

LEGAL NOTICE

NOTICE OF CLASS ACTION

IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.

IF YOU PAID THE CITY OF DETROIT PER-ACRE DRAINAGE CHARGES FOR NON-RESIDENTIAL PARCEL-BASED REAL PROPERTY AT ANY TIME BETWEEN JULY 18, 2013 AND JUNE 30, 2017 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM ON OR BEFORE DECEMBER 6, 2017 AND MAIL IT TO MICHIGAN WAREHOUSING GROUP LLC, et al. v. CITY OF DETROIT, C/O GCG, P.O. BOX 10494, DUBLIN, OHIO 43017-4094 OR EMAIL THE COMPLETED FORM TO MWDQUESTIONS@CHOOSEGCG.COM.

PLEASE RETAIN THIS NOTICE

STATE OF MICHIGAN  
WAYNE COUNTY CIRCUIT COURT

MICHIGAN WAREHOUSING GROUP LLC,  
a Michigan limited liability company, and  
MIDWEST VALVE & FITTING COMPANY,  
a Michigan corporation,

Case No. 15-010165-CZ  
Hon. John A. Murphy

Plaintiffs/Appellees

v.

CITY OF DETROIT, a municipal corporation,  
by and through its WATER AND SEWERAGE  
DEPARTMENT,

Defendant/Appellant.

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Kickham Hanley PLLC  
Gregory D. Hanley (P51204)  
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(734) 668-7786  
*Attorneys for Defendant*

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TO: All persons and entities who owned or occupied non-residential parcel-based real property who were billed and/or paid per-acre drainage charges to the City of Detroit (the "City") at any time between July 18, 2013 and June 30, 2017

You are hereby notified that a proposed settlement in the amount of \$29,500,000 has been reached with the City in a class action lawsuit pending in Wayne County Circuit Court titled *Michigan Warehousing Group LLC v. City of Detroit*, Case No. 15-010165-CZ, presiding Judge John A. Murphy, challenging one of the City's retail drainage charges (the "Per-Acre Drainage Charges") imposed by the City's Water and Sewerage Department ("DWSD") upon Plaintiffs' property located in the City. Plaintiffs allege that the Per-Acre Drainage Charges have been disproportionately imposed upon a particularized and narrow subset of the City's property owners (including Plaintiffs) – i.e., those non-residential customers that prior to October 1, 2016 were billed Per-Acre Drainage Charges – i.e., billed based on the impervious acreage of their properties (the "Per-Acre Properties").

Plaintiffs are non-residential water and sanitary sewer customers who have paid the Per-Acre Drainage Charges imposed by the City. Plaintiffs contend that the imposition of the Per-Acre Drainage Charges is motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the City's actual costs of providing drainage services, and that therefore: (1) the Charges are unlawful under the Headlee Amendment to the Michigan Constitution; (2) the Charges were imposed in violation of equal protection guarantees under the Michigan Constitution; and (3) the City is liable for a refund of the Charges under a theory of assumpsit.

The Plaintiffs seek a judgment from the court against the City that would order and direct the City to refund all Per-Acre Drainage Charges to which Plaintiffs and the class are entitled and any other appropriate relief.

The City denies that the Per-Acre Drainage Charges are improper; denies that it has committed any unlawful, wrongful or tortious acts or omissions of any kind, violated any constitutional provision or statute, or breached any duties of any kind whatsoever; denies that class certification is appropriate; denies that it is in any way liable to any member of the Class; and states that the claims asserted in the Lawsuit have no substance in fact or law, and the City has meritorious defenses to such claims, including but not limited to the City's pre-Headlee Amendment charter authority to assess a drainage fee and the mandates presented by federal regulations to assess a user charge upon users of the City's combined sewage system in order

to cover the costs related to infiltration and inflow (as defined under 40 C.F.R. § 35.2005(b)(20)-(21)); but, nevertheless, the City has agreed to enter into this Agreement not as an admission of liability, but rather to avoid further expense, inconvenience, and distraction and risks of burdensome and protracted litigation, and to obtain total and final peace, satisfaction and protection from the claims asserted in the Lawsuit.

The Plaintiffs and the City have agreed that the Court shall enter an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you were billed and/or paid Per-Acre Drainage Charges to the City between July 18, 2013 and June 30, 2017.

For settlement purposes, the Parties agree that the Court shall enter an order certifying a class of Plaintiffs (the "Class") consisting of all owners and occupiers of non-residential parcel-based real property who or which were billed and/or paid the Per-Acre Drainage Charges between July 18, 2013 and June 30, 2017 (the "Class Period"). Excluded from the Class are: (1) the City itself; (2) owners or occupiers of non-residential parcel-based real property who or which were first billed the Per-Acre Drainage Charges on or after October 1, 2016 and prior to October 1, 2016, did not pay any Per-Acre Drainage Charges on any other owned or occupied non-residential parcel-based real property; and (3) any owners or occupiers of non-residential parcel based real property who have previously released or waived their claims for the entire Class Period. The proposed Settlement Agreement is intended to settle all of the claims of the members of the Class ("Class Members").

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the City has agreed to create a settlement fund in the aggregate amount of \$29,500,000 for the benefit of the Class ("Settlement Fund"). In addition, the City will write off and not attempt to collect all outstanding unpaid balances for Per-Acre Drainage Charges incurred by Class Members prior to July 18, 2013 ("Pre-July 18, 2013 Write Off"), the total amount of which is estimated to be approximately \$24,401,000 in past due amounts owing to the City. The City agrees to forever release its claims relating to the collection of the Pre-July 18, 2013 Write Off.

The Parties have further agreed to certain prospective relief. Specifically, for a twelve-month period beginning August 1, 2017 (the "Twelve-Month Period"), the City shall impose upon and collect from Class Members Per-Acre Drainage Charges at an effective rate of not more than \$661 per impervious acre, which according to Class Counsel, results in a net reduction in Per-Acre Drainage Charges assessed upon the Class Members of approximately \$24,000,000 for the Twelve-Month Period ("Twelve-Month Drainage Reduction").

The Settlement Fund will be utilized, with Court approval, to pay refunds to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed Seven Million Seven Hundred Fifty Thousand Dollars (\$7,750,000), which is approximately 10% of the aggregate value of the Settlement Fund, the Pre-July 2013 Write Off, and the Twelve-Month Drainage Reduction, and expenses for the conduct of the litigation.

The "Net Settlement Fund" to be distributed to the Class is the Settlement Fund less the combined total of: (a) attorneys' fees, costs, and any incentive award to the Named Plaintiffs; and (b) Class Counsel and Claims-Escrow Administrator expenses reimbursed.

The Net Settlement Fund shall be used to pay Class Members as described below.

All Class Members may participate in the settlement of this case by receiving from the Net Settlement Fund a cash distribution payment or a credit on the Class Member's water and sewer account. To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members will be required to submit sworn claims (the "Claims") which identify their names, addresses, and the periods of time in which they paid the Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the "Claiming Class Members." The Claiming Class Members will be required to submit those claims no later than December 6, 2017. A claim form is enclosed with this Notice.

The Claims-Escrow Administrator shall calculate the pro rata share of the Net Settlement Fund (the "Pro Rata Share") of each Class Member. Only those Class Members who paid Per-Acre Drainage Charges during the Class Period and submit a timely Claim are entitled to a Payment of their Pro Rata Share from the Net Settlement Fund. The size of each Claiming Class Member's Pro Rata Share shall be determined by: (1) calculating the total amount of Charges the Claiming Class Member paid during the Class Period; and then (2) dividing that number by the total amount of Charges the City assessed during the Class Period against all Claiming Class Members; and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

Class Members who do not submit claims or who do submit a claim but are members of one of the groups described below will receive a credit on their sewer account in the amount of their Pro Rata Share of the Net Settlement Fund ("Credit") which will be applied against future Per-Acre Drainage Charges unless the Outstanding Balance is greater than the Class Member's Pro Rata Share, in which case the Pro Rata Share will offset the Outstanding Balance to the extent of the amount of the Pro Rata Share. The term "Outstanding Balance" means with respect to each Class Member the amount of Per-Acre Drainage Charges assessed on or after July 18, 2013 which are at least thirty (30) days past due as of June 30, 2017. Any Credit will attach to the account associated with the Per-Acre Drainage Charges and will remain until Per-Acre Drainage Charges accrued after the Settlement Date exceed the amount of the Credit. Class Members thus will be separated into three (3) groups, each of which will benefit from the Settlement as follows.

i. Group 1 – Class Members who have Outstanding Balances equal to or greater than their respective Pro Rata Shares. No later than March 1, 2018, Group 1 Class Members will receive a Credit against their Outstanding Balances in the amount of their Pro Rata Shares paid from the City Administered Portion. If the Class Member's Pro Rata Share of the Net

Settlement Fund is less than such Class Member's Outstanding Balance, the Outstanding Balance will be reduced by the amount of that Pro Rata Share, and the Class Member will still owe the City any remaining Outstanding Balance.

ii. Group 2 – Class Members who have Outstanding Balances that are less than their Pro Rata Shares. No later than March 1, 2018, Group 2 Class Members will receive from the City Administered Portion a Credit against their Outstanding Balances to the extent of their Outstanding Balances. Group 2 Class Members who submit claims will also receive a Payment from the Claims-Escrow Administrator in the amount by which their respective Pro Rata Shares exceed their Outstanding Balances. Such Payments will be paid from the portion of the Net Settlement Fund administered by the Claims-Escrow Administrator in accordance with the time frames set forth in Paragraph 5 of the Settlement Agreement. Group 2 Class Members who do not submit timely claims will receive no later than July 9, 2018, a Credit in their sewer account against future Per-Acre Drainage Charges in the amount by which their respective Pro Rata Shares exceed their Outstanding Balances.

iii. Group 3 – Class Members with no Outstanding Balances. Group 3 Class Members who submit timely claims will receive from the Claims-Escrow Administrator (and payable from portion of the Net Settlement Fund administered by the Claims-Escrow Administrator) a Payment that is equal to the amount of their respective Pro Rata Share. The Payment will be made in accordance with the time frames set forth in Paragraph 5 of the Settlement Agreement. Group 3 Class Members who do not submit timely claims will receive no later than July 9, 2018, a Credit in their sewer account against future Per-Acre Drainage Charges in the amount of their respective Pro Rata Shares.

The City may not levy a tax or other assessment against property owners or water or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval).

The Class Members shall release the City as provided below. In addition to the release set forth below, if the City complies with the prospective relief described above for the duration of the Twelve-Month Period, the Class Members who receive Payments and/or Credits as part of the settlement agree to extend Paragraph (b) of their Release and Covenant Not to Sue, which is more fully set forth below, to include FY 2017-2018. Nothing in this Paragraph shall be construed as limiting the scope and extent of Paragraph (a) of the Release and Covenant Not to Sue.

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiff's claims and many of the substantive legal and factual issues have not been resolved. **This request for exclusion must be postmarked no later than December 6, 2017 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073.**

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the City for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund if submit a timely claim and you do not request exclusion from the Class. If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Order of the Court dated September 12, 2017, a Settlement Hearing will be held in the Wayne County Circuit Court, 2 Woodward Ave., Detroit, Michigan 48226 at 8:30 a.m., on January 5, 2018, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated August 31, 2017, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement and whether counsel for Plaintiff Class should be awarded counsel fees and expenses. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before December 6, 2017, such Class member: (i) files with the Clerk of the Court notice of that person's intention to appear, proof of class membership, written objections that indicate the basis for such opposition, and any supporting papers and briefs; and (ii) serves by first class mail copies thereof upon each of the following attorneys:

**Attorneys for Plaintiff**  
Gregory D. Hanley, Esq.  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073

**Attorneys for Defendants**  
Sonal Hope Mithani  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, Michigan 48104

Any Class member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

**AGAIN, IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU PAID THE CITY OF DETROIT PER-ACRE DRAINAGE CHARGES FOR NON-RESIDENTIAL PARCEL-BASED REAL PROPERTY AT ANY TIME BETWEEN JULY 18, 2013 AND JUNE 30, 2017 AND WISH TO RECEIVE A CASH REFUND,**

**YOU MUST SUBMIT THE ENCLOSED CLAIM FORM ON OR BEFORE DECEMBER 6, 2017 AND MAIL IT TO MICHIGAN WAREHOUSING GROUP LLC, et al. v. CITY OF DETROIT, C/O GCG, P.O. BOX 10494, DUBLIN, OHIO 43017-4094 OR EMAIL THE COMPLETED FORM TO MWDQUESTIONS@CHOOSEGCG.COM.**

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Oakland County, Michigan. You may also view the Settlement Agreement and other important court documents at [www.kickhamhanley.com](http://www.kickhamhanley.com).

Should you have any questions with respect to this Notice of the proposed settlement of the Lawsuit generally, you should raise them with your own attorney or direct them to counsel for the Class, IN WRITING OR BY EMAIL TO KHTEMP@KICKHAMHANLEY.COM, NOT BY TELEPHONE, identified as Attorneys for Plaintiffs, above. **DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE CITY (INCLUDING DWSD) OR THE ATTORNEYS FOR DEFENDANT.**

On the Settlement Date, each member of the Class who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue, which shall be binding on all class members who have not timely requested exclusion:

(a) In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of past, present and/or future actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, that, with respect to any parcel owned or occupied by the Class Member at any time during the Class Period, (1) challenge the City's Per-Acre Drainage Charge, and/or (2) challenge the method employed by the City to recover the direct and indirect costs incurred (including capital costs) by the City to operate, manage, maintain, treat and dispose of storm water and surface water runoff (including but not limited to infiltration and inflow as defined under 40 C.F.R. § 35.2005(b)(20)-(21)) on the grounds that the Per-Acre Drainage Charge (or the methodology employed by the City) is, or results in the assessment of, an unlawful tax, or is unlawful under the Headlee Amendment of the Michigan Constitution. This release does not extend to claims challenging the Per-Acre Drainage Charge based upon any other legal theory or authority.

(b) Also, in executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever known or unknown, which arise from the beginning of time through June 30, 2017 that, with respect to any parcel owned or occupied by the Class Member at any time during the Class Period, concern or relate to (1) the legality of the City's Per-Acre Drainage Charges; (2) the City's calculation or assessment of the Per-Acre Drainage Charges; (3) the components of costs included in the Per-Acre Drainage Charges; and/or (4) the City's efforts to charge and/or collect the Per-Acre Drainage Charges.

(c) This release is intended to include all claims that were asserted or could have been asserted in the Lawsuit concerning the City's Per-Acre Drainage Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (1) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (2) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (3) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances. This release does not extend to claims that challenge the administered application of the City's retail Drainage Charge rate to a particular parcel, -- e.g., a claim that the City has miscalculated the impervious surface area of a particular property or has failed to properly record and deduct paid charges from drainage amounts owed.