross amount of two hundred forty eight thousand five hundred sixty dollars and zero cents (\$248,560), payable bi-weekly or in other installments that are consistent with the Employer's regular payroll practices and procedures.
- B. Deferred Compensation. In addition to the Base Salary described in Section IV. A., and to incentivize the Employee to remain employed with the LBWL until June 30, 2016, the Employee shall be paid deferred compensation pursuant to this Section IV. B.
 - (1) Annual Credits. The Employer shall make a credit to a bookkeeping account (Account) for the benefit of the Employee, in the following amount (Credit), if the Employee is an employee of the Employer on the relevant Credit Date that is set forth in the following chart:

Credit Date	Amount of Credit
June 30, 2013	\$ 30,000
June 30, 2014	\$ 40,000
June 30, 2015	\$ 50,000
June 30, 2016	\$50,000
June 30, 2017	-0-

Employee remains entitled to the credits of deferred compensation

received to date as provided in previous Employment Agreements in accordance with those previous Employment Agreements. If the Employee's employment is terminated for any reason on or before a Credit Date, the Employer shall make a prorated Credit to the Account in an amount determined by multiplying the amount of the Credit that would have been made on such Credit Date but for the termination of the Employee's employment by a fraction, the numerator of which is the number of days during the period commencing on the most recent July 1 and ending on the date on which the Employee's employment is terminated, and the denominator of which is 365..

- (2) Vesting. The Employee shall be vested in each Credit made to his Account as of the date on which the Credit is made to his Account.
- (3) Deemed Investments. The amounts credited to the Account will be allocated as directed by the Employee in the form of deemed investments among the investment options that the Employer selects for that purpose. The Employee may change his deemed investment elections as frequently as allowed by the Employer, and the change will be effective as soon as administratively possible. The Employee is solely responsible for the deemed investment of his Account, and neither the Employer or any officer or employee of the LBWL is authorized or empowered to advise the Employee as to the manner in which his Account should be deemed to be invested. The fact that a particular deemed investment option is available shall not be construed as a recommendation for deemed investment. The Employer retains the right to suspend the use of any investment option at any time for any reason, and in the event of such suspension, all deemed investments in such option shall be changed in accordance with the directions of the Employee or in such other manner as the Employer shall determine.
- (4) Payment. Notwithstanding anything in this agreement to the contrary, including Section VI, the amounts credited to the Account, determined as of the date of the termination of the Employee's employment, will be paid in a single lump sum to the Employee at the end of the pay period following the termination of the Employee's employment.
- (5) Tax Withholding. The Employer will pay the Employer's share of Social Security and Medicare payroll taxes that are due with regard to Credits to the Account consistent with applicable law without any reduction to the Account. The Employer will withhold the Employee's share of any Social Security and Medicare payroll taxes that are due with regard to Credits to the Account from the Employee's Base Salary consistent with applicable law without any reduction to the Account, except to the extent necessary.

The Employer will withhold income taxes from either the lump sum payment of amounts credited to the Account or the Employee's Base Salary, in the Employer's discretion, consistent with applicable law.

- (5) Account. The LBWL shall retain title to and ownership of all amounts credited to the Account until the Employee's termination of employment. Employee shall have no property interest in any specific assets of the LBWL, and the Account and all amounts invested with respect to it shall continue for all purposes to be part of the general assets of the LBWL, and no person other than the LBWL shall by virtue of the provisions of this agreement have any interest in such amounts until the Employee's termination of employment.

V. BENEFITS AND EXPENSES

The Employer shall provide the Employee with those fringe benefits, including pension, group life, health, hospitalization, and disability insurance that the LBWL provides to non-bargaining employees of the LBWL, as well as those benefits specified below. All benefits may be amended from time to time at the absolute discretion of the LBWL and/or Employer. Except insofar as this provision may be contrary to applicable law, no sale, transfer, alienation, assignment, pledge, collateralization or attachment of any benefits under this Agreement shall be valid or recognized by the LBWL. The value of benefits will be subject to tax as required by law.

- A. During a rolling twelve month period, beginning on the Commencement Date, the Employee shall be entitled to five weeks of vacation and six days of free choice days per year, as set forth in the Employee Policies and Benefits Reference Handbook, as modified or amended.
- B. The Employee shall be entitled to participate in the LBWL Home Ownership Program. Subject to receipt of appropriate documentation, the LBWL shall provide reimbursement for relocation expenses to be capped at Five Thousand Dollars and Zero Cents (\$5,000).
- C. To allow for immediate response to system emergency situations, the Employee shall be provided a vehicle allowance in the amount of Five Hundred Dollars (\$500.00) per month for the usage of an automobile during the Contract Period.
- D. The Employee shall be entitled to such club memberships which at this time include membership at the University Club and one other business or civic club mutually agreed upon by the Employer and Employee. The LBWL shall pay the dues for such club memberships and reimburse the Employee for the reasonable expense incurred by the Employee on behalf of the LBWL that have been

previously approved by the Employer via the budgeting process.

- E. The Employee shall be reimbursed for reasonable, necessary and authorized expenses incurred in the course of performing his duties, in accordance with LBWL policy and procedure. The Employee shall submit a quarterly report to the Employer detailing all expenses incurred.
- F. Additional Defined Contribution: Employer shall purchase a separate retirement plan for Employee's benefit. The Employer's defined contribution into that plan shall equate to 6.9 % of Employee's base pay with immediate investment. This benefit is in addition to the already established Employer 401a plan, where the Employer's defined contribution equates to 8.1% for being employed after January 1, 1997, 3% for being an exempt employee and .5% for being a non bargaining unit employee. Therefore, Employer's total defined contribution amounts to 18.5% of Employee's base pay.

VI. TERMINATION

Employee's employment and this Agreement may be terminated as follows:

- A. Voluntary Termination: The Employee may terminate this Agreement at any time, for any or no reason. The Employer requests that the Employee give the Employer at least thirty calendar days' prior written notice of voluntary termination. If the Employee gives the Employer at least thirty calendar days prior written notice of voluntary termination, he will be entitled to be paid for any unused, accumulated paid time off that the Employee is entitled to when this Agreement is terminated. He will not be eligible to be compensated for unused, accumulated paid time off under any other circumstances. Notice of voluntary termination shall be by hand delivery to the Chairperson of the Board of Commissioners or certified mail, return receipt requested to the Chairperson of the Board of Commissioners at the registered office of the Employer.
- B. Termination At Will: Given that the Employee and Employer are in an at-will employment relationship, this Agreement may be terminated "at will." There is no fixed or minimum term to this Agreement. In consideration of his employment, the Employee recognizes that he is serving solely at the will of the Employer and that his employment can be terminated by the Employer, with or without cause, at any time, with or without notice from the Employer. Termination of this Agreement based on Employee's "at will" status must be effectuated by a vote taken by the Board of Commissioners whether to terminate the Employment Agreement, and a majority of the sitting Board of Commissioners must vote to terminate. Termination will be effective upon the vote to terminate.

- C. Termination for Failure to Re-Appoint: If a majority of the sitting Board of Commissioners fails to affirmatively vote to re-appoint the Employee in accordance with its Rules of Administrative Procedure, this Agreement and the employment relationship shall expire, effective on the date of the vote.
- D. Termination for Cause: This Agreement may terminate for "just cause" immediately, without notice, but with written explanation to the Employee by the Employer, specifying the reason or cause for discharge. "Just cause" is defined in this Agreement as Employee misconduct as defined in the Employer's rules, regulations, and employment policies; the Employee's failure to render and perform services to the Employer according to his obligations under this Agreement; or failure of the Employee to perform at a level that meets the Employer's expectations as stipulated in his performance objectives. Termination of this Agreement based on "just cause" must be effectuated by a vote taken by the Board of Commissioners whether to terminate the Employment Agreement, and a majority of the confirmed Board of Commissioners must vote to terminate.
- E. Termination Upon Death or Disability: This Agreement and the employment relationship may terminate upon the Employee's death, or due to the Employee's "total disability." "Total disability" is defined, for purposes of this Agreement, as a condition resulting from injury or illness, physical or mental, experienced by the Employee that commences or occurs during the Contract Period and that prevents the Employee from performing the ordinary and regular duties required by his employment, with or without reasonable accommodation, for One Hundred Eighty-Three (183) consecutive calendar days or for One Hundred Thirty (130) working days in the aggregate, during a rolling twelve month period. If there is any disagreement between the Employer and Employee regarding whether the Employee has a total disability, the determination shall be made through a written opinion of a physician selected by the Employer. The Employer shall be required to give the Employee at least thirty (30) calendar days' written notice of the Employer's intent to terminate the employment of the Employee based upon total disability.
- F. Effect of Termination at Will or Failure to Re-Appoint: If during the Employment Term, the Employee is terminated from employment based on a Termination At Will (without just cause) or Termination for failure to re-appoint, the Employee shall be entitled to receive the following payments and benefits:

The Employee would receive all rights and benefits typically available to non-bargaining unit employees based on his cumulative years of service. These rights and benefits may include accrued vacation and free choice time and vested pension benefits and contributions to ICMA and Prudential, or other applicable retirement funds or benefits. In addition, in exchange for a Release and Settlement Agreement acceptable to the

LBWL that waives all claims and potential claims resulting from the Employee's termination or employment at the LBWL, the Employee would receive payment for the remainder of the term of employment, six months of payment of COBRA, pursuant to the limitations and parameters of COBRA, for health, dental and prescriptions drug coverages consistent with those received by non-bargaining unit employees, and outplacement services valued up to \$6,000.

- G. Effect of Termination for Cause: If during the Employment Term, the Employee is terminated from employment based on Just Cause the Employee shall be entitled to receive the following payments and benefits:

The Employee would receive all rights and benefits typically available to non-bargaining unit employees based on his cumulative years of service. These rights and benefits may include accrued vacation and free choice time and vested pension benefits and contributions to ICMA and Prudential, or other applicable retirement funds or benefits. In addition, in exchange for a Release and Settlement Agreement acceptable to the LBWL that waives all claims and potential claims resulting from the Employee's termination or employment at the LBWL, the Employee would receive payment for six months salary, six months of payment of COBRA, pursuant to the limitations and parameters of COBRA, for health, dental and prescriptions drug coverages consistent with those received by non-bargaining unit employees, and outplacement services valued up to \$6,000.

VII. RESTRICTIVE COVENANTS

- A. The Employee acknowledges that in the course of his employment with the LBWL, Employee will be exposed to and will obtain access to materials and information of the LBWL that constitute confidential and/or proprietary information of the LBWL. Employee agrees that he shall not use or disclose, during or after his employment with LBWL, such information for any purpose other than in connection with his employment and shall not disclose any such information to any person outside of the LBWL. The Employee shall, upon request by Employer, return or destroy, as directed by the Employer, any media in/on which such information is recorded. By entering into this Agreement, Employee represents and warrants that he is able to perform the contemplated duties of employment without breach of confidentiality or disclosure of proprietary information of any third party.
- B. Employee agrees that, during and after his employment with the LBWL, Employee will fully and voluntarily cooperate and assist in

defending any actions against the LBWL in which Employee is named as a defendant or witness or about which he has knowledge.

- C. Employee agrees that during the term of Employee's employment and for a period of one year after the termination of Employee's employment relationship with LBWL, Employee will not directly or indirectly, either individually, or on behalf of, or in conjunction with another person, organization, or entity, contact any employee, who was an employee of LBWL at the time of Employee's Separation Date or within the one year period prior to the Separation Date, for the purpose of soliciting such employee for work or employment with a person, organization or entity other than LBWL.

VIII. LBWL RESOURCES

The Employee recognizes that all LBWL resources of any kind and nature including, but not limited to, equipment, files and documentation are the sole property of the LBWL and shall not be used for personal or any other reasons that are not for the benefit of LBWL.

In the event that this Agreement is terminated, the Employee agrees to return all materials, documents and equipment acquired during his term of employment, and all materials, documents and equipment requested by the Employer. Specifically, this is to include without limitation, documents, computer discs, software, computers, work papers, notes, articles, phone lists, correspondence, reports, phone cards, office keys, pass codes, and any and all material related to employment with the LBWL. This Paragraph shall survive termination of the Employment Agreement and employment.

IX. DISPUTE RESOLUTION

Both parties agree that this Agreement will be enforced through alternative dispute resolution as described below. Notwithstanding anything to the contrary in this Paragraph, but without limiting the power of the arbitrator to grant similar remedies that may be requested by a party in a dispute, LBWL shall have the right to proceed in any court of proper jurisdiction to obtain injunctive relief.

- A. All disputes, controversies, or claims arising out of, in connection with, or relating to this Agreement or any breach or alleged breach of the Agreement, and any claim that the Employer violated any state or federal statute (including discrimination/civil rights claims) or Michigan common law doctrine or committed any tort regarding the Employee in relation to his employment shall be submitted to and settled by final and binding arbitration in Lansing, Michigan under the rules then in effect of the Employment Dispute Resolution Rules of the American Arbitration Association (or at any other place or under any other form

of arbitration mutually acceptable to the parties involved). The parties agree that the demand for arbitration will be made within 182 calendar days of when the party knew or should have known about the event precipitating the demand or before expiration of the applicable statute of limitations, whichever period is shorter. The parties specifically agree to arbitration with the other party in a joint proceeding for all common issues and disputes. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law and by a court of competent jurisdiction.

- B. The parties may elect to be represented by an attorney or other representative of their choice. Each party shall have the right to prehearing discovery in the time and manner provided by the then-applicable Michigan Court Rules. Each party also shall have the right to subpoena witnesses and documents for the arbitration hearing.
- C. The arbitrator shall have no power to add to, subtract from, or alter the terms of this Agreement, and shall render a written decision setting forth findings and conclusions only about the claims or disputes at issue. The expenses of any arbitration shall be borne by the Employer except for that portion that is equal to the current civil filing fee in federal court. Each party shall pay for and bear the costs of its own experts, evidence, and counsel fees. However, if any party prevails on a statutory claim, the arbitrator may award reasonable costs and fees, including the portion of the arbitrator's fees paid by the party, and attorney fees to the prevailing party in accordance with such statute. The arbitrator has full authority to award any and all damages provided for by the applicable statute.
- D. Any award by the arbitrator shall be in writing, shall contain findings of fact and conclusions of law, shall be final and conclusive upon the parties and a judgment may be entered in the highest court for the forum, state or federal, having jurisdiction. After the entry of an arbitral award in favor of the Employee, the Employer shall have thirty (30) calendar days after it receives notice of the award to fully comply with the award; a judgment may not be entered to enforce the award until the Employer has had an opportunity to comply with the arbitral award according to this provision. Any arbitral award regarding compensation due to the Employee because of an involuntary termination shall be limited to an amount equal to the salary that the Employee would have received during the remaining term of this Agreement.

X. MISCELLANEOUS

- A. This Agreement contains all of the terms and conditions of the contractual relationship between the parties, and no amendments or additions to this Agreement shall be binding unless they are in writing for that purpose and signed by both parties.

- B. This Agreement shall be binding upon the parties, their legal representatives, successors, and assigns. The Employee agrees that this Agreement shall not be assigned, hypothecated, or transferred in any way by the Employee, the Employee's personal representatives, heirs, or legatees, or any other person.
- C. This Agreement abrogates and takes the place of all prior employment contracts and/or understandings that may have been made by the Employer.
- D. The captions or headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of this Agreement or any of its Paragraphs, nor do they in any way affect this Employment Agreement.
- E. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Michigan.
- F. The invalidity of all or any part of any sections, subsections, paragraphs or subparagraphs of this Agreement shall not invalidate the remainder of this Agreement or the remainder of any paragraph or section not invalidated unless the elimination of such subsections, sections, paragraphs or subparagraphs shall

- G. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
- H. The Employee affirms that he is competent to sign this Agreement and is hereby advised to consult with an attorney of his choosing before executing this Employment Agreement. Employee further acknowledges that no representations have been made with respect to the income or estate tax or other consequences of this Agreement to him and that he has been advised of the importance of seeking independent advice of counsel with respect to such consequences.

The parties have executed this Agreement on the date listed on the first page of this Agreement.

WITNESSES

Kathy Barker

DL Peffley

EMPLOYER

**Board of Commissioners,
Lansing Board of Water and Light**

By: Sandra Zickel
Its: **Chairperson**

By: M. Denise Guff
Its: **Corporate Secretary**

EMPLOYEE

J. Peter Lark
J. Peter Lark

APPROVED
Bonnie E. Brown
**BOARD OF WATER & LIGHT
LEGAL COUNSEL**
Date May 15, 12