kp

STATE OF MICHIGAN

WAYNE COUNTY CIRCUIT COURT

THERESE SHAW,
individually and as representative of a
class of similarly-situated persons and entities,

Plaintiff,

v.

CITY OF DEARBORN,
a municipal corporation,

Defendant.

Case No. 13-014215-CB

Hon. Brian R. Sullivan

HEARING DATE:
September 25, 2014 at 9 a.m.

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PLAINTIFF'S REPLY BRIEF IN SUPPORT OF HER MOTION FOR PARTIAL SUMMARY DISPOSITION AS TO HER CLAIMS UNDER THE HEADLEE AMENDMENT TO THE MICHIGAN CONSTITUTION

I. PLAINTIFF HAS PROVIDED AMPLE EVIDENTIARY SUPPORT FOR THE HEADLEE AMENDMENT CLAIMS

In its response, the City contends that Plaintiff's Headlee Amendment claims "lack evidentiary support." City's Br. at pp. 10-13. This argument must fail, however, because it is based upon two fundamental misapprehensions – namely, (1) that expert testimony is necessary to establish that charges are "taxes" and not user fees under the Headlee Amendment, and (2) that Plaintiff's Headlee Amendment claims challenge the "reasonableness" of the City's overall water and sewer rates. For the reasons discussed below, neither of these propositions is true.

A. Expert Testimony Is Not Required To Establish That The Charges Are "Taxes"

The City first contends that Plaintiff's Headlee Amendment claims constitute "legal challenges to a utility rate model" which are "beyond the common knowledge and experience of an average layperson and therefore require expert testimony by an appropriate qualified utility rate expert." City's Br. at p. 10. This is wrong for at least two reasons.

1. The City Cites No Headlee Amendment Case Where Expert Testimony Was Even Considered, Much Less Deemed Necessary

First, the City cites no case holding that expert testimony is necessary to establish that municipal charges are "taxes" under the Headlee Amendment, and Plaintiff is not aware of any such case. The lone case discussed by the City – *Plymouth v. Detroit*, 423 Mich. 106 (1985) -- was not a Headlee case, and that Court did not address at all the issue of whether the charges at issue were "taxes" or "user fees." Moreover, while *Plymouth* Court did consider expert testimony in determining whether the water rates at issue there were "reasonable," the Court did not hold that such testimony was required.

On the other hand, the two Michigan cases addressing whether stormwater management charges constitute taxes – *Bolt* and *County of Jackson* -- both concluded that the charges at issue were taxes **without** considering expert testimony. This is not surprising since it is manifest that the Court can apply the so-called *Bolt* factors – i.e., (1) whether the Charges serve a regulatory purpose rather than a revenue raising purpose, (2) whether the Charges are proportionate to the necessary costs of the service, and (3) whether the Charges are voluntary -- without the aid of

expert testimony. Because the City has failed to establish that the Court cannot determine whether the Charges are taxes without the aid of expert testimony, the Court should reject the City's argument.

2. *It Is Well-Established That Whether A Particular Charge Constitutes A Tax Is A Question Of Law For The Court And Therefore Not The Proper Subject Of Expert Testimony*

Further, *Bolt* made clear that whether a challenged charge is in reality a disguised tax is a question of law for the Court. *See Bolt*, 459 Mich. at 158 ("Whether the stormwater service charge imposed by Ordinance 925 is a 'tax' or a 'user fee' is a question of law that this Court reviews de novo"). In other words, the Court must determine as a legal matter whether the Charges at issue are "taxes."

In effect, the City is arguing that expert testimony is necessary to prove that the Charges, as a legal matter, are "taxes." But experts cannot testify as to an issue of law, *People v Lyons,* 93 Mich. App. 35, 45-47; 285 N.W.2d 788 (1979), as it invades the exclusive province of the judge. *People v Drossart,* 99 Mich. App. 66, 75-76; 297 N.W.2d 863 (1980)(observing that it is the "exclusive responsibility of the trial judge to find and interpret the applicable law.") Accordingly, the Court should reject the City's contention that there has been a failure of proof on the Headlee Amendment claims merely because Plaintiff has not submitted expert testimony.

B. Plaintiff's Headlee Amendment Claims Do Not Implicate The "Reasonableness" Of The City's Overall Water and Sewer Rates

Further, the City's arguments concerning the need for expert testimony are based upon a fundamental mischaracterization of the nature of Plaintiff's claims. Indeed, in advancing these arguments, the City completely ignores the fact that this Court's role in a Headlee case is to determine whether the challenged Charges are "taxes" or "user fees." Instead, the City characterizes Plaintiff's Headlee Claims as challenging the overall "reasonableness" of the City's water and sewer rates. City's Br. at pp. 11-12. The Court should reject this distortion of Plaintiff's claims because Plaintiff need not prove that the City's water and sewer rates are

"unreasonable" in the aggregate, but rather must show that the Charges that are incorporated into the rates are "taxes" under the *Bolt* test.

The Court of Appeals has made clear that the standard for determining whether a municipal charge is a "tax" under the Headlee Amendment is separate from the standard for determining whether a municipal utility rate is "reasonable." Indeed, in *Mapleview Estates v. City of Brown*, 258 Mich. App. 412; 671 N.W.2d 572 (2003), Plaintiff contended that a sewer tap connection charge both violated the Headlee Amendment and was unreasonable under the Revenue Bond Act ("RBA"). In resolving these claims, the Court first engaged in a Headlee Amendment analysis under the *Bolt* factors to determine whether the sewer tap connection charge was a "user fee" or a "tax." Only after the Court determined that the tap connection charge was a "user fee" (and therefore did not violate Headlee) did it then proceed to analyze the charge under the "reasonableness standard" required by the RBA:

> **We find that the trial court erred when it found that the increased tap-in fees constituted a tax. As defendant obligingly points out, even if the tap-in fees are not a tax, they must still be reasonable**. *Atlas Valley Golf & Country Club, Inc v Village of Goodrich, 227 Mich. App. 14, 24; 575 N.W.2d 56 (1997)*. The Revenue Bond Act (RBA), *MCL 141.101 et seq.*, authorizes municipalities to "purchase, acquire, construct, improve, enlarge, extend or repair" public improvements such as water and sewer systems, and to "own, operate and maintain" them. *MCL 141.104, 141.103(a) and (b)*. The act also authorizes cities to fix the rate for these services, which includes "the charges, fees, rentals, and rates that may be . . . imposed for the services." *MCL 141.103(e), 141.121*. **"A connection charge clearly falls within the ambit of a [municipality's] authority to fix the rate for services" under the RBA, and must simply be "reasonable**." *Atlas Valley, supra at 21*. [*Mapleview Estates*, 258 Mich. App. at p. 417 (emphasis added)].

In sum, the City contends that expert and other testimony and evidence is necessary to establish that the City's water and sewer rates are "unreasonable." But *Bolt* precludes an analysis of the overall "reasonableness" of the City's water and sewer rates, but instead requires this Court to determine whether the challenged Charges which are incorporated into the rates are "taxes." Because Plaintiff need not prove that the City's water and sewer rates are

"unreasonable" in order to prevail on her Headlee Amendment claims, the Court should reject the City's argument that Plaintiff's Headlee Amendment claims "lack evidentiary support."

C. The Material Facts Necessary To A Finding That The Charges Are "Taxes" Are Undisputed.

Finally, while the Court's legal determination of whether the Charges are "taxes" must rest on a proper factual basis, the material facts necessary to the Court's determination are simple and undisputed.

In supporting her motion, Plaintiff has demonstrated with admissible evidence the following:

1. That each of the Charges at issue are incorporated into the City's Water and Sanitary Sewer Rates;
2. That, by paying the Water and Sanitary Sewer Rates, Plaintiff and the Class have paid the Charges at issue;
3. That the CSO Capital Charge is used to finance the Sewer Separation Project;
4. That the CSO O&M Charge is used to finance the operations and maintenance expenses of the Caissons; and
5. That the Stormwater Charge is used to cover the costs the City incurs from the DWSD to dispose of stormwater.

In sum, there is no dispute about the nature of the Charges and the use to which the City devotes the monies collected. It is for this Court to determine whether one or more of those Charges constitute taxes. If they do, then the Charges violate the Headlee Amendment because it is undisputed that the Charges have not been approved by a vote of the City's residents.

II. THE CITY HAS NOT REBUTTED PLAINTIFF'S SHOWING THAT ALL OF THE CHARGES ARE TAXES IMPOSED IN VIOLATION OF THE HEADLEE AMENDMENT.

In Plaintiff's S.D. Brief, which was filed on June 5, 2014, Plaintiff described in great detail the reasons why all of the Charges constitute "taxes" under the *Bolt* decision. Plaintiff incorporates by reference the arguments set forth in Sections III and IV of Plaintiff's S.D. Brief.

In addition, Plaintiff responds below to the City's arguments (and the absence of arguments) concerning the Headlee Claims set forth in the City's Brief.

A. The City Makes No Attempt To Demonstrate That The Stormwater Charges Are "User Fees" Under The *Bolt* Test.

With respect to the Headlee Claim, it is important to note that the City's response to Plaintiff's motion for partial summary disposition does not specifically purport to defend the Stormwater Charges. Instead, the City's brief focuses solely on defending the infrastructure improvements financed by the CSO Capital Charges, which the City is imposing to finance in part the Sewer Separation Project.

This failure is not surprising, since the Stormwater Charges – which are intended to cover the costs the City incurs in disposing stormwater through DWSD facilities -- are in no sense "user fees." These Charges indisputably are paid by persons whose properties do not contribute stormwater to the City's combined sewer system **and** persons whose properties do contribute stormwater to the City's combined sewer system (including the City itself) do not pay the Charges. A true "user fee" "confers benefits **only** upon the particular people who pay the fee, not the general public **or even a portion of the public who do not pay the fee.**" *Graham v. Township of Kochville*, 236 Mich. App. 141, 151, 599 N.W.2d 793 (1999) (emphasis added).

Moreover, even as to those persons whose properties contribute stormwater to the system **and** pay the Stormwater Charges, the Charges have no relationship to the City's actual costs of disposing of stormwater from those properties because the Charges are nonsensically based upon tap water usage, as opposed to an estimate of stormwater volumes. As described in Plaintiff's initial brief, DWSD charges the City a flat rate for disposing of the stormwater per a formula determined by the City based in large part on the amount of rainfall experienced. Witte Dep. at pp. 25-26. *See also* Exhibit H to initial Brief at 5 (DWSD document describing a "fixed monthly charge to recover costs of wet weather flow"); and Exhibit I to initial Brief at p. 31 (noting that wet weather volumes are calculated using the "percent of annual rainfall that the model determined enters the sewer system in response to rainfall"). **Even though the City concedes**

that the DWSD method "is perceived to be the most fairest and the most equitable" method of imposing stormwater-related charges (Witte Dep. at p. 84), the City's stormwater-related charges to its own customers in its Sanitary Sewer Rates do not in any way "take into account things like the rainfall amounts, the acreage, the runoff coefficients or the amount of impervious surface of any particular customer's property." Witte Dep. at p. 75.

A chart depicting the gross disparity between the "fair" and "most equitable" method used by the DWSD in assessing the stormwater charges to the City and the wholly unrational method used by the City in assessing Stormwater Charges to Plaintiff and the Class is attached hereto as Exhibit A. Given the City's failure to even attempt to justify the Stormwater Charges as "user fees," the inescapable conclusion is that the Stormwater Charges are "taxes."

B. The City's Effort To Salvage The CSO Capital Charges And The CSO O&M Charges Under *Bolt* Is Unavailing.

For the reasons discussed below, the City fares no better with its effort to defend the CSO Capital Charges and the CSO O&M Charges as "user fees."

1. The CSO Capital Charges Bear Every Characteristic Of A Tax As The Lansing Charges In Bolt And, In Fact, Those Charges Have Additional Characteristics Of A Tax That Were Not Present In Bolt

Notwithstanding the City's efforts to distinguish *Bolt*, a careful analysis of the *Bolt* decision demonstrates that the CSO Capital Charges here have **all** of the characteristics of a tax that the *Bolt* Court relied upon to find that the Lansing stormwater charges were taxes. In Exhibit B hereto, Plaintiff has listed each of those characteristics.

In fact, the Charges here have another important characteristic which was not present in *Bolt* or *County of Jackson* and which further confirms that the Charges are taxes. At least in *Bolt* and *County of Jackson*, the cities made an attempt (albeit unsuccessful) to base their respective stormwater charges on the estimated volume of stormwater contributed by each affected property. Here, in contrast, the amount of Charges paid by a water and sanitary sewer customer is based exclusively on the volume of water the customer takes from the tap and the size of the water pipe servicing the customer's property.

Significantly, even though Lansing and Jackson both implemented stormwater charges that were based upon an estimate of each property's contributed stormwater, *Bolt* and *County of Jackson* both held that the charges at issue still did not reflect the "actual costs of use, metered with relative precision in accordance with available technology, including some capital investment component."

In his Court of Appeals' dissent that ultimately was adopted by the *Bolt* Supreme Court majority, Judge Markman noted the deficiencies in Lansing's method of imposing the stormwater fees. Judge Markman observed:

> There is no significant element of regulation here. If there were, the storm water charge would be based, not merely on the amount of rainfall shed from a parcel of property as surface runoff; but additionally on the presence of pollutants on that parcel that contaminate such runoff and contribute to the need for treatment before discharge into navigable waters. Further, the regulatory nature of the charge would be enhanced if consideration had been given to the location and grade of properties or if greater justification had been provided for the arguable but overly facile assumption that properties contribute to runoff as a direct function of their size. **Although it is not the role of this Court to second-guess the premises of a regulatory system devised by local representatives, some closer relationship between the amount of runoff attributable to a particular property and its storm water charge is required before we should be prepared to equate the instant charges with regular utility charges associated with oil, gas, or water usage.** While something significantly short of an individualized metering system might well be sufficient, **the instant charges are simply too uncalibrated with the actual benefits derived by individual properties from the construction of the city's storm water project to constitute a true fee.** [221 Mich. App. at 99-100 (emphasis added)]

Stated simply, if stormwater charges based upon rational methods to estimate stormwater run-off such as were utilized in *Bolt* and *County of Jackson* were insufficient to constitute "user fees," then surely the City's Charges – irrationally based upon tap water usage – cannot pass muster as "user fees."

2. *The Fact That The City Did Not Create A Separate Stormwater Utility But Instead Chose To Impose The Charges Through The Water And Sanitary Sewer Rates Is Legally Irrelevant*

In attempting to distinguish *Bolt*, the City places great emphasis on the fact that the City, in lieu of creating a separate stormwater utility to impose the Charges as was done by the City of Lansing, the City here has incorporated the Charges into the Water and Sanitary Sewer Rates. The City argues that it "did not adopt new ordinances, did not create new enterprise funds, did not create a new storm water fee, and did not effectively create an entirely new storm water utility like Lansing." City's Br. at p. 15. The Court should reject this argument for several reasons.

First, by including the Charges in the Water and Sanitary Sewer Rates, the City's method of imposing the Charges is even more pernicious, and even more violative of Headlee, than Lansing's method of imposing the charges in the *Bolt* case, because the City's method of imposing the Charges here is designed to disguise the Charges as proper fees for water and sanitary sewer services. In this regard, it bears noting that Headlee is primarily concerned with "disguised" taxes. *See Bolt*, 459 Mich. at 164-165 (recognizing that stormwater and sewer charges are a "disguised tax" when the charges do not reflect the "actual costs of use, metered with relative precision in accordance with available technology, including some capital investment component"). Nothing in *Bolt* insulates stormwater charges from attack under Headlee merely because they are included in sewer rates as opposed to being imposed by a separate stormwater utility.

In fact, at least in *Bolt*, the charges at issue were separately itemized and included on the resident's tax bills. By virtue of that transparency, the City of Lansing's residents were at least on notice that they were incurring the charges at issue, even if they had not received voter approval. Here, in contrast, because the City has imbedded the Charges into the Water and Sanitary Sewer Rates, the City does not even inform its residents that they are paying the Charges.

In her Brief in Opposition to the City's Motion for Summary Disposition, filed June 6, 2014, Plaintiff addressed the City's other arguments on this issue in great detail. Plaintiff therefore incorporates by reference pages 10-13.

3. *Because The City Does Not Contest Plaintiff's Showing That The City's Ordinances Require Plaintiff To Use The City's Water and Sewer System, Payment of the Charges Is Not Voluntary.*

The City admits that its ordinances require Plaintiff (and those similarly situated) to connect to and use the City's water and sewer system. (*See* City's Response Brief at p. 17.) *Meadows Valley, LLC v. Village of Reese*, 2013 Mich. App. LEXIS 1009 (2013), a case relied upon by both Plaintiff and the City, unequivocally holds that there is **"[a]bsolutely no element of volition involved"** when an ordinance requires all property owners to connect to the public sewer system. *See* Exhibit W to Plaintiff's Brief in Support of her Motion for Summary Disposition (emphasis added). Moreover, as stated in *County of Jackson, supra*:

> Additionally, the ordinance authorizes the administrator of the storm water utility to discontinue water service to any property owner delinquent in the payment of the fee, as well as to engage in various civil remedies, including the imposition of a lien and the filing of a civil action, to collect payment of past-due charges. All of these circumstances demonstrate an absence of volition. **This lack of volition lends further support for our conclusion that the management charge is a tax.**

302 Mich. App. at p. 112, *citing Bolt*, 459 Mich at 168.[1]

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[1] The City's reliance upon the unpublished cases of *City of Gaylord v. Maple Manor Investments, LLC* 2006 Mich App LEXIS 2464 (2006) and *Futernick v. Sumpter Twp.* 2002 Mich App LEXIS 475 (2002) in support of the premise that payment of the Charges is voluntary because the user can control the amount of water is misplaced. *City of Gaylord* merely stands for the premise that municipalities have the authority to require property owners to connect to the municipal water and sewer system. *City of Gaylord* does not address the "voluntary" issue of a user fee under a Headlee analysis. *See Gaylord,* 2006 Mich App LEXIS 2464 at *11. Moreover, while both *Gaylord* and *Futernick* note that water consumers have control over their water bills based upon the amount of water that they use, (*see id; Futurnick* at *9) these cases do not stand for the premise that "limited water use" by a consumer is the remedy for a municipality incorporating improper fees or disguised taxes into that consumer's sewer rate—a theory that was expressly rejected by *Bolt*. *See* 459 Mich. at p. 167.

Simply, as discussed in Plaintiff's initial Brief in support of her motion for summary disposition (at pp. 33-36), Plaintiff and the Class are required to pay the improper Charges by virtue of their mandated "use" of the City's water supply and sanitary sewer systems. Such use is "effectively compulsory" within the meaning of the *Bolt* opinion and thus is not and cannot be voluntary.

4. ***Bolt* and *County of Jackson* Rejected The City's Argument That Avoidance Of Environmental Enforcement Penalties Confers A "Direct Particularized Benefit" Upon System Users, And The Courts Are Legion In Holding That The Benefits Of Stormwater Management Are Conferred On The General Public, and Not On Particular Landowners.**

Moreover, *Bolt* clearly rejected the City's argument that system users receive a direct benefit merely because the City imposes the Charges to comply with State and Federal environmental quality mandates and avoid federal penalties. Specifically, the *Bolt* court held that the City of Lansing failed to differentiate any particularized benefits to property owners from the general benefits conferred on the public, stating that its conclusion was:

> buttressed by the fact that the acknowledged goal of the ordinance is to address environmental concerns regarding water quality. **Improved water quality in the Grand and Red Cedar Rivers and the avoidance of federal penalties for discharge violations are goals that benefit everyone in the city, not only property owners**. As stated by the Court of Appeals dissent,
>
> > The extent of any particularized benefit to property owners is considerably outweighed by the general benefit to the citizenry of Lansing as a whole in the form of enhanced environmental quality. . . . When virtually every person in a community is a "user" of a public improvement, a municipal government's tactic of augmenting its budget by purporting to charge a "fee" for the "service" rendered should be seen for what it is: a subterfuge to evade constitutional limitations on its power to raise taxes. [*221 Mich. App. at 96.*]

See Bolt, 459 Mich. at 166.

The *County of Jackson* Court echoed this ruling, specifically finding that the prevention of sewer overflows was a benefit to the general public and did not confer a "particularized benefit" on the property owners who paid the stormwater management charge:

> **In the present cases, we cannot readily identify any particularized benefit the charge confers on the property owners that is not also conferred upon the general public.** The city indicated in its original response to plaintiffs' complaints that the charge "assur[es] cleanliness and safety of the State's waters and watercourses." The city also indicated that the management charge enables the city to protect the public health and safety, to reduce the likelihood of flooding caused by excessive storm water runoff, to reduce the potential for land erosion, which can damage roads, bridges and other infrastructure and thereby endanger the public, **and to prevent sewer overflows by providing a mechanism to collect and divert rain water runoff from the sanitary sewer system.** We do not doubt that a well-maintained storm water management system provides such benefits. Nevertheless, these concerns addressed by the city's ordinance, like the environmental concerns addressed by Lansing's ordinance in *Bolt*, benefit not only the property owners subject to the management charge, but also everyone in the city in roughly equal measure, as well as everyone who operates a motor vehicle on a Jackson city street or roadway or across a city bridge, everyone who uses the Grand River for recreational purposes downriver from the city, and everyone in the Grand River watershed. This lack of a correspondence between the management charge and a particularized benefit conferred to the parcels supports our conclusion that the management charge is a tax. *Bolt, 459 Mich at 166.* [302 Mich. App. at pp. 108-109 (emphasis added)].

In this case, the City uses funds generated from sales of water and from providing sanitary sewage treatment services to finance enhanced sewer infrastructure designed to comply with Federal environmental quality requirements. *See* discussion in Plaintiff's Brief in Support of her Motion for Summary Disposition at pp. 8-11. Like *Bolt*, the costs of the enhanced sewer improvements benefit the City's population as a whole and the amount of the Charges are unrelated to each class member's "use" of the stormwater management "services" provided by the City. Thus, this Court should see the Charges for what they are, "a subterfuge to evade constitutional limitations on [the City's] power to raise taxes." *Bolt*, 459 Mich. at 166.

5. *Bolt Also Rejected The City's Argument That, Because The Charges Are Authorized Under The Revenue Bond Act, The Charges Cannot Violate Headlee.*

Finally, the City contends that the Charges cannot be "taxes" because the Revenue Bond Act authorizes the City to impose water and sewer charges. This argument must fail, however, for at least two reasons.

First and foremost, *Bolt* specifically rejected the argument that the RBA "trumps" the Headlee Amendment:

> In response to this conclusion, the dissent notes that the Revenue Bond Act permits the city to implement a sewer system. However, whether the city was authorized under the Revenue Bond Act to implement a sewer system is not at issue in the present case. What is at issue is how that system is to be funded. **It stands to reason that even though the city may be authorized to implement the system, its method of funding the system may not violate the Headlee Amendment.**

Further, whether the Charges are actually a disguised tax under the Headlee Amendment is a wholly separate and unrelated issue to whether a "user fee" is "reasonable" under the RBA. Inquiry into these issues requires analysis under two separate, distinct and independent standards. Put another way, whether or not a rate is "reasonable" under the RBA is irrelevant if it is first determined to be a disguised tax under Headlee Amendment analysis as set forth in *Bolt.* Indeed, in *Mapleview Estates v. City of Brown*, 258 Mich. App. 412; 671 N.W.2d 572 (2003), the case relied upon by the City for the erroneous premise that *Bolt* must be "interpreted and applied in a manner consistent" with the RBA, the Michigan Court of Appeals first engaged in Headlee Amendment analysis under the *Bolt* factors to determine whether the tap connection charge imposed in that case was a "user fee" or a "tax." Only after the Court of Appeals determined that the tap connection charge was a "user fee" (and therefore did not violate Headlee) did it then proceed to analyze the charge under the "reasonableness standard" required by the RBA. *Mapleview Estates*, 258 Mich. App. at p. 417. Simply, the City's interpretation of and reliance upon *Mapleview Estates* in this case for the premise that the charges must only be reasonable is wholly inconsistent with the standard set forth under *Bolt.*

CONCLUSION

For all of the foregoing reasons, Plaintiff requests that the Court grant her motion for partial summary disposition and find that the Charges constitute "taxes" which have been imposed by the City without voter approval in violation of the Headlee Amendment.

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Date: September 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2014, I electronically filed ***Plaintiff's Reply Brief in Support of Her Motion for Partial Summary Disposition as to Her Claims Under the Headlee Amendment to the Michigan Constitution*** with the Clerk of the Court using the electronic filing system which will send notification of such filing to Vahan Vanerian @ vvanerian@secrestwardle.com and Anthony A. Randazzo @ arandazzo@secrestwardle.com.

/s/ Kim Plets
Kim Plets

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EXHIBIT A

BASIS FOR STORMWATER DISPOSAL CHARGES

[redacted]

DWSD Charges to City Rationally Based On
The City's Total Land Area,
Annual Rainfall, Percentage Of Impervious Surfaces
and Run-Off Coefficients

↓

[redacted]

Charges To W&S Customers Irrationally Based On Tap Water Usage.
NO Relationship To Volume Of Stormwater

↓

Class Members

Charges Paid By All Water and Sewer Customers Even Though:

(1) tap water usage has no relationship to the volume of stormwater "contributed" by each water and sewer customer,
(2) large areas of the City do not dispose of stormwater through DWSD,
(3) properties in the City without water and sewer service pay nothing for stormwater disposal, and
(4) the City itself does not pay for the "share" of stormwater that enters the system from streets and public rights of way.

EXHIBIT B

Characteristic of a Tax	Lansing Charges in Bolt	Dearborn CSO Capital Charges
Charges Used To Fund Public Infrastructure Improvements Designed To Provide A Long Term Benefit To The City And All Its Citizens	YES	YES
Charges Finance The Public Infrastructure Improvements "In A Period Significantly Shorter Than The Actual Useful Service Life" Of The Improvements	YES	YES
Charges Imposed Do Not Correspond To The Benefits Conferred Because Areas Of The City Are Already Served By A Separated Sewer System, Yet Citizens In Those Areas Pay The Same Charges As The Citizens Who Will "Enjoy The Full Benefits Of The New Construction"	YES	YES
Purpose Of The Charges Is To Address Environmental Concerns Regarding Water Quality	YES	YES
The Charges Are Not Imposed Only On Those Who Will Actually Benefit From The Sewer Separation Project, And Other Persons Who Do Benefit Do Not Incur The Charges	YES	YES
The Charges Lack "A Significant Element Of Regulation" Because They Do Not Consider The Presence of Pollutants On Each Parcel, The City Fails To Distinguish Between Those Responsible For Greater and Lesser Levels Of Runoff, the Charges Do Not Apply To Street Rights Of Way, and There Is No "End-of Pipe" Treatment Of The Stormwater	YES	YES
The Revenue Generated By The Charge Is Used To Finance Parts Of The CSO Project That Previously Were Funded By Property Taxes	YES	YES
The Charges Are "Effectively Compulsory" And Therefore Not Voluntary	YES	YES
The Charges May Be Secured By Placing A Lien On The Subject Property	YES	YES
The Charges Are Based Upon Tap Water Usage, As Opposed To Estimates Of Volumes Of Stormwater Run-Off	NO	YES

Kim Plets

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The following are the service contacts on this filing:
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