

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

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

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

Plaintiffs,

v.

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

Defendant.

15-010165-CB

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**PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiffs, Michigan Warehousing Group, LLC (“MWG”) and Midwest Valve & Fitting Company, (“Midwest,” collectively, with MWG, “Plaintiffs”), by their counsel, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated class members, state the following for their Second Amended Class Action Complaint against Defendant City of Detroit (the “City”):

### **INTRODUCTION**

1. Plaintiffs challenge one of the City’s Retail Drainage Charges (the “Per-Acre Drainage Charge”) imposed by the City’s Water and Sewerage Department (“DWSD”) upon Plaintiffs’ property located in the City. The City imposes the Per-Acre Drainage Charge for the alleged purpose of recovering the City’s costs of managing “stormwater” – rainfall and snowmelt that enters the City’s sewer system from the surface of the land.

2. The Per-Acre Drainage Charge has been disproportionately foisted upon a particularized and narrow subset of the City’s property owners (including Plaintiffs) – i.e., those owners of certain commercial properties that are being billed on an “acreage basis” based upon the “average imperviousness” of their properties (the “Per-Acre Properties”). Specifically, there are approximately 12,000 acres of private property that are subject to DWSD’s “per acre” billing practice — out of a total of 89,343 acres in the entire City.

3. DWSD persists in the exaction of the Per-Acre Drainage Charge from the owners of the Per-Acre Properties, even though “the nature of a stormwater management system, which benefits the public without providing any individualized, measurable benefit to individual property owners, does not lend itself to a system of funding based on user fees.” *Dekalb County v. U.S.*, 108 Fed. Cl. 681 (U.S. Court of Claims 2013).

4. The Per-Acre Drainage Charge constitutes a “tax” that has not been authorized by the City’s voters in violation of Article 9, Section 31 of the Michigan Constitution of 1963 (the “Headlee Amendment”) and is precisely the type of exaction the Michigan Supreme Court found

was an unconstitutional tax in the seminal case of *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998). The Per-Acre Drainage Charge also is an unlawful tax under MCL 141.91.

5. The Per-Acre Drainage Charge — which is imposed to cover approximately \$50 Million of the City’s total \$95 Million stormwater revenue requirement — imposes upon the owners of the Per-Acre Properties a disproportional financial burden of a governmental activity — stormwater disposal — which benefits the community at large.

6. In this regard, the Per-Acre Drainage Charge is motivated by a revenue raising and not a regulatory purpose, and is grossly disproportionate to DWSD’s actual costs of providing to Plaintiffs (and the other owners of the Per-Acre Properties) the purported benefits for which the Charges are ostensibly imposed upon them. Further, payment of the Per-Acre Drainage Charge is not voluntary because the amounts charged constitute a lien on the Per-Acre Properties and, if owners of the Per Acre Properties do not pay the Charges, they ultimately are added to the tax bills of the Properties.

7. Moreover, the Per-Acre Drainage Charge violates: Equal Protection Guarantees contained in the Michigan Constitution (*see* Mich. Constitution 1963, Article 1, § 2), the City’s own Charter (*see* § 7-1202, which requires that DWSD establish equitable water, drainage and sewerage service rates), the Prohibited Taxes by Cities and Villages Act (*See* MCL 141.91) and the Revenue Bond Act (*See* MCL 141.118). Here, the City’s Drainage Charge is purportedly designed to ensure that “all customers pay their fair share of [stormwater] treatment costs.” Yet, by imposing the Per Acre Drainage Charge upon the Per-Acre Properties, the City has failed to classify the Per-Acre Properties based upon naturally distinguishing characteristics.

8. Further, in this regard, by imposing the Per-Acre Drainage Charges upon the Per-Acre Properties, the City has failed to include all persons and entities of the same class, and has

instead extended privileges to an arbitrary or unreasonable class which are denied to owners of the Per-Acre Properties. This is true for at least three reasons:

a. First, the City is treating similarly-situated non-residential property owners differently by imposing stormwater drainage charges (“Drainage Charges”) upon the owners of the Per-Acre Properties that are dramatically higher than those imposed by the City on the owners of all other commercial properties. The owners of the 12,000 commercial acres that are subject to the Per-Acre Drainage Charge are bearing the entire burden of DWSD’s stormwater drainage treatment costs (approximately \$50 Million) allocated to non-residential properties. Specifically, there are a total of 41,237 acres in the City that are designated for non-residential use. However, only the owners of the 12,000 acres are being assessed the Per-Acre Drainage Charge, while the owners of the remaining 29,237 non-residential acres not. Thus, owners of the Per-Acre Properties, including Plaintiffs, are being charged differently than similarly situated owners of non-residential property in Detroit. MWG in particular has incurred and paid a Per-Acre Drainage Charge that is as much as 31 times higher than the Drainage Charge incurred by other similarly-situated non-residential landowners.

b. Second, the City also treats the owners of the Per-Acre Properties differently than it treats governmental units which incur Drainage Charges. Here, Plaintiffs and the majority of non-residential properties which incur Per-Acre Drainage Charges are being charged a rate of \$518.11 per acre per month. This number is calculated by applying “average impervious factors” based upon surveys of individual properties to a base cost rate to produce the monthly Drainage Charge. However, this Drainage Charge is nearly five times the amount being charged to the State of Michigan and Wayne County to manage the stormwater that enters the City’s sewer system from federal, state and county roads and highways. Even though those governmental entities are similarly situated to the Per-Acre Properties, the City only charges

these governmental entities \$113.85 per acre, per month. Thus, owners of Per-Acre Properties, including Plaintiffs, are being charged at a highly inflated rate as compared to similarly situated owners of impervious property in Detroit.

c. Third, the City treats all of its water and sewer customers which incur Drainage Charges (“Drainage Charge Customers”), including the owners of the Per-Acre Properties, differently than it treats itself—a governmental unit which *should* incur Drainage Charges, but does not. Instead, the City foists the cost of treatment and disposal of hundreds of millions of gallons of stormwater that do not emanate from private lands but rather originate on the City’s 21,000 acres of public streets upon the all of its Drainage Charge Customers, specifically including owners of Per-Acre Properties such as the Plaintiffs in this case.

### **JURISDICTION AND VENUE**

9. Plaintiffs own commercial real property situated in the City of Detroit, Wayne County, Michigan, have been assessed, and paid, the Per-Acre Drainage Charge at issue in this case within one year of the filing of this action, and seek to act as class representatives for all similarly situated persons and entities.

10. Defendant City is a Michigan home-rule city and is located in Wayne County, Michigan.

11. Venue and jurisdiction are proper in the Wayne County Circuit Court because all parties are present in Wayne County, Michigan, and the actions which give rise to Plaintiffs’ claims occurred in Wayne County, Michigan. Venue and jurisdiction also are proper in the Wayne County Circuit Court under Article 9, Section 31 of the Michigan Constitution of 1963, and MCL 600.308a.

### **GENERAL ALLEGATIONS**

12. Pursuant to its statutory authority, MCL 141.104, the City, through the Detroit Water and Sewerage Department (“DWSD”), maintains and operates a sewer system (the “Sewer

System”) to provide sanitary sewage treatment and disposal services to inhabitants of the City and to collect snowmelt and rainwater (“stormwater”) runoff. DWSD’s stormwater disposal services are of a general public nature and are furnished to the City at large. Because DWSD is a department of the City and not an independent legal entity, references in this Complaint to “DWSD” include the City.

13. DWSD establishes the rates for the Drainage Charges from time to time through legislative action, and revenues generated by the Drainage Charges are deposited into the DWSD sewer fund. The City’s current sewage and drainage rates are attached hereto as Exhibit A.

14. Pursuant to the City’s Charter, DWSD is required to establish equitable water, drainage and sewerage service rates. *See* 2012 Charter of the City of Detroit at Article 7, Chapter 12, § 7-1202.

15. For the Per-Acre Properties, the Drainage Charge is based upon the number of acres owned multiplied by an amount which varies based upon the size of the impervious surface area of the property. *See e.g.* Exhibit B hereto (November 22, 2013 Memorandum authored by The Foster Group, including Illustration of the City’s Drainage Charge Design).

16. Plaintiff MWG currently owns commercial property (the “MWG Property”) within the City’s limits.

17. Plaintiff Midwest currently owns commercial property (the “Midwest Property”) within the City’s limits.

### **THE DISTINCTION BETWEEN SANITARY SEWAGE AND STORMWATER**

18. Like many older communities in Southeast Michigan, the City primarily has a combined sanitary and storm sewer system, which is a system that is designed to collect both (i) snowmelt and rainwater (“stormwater”) runoff and (ii) domestic sewage and industrial wastewater (“sanitary sewage”), in the same pipe.

19. Sanitary sewage – i.e., spent water from a municipal water supply system which may be a combination of liquid and water-carried wastes -- enters a combined system directly from residences, commercial buildings, industrial plants, institutions and other structures. Owners and/or occupiers of such structures which generate the sewage are “users” of the sanitary sewage disposal services provided by the City.

20. Stormwater, in contrast, does not originate from any use of the water supply system or sanitary sewer system, and its presence in the combined system is wholly unrelated to the amount of tap water used, or sanitary sewage generated, by users of the system whose structures are physically connected to that system. Stormwater collects on both private and public land, roads and other physical, impervious surfaces during rainfall events, and the runoff enters the combined sewer system through catch-basins and other collection devices.

21. Even though they have different origins, both sanitary sewage and stormwater collected in a combined sewer system need to be disposed of. Here, the City’s combined sewer system flows to the DWSD treatment plant for disposal and treatment.

**THE CITY’S METHODOLOGY FOR IMPOSING STORMWATER DRAINAGE CHARGES FORCES A SMALL SUBSET OF ITS NONRESIDENTIAL PROPERTY OWNERS TO FINANCE A GROSSLY DISPROPORTIONAL AMOUNT OF THE CITY’S PURPORTED COST OF STORMWATER MANAGEMENT AND DISPOSAL**

22. DWSD purportedly imposes Drainage Charges in order to recover the cost of treatment and disposal of stormwater on a monthly basis.

23. The process for determining the Drainage Charges involves six steps. *See* Exhibit B, November 13, 2103 Foster Group Memorandum, which describes the process by which the DWSD Drainage Charges were computed for 2013-2014.

24. Initially, DWSD calculates the percentage of the total combined sewer flows it treats that is attributable to stormwater, as opposed to sanitary sewage or infiltration waters. For 2013-2014, the City determined that stormwater constituted 28% of the total treated flow. *Id.*

25. DWSD then determines the total revenue it needs to obtain from the City's customers in order to cover all of its sewer operations. For 2013-2014, this amount was \$203 Million. *Id.*

26. Next, DWSD determines the portion of the total revenue requirement that will be recovered via Drainage Charges. Here, the "Stormwater Revenue Requirement" includes 28% of the total cost of collection, treatment, and disposal of the total flow, 100% of the total capital and operating costs of CSO facilities,<sup>1</sup> and a pro-rata allocation of a "look back" adjustment. In its 2013-2014 calculation, DWSD determined that the total stormwater revenue requirement applicable to City customers was approximately \$95 million for that fiscal year.

27. The City's allocation of 28% of the total cost of collection, treatment and disposal of the total sewage flow to the City's Drainage Charge customers is grossly disproportionate to the actual costs of collection, treatment and disposal of stormwater flows. As the City admits, "stormwater flows are less polluted than sanitary flows and therefore less costly to treat." See Exhibit D hereto. Accordingly, even if stormwater flows constituted 28% of the total **volume** of all types of flows that are treated and disposed of by DWSD, the City's actual cost of collecting, treating and disposing of those flows is far less than 28% of the total **cost** of collection, treatment and disposal of the total flow.

28. DWSD then allocates responsibility for the grossly-inflated stormwater revenue requirement to the "major customer classes," which are defined as: (1) Residential, (2) Non-residential, and (3) State & County Classes. *Id.*

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<sup>1</sup> "CSO" means combined sewer overflows. Most of the time, combined sewer systems transport all of their sanitary sewage and stormwater to a sewage treatment plant, where it is treated and then discharged to a water body. During periods of heavy rainfall or snowmelt, however, the sanitary sewage and stormwater flow rate in a combined sewer system can exceed the capacity of the sewer system or treatment plant. For this reason, combined sewer systems were designed to overflow occasionally and discharge excess sanitary sewage and stormwater directly into nearby streams, rivers, or other water bodies. Historically, combined sewer overflows ("CSOs") were among the major causes of beach closings and other water quality impairments.



29. The City has approximately 89,343 acres. *Id.* Of this total number of acres, 46,892 acres are designated as residential. *Id.* Included in the 46,892 acres designated as residential are over 10,000 acres of public streets and roads. See Exhibit C hereto at p. 60. In its 2013-2014 calculation, DWSD allocated approximately \$43 Million of the Stormwater Revenue Requirement to the Residential class, and based upon DWSD's rate methodology, 217,100 residential customer accounts were charged approximately \$16.60 *per account per month* to meet the Residential class's allocation of the Stormwater Revenue Requirement. *Id.*

30. Out of the City's 89,343 acres, approximately 41,237 acres are designated as "Commercial" or "Non-residential." *Id.* The 41,237 acres includes over 11,700 acres of public streets and roads. See Exhibit C hereto at p. 60. In the 2013-2014 calculation, DWSD allocated approximately \$50 Million of the Stormwater Revenue Requirement to the Non-residential Subset. *Id.* However, based upon DWSD's rate methodology, which charges certain Non-residential customers – i.e., the owners of the Per-Acre Properties -- on a *per acre* basis, only 12,000 acres of the 41,237 acres were actually charged in order to meet the Non-residential class's allocation of the Stormwater Revenue Requirement. *Id.* This means that (for some reason) DWSD is allocating an already-inflated \$50 Million revenue requirement against only 12,000 Non-residential acres—even though there are actually 41,237 Non-residential acres in the City including the 11,700+ acres of City streets and roads that the City has elected to allocate to the Non-residential category. *Id.*

31. Based upon DWSD's calculations, the 12,000 Non-residential acres are assessed a base cost of \$350.80 per acre. *Id.* DWSD adjusts the base cost by factoring in an "average impervious factor" of 48% to yield a "per impervious acre" unit charge of \$719.59 per month for the 12,000 Non-Residential acres being billed on this acreage basis. *Id.* DWSD then multiplies the "per impervious acre" unit charge of \$719.59 by the estimated "average imperviousness" of the individual properties being charged in order to determine the per acre unit cost to be charged to

members of the Non-residential Subset. *Id.* DWSD's methodology establishes 5 classes of "average imperviousness" based upon surveys taken of the Non-residential properties. *Id.* Once the "average imperviousness" factor is calculated, the majority of owners of these 12,000 Non-residential acres are being disproportionately charged an average of \$518.11/per acre for their share of the Stormwater Revenue Requirement. *Id.*

32. The third "class" consists of the purported 1,214 acres owned by the State and County. *Id.* DWSD charges the State and County only \$113.85/acre as their portion of the Stormwater Revenue Requirement. *Id.* The per-acre amounts actually paid by the State and County are even lower, because the City has grossly underestimated the number of acres encompassed by State and County highways in the City.

33. The City does not allocate a Drainage Charge to itself for the 21,000 acres of City streets and impervious surfaces. *Id.*

34. DWSD has imposed—and plans to continue to impose—a disproportionate amount of the Drainage Charges upon a particularized and narrow subset of non-residential properties that represent only a fraction of the Non-residential Customer class.

35. Specifically, out of a total of 89,343 acres in the entire City, with 41,237 acres designated as "non-residential," only approximately 12,000 commercial acres are subject to DWSD's "per acre" billing practice, and the owners of these acres, like Plaintiffs, bear a disproportionate cost allocation of the DWSD's Stormwater Revenue Requirement. Other non-residential properties are charged a monthly fee which ranges from \$18.11 per month to \$169.55 per month and is nonsensically based upon the size of the water pipes that service those properties.

36. The City's method of imposing these Drainage Charges leads to grossly disparate Charges for similarly situated non-residential properties. A one acre parcel which incurs the Per-Acre Charge is charged a "standard rate" of \$565.17 per month, while an identical parcel upon

which the City has not imposed the Per Acre Charge but rather has imposed a charge based upon the water meter size can pay as low as \$18.11 per month. The owners of the Per-Acre Properties therefore pay up to 31 times as much per month as similarly situated non-residential property owners.

37. The Drainage Charge is being used to fund costs for services which provide a benefit to the City and *all* of its citizens, whether commercial or residential. In addition to paying to dispose of stormwater, the Drainage Charge also finances 100% of the capital and operating expenses of the City's CSO facilities, which exceed \$36 million per year.

38. The portion of the Drainage Charge allocated to the Per-Acre Properties does not correspond to the benefits conferred upon this class for at least three reasons. First, the revenues being derived from the Per-Acre Drainage Charges are clearly in excess of the direct and indirect costs of the current "use" of the stormwater disposal services by the narrow subset of non-residential properties paying those exactions – i.e., the owners of the Per-Acre Properties.

39. Second, stormwater disposal services do not confer a unique benefit upon Plaintiffs or the other similarly situated non-residential property owners. Stormwater collects on land, roads and other physical surfaces, and the runoff enters the combined sewer system through catch-basins and other collection devices. Indeed, the stormwater collected in a combined sewer system are not "used" in any meaningful sense by any particular landowner or user.

40. Third, any "benefit" of stormwater disposal conferred on the City's property owners is no different than the benefit conferred on the general public. Storm water systems help prevent erosion, collect contaminated water for cleansing, keep roadways from flooding, and prevent the formation of standing pools of stagnant water. The benefits resulting from this management are shared by nearly every member of the public.

41. DWSD's use of the revenues generated by the Per-Acre Drainage Charge assessed against only the owners of 12,000 of the City's 41,000 non-residential acres to pay for stormwater disposal has the effect of forcing one subset of the citizenry to bear a disproportionate amount of the costs of a public service, even though there are other "users" of those services and even though the services benefit the general public.

### **CLASS ALLEGATIONS**

42. Plaintiffs bring this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of the owners of the 12,000 commercial acres that are subject to DWSD's "per acre" billing practice which have incurred and/or paid the Per Acre Drainage Charge during the relevant class periods, excluding the plaintiff in Case No. 14-011369-CB.

43. The members of the Class are so numerous that joinder of all members is impracticable.

44. Plaintiffs' claims are typical of the claims of members of the Class. Plaintiffs are members of the Class they seek to represent, and Plaintiffs were injured by the same wrongful conduct that injured the other members of the Class.

45. The City has acted wrongfully in the same basic manner as to the entire class.

46. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

- a. whether the Per Acre Drainage Charge is a tax;
- b. whether the Per Acre Drainage Charge violates the Headlee Amendment;
- c. whether the Per Acre Drainage Charge violates the Equal Protection Guarantees of the Michigan Constitution;
- d. whether the Per Acre Drainage Charge violates the City's Charter Article 7,

Chapter 12, § 7-1202;

- e. whether the Per Acre Drainage Charge is “unreasonable,”
- f. whether the Per Acre Drainage Charge violates MCL 141.91;
- g. whether the Per Acre Drainage Charge violates MCL 141.118 and
- h. whether the City has been unjustly enriched by collecting the Per Acre Drainage Charge.<sup>2</sup>

47. Plaintiffs will fairly and adequately protect the interests of the Class, and Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs are committed to the vigorous prosecution of this action, and have retained competent and experienced counsel to prosecute this action.

48. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. Plaintiffs anticipate no difficulty in the management of this action as a class action.

### **COUNT I** **VIOLATION OF THE HEADLEE AMENDMENT**

49. Plaintiffs incorporate each of its preceding allegations as if fully set forth herein.

50. The City is bound by the Michigan Constitution of 1963, including those portions commonly known as the Headlee Amendment.

51. In particular, the City may not disguise a tax as a fee under Article 9, Section 31 of the Michigan Constitution of 1963, which provides:

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<sup>2</sup> Pursuant to MCR 2.112(M), Plaintiffs identifies subparts (a) through (f) of Paragraph 46 as “factual questions that are anticipated to require resolution by the Court.”

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31.]

52. The Per-Acre Drainage Charge is a disguised tax and is intended to avoid the obligations of the Headlee Amendment, including the requirement that the Per-Acre Drainage Charge, as taxes, be approved by a majority of the electorate.

53. The Per-Acre Drainage Charge has all relevant indicia of a tax:

- a. It has no relation to any service or benefit actually received by the taxpayer;
- b. The amount of the Per-Acre Drainage Charge is disproportionate to the cost incurred by the City in providing stormwater management services;
- c. The Per-Acre Drainage Charge is designed to generate revenue—and in fact generates revenue for the City that exceeds the City’s actual cost of providing stormwater drainage services to Plaintiffs and the Class by millions of dollars (the “Per Acre Drainage Overcharges”);
- d. The payers of the Per-Acre Drainage Charge benefit in no manner distinct from any other taxpayer or the general public;
- e. Payment of the Per-Acre Drainage Charge is not discretionary, but actually or effectively mandatory;
- f. Various other indicia of a tax described in *Bolt v. City of Lansing* are present.

54. As a direct and proximate result of the City’s implementation of the Per-Acre Drainage Charge, Plaintiffs and the Class have been harmed.

WHEREFORE, Plaintiffs seek an injunction prohibiting the City from imposing the Per-Acre Drainage Charges, and further seek a refund of all amounts to which they and the Class are entitled to under this claim, including attorneys' fees and costs as allowed by Article 9, Section 32 of the Michigan Constitution of 1963 and MCL 600.308a.

**COUNT II**  
**VIOLATION OF EQUAL PROTECTION GUARANTEES STATED IN THE**  
**MICHIGAN CONSTITUTION OF 1963, ARTICLE I, SECTION 2**

55. Plaintiffs incorporate each of their preceding allegations as if fully set forth herein.

56. The Michigan Constitution of 1963 provides in pertinent part that “no person shall be denied the equal protection of the laws...” Mich. Constitution 1963, Article 1, § 2. Plaintiffs are not asserting claims under the U.S. Constitution or other federal law.

57. The City's practice of imposing the Per-Acre Drainage Charge only upon Plaintiffs and the other Per-Acre Properties is a constitutionally improper classification which violates Michigan equal protection guarantees in at least two ways. First, there is no natural distinguishing characteristic between the 12,000 acres that are subject to the Per-Acre Drainage Charge and the 29,237 acres that are not subject to the Per-Acre Drainage Charge. Thus, Plaintiffs and the Class are irrationally being charged differently than the similarly situated owners of the 29,237 acres of commercial property that are not being assessed the Drainage Charge, including the City itself.

58. The manner in which the Per-Acre Drainage Charge is imposed upon commercial properties unduly burdens Plaintiffs and the Class, and puts all Class members at a distinct financial disadvantage as compared to the owners of the 29,237 non-residential property acres which are not being charged in the same manner. Thus, Plaintiffs and the Class are financing the entire portion of DWSD's Stormwater Revenue Requirement (approximately \$50 Million) for non-residential properties.

59. Additionally, the varying rates of the Per-Acre Drainage Charge also violate equal protection guarantees. Here, the majority of commercial properties within the Class are being charged a rate of \$518.11 per acre per month—which is nearly five times the amount being charged to the State of Michigan and Wayne County, entities who are similarly situated to Plaintiffs and the Class, as the same “impervious factors” apply—but for some reason, DWSD only charges the State and County \$113.85 per acre, per month. Thus, Plaintiffs and the Class are being charged at a highly inflated and disparate rate as compared to similarly situated owners of impervious property in Detroit.

60. There is no legitimate governmental purpose being served through the City charging Plaintiffs and the Class a higher rate than it charges the State and County.

61. The City has violated Mich. Constitution 1963, Article 1, § 2 by imposing the Per-Acre Drainage Charge upon Plaintiffs and the Class in violation of their constitutional equal protection guarantees.

62. Plaintiffs and the Class have been financially harmed as a result of the City’s violation of their constitutional equal protection guarantees.

WHEREFORE, the City should be required to disgorge the revenues attributable to the Per Acre Drainage Charges imposed or collected by the City between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action, and during the pendency of this action, and refund all Per Acre Drainage Charges it has collected to Plaintiffs and the Class.

### **COUNT III** **UNJUST ENRICHMENT – CHARTER VIOLATION**

63. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

64. § 7-1202 of the City’s Charter requires that DWSD establish equitable water, drainage and sewerage service rates.



65. The City has exceeded the authority stated in its Charter, § 7-1202, by imposing an inequitable drainage rate—the Per Acre Drainage Charge—upon Plaintiffs and the Class.

66. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled (the "Per Acre Drainage Overcharges"). By paying the Per Acre Drainage Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

67. The City has been unjustly enriched because it received Per Acre Drainage Overcharges to which it was not entitled, and it would be unfair for the City to retain the Per Acre Drainage Overcharges under the circumstances.

68. The City should be required to disgorge the amounts by which it has been unjustly enriched.

WHEREFORE, the City should be required to disgorge the revenues attributable to the Per Acre Drainage Charges imposed or collected by the City between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action, and during the pendency of this action, and refund all Per Acre Drainage Charges it has collected to Plaintiffs and the Class.

#### **COUNT IV** **UNJUST ENRICHMENT – UNREASONABLE SEWER RATES**

69. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

70. Even if the Per Acre Charges are not taxes, they must still be "reasonable." *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

71. The Per Acre Drainage Charge is arbitrary, capricious and unreasonable.

72. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Per Acre Drainage Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

73. The City has been unjustly enriched because it received Per Acre Drainage Overcharges to which it was not entitled, and it would be unfair for the City to retain the Per Acre Drainage Overcharges under the circumstances.

74. The City should be required to disgorge the amounts by which it has been unjustly enriched.

WHEREFORE, the City should be required to disgorge the revenues attributable to the Per Acre Drainage Charges imposed or collected by the City between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action, and during the pendency of this action, and refund all Per Acre Drainage Charges it has collected to Plaintiffs and the Class.

**COUNT V**  
**UNJUST ENRICHMENT – VIOLATION OF MCL 141.91**

75. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

76. MCL 141.91 provides: Sec. 1. “Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964.”

77. The City has violated MCL 141.91 by imposing and collecting the Per Acre Drainage Charges. The Per Acre Drainage Charge is a tax that is not an ad valorem property tax and it was first imposed after January 1, 1964.

78. As a direct and proximate result of the City’s improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Per Acre Drainage Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

79. The City has been unjustly enriched because it received Per Acre Drainage Overcharges to which it was not entitled, and it would be unfair for the City to retain the Per Acre Drainage Overcharges under the circumstances.

80. The City should be required to disgorge the amounts by which it has been unjustly enriched.

WHEREFORE, the City should be required to disgorge the revenues attributable to the Per Acre Drainage Charges imposed or collected by the City between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action, and during the pendency of this action, and refund all Per Acre Drainage Charges it has collected to Plaintiffs and the Class.

**COUNT VI**  
**UNJUST ENRICHMENT – VIOLATION OF MCL 141.118**

81. Plaintiffs incorporate each of its preceding allegations as if fully set forth herein.

82. The Revenue Bond Act is clear in its prohibition that "free service shall not be furnished by a public improvement to a person, firm, or corporation, public or private, or to a public agency or instrumentality." MCL 141.118(1). Under MCL 141.118(1), "[t]he reasonable cost and value of any service rendered to a public corporation, including the borrower [the City] by a public improvement shall be charged against the public corporation and shall be paid for as the service accrues from the public corporation's current funds or from the proceeds of taxes which the public corporation, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, or both, ..."

83. The City has violated MCL 141.118 because it does not impose any Drainage Charge upon itself, but instead, imposes the cost of treatment and disposal of stormwater for the City's 21,000 acres of streets and impervious surfaces upon its Drainage Charge Customers, specifically including owners of Per-Acre Properties such as the Plaintiffs in this case.

84. Thus, the City is receiving a free service that is prohibited by MCL 141.118 by imposing its costs for treatment and disposal of stormwater that originates from the City's own streets and roads upon its Drainage Charge Customers.

85. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the Per Acre Drainage Overcharges, which necessarily includes charges for the City's impervious surfaces, Plaintiffs and the Class have conferred a benefit upon on the City.

86. The City has been unjustly enriched because by paying the Per Acre Drainage Charge, Plaintiffs, and those similarly situated, have paid the City's cost of stormwater disposal.

87. The City has been unjustly enriched because it has received the Per Acre Drainage Overcharges (which include charges for the City's impervious surfaces) to which it was not entitled, and it would be unfair for the City to retain the Per Acre Drainage Overcharges under these circumstances.

88. The City should be required to disgorge the amounts by which it has been unjustly enriched and, pursuant to MCL 141.118, should be forced to impose a Drainage Charge upon itself for the acres of roads and impervious surfaces that it owns.

WHEREFORE, the City should be required to disgorge the revenues attributable to the Per Acre Drainage Charges imposed or collected by the City between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action, and during the pendency of this action, and refund all Per Acre Drainage Charges it has collected to Plaintiffs and the Class.

**COUNT VII**  
**DECLARATORY JUDGMENT INVALIDATING LIENS**

89. Plaintiffs incorporate each of its preceding allegations as if fully set forth herein.

90. Pursuant to Michigan law and City's ordinances, unpaid Drainage Charges may become a lien against the property of certain members of the Class. If left unpaid, the Charges are transferred to the tax roll of the property.

91. The City may claim liens against the properties owned by Plaintiffs and the Class for unpaid Per-Acre Charges.

WHEREFORE, because the Per-Acre Drainage Charges are unconstitutional and unlawful, the Court should enter an order invalidating any municipal water or sewer liens or associated tax liens which have been imposed, or which may become imposed, against properties arising out of or relating to the Per-Acre Drainage Charges.

#### **PRAYER FOR RELIEF**

Plaintiffs request that the Court grant the following relief:

- A. Certify this action to be a proper class action with Plaintiffs certified as Class Representatives and Kickham Hanley PLLC designated as Class Counsel;
- B. With respect to Count I, define the Class to include the owners of the 12,000 commercial acres that are subject to DWSD's "per acre" billing practice which have incurred and/or paid the Per Acre Drainage Charge at any time in the one year preceding the filing of this lawsuit or which incur and/or pay the Per Acre Drainage Charge during the pendency of this action;
- C. With respect to Counts II, III, IV, V and VI, define the Class to include the owners of the 12,000 commercial acres that are subject to DWSD's "per acre" billing practice which have incurred and/or paid the Per Acre Drainage Charge between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action or which incur and/or pay the Per Acre Drainage Charge during the pendency of this action;

- D. With respect to Count VII define the Class to include the owners of the 12,000 commercial acres that are subject to DWSD's "per acre" billing practice which have incurred and/or paid the Per Acre Drainage Charge between July 18, 2013 (or any earlier date permissible under federal and state law) and the date of the filing of this action or which pay the Per Acre Drainage Charge during the pendency of this action that have incurred liens on their property;
- E. With respect to Count I, enter judgment in favor of Plaintiffs and the Class and against the City, and order and direct the City to disgorge and refund all Per Acre Drainage Charges collected, and order the City to pay into a common fund for the benefit of Plaintiffs and all other members of the Class the total amount of Per Acre Drainage Charges to which Plaintiffs and the Class are entitled;
- F. With respect to Counts II through VI, enter judgment in favor of Plaintiffs and the Class and against the City, and order and direct the City to disgorge and refund all Per Acre Drainage Charges collected, and order the City to pay into a common fund for the benefit of Plaintiffs and all other members of the Class the total amount of Per Acre Drainage Charges to which Plaintiffs and the Class are entitled;
- G. Appoint a Trustee to seize, manage and distribute in an orderly manner the common fund thus established;
- H. Find and declare that the Per-Acre Drainage Charge violates the Headlee Amendment and permanently enjoin the City from imposing or collecting it;
- I. Find and declare that the Per-Acre Drainage Charge violates the Equal Protection Guarantees of the Michigan Constitution;
- J. Find and declare that the Per-Acre Drainage Charge violates the City's Charter § 7-1202 and permanently enjoin the City from imposing or collecting it;

- K. Find and declare that the Per Acre Drainage Charge is “unreasonable” and violates MCL 141.91 and permanently enjoin the City from imposing or collecting it;
- L. With regard to County VII, enter an order invalidating any municipal water lien or associated tax liens which have been imposed, or which may become imposed, against the properties of all class members arising out of or relating to the Per Acre Drainage Charges.
- M. Award Plaintiffs and the Class the costs and expenses incurred in this action, including reasonable attorneys’, accountants’, and experts’ fees; and
- N. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

By: /s/ Gregory D. Hanley  
Gregory D. Hanley (P51204)  
Jamie Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073  
248-544-1500  
Attorneys for Plaintiffs

Date: February 26, 2016  
KH145405

**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2016 I electronically filed the ***Plaintiffs’ Second Amended Class Action Complaint*** with the Clerk of the Court using the electronic filing system which will send notification to all parties.

/s/ Kim Plets  
Kim Plets

KH145405

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# EXHIBIT - A



**CITY OF DETROIT SEWAGE, DRAINAGE, INDUSTRIAL  
WASTE CONTROL AND SURCHARGE RATES**

Effective on all bills rendered on or after August 1, 2014

**SEWAGE RATES**

**Rate**

Sewage Disposal Rate per 1,000 cu. ft:

**\$46.26**

**SERVICE CHARGE**

**Charge**

Based on number of months in the Billing period

Per bill:

**\$ 5.47**

**SERVICE CHARGE**

Monthly Drainage Charge based on meter size

**Residential**

**Non-Residential**

<u>Meter Size</u>	<u>Drainage Charge</u>	<u>Meter Size</u>	<u>Drainage Charge</u>
5/8 inch	\$18.11	5/8 inch	\$ 18.11
3/4 inch	18.11	3/4 inch	18.11
1 inch	18.11	1 inch	18.11
1 1/2 inch	18.11	1 1/2 inch	169.55
2 inch	18.11	2 inch	169.55
3 inch	169.55	3 inch	169.55
4-48 inch	169.55	4-48 inch	169.55

Minimum Sewage Charge..... \$ 23.58 per month\*

**Non-Residential Drainage Rate per Acre per Month**

	<b>Standard Rate*</b>	<b>Surveyed</b>	<b>Imperviousness</b>		<b>Rate</b>
	<u>72%</u>	<u>10/24%</u>	<u>25/49%</u>	<u>50/74%</u>	<u>75/100%</u>
Charge	\$565.17	\$133.44	\$290.43	\$486.66	\$886.83

\*The standard rate of \$565.17 per acre per month applies to all non-residential property that has not had a property imperviousness survey completed, submitted to and approved by the Detroit Water and Sewerage Department. A minimum charge of \$23.58 applies to non-residential property.

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# EXHIBIT - B

# **TFG**

## **THE FOSTER GROUP**

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THE FOSTER GROUP, LLC  
BART FOSTER, PRESIDENT  
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### **MEMORANDUM**

**Detroit Retail Stormwater Rates**

**November 22, 2013**

**To: Bill Wolfson, Raphael Chirolla**

**From: Bart Foster**

You have asked for a brief documentation describing the process by which the DWSD stormwater drainage charges are computed for retail customers in the City of Detroit. The attached table illustrates the calculation of the FY 2013-14 charges, and is briefly described herein. The stormwater rate methodology was originally established in the early 1980s and remains intact today. While minor adjustments to the underlying allocation factors have been made periodically, no material changes to the methodology have been implemented. It is our understanding that the entire methodology is in the process of review for potential changes in the FY 2014-15 rates.

The process for determining the stormwater rates and charges basically consists of six calculation steps:

**Step 1 – Determine relative stormwater volumes as a percentage of the total Detroit retail class allocation volume. This is illustrated on Lines 1 through 6. For the FY 2013-14 rates, the flow modeling and flow balancing efforts indicated that 28% of the flow from the Detroit class was related to storm flows.**

**Step 2 – Determine the overall revenue requirement allocable to the Detroit retail class. As shown on Lines 7 through 9, the sewer cost of service study assigned approximately \$203 million to the class for FY 2013-14. *Note – this does not include amounts that are recovered from “per bill” charges, as they do not affect the calculation of stormwater or commodity charges.***

**Step 3 – Determine the relative portion of the Detroit revenue requirement that should be recovered by stormwater charges. See Lines 10 through 13. The stormwater rate methodology assigns “regular” treatment and collection costs proportional to the allocation volume. So 28% of these costs are allocated to the stormwater rates. The methodology also assigns 100% of the costs related to the CSO facilities to stormwater rates. Finally, the stormwater rate requirement picks up a pro-rata allocation of the Look-Back Adjustment.**

Step 4 – Allocate the stormwater revenue requirement to major customer classes. See Lines 14 through 18. The methodology uses property use statistics to perform this allocation on the basis of total impervious acres in the City. Approximately \$50 million is assigned to be recovered through “per acre” charges. Note – the Look-Back amounts are not allocated to the State and County Road accounts.

Step 5 – Determine effective unit costs. See Lines 19 through 23. The unit costs for the residential and State and County Road accounts simply become the proposed rates, as shown on Line 20. The “per acre” charges require additional adjustments. Based on information from the billing system, there are approximately 12,000 acres being billed on an acreage basis, with an average imperviousness of 48.8%. This yields a “per impervious acre” unit charge of \$719.59 per month.

Step 6 – Adjust unit costs by average impervious factors. The methodology establishes 5 classes of “average imperviousness” based on surveys of individual properties. These average impervious factors are applied to the standard unit cost to produce the monthly charges shown on Lines 24 through 28.

We trust that this information provides an executive summary description of the process. We are prepared to discuss this matter further at your convenience.

**Illustration of City of Detroit Stormwater Drainage Charge Design - "Net" Rates with LB**

		Allocation			
		Total	Residential	Non-Res	State & Co
<b>City of Detroit Flow Volumes - Mcf</b>					
1	Sanitary	3,242,500			
2	Dry Weather Infiltration	5,046,125			
3	Net Wet Weather Inflow *	3,257,813			
4	Total	11,546,438			
5	Wet Weather (Storm) %	28%			
6	* Reflects overflow credit % of:	15%			
<b>City of Detroit Revenue Requirement - \$</b>					
7	Original Collection, Treatment, & Disposal	166,542,400			
8	CSO Facilities	36,927,400			
9	Total	203,469,800			
<b>Stormwater Revenue Requirement - \$</b>					
10	Orig Collection, Treatment, & Disposal	28% 46,989,700			
11	CSO Facilities	100% 36,927,400			
12	Net Look-Back Adjustment	11,500,000			
13	Total	95,417,100			
14	Assigned Acres	89,343	46,892	41,237	1,214
15	Impervious Factor	51%	44%	58%	75%
16	Assigned Impervious Acres	45,517	20,573	24,033	911
17	Allocation Factor (a)		45.2%	52.8%	1.7%
18	Allocated Revenue Requirement (a)	95,417,100	43,243,101	50,515,369	1,658,630
19	Total Billing Units		217,100	12,000	1,214
	Units		accts	acres	acres
20	Cost per Unit		16.60	350.80	113.85
	Units		per acct	per acre	per acre
21	Avg Impervious Factor			0.488	
22	Effective Billing Units			5,850	
	Units			imp acres	
23	Cost per Unit			719.59	
	Units			per imp acre	
<b>Non-Residential Acreage Charges</b>					
	Average	Unit Cost			
	Imp Factor	per Imp Acre			
24	Class 1	0.170 x 719.59	=	122.33	per acre
25	Class 2	0.370 x 719.59	=	266.25	per acre
26	Class 3	0.620 x 719.59	=	446.15	per acre
27	Class 4 (Standard)	0.720 x 719.59	=	518.11	per acre
28	Class 5	0.875 x 719.59	=	629.64	per acre

(a) Look-Back not allocated to State and County ROW

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# EXHIBIT - C

**CITY OF DETROIT  
WATER AND SEWERAGE DEPARTMENT**



*Report on*  
**FISCAL YEAR 1992 WATER AND SEWER RATES AND  
FISCAL YEAR 1990 SEWER LOOK-BACK ADJUSTMENTS**

**JUNE 1991**

## **Units of Service**

The basic unit of service for wastewater is contributed volume. In addition, it is necessary to determine projected retail sewer bills and all non-residential accounts by meter size.

## **Volume Projections**

Wastewater Volumes are projected differently for metered and unmetered customers. For metered customers, the total contributed volume for each customer is measured by sewage meters. For unmetered customers, contributed volume is estimated as a percentage of metered water sales, stormwater runoff, and infiltration and inflow. Historical billed wastewater data is analyzed to determine wastewater contribution data for metered customers and water usage trends for unmetered customers and the City of Detroit. Projected volumes are submitted to wholesale suburban customers for their input or concurrence. The Department generally accepts any revised projections from suburban communities. Actual billed wastewater data for 1986 through 1990 and projections for 1991 and 1992 are presented for each customer in Table S-10.

Total projected allocated wastewater volumes for each customer are presented in Table S-11. The wastewater volumes for metered customers are taken from the projection shown in Table S-10. For unmetered customers, the projections in Table S-10 represent water sales and are adjusted to reflect the estimated volumes of wastewater discharged to the System. Contributed wastewater projections for unmetered suburban wholesale customers are stated at 90 percent of projected water sales. The quantity of wastewater contributed from the City of Detroit is also estimated at 90 percent of water sales. However, it is estimated that the retail water meters under-register by 10 percent. As such, Detroit water sales volumes are adjusted by applying a factor of 99 percent. The projected wastewater contributions are shown in Column 1 of Table S-11. To these volumes, stormwater runoff and infiltration and inflow must be added. Stormwater runoff is calculated for each unmetered customer and the City of Detroit as a function of rainfall, area, surface imperviousness, extent of combined sewers, and overflow characteristics of each applicable drainage district. Infiltration and inflow is also a function of area and other factors. The figures shown in Column 3 of Table S-11 were taken from the Segmented Facilities Plan for Detroit and established from various infiltration/inflow studies for the unmetered suburban customers.

Start Here

## **Stormwater Drainage**

In order to accurately recover the costs of treating stormwater runoff from retail customers, it is necessary to determine responsibility for stormwater volumes. Table S-12 shows the development of stormwater revenue requirement allocation percentages for 1992.



**SEWAGE DISPOSAL SYSTEM**  
**TABLE S-12**  
**DETERMINATION OF FY 1992 RETAIL STORMWATER**  
**REVENUE REQUIREMENT ALLOCATION PERCENTAGES**

Class	(1) Acres	(2) Percent Impervious	(3) Impervious Acres	(4) Residential/ Other Percentage	(5) Total City Trafficway Allocation	(6) Total Allocated Acres	(7) Weighted Average Percent Impervious	(8) Adjusted Impervious Acres	(9) Percent of Total
Residential	27,362								
Res. - Unimproved	9,457								
Subtotal Res.	36,819	37%	13,623	46%	10,073	46,892	44%	20,573	45.20%
Non-Residential	19,098								
Non-Res.- Unimproved	10,372								
Subtotal Non-Res.	29,470	54%	15,914	54%	11,767	41,237	58%	24,033	52.80%
State Highways	714	75%			-	714	75%	536	1.18%
County Highways	500	75%			-	500	75%	375	0.82%
City Trafficways	21,840	69%			-	-		-	
Total City	<u>89,343</u>		<u>29,537</u>	<u>100.00%</u>	<u>21,840</u>	<u>89,343</u>		<u>45,517</u>	<u>100.00%</u>

The total projected cost of serving each customer class for 1992 is presented on Line 17 of Table S-13. Lines 18 through 21 reconcile these totals with the total 1992 revenue requirement of \$172,875,452.

### **Determination of Revenue Required from Rates**

Table S-14 forms the basis for the design of volume and drainage charges. The total 1992 revenue requirement for each customer class is presented in Column 1. Macomb County's revenue requirement is adjusted to recognize the various fixed monthly charges paid by Macomb County. Column 2 presents the percentage of each customer's revenue requirement that is not related to stormwater runoff. Column 3 and 4 present the resultant revenue requirement for each customer class split between volume and stormwater portions.

### **Sewer Rates**

The Sewage Disposal System revenue requirement is recovered from customers of the System through volume charges, stormwater drainage charges, "per bill" charges, industrial waste control charges, and pollutant surcharges.

### **Volume Charges**

Table S-15 shows the calculation of the 1992 volume charges for each customer class. The total volume revenue requirement from Table S-14 is presented in Column 1 of Table S-15. Suburban Individual customers have been separated from Detroit Retail. Since rate changes are not effective until August 1, 1991, the revenue collected in the first two months (or three months for quarterly wholesale customers) of 1992 will reflect volumes billed at 1991 rates. Subtracting these revenues, shown in Column 2, from the volume revenue requirements results in the total amount of revenues to be collected from 1992 volume charges in Column 3. The volume charges presented in Column 5 are the result of dividing the net revenue requirements in Column 3 by the applicable volumes in Column 4. These volumes represent 10 months of the 1992 projections for retail and monthly wholesale customers and 9 months for quarterly wholesale customers. The 1992 volume rates are presented for each customer, along with a rate history, in Appendix B.

### **Wholesale Stormwater Drainage Charges**

Table S-16 presents monthly stormwater drainage rates for 1992 for unmetered suburban wholesale customers. Because their flow is unmetered, the stormwater runoff from these customers is based on estimates described previously. These customers pay for the costs of collecting and treating stormflow in fixed monthly payments. The unmetered stormwater revenue requirement from Table S-14 is allocated to unmetered wholesale

**SEWAGE DISPOSAL SYSTEM**  
**TABLE S-14**  
**DETERMINATION OF FY 1992 REVENUE REQUIRED FROM RATES**

Line No.	Customer Class	(1) Allocated Revenue Requirement \$	(2) Volume Allocation Percentage	(3) Volume Revenue Requirement \$	(4) Stormwater Revenue Requirement \$
1	Detroit Retail	70,061,949	79.493%	55,694,103	14,367,846
2	Clinton-Oakland	6,358,323	100.000%	6,358,323	-
3	Macomb County Allocated Revenue Requirement less Fixed Payments:	11,774,659			
4	Final Interceptor Repairs	(110,012)			
5	Interim Interceptor Repairs	(989,966)			
6	Control Facilities	(63,803)			
7	Revenue Required from Rates	10,610,878	100.000%	10,610,878	-
8	Metered Wayne Co. Suburbs	24,118,970	100.000%	24,118,970	-
9	Metered Non-Wayne Co. Suburbs	32,878,907	100.000%	32,878,907	-
10	Unmetered Suburbs	5,429,293	82.289%	4,467,711	961,582
11	Total	<u>149,458,320</u>		<u>134,128,892</u>	<u>15,329,428</u>

customers based on projected stormflows. Drainage charges are computed by subtracting two months of 1991 charges from the allocated revenue requirements and dividing the result by 10. Also presented in Table S-16 are Macomb County's fixed monthly payments for repairs to the Macomb Interceptor and for control facilities.

### ***Retail Stormwater Drainage Charges***

Retail customers must also pay for stormwater drainage based on estimated units. The development of retail stormwater drainage charges is illustrated in Table S-17. The total retail stormwater revenue requirement of \$14,367,846 is shown in Column 1. Column 2 presents the customer class allocation percentages that were developed in Table S-12. Applying these factors results in the allocated stormwater revenue requirements presented in Column 3.

All retail customers pay for collection and treatment of stormwater runoff through fixed monthly (or quarterly) charges. The 1992 retail stormwater drainage charges are presented in Table S-17. The charges are based on estimates of the drainage area and resulting stormwater runoff for each class of account. A flat monthly rate for stormwater runoff is charged to all residential customers in the City.

Some non-residential customers pay for stormwater drainage based on total property area and drainage characteristics. These customers are categorized into five classes based on the imperviousness of the properties. Assignment of these customers to one of the five classes is based on surveys to determine the overall imperviousness of each property. Class 1 properties are able to absorb the most amount of stormwater. Their impervious range is from 10 to 24 percent. The ranges for the other classes are: Class 2 - 25 to 49 percent; Class 3 - 50 to 74 percent; and Class 5 - 75 to 100 percent. Class 4 is reserved for large customers who have not been surveyed. These customers are assigned an impervious factor of 72 percent. The impervious factor used for the other classes is the midpoint of the respective ranges. The stormwater rates for customers in these classes are monthly charges per acre which are multiplied by the total property area of the customer. Non-residential customers whose properties are not large enough to survey pay a uniform fixed monthly charge regardless of acreage.

### ***"Per Bill" Charges***

The costs assigned to the customer category are recovered from retail customers through a "per bill" charge. This charge is levied on every residential customer of the System regardless of class, size, or billing frequency. For 1992 this charge is \$5.57.

**SEWAGE DISPOSAL SYSTEM**  
**TABLE S-17**  
**ALLOCATION OF FY 1992 RETAIL STORMWATER REVENUE REQUIREMENT**  
**AND DEVELOPMENT OF MONTHLY CHARGES**

Line No.	Customer Class	(1) Stormwater Revenue Requirement \$	(2) Allocation Percentage	(3) Allocated Revenue Requirement \$	(4) FY 1992 Monthly Charge \$
1	Stormwater Revenue Requirement	14,367,846			
2	Residential		45.20%	6,494,153	1.96 /mo.
3	Non Residential		52.80%	7,586,286	
4	Meter Charge				13.24 /acre/mo.
	Acreage Charges				
5	Class 1				10.42 /acre/mo.
6	Class 2				22.68 /acre/mo.
7	Class 3				38.00 /acre/mo.
8	Class 4				44.13 /acre/mo.
9	Class 5				53.63 /acre/mo.
10	State		1.18%	169,035	19.93 /acre/mo.
11	County		0.82%	118,372	19.93 /acre/mo.
12	Total		<u>100.00%</u>	<u>14,367,846</u>	

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# EXHIBIT - D

## SIMPLIFIED RATE SYSTEM GLOSSARY

**Base Share:** The portion of common-to-all sewer system costs assigned to a wholesale customer in the rate method. It is based on a customer's historical average share of the costs to operate and maintain the system.

**Inflow and Infiltration (I&I):** Stormwater and groundwater that enter sewer pipes through off-set joints, cracks, leaky manholes and/or footing drain connections.

**Look Back Adjustment:** An adjustment performed at the end of the rate year to balance sewer revenues collected with actual expenditures and actual flows. This resulted in a credit or charge to the City of Detroit and each wholesale customer.

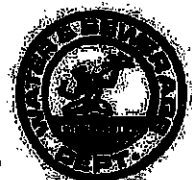
**Revenue Requirement:** The amount of revenue that must be generated from sewer rates to pay for expenses to operate and maintain the sewage collection system and wastewater treatment plant. Each customer's revenue requirement is established by multiplying sewer system costs attributable to Tier 1 customers by the customer's Base Share.

**Sanitary Flow:** Wastewater from homes, businesses and industry including water used for bathing, laundry, dish washing, flushing toilets and in manufacturing processes.

**Stormwater Flow:** Flow from rain storms and snow melt that enters sanitary sewers as part of inflow and infiltration. Stormwater also enters the sewer system through combined sewers that transport both stormwater and sewage and are used in the communities that send flows to the Detroit Wastewater Treatment Plant.

**Strength of Flow:** The ratio of solids-to-liquids in sewage flow. Inflow and infiltration and stormwater flows are less polluted than sanitary flows and therefore less costly to treat.

**Tier 1 Customers:** Wholesale wastewater customers that have direct contracts with DWSD. There are 16 Tier 1 customers including Macomb, Oakland and Wayne Counties. These wholesale customers offer retail service to their constituent communities.



## Kim Plets

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Filing Code: Amended Complaint, Filed

The following are the service contacts on this filing:  
Michigan Warehousing Group LLC:

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Edward Kickham III ([ekickhamjr@kickhamhanley.com](mailto:ekickhamjr@kickhamhanley.com))

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