

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

DEERHURST CONDOMINIUM
OWNERS ASSOCIATION, INC., a
Michigan non-profit corporation, and
WOODVIEW CONDOMINIUM
ASSOCIATION, a Michigan non-profit
corporation, individually and as
representatives of a class of
similarly-situated persons and entities,

Case No. 2015-006473-CZ
Hon. Daphne Means Curtis

Plaintiffs,

v.

CITY OF WESTLAND,
a municipal corporation,

Defendant.

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**PLAINTIFFS' SECOND AMENDED RESPONSE TO INTERROGATORY NO. 6 OF
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Plaintiffs Deerhurst Condominium Owners Association (“Deerhurst”) and Woodview Condominium Association (“Woodview”), collectively known as “Plaintiffs”, by their attorneys, Kickham Hanley PLLC, submit the following as their second amended response to Interrogatory No. 6 of the First Interrogatories served by Defendant City of Westland (the “City”):

INTERROGATORIES

INTERROGATORY NO. 6: As to the allegation in Paragraph 2 (and all subparts) of the First Amended Class Action Complaint:

- a. Please set forth in detail, what facts you currently know in support of said allegations, including all information about how the Water Rates generate “revenues for the City that exceed the City’s actual cost of providing water to its residents.”
- b. Please identify and set forth for said allegations, each and every person on whom you rely for support of these allegations.
- c. With respect to each and every person identified above, please state their complete name, address, and telephone number most recently known to you.
- d. Please identify the names, addresses, and telephone number of all persons that you presently intend to call at time of trial to corroborate or support said allegations.
- e. Please state the substance of the testimony which you intend to elicit from said witness.
- f. Please identify all documents, paper and things that support or corroborate said allegations.
- g. Please identify in detail, with specificity, any and all exhibits, documents, papers or things which you may move to admit before the court, which you maintain tend to corroborate or support said allegations.

ANSWER NO. 6:

a. The City purchases its water at wholesale from the City of Detroit and incurs sewage disposal charges from Wayne County. The City also incurs some additional costs related to providing water and sewer service to residents. It is lawful for the City to recover from water and sewer users the actual and reasonable cost of providing water and sewer services. But the City has collected money far in excess of the amount reasonably necessary to recover its costs. Because it has overcharged water and sewer customers, since at least 2009 the City has systematically transferred, on an annual basis, millions of dollars from the Water and Sewer Fund to the City’s General Fund.

THE GENERAL FUND SUPPORT CHARGE

In each fiscal year from 2010 to 2016, the City transferred at least \$3 million from the Water and Sewer Fund to the General Fund and the transfers were funded by charges imposed upon the City's water and sewer customers (the "General Fund Support Charge"). The City incorporated the General Fund Support Charge into the Rates and therefore each member of the class paid the General Fund Support Charge when they paid their water and sewer bill. *See* Smith Dep. at p. 55, 127-128. The City utilized the General Fund Support Charge to pay for, among other things, health care insurance for retired General Fund employees, property tax refunds and other expenses unrelated to providing water and sewer services.

The General Fund Support Charge was also imposed to cover the clean-up costs and litigation expenses the City incurred in connection with two significant rain events, which occurred in 2010 and 2011 and which caused flooding which impacted approximately 800 dwellings in the City. The City paid approximately \$2 million to an outside contractor to remediate flood damage to the affected properties. Even though the clean-up costs benefitted only approximately 800 of the City's residents, the City reimbursed itself for those payments by incorporating the costs into the Rates it charged to its 26,000 water and sewer customers. *See generally*, June 17, 2016 Deposition Testimony of Steven Smith ("June 17, 2016 Smith Tx."), at pp. 113-122.¹

The General Fund Support Charge and the associated transfers cannot be justified as payments

¹ As Steven Smith testified on June 17, 2016:

Q: So is it fair for me to assume that these numbers for the rain event expenditures are retroactive kind of adjustments to what the total expenses were in those prior periods, but they weren't necessarily reflected in the rates that apply during those prior periods.

A That is correct.

Q So what would have been the rates for those prior periods or at least for four fiscal years was the two million dollars that was recovered through the twenty-four cent per unit charge.

A Yes, that would have been included in the revenue as well as the expenditures.

Q Right. In other words you intended to recapture through rates the amount that you had paid to Belfor for the cleanup in the amount of approximately two million dollars.

A Correct.

for “contracted services” provided to the Water and Sewer Fund by the City’s General Fund Departments, because the value of any such services are far less than the amounts transferred. The General Fund Support Charge is particularly pernicious because the City has taken an otherwise appropriate cost allocation methodology and secretly added millions of dollars of phantom expenses in order to transfer millions of dollars to the General Fund. In fact, while certain General Fund departments, such as the Finance Department, supply goods, services and/or facilities to the Water and Sewer Fund, the City has grossly inflated the costs of those services in order to allocate a disproportionate amount of the costs to the Water and Sewer Fund. The City transferred amounts from the Water and Sewer Fund to the General Fund that far exceeded the actual value of services the General Fund provided. All amounts in excess of the actual value of services were available and actually used to pay for the general expenses of the City unrelated to providing water or sanitary sewer services.

These unlawful transfers were absolutely vital to allow the City to meet its general municipal obligations, because the City’s general fund revenues were insufficient to meet those obligations absent the unlawful transfers. Of the \$3.4 million the City transferred from the Water and Sewer Fund to the General Fund in FY 2014-15, at least \$2.1 million of this transfer was unlawful. *See* discussion below. Significantly, in FY 2014-15, by including the transfers, the City’s General Fund balance increased from \$5,614,861 to \$7,073,257, an increase of approximately \$1.46 million. *See* City’s FY 2014-15 CAFR at pp. 7 and 14. Absent these unlawful transfers, however, the City’s General Fund balance would have experienced a significant decrease. Unfortunately, for the City, however, the City’s creative method of municipal finance violates the Headlee Amendment, MCL 141.91, the City’s own Charter, and common law principles.

Plaintiffs’ experts will testify that the City’s cost allocations violate established methodologies for allocating general fund support costs to the W&S function. Established water and sewer rate methodologies allow for such transfers, but prohibit the use of such transfers as a disguised method of

utilizing water and sewer funds for purposes unrelated to water and sewer functions. In this regard, the American Water Works Association's M1 Manual "Principles of Water Rates, Fees and Charges," says the following about transfers from water funds to general funds for services provided:

AWWA's policy statement on Finance, Accounting and Rates that that 'Water utility funds should not be diverted to uses unrelated to water utility services. Reasonable taxes, payments in lieu of taxes, and/or payments for services rendered to the water utility by a local government or other divisions of the owning entity may be included in the water utility's revenue requirements after taking into account the contribution for fire protection and other services furnished by the utility to the local government or to other divisions of the owning entity.' **Accordingly, payments made to a municipality's general fund should reimburse the general fund for the necessary cost of goods and/or services required by the water utility to provide water service.**

The AWWA policy statement on Finance, Accounting and Rates applies to both water and sewer rates and provides:

Utilities should account for and maintain their funds in separate accounts from other governmental or owning entity operations. **Water and wastewater utility funds should not be diverted to uses unrelated to water or wastewater utility services.** Reasonable taxes, payments in lieu of taxes, and payments for services rendered to the utility by a local government or other divisions of the owning entity may be included in the utility's revenue requirements after taking into account the contribution for fire protection and other services furnished by the utility to the local government or to other divisions of the owning entity.

The City's Budget Director confirmed that it is improper to charge Rates which allow a water and sewer utility to divert water and sewer revenue to the general fund. Peck Dep. at p. 23. Yet, that is exactly what the City has been doing for years. In fact, that diversion of funds is a violation of the City's Charter, which provides that the proceeds of sewer-related charges "**shall be exclusively used for the purpose of the sewage disposal system.**" City Charter, Section 16.10 (emphasis added). The evidence of the improper diversion of these funds is compelling, as discussed below.

Moreover, Plaintiffs' experts will testify that the City's cost allocation methodology is completely arbitrary and unreasonable because the City does not support its cost allocations by reference to objective and existing actual cost data but instead relies upon alleged "historical" and undocumented allocations, ostensibly updated by periodic conversations in the City's hallways between

the City's finance director and employees of the General Fund departments which have certain of their costs allocated to W&S. *See, e.g.*, Smith Dep. at pp. 78-80. The GFOA cost allocations guidelines cited by the City in its interrogatory answers, and recognized as "authoritative and appropriate to guide" the City in its cost allocation methodologies"² provide that "Governments should also regularly review their internal charge rates against actual experience for appropriate adjustments." *See* GFOA "Pricing Internal Services" (February 2013). The City clearly has not "regularly reviewed" its cost allocations "against actual experience" and seemingly had no interest in doing so at any time prior to the filing of this suit. In fact, the City has transferred millions of dollars from the Water and Sewer Fund to the General Fund, purportedly for health insurance expenses the General Fund allegedly paid on behalf of retired employees of the Water and Sewer division. Significantly, however, until this suit was filed, the City never determined how many of the retired employees it was paying health insurance expenses for actually were retired employees of the Water and Sewer division. Peck Dep. at pp. 36-37; *see also* generally, June 17, 2016 Smith Tx. at p. 28-32. Under the circumstances, it goes without saying that the City's allocation of up to 42% of the total retiree health insurance expense to the Water and Sewer Fund was completely arbitrary and capricious.

Interestingly, this arbitrary and erroneous cost allocation methodology is completely contrary to representations the City's counsel made to Plaintiffs' counsel prior to the filing of this lawsuit. In a January 15, 2015 letter to Plaintiffs' counsel, the City's counsel that "efforts are made by the City to make reasonable transfer of costs between WF and GF," and "the Finance Director and Administration will again undertake that effort in the January-March 2015 period."

In addition to falsely representing that the City had made a reasonable transfer of costs, the letter falsely represented that "[e]ach year, the City auditors review an analysis of the costs and

² June 17, 2016 Smith Tx. at p. 7-8. Admittedly, though recognizing it as an authority, Smith did not consult the GFOA or any other professional standards when preparing the City's cost allocation sheets. *Id.*

attributable percentage associated with the services which constitute the transfer.” In fact, far from the extensive involvement described by the City’s counsel, the City’s auditors actually only reviewed **one** element of cost that was allocated to W&S during **one** audit year! *See* 9/28/15 email from Hanley to Nelson, and 10/13/15 email from Nelson to Hanley. In its audit of the City’s 2013-14 financial statements, Plante Moran “haphazardly selected the Personnel Department” and concluded that the allocation of costs in the amount of \$65,251 was “reasonable.” Since FY 2010, the City has allocated approximately \$20 million of purported General Fund costs to the W&S Fund, yet the City’s auditors have only tested the reasonableness of one \$65,251 item of cost in that entire time period.³

In addition to the General Fund Support Charge, for at least the last four fiscal years, by setting Rates far in excess of the City’s actual cost of providing water and sewer services (the “Rate Overcharges”), the City has accumulated significant cash in the Water and Sewer Fund, even after transferring millions of dollars to the General Fund. For example, as of June 30, 2011, the Water and Sewer Fund had \$1.8 million in cash. By June 30, 2012, the Water and Sewer Fund had \$2.9 million in cash. By June 30, 2013, the Fund had \$4.1 million. By June 30, 2014, the Water and Sewer Fund had over \$6.1 million in cash. By June 30, 2015, the Water and Sewer Fund had over \$8.3 million in cash. Thus, in just four years, the City increased its cash reserves in the Water and Sewer Fund by \$6.5 million. And had the City retained in the Water and Sewer Fund the \$14 million it transferred to the General Fund during that time period, the Water and Sewer Fund would have had over \$22.3 million in cash as of June 30, 2015.

The City ostensibly is stockpiling the excess cash it does not transfer to the General Fund in order to create a substantial reserve to finance future improvements to the water and sewer system.

³ In response to a subpoena issued by Plaintiffs, the City’s auditors, Plante Moran, produced only **one** single work paper for **one** year in which they tested only **one** item of cost as to the reasonableness. The City’s finance director, Steven Smith, did not have any recollection of that review and admitted that the City’s auditors were not involved with any investigation, analysis, or determination of the reasonableness of the City’s cost allocations. *See* June 17, 2016 Smith Tx. at pp. 20-21.

Smith Dep. at pp. 131-135. Current water and sewer customers therefore are paying to finance benefits that will be conferred upon future water and sewer customers.

Below is a calculation of the amount the City has unlawfully extracted from Plaintiffs and the Class relating to the General Fund Support Charge. Through June 2016, the amount of the unlawful charge is approximately **\$13 million**. In general, this analysis does not address subjective “percentage” allocations, such as how much time a general fund department head spends on W&S activities. It instead focuses on two situations: (1) where the amount of the cost item the City is allocating to other departments (including W&S) is grossly inflated, and (2) where the amount of the cost item the City is allocating may be correct, but the City’s percentage allocation of that cost to W&S can be verified as being inflated by objective evidence, such as invoices and reconciliations. Discovery is ongoing and Plaintiffs are still awaiting additional documents and information from the City, but Plaintiffs’ preliminary analysis of the amount the City has unlawfully extracted through the General Fund Support Charge through the end of the last fiscal year (June 30, 2016) appears below:

Retiree Insurance (Exhibit A hereto)⁴ – The City budgets up to \$3,274,000 per year for health insurance for retired employees that were not police, fire or library employees. The City then allocates up to 42% of this amount to W&S. *See* Dep. Exhs. 2, 13, 14, 15, 16 (Exhibit A.1). The City has provided no documentary support for this allocation. *See e.g.* June 17, 2016 Smith Tx. at pp. 28-32 (Exhibit A.2). The City’s finance director stated that the 42% allocation is intended to recover the retiree health insurance costs associated with retirees of the W&S Division. Smith Dep. at pp. 78-80 (Exhibit A.3). *See also* January 15, 2015 letter (referring to “retiree’s health insurance of former DPS water employees”) (Exhibit A.4).

⁴ The documentary evidence and deposition testimony which supports each type of overcharge that is included in the General Fund Support Charge and the Rate Overcharge are attached hereto as Exhibits A through I.

For the FY 2015, the City allocated \$1,375,259 of its health insurance costs for retired non-police and fire employees to the W&S fund. However, the actual amounts that the City has spent for health insurance for retired W&S employees are far less than the amounts allocated by the City to W&S in the General Fund Support Charge. *See* Kolar deposition at pp. 16 et seq. (Exhibit A.5) and Dep. Exhibits 23-25 (Exhibit A.6). While the City has consistently allocated 42% of the retiree health insurance costs for general fund employees to W&S, in 2015, the cost of health insurance for retired W&S employees represented no more than 18% of the total costs.

As of December 2015, all of the City’s retired W&S employees were covered by one of three health care plans: (1) Blue Care Network, (2) Health Alliance Plan (“HAP”), and (3) Blue Cross/Blue Shield. As of December 2015, the maximum monthly and annualized cost of health insurance for retired W&S employees (as reflected in records produced by the City) was as follows:

	<u>Monthly Charge</u>	<u>Annualized Charge</u>	<u>Source</u>
Blue Care Network:	\$4,493	\$53,916	Dep. Ex. 24
HAP:	\$11,044	\$132,528	Dep. Ex. 23
Blue Cross/Blue Shield:	\$33,418	\$401,016	Dep. Ex. 25
Total	\$48,955	\$587,460	

Ms. Kolar confirmed all of these figures in her deposition at pp. 16-25. Exhibit A.5.⁵

⁵ In his June 17, 2016 deposition, Mr. Smith generally agreed with Ms. Kolar’s calculations (her “math”), admitted that Ms. Kolar’s calculations for the retiree health insurance expense as of December 2015 was \$587,000 and that his allocation for the same time period for the retiree health insurance was \$1,375,000—more than double what Ms. Kolar’s data showed. Though he attempted to excuse the City’s inflated retiree healthcare cost allocation, Mr. Smith ultimately admitted that he could not produce any data to back up his cost allocation of the retiree health insurance, other than referencing a nebulous 12-year old document—that has yet to be located and/or produced—which purportedly contains an analysis that would justify the City’s allocation of 42% of the total retiree health insurance cost to the Water & Sewer fund. Mr. Smith further admitted that the City has never adjusted its retiree health care cost allocations to match Ms. Kolar’s data. *See generally*, June 17, 2016 Smith Tx. at pp. 22-40. Exhibit A.2.

Plaintiffs’ experts will testify that, according to established cost allocation methodologies, retiree health insurance expense should be allocated to W&S based upon W&S’s percentage of full time equivalent employees (“FTEs”) of all covered departments. Excluding Police, Fire and Library, there were 145 total FTEs in the departments that are included in the retiree health insurance expense as of FY 2015. *See* Exhibit A.7. W&S has 34 FTEs, representing 23.4% of the total applicable FTEs. *See* Exhibit A.7. Therefore, a conservative calculation of the overcharge can be made using 23.4% instead of the 42% that the City actually applied (smaller percentages in some prior years). Note that the use of 23.4% in the calculation is conservative because, as of December 2015, the City’s had determined that the amount of actual retiree health insurance costs for retired W&S employees was just 18% of the total expense.⁶

Moreover, since at least July 1, 2013 (and probably earlier), the City historically included the health insurance costs associated with retirees of the W&S Division in the “OPEB” line item (Other Post Employment Benefits) in its water and sewer rates, **in addition to** incorporating a charge for the **exact same expenses** in the General Fund Support Charge. *See* Deerhurst 001997 (Exhibit A.9),

⁶ The \$587,000 is the expense associated with retired employees who were assigned to W&S at the time of their respective retirements. Documents recently produced by the City, however, show, as we suspected, that even the \$587,000 is grossly inflated because several of the people the City claims are retired W&S employees actually worked the vast majority of the time at the City outside of the W&S department. The City moved them into W&S before they retired (sometimes immediately prior) and the City has made no attempt to reflect that fact in the allocation. Instead, the City charges 100% of the health insurance expense of those retired employees to W&S. For example,

Employee	Time in Other Departments	Time in W&S
Joseph Daugherty	20 years	1 month
John Dickey	18 years	1.42 years
Steven June	19.96 years	5 ½ months
Douglas Kautz	14.4 years	6.84 years
Walter Misiak	9.84 years	6.37 years
Floyd Stevens	8.84 years	12 years
Keith Talbot	24 years	2 years
John Thomas	21.4 years	3 months

See Exhibit A.8.

Deerhurst 002068 (Exhibit A.10), Deerhurst 000958 (Exhibit A.11), and Peck Dep. at pp. 16-18 (Exhibit A.12). Therefore, the entire amount of retiree health insurance expense allocated to W&S in the General Fund Support Charge since at least July 1, 2013 is improper because it constitutes a “double dip.”⁷

A calculation by Plaintiffs’ experts of the overcharge of retiree health insurance expense through June 30, 2016 appears below:

2015-16 – total expense -- \$3,274,425. Allocated to W&S (42%) -- \$1,375,259. Unlawful Charge -- \$1,375,259.

2014-15 – total expense -- \$3,274,425. Allocated to W&S (42%) -- \$1,375,259. Unlawful Charge -- \$1,375,259.

2013-14 – total expense -- \$3,118,500. Allocated to W&S (42%) -- \$1,309,770. Unlawful Charge -- \$1,309,770

2012-13 – total expense -- \$2,970,000. Allocated to W&S (42%) -- \$1,247,400. Actual W&S expense (23.4%) -- \$694,980. Unlawful Charge – \$552,420

2011-12 – total expense -- \$2,700,000. Allocated to W&S (39%) -- \$1,053,000. Actual W&S expense (23.4%) -- \$631,800. Unlawful Charge -- \$421,200

2010-11 – total expense -- \$2,500,000. Allocated to W&S (39%) -- \$975,000. Actual W&S expense (23.4%) -- \$585,000. Unlawful Charge -- \$390,000

2009-10 – total expense -- \$2,235,000. Allocated to W&S (37%) -- \$826,950. Actual W&S expense (23.4%) -- \$522,990. Unlawful Charge – \$303,960

Total Unlawful Charge July 1, 2009 – June 30, 2016 -- **\$5,727,868**

City Hall Grounds (Exhibit B hereto) – As of 2014-15, the W&S department occupies 3% of the total square footage of the City Hall Building (13.55% in prior years),⁸ yet the City allocates 25%

⁷ Mr. Smith confirmed that the OPEB expense is in the water rate such that when someone pays their water bill, they are paying their portion of the annual OPEB expense. June 17, 2016 Smith Tx. at p. 92 (Exhibit A.2). Moreover, Mr. Smith confirmed that OPEB expense is not being set aside for future retirement benefits and is available to pay current expenses of the W&S Fund. *See* June 17, 2016 Smith Tx. at p. 91-94 (Exhibit A.2).

⁸ *See* June 17, 2016 Smith Tx. at p. 45 (Exhibit B.2), admitting the Water & Sewer Department occupied about 13% of the old City Hall, but now occupies 3% of the new City Hall.

of the operation, maintenance and utilities expense for City Hall to the W&S department. *See* Smith Dep., pp. 47-48 (Exhibit B.1); June 17, 2016 Smith Tx. at pp. 46-47 (Exhibit B.2); Allocation Sheets (Exhibit A.1). Mr. Smith testified that the “City Hall Grounds” expense included expenses associated with the new City Hall and may include some expenses associated with the old City Hall—though that structure has been demolished. June 17, 2016 Smith Tx. at pp. 44-45 (Exhibit B.2). Plaintiffs’ experts will testify that building expenses should be allocated according to the square footage occupied by each City department. The City admitted that operation, maintenance and utilities expense should be allocated according to square footage. *See* Peck Dep. at pp. 27-28 (Exhibit B.3); June 17, 2016 Smith Tx. at pp. 45-46, 48 (Exhibit B.2).⁹

A calculation by Plaintiffs’ experts of the overcharges associated with the City Hall Grounds expense appears below:

2015-2016 – total expense -- \$315,195. Allocated to W&S -- \$78,799 (25%). Max charge to W&S -- \$9,455 (3%). Unlawful Charge -- \$69,344

2014-15 – total expense -- \$315,195. Allocated to W&S -- \$78,799 (25%). Max charge to W&S -- \$9,455 (3%). Unlawful Charge -- \$69,344

2013-14 – total expense -- \$215,175. Allocated to W&S -- \$53,794 (25%). Max charge to W&S -- \$29,156 (13.55%). Unlawful Charge -- \$24,638

2012-13 – total expense -- \$247,675. Allocated to W&S -- \$61,949 (25%). Max charge to W&S -- \$33,559 (13.55%). Unlawful Charge -- \$28,390

2011-12 – total expense -- \$210,260. Allocated to W&S -- \$52,590 (25%). Max charge to W&S -- \$28,490 (13.55%). Unlawful Charge -- \$24,100

2010-11 – total expense -- \$194,479. Allocated to W&S -- \$48,619 (25%). Max charge to W&S -- \$26,351 (13.55%). Unlawful Charge -- \$22,267

⁹ Smith later retreated from this testimony asserting that operating expenses, maintenance, utilities, and repair expenses should be based upon the Water & Sewer Department actually uses, but when pressed, could not support with any documentary evidence the 25% allocation of these expenses to Water & Sewer, merely stating that the 25% allocation was based upon “everyday activity” in the Water & Sewer Department and was an “estimate of what the resources that they use.” June 17, 2016 Smith Tx. at pp. 51-55 (Exhibit B.2).

2009-10 – total expense -- \$195,600. Allocated to W&S -- \$48,900 (25%). Max charge to W&S -- \$26,503 (13.55%). Unlawful Charge -- \$22,396

Total Unlawful Charge July 1, 2009 – June 30, 2016 -- **\$260,479**.¹⁰

DPS Garage (Exhibit C hereto) – The City allocates up to 50% of the “rent” expense for its 30,594 sq. foot DPS Garage to the W&S Department. *See* Exhibit A.1.¹¹ The “rent” has been as much as \$11.90 per square foot annually. Plaintiffs’ experts, however, will testify that, under established cost allocation methodologies, it is improper to impute “rent” to W&S. If expense is to be allocated to W&S relating to the DPS Garage, it should be allocated based upon the annual depreciation expense associated with the DPS Garage. Specifically, the annual depreciation expense can be properly allocated to W&S based upon the percentage of space occupied by W&S. Annual General Fund depreciation expense for the DPS Garage is \$19,545. *See* Deerhurst 043914 (Exhibit C.2). Therefore, the expense properly allocable to W&S is 50% of that expense (assuming W&S actually occupies 50% of the DPS Garage) – approximately **\$9,773** per year.

A calculation by Plaintiffs’ experts of the amount of the overcharges associated with the DPS Garage expense appears below.

2015-16 – total expense -- \$330,092. Allocated to W&S -- \$165,046 (\$10.80 per sq ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$155,273

2014-15 – total expense -- \$330,092. Allocated to W&S -- \$165,046 (\$10.80 per sq ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$155,273

2013-14 – total expense -- \$365,472. Allocated to W&S -- \$182,736 (\$11.90 per sq. ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$172,963

2012-13 – total expense -- \$365,472. Allocated to W&S -- \$182,736 (\$11.90 per sq. ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$172,963

¹⁰ Note that, based upon Mr. Smith’s testimony, these numbers properly assume that the “City Hall Grounds” expense relates solely to the City Hall and not the City’s other buildings and properties.

¹¹ Smith admitted that the cost allocation for the DPS Garage assumed that the W&S Department occupies 50% of the garage, and further testified that there has been no investigation done to determine whether or not this estimate is appropriate. June 17, 2016 Smith Tx. at p. 100-101 (Exhibit C.1).

2011-12 – total expense -- \$365,472. Allocated to W&S -- \$151,086 (\$11.90 per sq. ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$141,313

2010-11 – total expense -- \$365,472. Allocated to W&S -- \$151,086 (\$11.90 per sq. ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$141,313

2009-10 – total expense -- \$365,472. Allocated to W&S -- \$151,086 (\$11.90 per sq. ft). Max charge to W&S -- \$9,773. Unlawful Charge -- \$141,313

Total Unlawful Charge July 1, 2009 – June 30, 2016 -- **\$1,080,411**

MTT Refunds (Exhibit D hereto) – the City allocates 15% of the costs of Michigan Tax Tribunal property tax refunds to W&S. Plaintiffs’ experts will testify that established cost allocation methodologies preclude the allocation of these refunds to W&S, because that expense is wholly unrelated to the City’s water and sewer functions. The City’s finance director admitted that there is no basis for assessing Tax Tribunal property tax refunds to W&S and that the allocation was a “mistake.” *See* June 17, 2016 Smith Tx. at p. 105 (Exhibit D.1). Notably, this “mistake” was repeated by the City every fiscal year since 2010. A calculation by Plaintiffs’ experts of the amount of overcharge associated with the MTT Refund expense appears below.

2015-16 – total expense allocated to W&S = Unlawful Charge -- \$42,750

2014-15 – total expense allocated to W&S = Unlawful Charge -- \$42,750

2013-14 – total expense allocated to W&S = Unlawful Charge -- \$42,750

2012-13 – total expense allocated to W&S = Unlawful Charge -- \$26,250

2011-12 – total expense allocated to W&S = Unlawful Charge -- \$24,000

2010-11 – total expense allocated to W&S = Unlawful Charge -- \$24,000

2009-10 – total expense allocated to W&S = \$0

Total Unlawful Charge July 1, 2009 – June 30, 2016 -- **\$202,500**

Municipal Risk/Reserves (Exhibit E hereto)

Westland claims it incurs up to \$1,500,000 annually for “municipal risk/reserves.” The City claims that amount excludes building insurance, which the City charges to W&S through separate cost

allocations.¹² The City currently allocates 35% of this purported \$1,500,000 cost to W&S (\$525,000). In prior years, the City has allocated 25-35% of this expense to W&S.¹³

First, a significant portion of the claimed “municipal risk/reserves” expense is for workers compensation costs. None of that expense is allocable to W&S, however, because W&S pays for workers compensation through a separate expense line-item in its budget. In other words, W&S’s workers compensation expenses already are recovered through the W&S rates and, therefore, any workers compensation costs incurred by the City in the “municipal risk/reserves” cost center clearly do not relate to W&S employees.

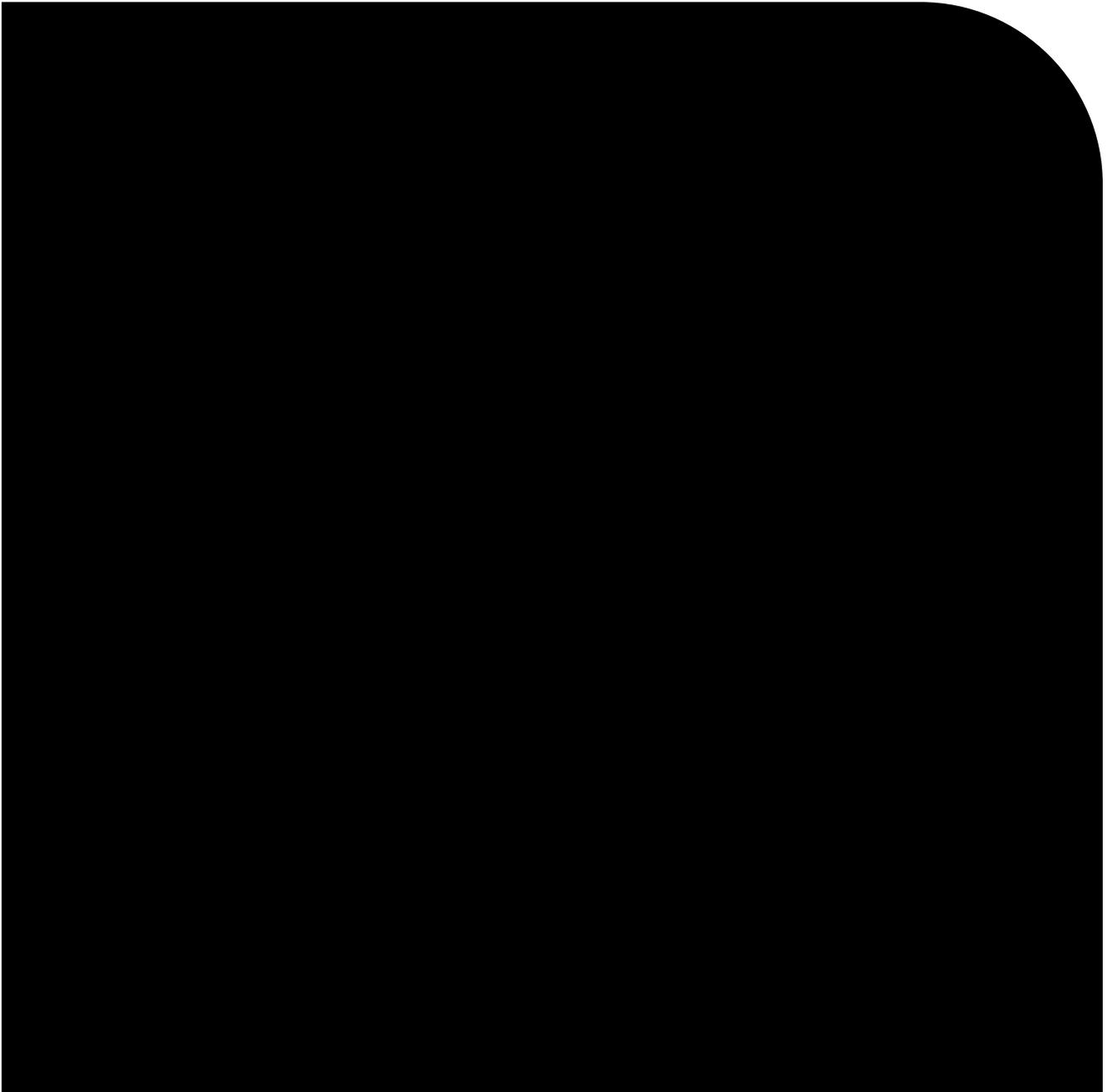
Virtually all of the remaining expense for “municipal risk/reserves” is for insurance coverage provided by the MMRMA. The actual amount the City incurs for MMRMA “premiums” averages about \$900,000 per year. This does not take into account substantial premium refunds the City has received from MMRMA (which decrease the amount paid), nor does it take into account reserves that the City is required to contribute in addition to premiums (which increase the amount paid).¹⁴ However, in several years the refunds have far exceeded the additional reserve contributions, so that reduces the net amount the City pays even more, as detailed below. Indeed, the City’s finance director admitted that the refunds provided by the MMRMA have not been used to reduce the MMRMA Expense, but have been put into a revenue account, and thus the cost allocation numbers used by the City do not include an offset for the substantial refunds received, which exceeded \$2.5 million during the class period. June 17, 2016 Smith Tx. at pp. 64-67; 75-79, 85-86 (Exhibit E.1).

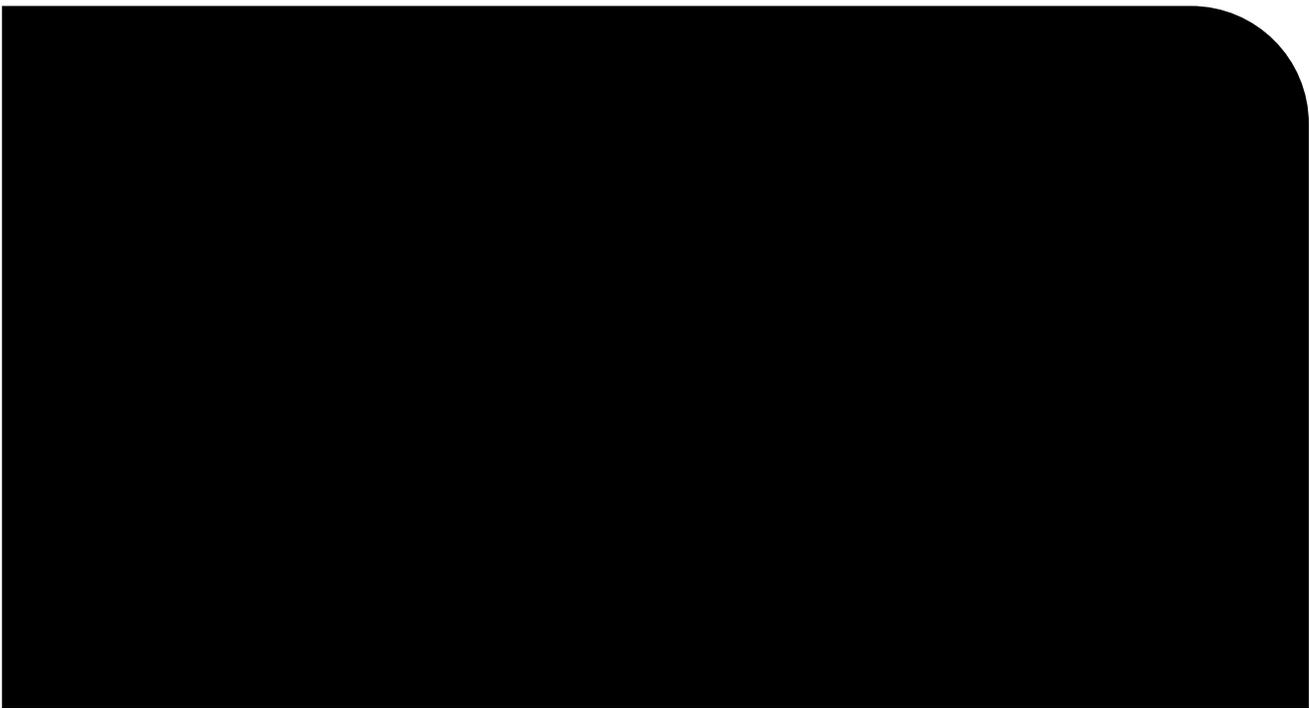
¹² Smith testified that he was unsure if building insurance was included in the \$1.5 Million, but agreed that if it was it would mean there was a partial double-dip in the City’s cost allocations to the Water & Sewer Department. June 17, 2016 Smith Tx. at pp. 56-57 (Exhibit E.1).

¹³ For Fiscal Year 2014-2015 the City allocated 25% of the total municipal risk reserve expenses to Water & Sewer in an amount of \$375,000. June 17, 2016 Smith Tx. at pp. 59 (Exhibit E.1).

¹⁴ The City claims it has paid \$1.9 Million in retention and reserve payments during the time period between October 2009 and current. *See* City Documents bates labeled Deerhurst043451-Deerhurst043457 (Exhibit E.2).

According to the documents produced by the MMRMA, the \$937,807 premium for FY 2016 breaks down as follows:





A calculation by Plaintiffs' experts of the overcharge associated with the Municipal Risk/Reserves expense appears below.

Below is the breakdown of the maximum proper amount allocable to W&S for 2015-16:

MMRMA PREMIUM BREAKDOWN:

MAX AMOUNT ALLOCABLE TO W&S

Total: **\$937,807**

Total: **\$95,371** (10.2% of total)

Less Total refund from MMRMA -- \$547,142

¹⁵ The MMRMA premium proposal which lists the vehicles insured by the City appears to be missing a page, so it is possible that the W&S department uses more than 5 vehicles. Even if that is the case, it will not materially alter the overcharge analysis.

Plus Total retention fund contribution -- \$637,000

Net premium paid to MMRMA for FY 15-16 -- \$1,027,665 (Exhibit E.5)

10.2% allocable to W&S == \$104,821

Unlawful Charge for FY 2015-16 -- **\$420,179** (\$525,000 (the amount actually allocated to W&S) minus \$104,821 (the maximum amount properly allocable to W&S)).

Percentage of City's total net premium expense paid by W&S: **51%**

Below is the breakdown of the maximum proper amount allocable to W&S for 2014-15:

MMRMA PREMIUM BREAKDOWN:

MAX AMOUNT ALLOCABLE TO W&S



Total: **\$894,175**

Total: **\$98,483 (11% of total)**

Less Total refund from MMRMA -- \$513,587

Plus Total retention fund contribution -- \$400,000¹⁶

Net premium paid to MMRMA for FY 14-15 -- \$780,588 (Exhibit E.5)

11% allocable to W&S == \$85,864

Unlawful Charge for FY 2014-15 -- **\$289,136** (\$375,000 (the amount actually allocated to W&S) minus \$85,864 (the maximum amount properly allocable to W&S)).

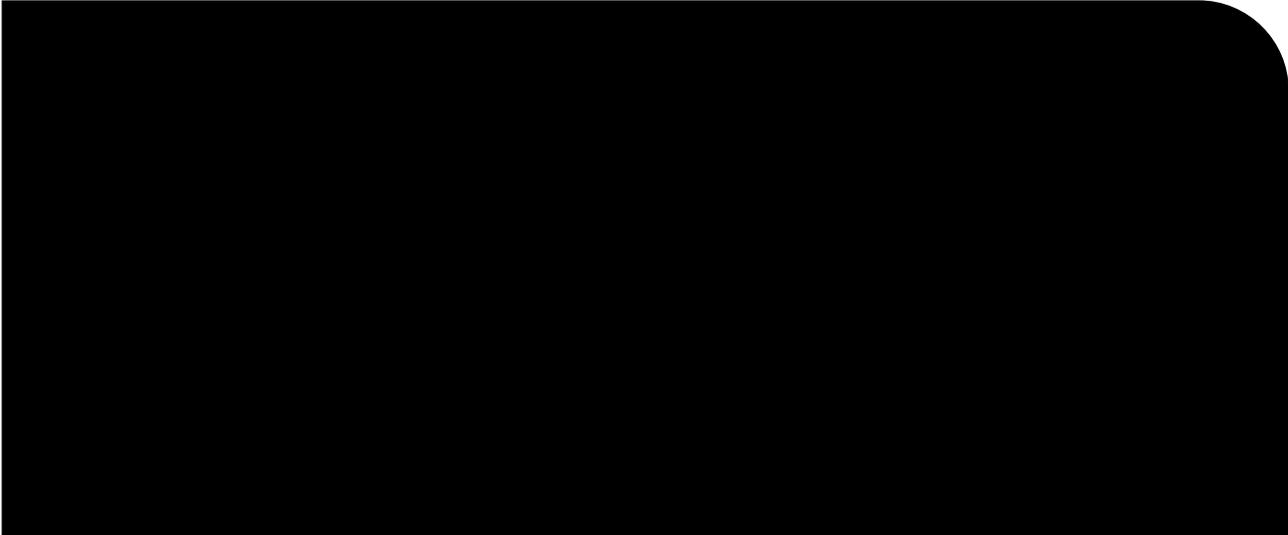
¹⁶ The total amount paid to the MMRMA for FY 2014-2015 was confirmed by Mr. Smith as \$1,294,175 (\$894,175 Premium payment plus \$400,000 retention fund contribution). See June 17, 2016 Smith Tx. at pp. 74 (Exhibit E.1)

Percentage of City's total net premium expense paid by W&S: **48%**

Below is the breakdown of the maximum proper amount allocable to W&S for 2013-14:

MMRMA PREMIUM BREAKDOWN:

MAX AMOUNT ALLOCABLE TO W&S



Total: **\$828,176** (Exhibit E.4)

Total: **\$97,869** (11.8% of total)

Less Total refund from MMRMA -- \$108,623

Plus Total retention fund contribution -- \$410,972

Net premium paid to MMRMA for FY 13-14 -- \$1,130,525 (Exhibit E.5)

11.8% allocable to W&S == \$133,401

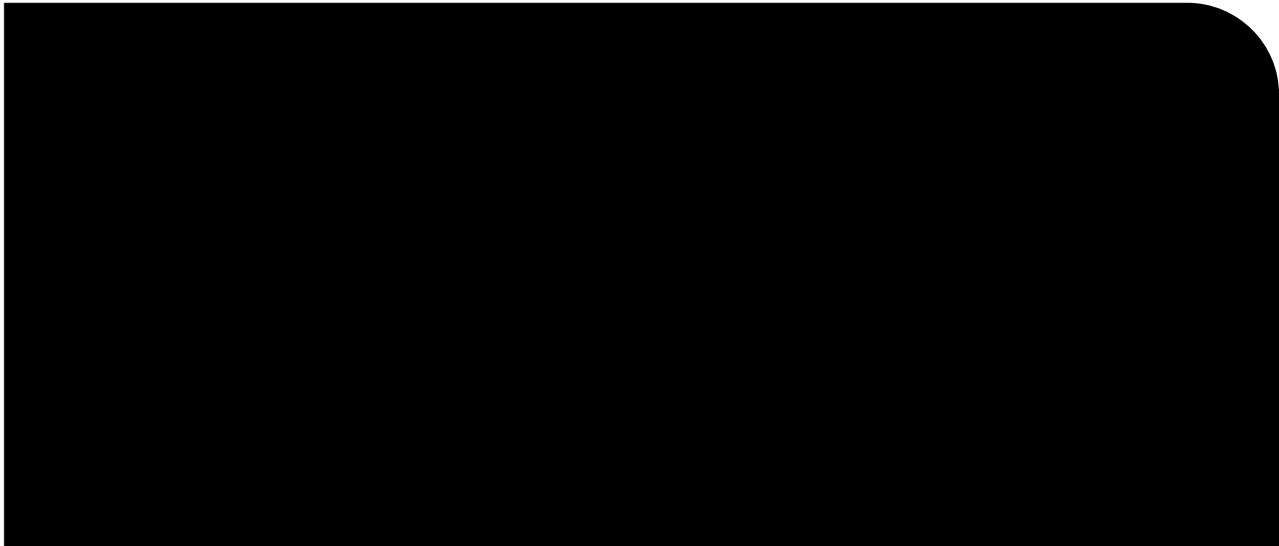
Unlawful Charge for FY 2013-14 -- **\$304,099** (\$437,500 (the amount actually allocated to W&S) minus \$133,401 (the maximum amount properly allocable to W&S)).

Percentage of City's total net premium expense paid by W&S: **41.4%**

Below is the breakdown of the maximum proper amount allocable to W&S for 2012-13:

MMRMA PREMIUM BREAKDOWN:

MAX AMOUNT ALLOCABLE TO W&S



Total: **\$821,916**

Total: **\$106,101** (12.9% of total)

Less Total refund from MMRMA -- \$817,593

Plus Total retention fund contribution -- \$550,000

Net premium paid to MMRMA for FY 12-13 -- \$554,323 (Exhibit E.5)

12.9% allocable to W&S -- \$71,507

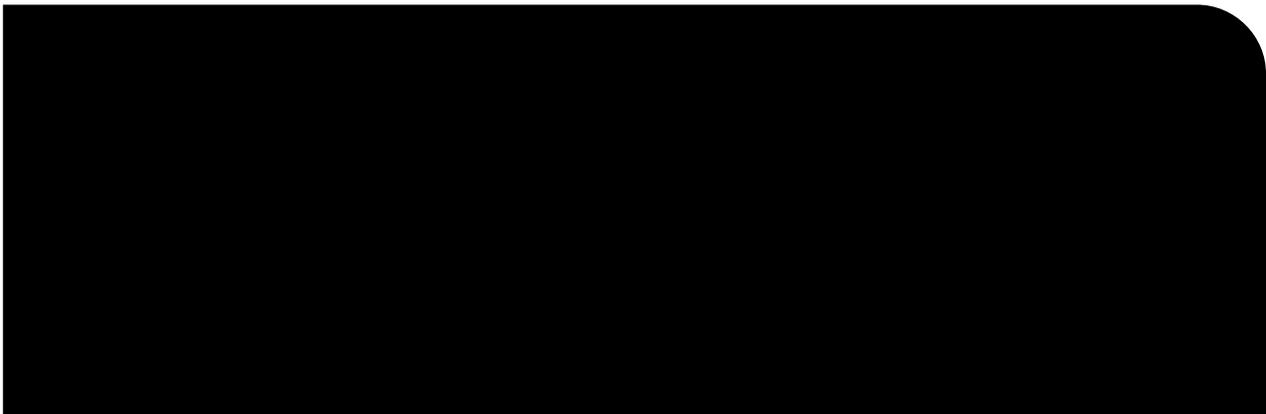
Unlawful Charge for FY 2012-13 -- **\$365,993** (\$437,500 (the amount actually allocated to W&S) minus \$71,507 (the maximum amount properly allocable to W&S)).

Percentage of City's total net premium expense paid by W&S: **79%**

Below is the breakdown of the maximum proper amount allocable to W&S for 2011-12:

MMRMA PREMIUM BREAKDOWN:

MAX AMOUNT ALLOCABLE TO W&S



Total: **\$850,904** (Exhibit E.4)

Total: **\$104,177** (12.2% of total)

Less Total refund from MMRMA -- \$426,527

Plus Total retention fund contribution -- \$150,000

Net premium paid to MMRMA for FY 11-12 -- \$574,377 (Exhibit E.5)

12.2% allocable to W&S == \$70,073

Unlawful Charge for FY 2011-12 -- **\$367,427** (\$437,500 (the amount actually allocated to W&S) minus \$70,073 (the maximum amount properly allocable to W&S)).

Percentage of City's total net premium expense paid by W&S: **76%**

Below is the breakdown of the maximum proper amount allocable to W&S for 2010-11:

MMRMA PREMIUM BREAKDOWN:

MAX AMOUNT ALLOCABLE TO W&S

Total: **\$931,342**

Total: **\$114,850** (12.3% of total)

Plus Total retention fund contribution -- \$150,000

Less Total refund from MMRMA -- \$259,423

Net premium paid to MMRMA for FY 10-11 -- \$821,919 (Exhibit E.5)

12.3% allocable to W&S == \$101,096

Unlawful Charge for FY 2010-11 -- **\$388,904** (\$490,000 (the amount actually allocated to W&S) minus \$101,096 (the maximum amount properly allocable to W&S)).

Percentage of City's total net premium expense paid by W&S: **59.6%**

Below is the breakdown of the maximum proper amount allocable to W&S for 2009-10:

MMRMA PREMIUM:

MAX AMOUNT ALLOCABLE TO W&S

Total: **\$940,312** (Exhibit E.4)

Total: **\$222,638** (13% of total)¹⁷

Plus Total retention fund contribution -- \$150,000

Net premium paid to MMRMA for FY 10-11 -- \$1,090,312 (Exhibit E.5)

13% allocable to W&S == \$141,740

Unlawful Charge for FY 2010-11 -- **\$348,260** (\$490,000 (the amount actually allocated to W&S) minus \$141,740 (the maximum amount properly allocable to W&S)).

Percentage of City's total net premium expense paid by W&S: **45%**

Total Unlawful "Municipal Risk/Reserves" Charge -- \$2,483,998

IT Department (Exhibit F hereto) – The City has allocated up to 60% of the IT department expense to W&S. This expense is primarily allocated based upon the percentage of time the City's IT director, Daniel Bourdeau purportedly spends on activities relating to W&S. In his deposition, however, the Bourdeau repeatedly confirmed that the allocations for certain years during the class period grossly overstated the percentage of his time that was actually spent on activities relating to W&S:

Q. Is it, is that 25 to 30 percent a fair assessment for all the years except for the fiscal year '13/14 when you were heavy into the grant?

A. I believe it's a, it's an accurate representation of an annual percentage. [See Exhibit F.1 hereto at pp. 65-66].

A calculation by Plaintiffs' experts of the amount of the overcharge associated with the IT Department expense appears below.

2015-16 – total expense -- \$599,575. Allocated to W&S -- \$239,830 (40%). Max charge to W&S -- \$179,872 (30%). Unlawful Charge -- \$59,958.

2012-13 – total expense -- \$382,837. Allocated to W&S -- \$153,135 (40%). Max charge to W&S -- \$114,851 (30%). Unlawful Charge -- \$38,283.

2011-12 – total expense -- \$350,446. Allocated to W&S -- \$210,268 (60%). Max charge to W&S -- \$105,134 (30%). Unlawful Charge -- \$105,134.

2010-11 – total expense -- \$399,823. Allocated to W&S -- \$239,894 (60%). Max charge to W&S -- \$119,947 (30%). Unlawful Charge -- \$119,947

2009-10 – total expense -- \$394,696. Allocated to W&S -- \$236,817 (60%). Max Charge to W&S -- \$118,408 (30%). Unlawful Charge -- \$118,408

Total Unlawful Charge for IT Department expense -- **\$441,730**

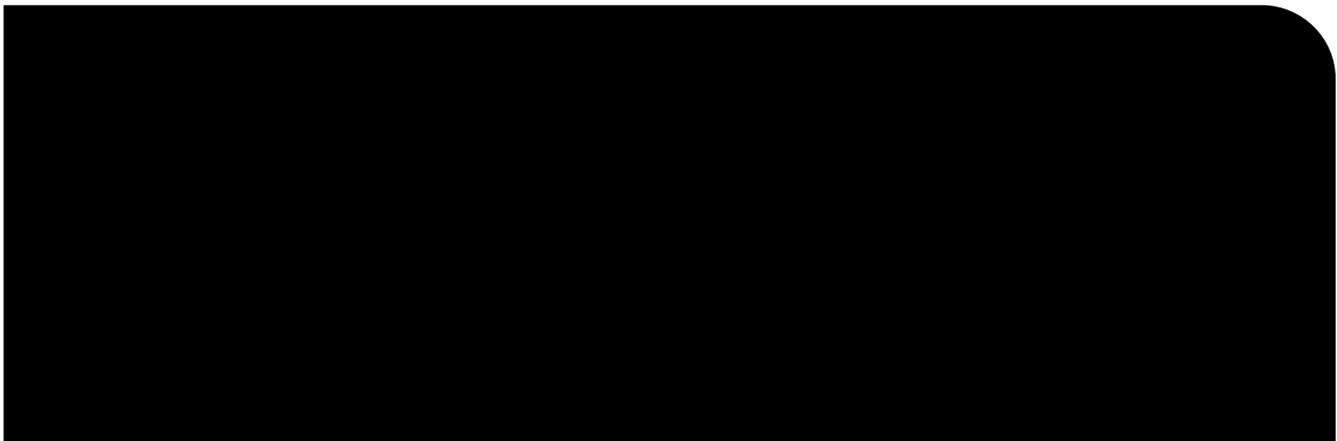
Attorney Fees (Exhibit G hereto) – The City budgets up to \$800,000 per year for attorneys' fees paid to Fausone Bohn for the legal services provided to all of the City's departments and functions and then allocates 30% of that amount (\$240,000) to W&S. The City has provided no documentary support for its allocation. Prior to FY 2012-13, the City only allocated \$50,000 of the annual attorneys' fee budget to W&S, and the City has provided no explanation for why it increased the allocation by nearly 500% beginning in FY 2012-13. Plaintiffs' experts will testify that under established cost allocation methodologies, attorney fees incurred by the General Fund should be allocated to City departments based upon the value of the legal services provided to each department.

Plaintiffs' experts will testify that the City's allocation of attorney fee expense to W&S is completely arbitrary. The City did not consult Fausone Bohn concerning this allocation of cost at any time prior to the lawsuit or even make its principal outside attorney, James Fausone, aware of the amount of attorneys' fees it was allocating to W&S. Fausone Dep. at pp. 6-8 (Exhibit G.3). Fausone himself conceded that he never – even after the lawsuit was filed – undertook an analysis of the actual

attorney time and expense devoted to W&S legal issues, and further conceded that he is not aware of that analysis being done by anybody. *Id.* at pp. 7-8.

The City produced the Fausone Bohn billings for FY 2009 through 2016. The bills are broken out into various categories. In his deposition, Fausone divided the categories into three groups: (1) categories that reflected at least some services that related to W&S, (2) categories that possibly reflected at least some services that related to W&S, and (3) categories that did not reflect at least some services that related to W&S. Fausone Dep. at pp. 10-31. Significantly, however, with respect to the vast majority of categories that Fausone testified reflected legal services that related to W&S or which possibly related to W&S, Fausone could not identify any specific services or the amount of those services.

The Court's September 22, 2016 Order requires the City to provide full and complete responses to Plaintiffs' Second Set of Interrogatories, which, among other things, requested that the City "identify the actual amount the City paid in 'Attorney Fees' relating to legal services provide to the Water and Sewer Division and/or the Water and Sewer Fund" during each relevant year. The City did not do so, but, instead, provided voluminous billing statements. Because the City has not even attempted to meet the burden under the Court order, Plaintiffs' experts will testify that it is proper to conclude that Fausone Bohn did not provide any services to W&S other than those that can be clearly identified and quantified, as described below.





2015-16 – total expense -- \$800,000. Allocated to W&S -- \$240,000 (30%). Max charge to W&S -- \$40,000. Unlawful Charge -- \$200,000

2014-15 – total expense -- \$800,000. Allocated to W&S -- \$240,000 (30%). Max charge to W&S -- \$40,000. Unlawful Charge -- \$200,000

2013-14 – total expense -- \$800,000. Allocated to W&S -- \$240,000 (30%). Max charge to W&S -- \$40,000. Unlawful Charge -- \$200,000

2012-13 – total expense -- \$800,000. Allocated to W&S -- \$240,000 (30%). Max charge to W&S -- \$55,000. Unlawful Charge -- \$185,000

Total Unlawful Charge July 1, 2009 – June 30, 2016 -- **\$785,000**

Rain Event Cleanup and Lawsuit Expenditures (Exhibit H hereto) – The City experienced a significant rain event in 2010 which resulted in basement flooding in several hundreds of homes in the City. The City paid Belfor \$2,000,000 to remediate flood damage to approximately 800 homes. These expenses were incorporated into the water and sewer rates beginning in FY 2012 and ending in FY 2015. *See* Peck Dep. at pp. 18-19 (Exhibit H.1 hereto). Smith Dep. at pp. 139-141

(Exhibit H.2 hereto); June 17, 2016 Smith Tx. at pp. 113-122 (Exhibit H.3 hereto); Dep. Exh. 8 at p. 11 (Exhibit H.4 hereto).

2014-15 – total expense included in sewer rate (\$500,000 cleanup) = Unlawful Charge -- \$500,000

2013-14 – total expense included in sewer rate (\$500,000 cleanup) = Unlawful Charge -- \$500,000

2012-13 – total expense included in sewer rate (\$500,000 cleanup) = Unlawful Charge -- \$500,000

2011-12 – total expense included in sewer rate (\$500,000 cleanup) = Unlawful Charge -- \$500,000

Total Unlawful Charge: **\$2 million**

**TOTAL UNLAWFUL GENERAL FUND SUPPORT CHARGE THROUGH JUNE 30, 2016 -
- \$12,981,986**

**OTHER COMPONENTS OF COST THAT THE CITY HAS UNLAWFULLY INCLUDED
IN ITS WATER AND SEWER RATES.**

A. SERVICES FUNDED BY W&S BUT PROVIDED TO OTHER DEPARTMENTS

Not only has the City grossly misstated the value of the services provided by General Fund Departments to W&S, but the City also has failed to charge the General Fund for services provided or paid for by W&S which benefitted the General Fund, such as the salary and benefits for a sanitation foreman and 100% of the salary of the DPS director.

Prior to FY 2014-15, the DPS Director was in the Highway Maintenance Department. During that time, the City allocated 33% of his compensation to W&S. Therefore, it is reasonable to assume that at least 67% of the DPS director's time is devoted to tasks unrelated to W&S. Accordingly, the City should be allocating back to the General Fund 67% of the DPS Director's compensation. That compensation was \$150,000 in FY 2013-14. Allocating 67% of that for FYs 2014-15 through 2015-16 results in a chargeback to the General Fund of \$201,000.

The City’s budget director admitted that proper cost allocation methodologies require such charges, but that the City has not done so. Peck Dep. at pp. 23-26. Moreover, Section 17.6 of the City’s Charter mandates that “Charges for all service furnished [by W&S] to ... other City departments or agencies shall be recorded.”

B. THE CAPITAL IMPROVEMENTS CHARGE (Exhibit I hereto)

In addition, since FY 2011-12, the City has incorporated \$500,000 per year into its Rates to fund future improvements to the W&S system. Smith Dep. at pp. 132-136 (Exhibit I.1 hereto); Dep. Exh. 8 at pp. 10-11 (Exhibit I.2 hereto). These amounts are in addition to charges for current period capital improvements. This is a tax because it is impermissible to charge current users to create a fund to finance future improvements to the W&S system that will benefit future users. See *Grunow v. Township of Frankenmuth*, 2002 Mich. App. LEXIS 1440 (2002); *In re Foreclosure of Certain Parcels of Property*, 2014 Mich. App. LEXIS 943 (2014).

2015-16 – total expense included in water and sewer rate = Unlawful Charge -- \$500,000

2014-15 – total expense included in water and sewer rate = Unlawful Charge -- \$500,000

2013-14 – total expense included in water and sewer rate = Unlawful Charge -- \$500,000

2012-13 – total expense included in water and sewer rate = Unlawful Charge -- \$500,000

2011-12 – total expense included in water and sewer rate = Unlawful Charge -- \$500,000

Total Unlawful Charge: **\$2,500,000**

THE CITY’S UNLAWFUL CONDUCT IS INTENTIONAL

In their initial Responses to the City’s First Set of Interrogatories in **February 2016** and in their Supplemental Response to Interrogatory No. 6, served in **March 2016**, Plaintiffs presented in painstaking detail the facts (with citations to supporting evidence) which show that the General Fund Support Charge was and is grossly inflated, includes a multitude of phantom expenses, and has no basis in reality – *i.e.*, it does not even remotely reflect the fair value of any services provided by General Fund

department to W&S. Instead of absorbing this reality and radically reducing the Charge on a going forward basis, the City has decided to “double-down” on its wrongful conduct. On March 7, 2016 – **after the City had objectively-verifiable proof that the General Fund Support Charge was grossly inflated** – the City adopted new water and sewer rates which went into effect on July 1, 2016 and which include a General Fund Support Charge that is equal to or greater than the Charge the City was imposing when Plaintiffs filed suit in May 2015. The adoption of these new Rates in the face of undeniable evidence that the General Fund Support Charge has no basis in reality confirms that the City’s inclusion of the grossly-inflated Charge in its Rates is an intentional cash-grab, and not merely the result of a negligent failure in the past to fairly and adequately estimate the value of the services provided by the General Fund to W&S.

And the City cannot even justify its theft from W&S as being necessary to support core, indispensable public services. Surely, at least part of the reason the City finds it necessary to steal from its W&S Fund is to support the outrageous compensation packages it provides to numerous City employees.¹⁹

Here are some examples:

1. IT Department (two employees) – For FY 2016-17, \$426,000 per year in salary and benefits. The City’s annual pension contributions for these two employee (\$217,000) is LARGER than their wages (\$162,000).
2. Mayor’s office (4 employees -- Mayor, Deputy Mayor and two secretaries) – For FY 2016-17, \$1,020,000 per year in salary and benefits. That’s an average of \$255,000 per employee. Assuming the Mayor and Deputy Mayor earn twice as much as the secretaries, the Mayor and Deputy Mayor get \$340,000 each and the secretaries get \$170,000 each.
3. Clerk’s office (5 employees – For FY 2016-17, City Clerk, Deputy Clerk and three secretaries) -- \$566,000 per year in salary and benefits. That’s an average of \$113,000 per employee.
4. Personnel Department – (3 employees – Director, Supervisor and payroll clerk) -- \$487,000 per year in salary and benefits for FY 2016-17. Dep. Exh. 2 says Director gets

¹⁹ The City’s Finance Director admitted that he did not know what other cities paid their IT and similar personnel. Smith further stated that no analysis has been made by the City as to what comparable cities pay their personnel. June 17, 2016 Smith Tx. at pp. 106-107.

\$216,504 in salary and benefits and the **Administrative Secretary gets \$127,575** in salary and benefits as of FY 2014-15. The balance apparently relates to the supervisor.

5. Finance Office – Salary and benefits as of FY 2014-15
 - Director -- \$222,184
 - Budget Director -- \$193,168
 - Controller -- \$176,399
 - Senior Accountant -- \$132,224
 - Accounts payable clerk -- \$87,457
6. Department of Highway Maintenance – 9 employees earning \$1.1 million in total compensation as of FY 2015-16. 8 of these employees are either crew leaders or equipment operators.

Reference: 2015-16 Budget, 2016-17 Budget and allocation doc (Dep. Exh. 2).

- b. Plaintiffs object to this interrogatory because discovery is ongoing and it is impossible to identify each and every person with knowledge of the relevant facts, and because the interrogatory seeks information that is within Defendant’s possession or control.

Subject to their objections, Plaintiffs state that Steve Smith, Daniel Bourdeau, Deb Peck and Nicole Kolar have knowledge of the relevant facts. Plaintiffs believe that William Wild, Ramzi El-Gharib, James Fausone, and all other employees of the City and its agents who are listed on Plaintiffs’ Preliminary Witness List have knowledge of relevant facts.

- c. Smith, Wild, Bourdeau, Peck and Kolar are employees of the City and the City has their contact information.
- d. Plaintiffs object to this interrogatory because discovery is ongoing and it is impossible to identify each and every person whom Plaintiffs might call to testify at trial.

Subject to their objections, Plaintiffs state that at present they intend to call Steve Smith, Daniel Bourdeau, Deb Peck, Nicole Kolar, William Wild, James Fausone, Jim Olson, and other persons listed on their Preliminary Witness List to testify at trial.

- e. *See* answer to subpart (a) of this Interrogatory and the deposition transcripts of Steve Smith, Daniel Bourdeau, Deb Peck, William Wild, James Fausone and Nicole Kolar.

- f. Plaintiffs object to this interrogatory because discovery is ongoing and it is impossible to identify each and every document that supports Plaintiffs' allegations.

Subject to their objections, documents that support or corroborate the allegations set forth in subpart (a) of Plaintiffs' answer to this interrogatory include, but are not limited to, the City's budgets, internal accounting documents, audited financial statements, and cost allocations; the transcripts of the depositions of Steve Smith, Daniel Bourdeau, William Wild, Deb Peck, James Fausone, and Nicole Kolar and exhibits thereto; and the City's charter and ordinances.

- g. Plaintiffs object to this interrogatory because discovery is ongoing and it is impossible to identify each and every document Plaintiffs might seek to introduce into evidence.

Subject to their objections, Plaintiffs state: *see* answer to subpart (f) of this Interrogatory.

As to objections and legal matters,

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham Jr.(P70332)
Counsel for Plaintiffs

FOLEY & ROBINETTE, P.C.

/s/ Dean C. Robinette

Dean C. Robinette (P54197)
Co-counsel for Plaintiffs

Dated: November 14, 2016

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2016 I electronically served ***Plaintiffs' Second Amended Responses to Interrogatory No. 6 of Defendant's First Set of Interrogatories*** (without referenced exhibits) through the Court's electronic filing system. I further certify that on November 14, 2016, I served **Plaintiffs' Second Amended Responses To Interrogatory No. 6 of Defendant's First Set of Interrogatories**, with exhibits, upon Defendant's counsel of record by hand-delivery by courier.

/s/ Kim Plets _____

Kim Plets