

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All persons and entities which have paid the City of Ferndale (the "City") for water and sanitary sewage disposal services between January 22, 2008 and December 31, 2014.

You are hereby notified that a proposed settlement in the amount of \$4,250,000 has been reached with the City in a class action lawsuit pending in Oakland County Circuit Court titled *Wolf et al v. City of Ferndale*, Case No. 14-138464-CZ, presiding Judge Colleen O'Brien (the "Lawsuit"). The Lawsuit challenges the inclusion of two charges assessed against the City by Oakland County Water Resources Commission ("OCWRC"), specifically a debt service charge (the "Kuhn Facility Debt Charge") and a stormwater disposal charge (the "Stormwater Charge") (collectively, the "Charges"), in the calculation of the water and sewer rates (the "Rates") the City assesses upon users of its water and sanitary sewage disposal services. Plaintiffs have brought these claims on behalf of themselves and a class of all others similarly situated.

Plaintiffs are individuals and entities that are water and sanitary sewer customers who have paid the Charges assessed by the City. Plaintiffs contend that the assessment, collection and retention of these Charges: (a) are not authorized under the City's Ordinance 22-63; (b) are not proper user fees but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan Constitution; (c) have unjustly enriched the City; and (d) have harmed the plaintiffs and those similarly situated.

The plaintiffs seek a judgment from the Court against the City which would order and direct the City to disgorge and refund all Charges to which plaintiffs and the class are entitled and would grant any other appropriate relief.

The City maintains that the inclusion of the Charges in the calculation of the City's Rates is proper and not unlawful. Thus, the City denies that the Charges are barred by the City's Ordinance 22-63; denies that the Charges are not proper user fees and states that the Charges were assessed in the Rates in order to reimburse OCWRC and not to raise revenue; denies that the City has been unjustly enriched by the collecting money to reimburse the City for payment of these Charges to OCWRC and denies that the plaintiffs and those similarly situated have been harmed. The City contends that it should prevail in the Lawsuit.

The Court has made no rulings concerning the merits of the Lawsuit at this time. Although the City believes it has meritorious defenses to the Lawsuit, it has nevertheless agreed to settle this matter to avoid protracted litigation at further expense to the City and its taxpayers, and to obtain for the City and its taxpayers total and final peace, satisfaction and protection from the claims asserted in the Lawsuit.

On October 10, 2014, Judge Colleen O'Brien entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you paid the City for water and sewer service at some time after January 22, 2008 and are therefore a member of the Class.

For settlement purposes, the parties have agreed that the Class will consist of two subclasses: (a) the "Headlee Subclass," which shall include all persons or entities which have paid the City for Water and Sanitary Sewer Service between January 22, 2013 and December 31, 2014; and (b) the "Ordinance Subclass," which shall include all persons or entities which have paid the City for Water and Sanitary Sewer Service between January 22, 2008 and January 21, 2013. Many Class Members are members of both Subclasses. The Settlement Agreement is intended to settle all of the Claims of the Class, including the subclasses.

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 **\$4,250,000** for the benefit of the Class (“Settlement Amount”). For purposes of this settlement, Two Million Five Hundred Fifty Thousand Dollars (\$2,550,000) of the Settlement Fund shall be allocated to the claims of the Headlee Subclass, and One Million Seven Hundred Thousand Dollars (\$1,700,000) shall be allocated to the claims of the Ordinance Subclass. The Settlement Amount will be utilized, with Court approval, to pay Class Counsel an award of attorneys’ fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

The “Net Settlement Fund” is the Settlement Amount less the combined total of: (a) the attorneys’ fees awarded to Class Counsel by the Court; (b) expenses reimbursed pursuant to the terms of the Settlement; (c) out-of-pocket expenses of the Claims-Escrow Administrator, and (d) any incentive award made by the Court to the class representative in an amount not to exceed \$10,000.

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 a distribution from the Net Settlement Fund if they paid the City for water and sanitary sewer service at any time between January 22, 2008 and December 31, 2014. Class Members shall not be required to submit any information or documentation to the City or the Claims-Escrow Administrator in order to receive their portion of the Net Settlement Fund. Each Class Member’s claim for a distribution from the Net Settlement Fund shall hereinafter be referred to as his, her or its “Allowed Claim.” The size of each Claim Member’s Allowed Claim shall be determined by calculating his, her or its Pro Rata Interest in the Net Settlement Fund based upon the amount of water and sewer service charges (the “Service Charges”) each Class Member paid as members of each Subclass. Thus, by way of example, if a Class Member paid \$5000 in Service Charges as a member of the Headlee Subclass, they will receive a proportionally higher distribution than a Class Member who paid \$2500 in Service Charges as a member of the Headlee Subclass.

In addition to the refunds described above, beginning January 1, 2016 and ending December 31, 2020 or any date thereafter at the City’s election (the “Prospective Relief Period”), the City shall reduce its Rates so that the Kuhn Facility Debt Charge the City incurs to Oakland County (as described in Plaintiff’s Complaint) is not a component of cost that is included in the Rates. The City may not increase other water and sewer-related charges (e.g., the “readiness to serve” charge) to replace this revenue.

For the duration of the Prospective Relief Period, the City shall further reduce its Rates so that 40% of the Stormwater Charge a/k/a “Pollution Control Charge” the City incurs to Oakland County (as described in Plaintiff’s Complaint) is not a component of cost that is included in the Rates. The City may not increase other water and sewer-related charges (e.g., the “readiness to serve” charge) to replace this revenue.

For the duration of the Prospective Relief Period, the City will be permitted to use 60% of the Pollution Control Charge assessed by Oakland County in establishing the Rates.

For the duration of the Prospective Relief Period, the parties agree that the City may replace the revenue it will lose as a result of not including the Kuhn Facility Debt Charge and

40% of the Pollution Control Charge in the Rates by implementing an assessment under the Michigan Drain Code of 1956 (the “Drain Code”) in an amount equal to the Kuhn Facility Debt Charge and 40% of the Pollution Control Charge (the “Drain Code Assessments”).

For the duration of the Prospective Relief Period, the City will retain the discretion to adjust the Rates as necessary in order to reflect increases in expenses in wholesale water from DWSD, to reflect increases in expenses for sewage disposal from the Oakland County Water Resources Commission, to reflect increases in operating expenses, and to allow for future repair to its water and sewer system and for future capital replacement(s), provided the City utilizes the utility-basis rate setting method in adjusting the Rates. The City also retains the discretion to adjust the Rates as necessary in order to account for and/or incorporate and requirements or changes that are created, implemented and/or adopted by the Great Lakes Water Authority.

So long as the City complies with the prospective relief established by the Settlement Agreement for the duration of the Prospective Relief Period, the Class Members who receive distributions from the Net Settlement Fund shall release and waive any and all claims that arise and/or could be brought during the Prospective Relief Period challenging the inclusion of 60% of the Pollution Control Charge in establishing the Rates during the Prospective Relief Period, and/or challenging the propriety or amount of the Drain Code Assessments during the Prospective Relief Period (“Prospective Relief Period Claims”).

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 fourteen (14) days after the mailing of this notice and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, 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 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 March 4, 2015, a Settlement Hearing will be held in the Oakland County Circuit Court, 1200 Telegraph Road, Pontiac, Michigan 48341 at 8:30 a.m., on April 8, 2015, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated February 27, 2015, 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 March 25, 2015, 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 Plaintiffs**

Gregory D. Hanley, Esq.  
Kickham Hanley PLLC  
32121 Woodward Avenue  
Royal Oak, Michigan 48073

**Attorneys for Defendants**

Soni Mithani, Esq.  
Miller, Canfield, Paddock and Stone P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, Michigan 48104

P. Daniel Christ, Esq.  
Hafeli Staran & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, Michigan 48320

**IF YOU PAID THE CITY FOR WATER AND SEWER SERVICE AT ANY TIME BETWEEN JANUARY 22, 2008 AND DECEMBER 31, 2014 AND YOU DO NOTHING IN RESPONSE TO THIS NOTICE AND THE SETTLEMENT IS FINALLY APPROVED BY THE COURT, YOU WILL AUTOMATICALLY RECEIVE A CHECK REPRESENTING YOUR PRO RATA SHARE OF THE NET SETTLEMENT FUND SENT TO SAME ADDRESS AS THIS NOTICE. NO ACTION ON YOUR PART IS NECESSARY IN ORDER TO PARTICIPATE IN THIS SETTLEMENT.**

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.

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 GHANLEY@KICKHAMHANLEY.COM, NOT BY TELEPHONE, identified as Attorneys for Plaintiffs, above. **DO NOT CONTACT THE COURT OR CLERK OF THE COURT, OR 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:

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 (1) arise out of the City's calculation of the Rates and/or the components of costs included in the Rates, (2) arise out of the fund balance maintained by the City in its water and sewer fund, (3) the Prospective Relief Period Claims, or (4) were asserted in the Lawsuit. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) 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; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) 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.