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STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

ANDREW SCHROEDER,  
individually, and as representative  
of a class of similarly-situated persons  
and entities,

Case No. **2014-138919-CZ**

Hon. **JUDGE KUMAR**

Plaintiff,

v.

CITY OF ROYAL OAK,  
a municipal corporation,

Defendant.

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**PLAINTIFF'S CLASS ACTION COMPLAINT BASED ON DEFENDANT'S  
VIOLATION OF HEADLEE AMENDMENT TO THE MICHIGAN CONSTITUTION  
AND ROYAL OAK ORDINANCE SECTION 600-1**

Plaintiff Andrew Schroeder ("Plaintiff"), by his attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated persons and entities, states as follows for his Complaint against Defendant City of Royal Oak (the "City"):

## INTRODUCTION

1. “When virtually every person in a community is a ‘user’ of a public improvement, a municipal government’s tactic of augmenting its budget by purporting to charge a ‘fee’ for the ‘service’ rendered should be seen for what it is; a subterfuge to evade constitutional limitations on its power to raise taxes.” *Bolt v. City of Lansing*, 459 Mich. 152, 166, 587 N.W.2d 264 (1998).

2. This is an action challenging the City’s creative yet impermissible financing of its stormwater management obligations through purported “user fees” foisted upon a particularized subset of its citizenry. Plaintiff challenges a mandatory debt service charge (the “Kuhn Facility Debt Charge”) and a mandatory stormwater disposal charge (the “Stormwater Charge”) imposed by the City on users of its water and sanitary sewage disposal services. The City persists in the exaction of these charges 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).

3. The Kuhn Facility Debt Charge, which is incorporated into the water and sanitary sewage disposal rates charged by the City, 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”). The City uses the revenues generated by the Kuhn Facility Debt Charge – approximately \$2.5 million per year -- to pay for its share of the costs of the construction of a major infrastructure improvement (a combined sewer overflow (“CSO”) facility) designed to benefit the general public and which should be financed through general taxation. The Kuhn Facility Debt Charge finances an investment in infrastructure and is not a fee designed simply to defray the costs of a regulatory activity. Therefore, the charge 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).

4. Further, the Stormwater Charge – totaling approximately \$7 million per year – also constitutes an unlawful tax under the *Bolt* decision because it imposes upon one subset of residents – water and sanitary sewage disposal customers – the financial burden of a governmental activity – stormwater disposal – which benefits the community at large. Indeed, through payment of the water and sewage disposal charges, Plaintiff and the Class are paying the City’s entire cost of stormwater management and disposal.

5. Both the Kuhn Facility Debt Charge and the Stormwater Charge are motivated by a revenue-raising and not a regulatory purpose, the charges to Plaintiff and the Class are grossly disproportionate to the City’s actual costs of providing to Plaintiff and the Class the purported benefits for which the charges are purportedly imposed, and payment of the charges is not voluntary.

6. The Kuhn Facility Debt Charge and the Stormwater Charge also are unlawful because those charges are specifically prohibited by the City Ordinance Section 600-1.

7. Plaintiff, individually and on behalf of a class of similarly situated persons and entities, seeks, among other things, a refund of all Kuhn Facility Debt Charges and Stormwater Charges received by the City in the six years preceding the filing of this action and all such charges collected during the pendency of this action. The total amount of the refund required exceeds \$50 million.

#### **JURISDICTION AND VENUE**

8. Plaintiff owns improved real property situated in the City of Royal Oak, Oakland County, Michigan, has paid the charges at issue in this case, and seeks to act as a class representative for all similarly situated persons.

9. Defendant City of Royal Oak (the “City”) is a municipality located in Oakland County, Michigan.

10. Venue and jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiff’s claims occurred in this County. Venue and

jurisdiction also are proper with this Court under Article 9, Section 31 of the Michigan Constitution of 1963, and MCL 600.308a.

### **GENERAL ALLEGATIONS**

11. The City maintains and operates a water supply system (the “Water Supply System”) to provide fresh water to inhabitants of the City. The City purchases its water at wholesale from a regional authority known as Southeast Oakland County Water Authority (“SOCWA”). Per its ordinance (Section 752-12), the City assesses water rates (the “Water Rates”) against the “land or premises” receiving water service, and obligates the owner or occupant of such land or premises to pay the Water Rates. Plaintiff has received water service from the City and paid the Water Rates imposed by the City. The City characterizes water service as an “essential service” (Royal Oak Ordinance Section 770-8) and the City’s ordinances and other applicable laws and regulations require or effectively require the structures used by its citizens to be connected to the City’s Water Supply System.

11. Pursuant to its statutory authority, MCL 141.104, the City 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. The City contracts with Oakland County (the “County”) for the treatment of sewage and the County, in turn, contracts with the Detroit Water and Sewerage Department (“DWSD”) for treatment of the sanitary sewage and ultimate discharge of the effluent. The City also contracts with the County for stormwater disposal and the County, in turn, contracts with DWSD for disposal of the stormwater. The County’s stormwater disposal services are of a general public nature and are furnished to the City at large.

12. Plaintiff, at all relevant times, has received sanitary sewage disposal service from the City and paid the sewage disposal rates (“Sewage Disposal Rates”) imposed by the City. Plaintiff is required or effectively required by Michigan law, the City’s ordinances, and other laws and regulations to utilize the City’s Sanitary Sewer System. *See, e.g.,* MCL 333.12753.

13. The City establishes Water and Sewage Disposal Rates from time to time through legislative action, and revenues generated by the Water and Sewage Disposal Rates are deposited into the City's Water and Sewer Fund. A copy of the City's Water and Sewer Ordinances are attached hereto as Exhibit A and incorporated herein by reference. The Sewage Disposal Rates are based directly and exclusively on the units of water the sewer customer uses from the City's water supply system.

14. The Kuhn Facility Debt Charge is included in the Water and Sewage Disposal Rates imposed by the City, and for the fiscal year ended June 30, 2013, the City collected Charges in excess of \$2,500,000. The Stormwater Charge also is included in the Water and Sanitary Sewer Rates imposed by the City, and for the fiscal year ended June 30, 2013, the City collected charges in excess of \$7 million.

15. Even after taking into account payments to the County for its obligations relating to the Kuhn Facility Infrastructure Improvements and stormwater disposal, the City has consistently experienced an operating profit in its Water and Sewer Fund as a result of imposing Water and Sewer Charges which generate revenues far exceeding the City's actual costs of supplying water and sanitary sewer services to its inhabitants. For example, in FY 2013 (July 1, 2012 to June 30, 2013) the City's Water and Sewer Fund had net cash provided by operating activities of **\$7.3 million**, and had net operating income of **\$4.2 million**. See Exhibit B. The total operating income is calculated net of depreciation expenses. As of June 30, 2013, the Water and Sewer Fund had over \$13.9 million in cash and other current assets. See Exhibit B hereto.

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

16. Like many older communities in Southeast Michigan, the City 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.

17. 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.

18. 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 surfaces during rainfall events, and the runoff enters the combined sewer system through catch-basins and other collection devices. As a result, “surface run-off cannot be fairly ascribed to individual land-owners' 'use' of the treatment system.” *Hotel Employers Ass’n v. Gorsuch*, 669 F.2d 1305, 1309 (9th Cir. 1982).

19. Even though they have different origins, both sanitary sewage and stormwater collected in a combined sewer system need to be disposed of. The City’s combined sewer system flows to the Southeastern Oakland County Sewage Disposal System (the “County System”), which is owned and maintained by the County. Except during heavy rainfall when high volumes of combined sanitary sewage and stormwater exceed the outlet capacity to Detroit causing excess flow to be diverted to the Kuhn Facility (as described below), the entire flow from the County System is conveyed to the DWSD treatment plant through Detroit’s Dequindre Interceptor, which contains a master meter which measures the total flow passing from the County System into the DWSD treatment plant. DWSD charges the County for disposing of the sanitary sewage and stormwater and, in turn, the County charges the municipalities who contribute flow to the County System for such disposal. Those municipalities which have a combined sewer system, including the City, are charged a flat rate per month for stormwater disposal per a formula determined by the County. Those municipalities serviced by separate sanitary and stormwater systems do not incur charges from the County for stormwater disposal,

since the stormwater collected by those municipalities does not enter the DWSD system but rather is discharged into neighboring watercourses.

**THE CITY'S USE OF WATER AND SANITARY SEWER REVENUES TO FINANCE  
THE CONSTRUCTION OF A COMBINED SEWER OVERFLOW FACILITY**

20. 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.

21. Following the passage of the Federal Clean Water Act, the Federal Government developed a nationwide CSO Control Policy and required local communities to implement interim and long-term control plans for combined sewer overflow events.

22. There are two recognized forms of corrective action to address CSOs: (1) separate the sewer system into two separate types of sewers: (a) sanitary sewers designed to carry only sanitary sewage to a wastewater treatment plant, and (b) storm water sewers designed to convey stormwater to nearby rivers, lakes or streams, or (2) install a retention and treatment system ("RTF"), which is designed to capture and treat the combined sanitary sewage and stormwater that would otherwise flow to surface waters untreated. The City is serviced by an RTF, the "Kuhn Facility", as described below.

23. The City is a member of the George W. Kuhn Drainage District (the "District"), which was originally established in 1942 (it was then called the Twelve Towns Drain District), and now includes the City and the cities of Berkley, Birmingham, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Southfield, Troy, and

Royal Oak Township and the Village of Beverly Hills. The District encompasses a drainage area of 24,500 acres upstream of the Red Run Drain, a tributary of the Clinton River.

24. The original RTF servicing the members of the District was constructed in the early 1970s in the bed of the former Red Run Drain. This RTF runs 2.2 miles from Twelve Mile and Stephenson Highway in a northeastern direction to Dequindre Road south of Whitcomb where it empties into the Red Run Drain. The sole purpose of this RTF is to ameliorate the environmental effects of CSOs.

25. During dry weather, all flow from the combined sewer systems of the communities in the District is routed directly to the DWSD Waste Water Treatment Plant, but during heavy rainfall, high volumes of combined sanitary sewage and stormwater (typically more than 93 percent stormwater) exceed the outlet capacity to Detroit causing excess flow to be diverted to the RTF, where it is stored, screened, and disinfected prior to discharge to the Red Run Drain. Thus, the RTF is utilized only when CSO events occur, and the vast majority of the flow treated (approximately 93%) constitutes stormwater runoff. Indeed, it is stormwater, not sanitary sewage, which causes the CSO events and thereby creates the need for the RTF.

26. By the 1990s the RTF could no longer meet more stringent environmental regulations. As part of an agreement with the Michigan Department of Environmental Quality ("MDEQ"), the City and the other communities in the District were required to plan and construct infrastructure improvements to the RTF aimed at reducing the volume and frequency of the overflows from the RTF into the Red Run Drain, and providing adequate treatment of the overflows when they did occur. By this time, the RTF was known as the George W. Kuhn Retention Treatment Basin (hereinafter, the "Kuhn Facility"). The cost of these improvements to the Kuhn Facility (the "Kuhn Facility Infrastructure Improvements") was originally expected to exceed \$140 million.

27. Construction of the Kuhn Facility Infrastructure Improvements commenced in 2000, and included the expansion of the existing retention treatment basin, the removal and re-routing of storm drains discharging into the basin (providing more volume to control combined

sewer flows), and the installation of new screens and disinfection facilities. Construction was substantially complete by 2006 at a cost in excess of \$130 million.

28. Consistent with their purpose, the Kuhn Facility Infrastructure Improvements have provided significant environmental benefits to the public, both within and without the District. The expansion of the retention treatment basin by 30 million gallons has reduced overflow volume by an average of 875 million gallons per year. It has also eliminated the release of untreated combined sanitary sewage and stormwater by rerouting two combined sewers into the basin which would have otherwise entered the basin downstream of the new screens and disinfection facilities. All discharge is now screened, in addition to being settled and disinfected, to reduce pollutants prior to release. These improvements were undertaken in order to comply with the conditions of various wastewater discharge permits issued by the MDEQ, and have greatly enhanced the environmental quality of the Clinton River watershed.

29. The Kuhn Facility Infrastructure Improvements were administered and initially financed by the County through various debt obligations. Pursuant to contracts with the County, the City and the other communities in the District each agreed to pay to the County, over 20 years, with interest, their *pro rata* share (based upon contributed flow) of the costs of the Kuhn Facility Infrastructure Improvements. As of June 30, 2013, the City was obligated to pay the County \$23,125,588 in principal, plus interest, pursuant to a payment schedule that would pay off this obligation by 2029. *See* Exhibit C hereto. The City paid the County over \$1.9 million in principal and approximately \$600,000 in interest for the City's share of the cost of the Kuhn Facility Infrastructure Improvements during the fiscal year ending June 30, 2013. *Id.* at p. 49.

30. Various of the communities in the District appropriately and correctly concluded that the costs associated with the Kuhn Facility Infrastructure Improvements should be a general fund obligation financed by general taxation. Certain communities did precisely what the Headlee Amendment requires by seeking and obtaining voter approval for new taxes to pay for the Improvements. For example, the City of Birmingham collects the funds necessary to pay its obligations to the County for the Kuhn Facility Infrastructure Improvements via a millage

increase approved by Birmingham voters for that specific purpose. Similarly, Clawson collects the necessary funds pursuant to 2.35 mill tax increase approved by its own residents in 2010 for that specific purpose. Southfield, Huntington Woods and Troy did not increase taxes through voter millages, but nonetheless have treated their obligations for the Kuhn Facility Infrastructure Improvements as general obligations of their respective cities, and have funded those obligations from their respective general funds.

31. In contrast, the City has elected to finance its obligations to the County by charging only water and sanitary sewer users the Kuhn Facility Debt Charge as a component of the Water and Sanitary Sewer Rates paid by those users.

32. By virtue of the Kuhn Facility Debt Charge, the City has imposed and plans to continue to impose upon users of the water supply system and the sanitary sewer services, all or virtually all of the \$38 million cost of a major infrastructure improvement which should be financed by bonds, new property taxes and/or general fund revenues.

33. The use the City has made of the revenues generated by the Kuhn Facility Debt Charges constitute an investment in infrastructure as opposed to a fee designed simply to defray the costs of a regulatory activity. The Kuhn Facility Debt Charges are being used to fund public improvements designed to provide a long term benefit to the City and all its citizens. The revenues being derived from the Kuhn Facility Debt Charges are clearly in excess of the direct and indirect costs of the current "use" of the Kuhn Facility Infrastructure Improvements by the persons paying those exactions.

34. By imposing the cost of the Kuhn Facility Infrastructure Improvements only on water and sanitary sewage disposal customers, the City's charges do not correspond to the benefits conferred for at least three reasons. First, the Kuhn Facility Infrastructure Improvements do not confer a unique benefit upon Plaintiffs or the Class based upon their status as users of the water supply system and sanitary sewer services. While public water used, and sanitary sewage generated by, Plaintiffs may, under certain circumstances, be routed through the Kuhn Facility, the purpose of the Kuhn Facility Infrastructure Improvements is to address CSO

events during heavy rainfall by providing a facility to receive combined sewer flows which exceed the outlet capacity to DWSD, and to store, screen, and disinfect that flow prior to discharge to the Red Run Drain. Significantly, up to 93% of the flow treated at the Kuhn Facility in the course of those events is stormwater that originates not from public water supply or sanitary sewer usage, but rather from runoff from impervious surfaces during rain events. Indeed, the stormwaters collected in a combined sewer system are not “used” in any meaningful sense by any particular landowner or user.

35. Any “benefit” of the Kuhn Facility Infrastructure Improvements conferred on users of the City’s water supply and sanitary sewer services is no different than the benefit conferred on the general public in the form of enhanced environmental quality. In fact, as the Michigan Supreme Court stated in *Bolt v. City of Lansing*, 459 Mich. 152, 166, 587 N.W.2d 264 (1998), in striking down fees the City of Lansing imposed to finance the construction of its own CSO facilities, “[i]mproved water quality ... and the avoidance of federal penalties for discharge violations are goals that benefit everyone in the city, not only property owners.”

36. The City’s use of the revenues generated by the Kuhn Facility Debt Charge to pay for the Kuhn Facility Infrastructure Improvements has the effect of forcing one subset of the citizenry (water and sanitary sewage disposal customers) to bear all of the costs of the construction of those public facilities, even though there are other “users” of those facilities and even though the facilities benefit the general public. Importantly, the Water and Sewer Rates are based exclusively on the volume of water each user extracts from the water supply system. A property owner’s “use” of the Kuhn Facility, however, is not dependent upon the volume of tap water the owner extracts from the water supply system, but rather by a number of other factors, including the amount of rainfall and the area of impervious surface that is present on his or her property. Accordingly, by incorporating the Kuhn Facility Debt Charges, the Water Rates and Sanitary Sewer Rates do not reflect the actual costs of use of the Kuhn Facility, metered with relative precision in accordance with available technology and including an appropriate capital investment component.

37. Second, imposing the costs of the CSO facilities only on water and sanitary sewage disposal customers also allows other “users” of those facilities, including more intensive “users,” to receive the benefit of those facilities without cost. In fact, the City’s method of financing these costs fails to distinguish at all between those responsible for greater and lesser levels of runoff, which represents 93% of the flow processed by the Kuhn Facility. For example, a property owner with a parking lot with no water or sanitary sewer service incurs no charge for stormwater management or the Kuhn Facility, yet the impervious surface of a parking lot contributes much higher volumes of rainwater run-off to the stormwater system than does the same sized residential parcel. The City’s method of financing these costs also fails to take into account the high volumes of rainwater run-off generated by public and private road surfaces. For these reasons, “the actual use of [the Kuhn Facility] by each [water and sanitary sewer user] is not accounted for with the requisite level of precision necessary to support a conclusion that the charge is proportionate to the costs of the services provided.” *See County of Jackson v. City of Jackson*, 2013 Mich. App. LEXIS 1786 (2013).

38. Third, under *Bolt*, the Kuhn Facility Debt Charge is impermissibly designed to amortize the expense of the Kuhn Facility Infrastructure Improvements and to enable the City to fully recoup its investment in a period significantly shorter than the actual useful service life of the Improvements. The City must pay the County for the Kuhn Facility Infrastructure Improvements over a 20 year program, and that debt will be repaid by 2029. However, the Kuhn Facility Infrastructure Improvements will have an actual useful service life of more than 50 years. Nonetheless, the City has made no effort to allocate even that portion of the City’s cost of the Kuhn Facility Infrastructure Improvements that will have a useful service life in excess of the financing period to the City’s general fund.

39. The Kuhn Facility Infrastructure Improvements constitute an investment in infrastructure that will substantially outlast the current “mortgage” that the Kuhn Facility Debt Charge requires water and sanitary sewage disposal customers to amortize. At the end of 20

years, those persons and entities will have fully paid for a tangible asset that will serve the City for many years thereafter.

40. By virtue of the Kuhn Facility Debt Charge, the City's Water and Sanitary Sewer Rates do not reflect the actual costs of use of the City's water supply and sanitary sewer systems, metered with relative precision in accordance with available technology and including an appropriate capital investment component. This is true even if the Kuhn Facility is "used" in some fashion by users of the City's water and sanitary sewer services.

**THE CITY FORCES WATER AND SEWER CUSTOMERS TO FINANCE THE CITY'S ENTIRE COST OF STORMWATER MANAGEMENT AND DISPOSAL**

41. The City's stormwater (and the stormwater of other communities in the District) is conveyed by the County to the DWSD for ultimate disposal. The DWSD charges the County a flat annual rate (currently in excess of \$20 million) to dispose of the stormwater. *See Exhibit D* hereto. The County, in turn, allocates the annual DWSD stormwater charge among all of the municipalities in the District, including the City, and charges each municipality a flat annual rate for stormwater disposal. *Id.* The DWSD stormwater charge to the County, and the County's pass-through stormwater charge to the City, are based on a formula tied to the amount of rainfall and the volume of surface water that enters the County system for ultimate disposal by DWSD.

42. While the charges for sanitary sewage disposal are based upon tap water usage and sanitary sewage volumes, the charges for stormwater disposal have no connection to usage of the City's water supply system or sanitary sewage disposal. The County charges the City in excess of \$7 million per year for such services. *See Exhibit D.* The City charges all of that cost to the Water and Sewer fund and imposes Stormwater Charges in order to recover the entire amount of that cost on an annual basis. *See Exhibit E* hereto. By virtue of the Stormwater Charges, the City has imposed and plans to continue to impose upon water and sanitary sewage disposal customers, all of the cost of stormwater treatment.

43. The Stormwater Charges are being used to fund costs for services which provide a benefit to the City and all its citizens. The revenues being derived from the Stormwater Charges

are clearly in excess of the direct and indirect costs of the current “use” of the stormwater disposal services by the persons paying those exactions.

44. By imposing the cost of the Stormwater Charges only on water and sanitary sewage disposal customers, the City’s charges do not correspond to the benefits conferred for at least two reasons. First, stormwater disposal services do not confer a unique benefit upon Plaintiff or the Class based upon their status as water and sanitary sewage disposal customers. Stormwater obviously does not originate from the use of the water supply system. It 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 storm waters collected in a combined sewer system are not “used” in any meaningful sense by any particular landowner or user.

45. Any “benefit” of stormwater disposal conferred on the City’s water and sanitary sewage disposal customers 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.

46. The City’s use of the revenues generated by the Stormwater Charges to pay for stormwater disposal has the effect of forcing one subset of the citizenry (water and sanitary sewage disposal customers) to bear all 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. Importantly, the Water and Sanitary Sewer Rates are based exclusively on the volume of water each user extracts from the water supply system. A property owner’s “use” of stormwater treatment services, however, is not dependent upon the volume of tap water the owner extracts from the water supply system, but rather by a number of other factors, including the amount of rainfall and the area of impervious surface that is present on his or her property. Accordingly, by incorporating the Stormwater Charges, the Water and Sanitary Sewer Rates do not reflect the actual costs of stormwater disposal services, metered with relative precision in accordance with available technology and including an appropriate capital investment component.

47. Second, imposing the stormwater disposal costs only on water and sanitary sewage disposal users also allows other “users” of those facilities and services, including more intensive “users,” to receive the benefit of those facilities and services without cost, including the City itself. In fact, the City’s method of financing these costs fails to distinguish at all between those responsible for greater and lesser levels of runoff, which determine the volume of stormwater which enters the combined sewer system. For example, a property owner with a parking lot with no water or sanitary sewer service incurs no charge for stormwater management, yet the impervious surface of a parking lot contributes much higher volumes of rainwater run-off to the combined system than does the same sized residential parcel. The City’s method of financing these costs also fails to take into account the high volumes of rainwater run-off generated by public and private road surfaces. For these reasons, “the actual use of [stormwater disposal services] by each [water and sanitary sewage disposal user] is not accounted for with the requisite level of precision necessary to support a conclusion that the charge is proportionate to the costs of the services provided.” *See County of Jackson v. City of Jackson*, 2013 Mich. App. LEXIS 1786 (2013).

48. By virtue of the Stormwater Charge, the City’s Water Rates and Sanitary Sewer Rates do not reflect the actual costs of use of the City’s water supply and sewage disposal services, metered with relative precision in accordance with available technology and including an appropriate capital investment component. This is true even if stormwater disposal services are “used” in some fashion by users of the City’s water and sanitary sewer system.

#### **PAYMENT OF THE CHARGES IS MANDATED BY THE CITY’S ORDINANCES**

49. Payment of the Kuhn Facility Debt Charge and the Stormwater Charges are not voluntary because Plaintiffs and the Class are actually or effectively required to connect to the City’s water supply and sanitary sewer system and, by virtue of that connection, are required to pay the charges at issue in this case.

50. Royal Oak Ordinance Section 752-12 provides in pertinent part with respect to Water Rates as follows:

A. The owner or occupant of any land or premises against which water rates shall be assessed shall pay same to the City Treasurer quarter-annually or more frequently as may be required according to such rules and regulations as may be adopted from time to time by the City Commission.

B. All water charges shall be a lien upon the premises from and after the due date thereof and a five-percent penalty shall immediately attach thereto. All unpaid water charges which upon the 31st day of December have remained delinquent for a period of two months shall be placed on the delinquent water roll and shall have appended thereto a five-percent penalty charge. If the items on the delinquent water roll remain unpaid as of February 28, they shall be reported by the City Clerk to the City Commission, and the City Commission may require such charges to be transferred by the City Treasurer to the delinquent tax rolls. In the process thereof, an additional five-percent penalty charge shall be added. Said delinquent charges shall then be dealt with by the City Treasurer and enforced in the same manner and by the same means as are similar lien interests.

51. Similarly, Royal Oak Ordinance 660-2 provides in pertinent part with respect to Sanitary Sewer Charges.

A. All sewage disposal charges shall be a lien upon the premises from and after the due date thereof, and a penalty of 5% shall immediately attach thereto. All unpaid sewage disposal charges which upon the 31st day of December have remained delinquent for a period of two months shall be placed on the delinquent water roll and shall have appended thereto a five-percent penalty charge. If the items on the delinquent water roll remain unpaid as of February 28, they shall be reported by the City Clerk to the City Commission, and the City Commission may require such charges to be transferred by the City Treasurer to the delinquent tax rolls. In the process thereof, an additional, five-percent penalty charge shall be added. Said delinquent charges shall then be dealt with by the City Treasurer and enforced in the same manner and by the same means as are similar lien interests. In this regard, the City's Ordinance Section 22-62 provides that "[a]ny person being the owner, occupant or interested party in any property, building or dwelling wherein any sewer or drain has been constructed adjacent to, or adjoining said property shall within 60 days after said sewer or drain has been constructed, connect or cause to be connected to said sewer or drain any and all sewerage of any kind and nature from said lot or parcel of land, and from any and all buildings in connection therewith."

**THE CITY'S IMPOSITION OF THE KUHN FACILITY DEBT CHARGES  
AND THE STORMWATER CHARGES ALSO IS UNLAWFUL  
BECAUSE THE CITY'S ORDINANCE PROHIBITS SUCH CHARGES**

52. The scope of the City's authority to charge for sewer services, and the sources of the funds, is defined and limited by the City's Ordinances.

53. City Ordinance Section 600-1 (Rates;billing) states in pertinent part:

The rates for **sewage disposal services** furnished by the City of Royal Oak shall be applied uniformly to all water consumers within its corporate limits whose premises have available a sewer or sewers from which **the sanitary sewage** is finally discharged into the Southeastern Oakland County Sewage Disposal System. ... [emphasis added].

54. The City's Ordinance only empowers the City to charge for the disposal of "sewage" and requires the City to establish a rate for sewage disposal that bears "a reasonable relationship to the obligation imposed upon the City for sewage disposal."

55. Stormwater is not "sewage" within the meaning of Section 600-1, and therefore the City is not authorized to charge sanitary sewage disposal customers for the City's cost of stormwater disposal. The City's Sewer Ordinance expressly defines "sewage" to exclude stormwater. *See, e.g.*, City Ordinance 600-15.

56. In the alternative, if stormwater is "sewage" within the meaning of Section 600-1, the City's Stormwater Charge still is unlawful because the City is required to finance its stormwater disposal costs through use of tax revenues. In this regard, City Ordinance 600-1 further states in pertinent part:

The City shall include each year in its **tax budget** an amount sufficient to pay for sewage disposal services **of a general public nature furnished to the city at large**, which charges shall be at the foregoing rate and shall be based upon water consumption, which shall be estimated by the legislative body of the City where the water is not actually metered. *Id.* [emphasis added].

57. The City has a legal duty to comply with its own ordinances.

58. While Ordinance Section 600-1 authorizes the City to impose user fees for sewage disposal services furnished to premises which contribute sanitary sewage to the City's combined sewer system, that Ordinance requires sewage disposal services "of a general public nature furnished to the City at large" to be funded by taxes, not by fees imposed on Plaintiffs and the Class.

59. The services provided by the Kuhn Facility and County's disposal of the City's stormwater both are services "of a general public nature furnished to the City at large."

60. The purpose of the Kuhn Facility is to address CSO events during heavy rainfall by providing a facility to receive combined sewer flows which exceed the outlet capacity to DWSD, and to store, screen, and disinfect that flow prior to discharge to the Red Run Drain. Significantly, up to 93% of the flow treated at the Kuhn Facility in the course of those events is stormwater that originates not from public water supply or sanitary sewer usage, but rather from runoff from impervious surfaces during rain events. The benefit of the Kuhn Facility is conferred on the general public in the form of enhanced environmental quality. Accordingly, the costs the City incurs relating to the Kuhn Facility must be funded by taxes, not by the Kuhn Facility Debt Charges.

61. Further, 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 the County's disposal of the City's stormwater are shared by nearly every member of the public. Accordingly, the cost the City incurs to the County for disposing of the City's stormwater therefore must be funded by taxes, not by Stormwater Charges imposed on Plaintiffs and the Class.

62. The Stormwater Charges are illegal and void because they have been imposed, and continue to be imposed, in violation of City Ordinance Section 600-1.

#### **CLASS ALLEGATIONS**

63. Plaintiff brings this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities which have paid the City for water service and/or sewer service during the relevant class periods.

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

65. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class he seeks to represent, and Plaintiff was injured by the same wrongful

conduct that injured the other members of the Class.

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

67. 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 Kuhn Facility Debt Charges and Stormwater Charges imposed by the City are taxes;
- b. whether the Kuhn Facility Debt Charges and Stormwater Charges imposed by the City violate the Headlee Amendment;
- c. whether the Kuhn Facility Debt Charges and Stormwater Charges have a revenue-raising purpose;
- d. whether the Kuhn Facility Debt Charges and Stormwater Charges are disproportionate to the benefits conferred upon the payers of those charges;
- e. Whether the Kuhn Facility Debt Charges and Stormwater Charges are voluntary;
- f. Whether the Kuhn Facility Debt Charges and Stormwater Charges are authorized by the City's ordinances; and
- g. Whether the City has been unjustly enriched by its collection of the Kuhn Facility Debt Charges and Stormwater Charges.

68. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action, and has retained competent and experienced counsel to prosecute this action.

69. 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. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. Plaintiff anticipates no difficulty in the management of this action as a class action.

**COUNT I  
VIOLATION OF THE HEADLEE AMENDMENT**

70. Plaintiff incorporates each of their preceding allegations as if fully set forth herein.

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

72. 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:

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.]

73. The Kuhn Facility Debt Charges and Stormwater Charges are disguised taxes and intended to avoid the obligations of the Headlee Amendment, including the requirement that the Kuhn Facility Debt Charges and the Stormwater Charges, as taxes, be approved by a majority of the electorate.

74. The Kuhn Facility Debt Charges and Stormwater Charges have all relevant indicia of a tax:

- a. They have no relation to any service or benefit actually received by the taxpayer;
- b. The amount of the Kuhn Facility Debt Charges and Stormwater Charges is disproportionate to the cost incurred by the City in providing water and sewage disposal services;
- c. The Kuhn Facility Debt Charges and Stormwater Charges are designed to generate revenue;
- d. The payers of the Kuhn Facility Debt Charges and Stormwater Charges benefit in no manner distinct from any other taxpayer or the general public;
- e. Payment of the Kuhn Facility Debt Charges and Stormwater Charges are not discretionary, but actually or effectively mandatory;
- f. Various other indicia of a tax described in *Bolt v. City of Lansing* are present.<sup>1</sup>

75. As a direct and proximate result of the City's implementation of the Kuhn Facility Debt Charges and Stormwater Charges, Plaintiff and the Class have been harmed.

76. Plaintiff seeks his attorneys' fees and costs as allowed by Article 9, Section 32 of the Michigan Constitution of 1963 and MCL 600.308a.

77. Plaintiff seeks damages in the form of a refund of all amounts to which he and the Class are entitled, including all Kuhn Facility Debt Charges and Stormwater Charges they paid to the City during the Headlee Class Period, as defined below.

---

<sup>1</sup> Pursuant to MCR 2.1112(M), Plaintiff identifies subparts (a) through (f) of Paragraph 74 as "factual questions that are anticipated to require resolution by the Court."

**COUNT II**  
**UNJUST ENRICHMENT**

78. Plaintiff incorporates the allegations of Paragraphs 1 through 69 of this Complaint as if fully set forth herein.

79. The City is not authorized by its ordinances to impose or collect the Kuhn Facility Debt Charges or the Stormwater Charges, and its actions with respect to the Kuhn Facility Debt Charges and the Stormwater Charges are ultra vires. The City's collection of the Stormwater Charges therefore was unlawful.

80. The City is prevented from retaining the Kuhn Facility Debt Charges and the Stormwater Charges by the equitable doctrine of unjust enrichment.

81. As a direct and proximate result of its imposition of the Kuhn Facility Debt Charges and the Stormwater Charges, the City has collected millions of dollars to which it is not entitled. By paying the Kuhn Facility Debt Charges and the Stormwater Charges, Plaintiff and the Class conferred a substantial monetary benefit upon the City.

82. The City has been unjustly enriched because it received and retained the Kuhn Facility Debt Charges and Stormwater Charges to which it is not entitled. It would be inequitable to allow the City to retain the Kuhn Facility Debt Charges and the Stormwater Charges.

83. As a direct and proximate result of the City's retention of the Kuhn Facility Debt Charges and the Stormwater Charges, Plaintiff and the Class have been injured. The City should be required to disgorge the amounts by which it has been unjustly enriched, including all Kuhn Facility Debt Charges and Stormwater Charges paid by Plaintiff and the Class during the Unjust Enrichment Class Period, as defined below.

**PRAYER FOR RELIEF**

Plaintiffs request that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiff certified as Class Representative and Kickham Hanley PLLC designated Class Counsel;

B. With respect to Count I, define the Class to include all persons or entities which have paid the City for water or sewer service at any time in the one year preceding the filing of this lawsuit and/or at any time during the pendency of this action (the "Headlee Class Period");

C. With respect to Count I, enter judgment in favor of Plaintiff and the Class and against the City, and order and direct the City to disgorge and refund all Kuhn Facility Debt Charges and Stormwater Charges collected during the Headlee Class Period, and order the City to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Kuhn Facility Debt Charges and Stormwater Charges to which Plaintiff and the Class are entitled;

D. With respect to Count II, define the Class to include all persons or entities which have paid the City for water or sewer service at any time in the six years preceding the filing of this lawsuit and/or at any time during the pendency of this action (the "Unjust Enrichment Class Period");

E. With respect to Count II, enter judgment in favor of Plaintiff and the Class and against the City, and order and direct the City to disgorge and refund all Kuhn Facility Debt Charges and Stormwater Charges collected during the Unjust Enrichment Class Period, and order the City to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Kuhn Facility Debt Charges and Stormwater Charges to which Plaintiff and the Class are entitled;

F. Appoint a Trustee to seize, manage and distribute in an orderly manner the common fund thus established;

G. Find and declare that the Kuhn Facility Debt Charges and the Stormwater Charges violate the Headlee Amendment and the City's ordinances and permanently enjoin the City from imposing or collecting Kuhn Facility Debt Charges and Stormwater Charges;

H. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

I. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

By: /s/Gregory D. Hanley  
Gregory D. Hanley (P51204)  
Jamie Warrow (P61521)  
Attorneys for Plaintiffs and the Class  
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Royal Oak, Michigan 48073

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Bloomfield Hills, Michigan 48302  
248-594-4544  
Co-Counsel for Plaintiff

Date: February 14, 2014  
KH137759.doc

## **EXHIBIT A**

City of Royal Oak, MI  
Wednesday, January 22, 2014

## Chapter 752. WATERWORKS

**[HISTORY: Adopted by the City Commission of the City of Royal Oak 6-18-1917 by Ord. No. 72; amended 8-18-1926 by Ord. No. 157. Subsequent amendments noted where applicable.]**

### **CHARTER REFERENCES**

Water supply — See Ch. 13.

### **GENERAL REFERENCES**

Southeastern Oakland County Water Authority — See Ch. 160.

Flood damage prevention — See Ch. 351.

Sewers and sewage disposal — See Ch. 600.

Stormwater detention — See Ch. 644.

Wastewater — See Ch. 740.

Water — See Ch. 745.

### **§ 752-1. Rules and regulations.**

The rules and regulations hereinafter named shall be considered a part of the contract with every person, company or corporation that is supplied with water through the water system of the City of Royal Oak, Michigan.

### **§ 752-2. Permit required for service connections.**

Before any service connection shall be made or any work performed upon old or new connections, a permit shall be obtained from the City Clerk. No permit shall be issued to any person who is not licensed as a master plumber in the City of Royal Oak.

### **§ 752-3. Fees.**

**[Amended 3-16-1942 by Ord. No. 404]**

The City Commission shall, from time to time, establish fees to be charged for services rendered by the officers, agents and employees of the City incident to the granting of the permit herein provided for, which fees shall be paid before the permit is issued. Such fees shall include the cost of tapping the main, installing the curb stop and laying the pipe to the curb stop, which curb stop and pipe shall be and remain the property of the City of Royal Oak.

### **§ 752-4. Supplying water to others; unnecessary waste.**

No owner or occupant of any building or premises shall be allowed to supply water to other persons or families, firm, company or corporation except by permission of the City Manager,

or permit any unnecessary waste of water. If found doing so, the supply of water may be shut off at the option of the City.

### **§ 752-5. Installation of service pipes; supervision.**

All service pipes connecting with the distributing pipes of the Royal Oak water mains shall be laid in accordance with the provisions of this article and rules and regulations of the City of Royal Oak pertaining to its waterworks and shall be under the supervision of the proper officers of said City.

### **§ 752-6. Connections supplying more than one building.**

In all cases where the connection is intended to supply more than one tenement, shop, store or building, it shall be the duty of the person making such connection or causing the same to be made to lay down a branch with a stop cock for each branch outside the line of premises so to be supplied, to be suitably protected and marked as to be easily found. In no case shall one service supply more than one lot unless occupied by a single building used for a single industry or enterprise.

### **§ 752-7. Meters.**

#### **[Amended 3-16-1942 by Ord. No. 404]**

Meters shall be installed by the City upon all premises supplied with water. Any damage sustained by said meter resulting from the neglect or carelessness of the agent, owner or tenant to properly secure and protect the same shall be paid by the owner to the City. It shall be unlawful for any person to interfere with or remove the water meter from any service where it has been attached without permission from the proper officers of the City, and it shall be unlawful for anyone to interfere with the reading of said meters by duly authorized officers of the City.

### **§ 752-8. Disconnection; discontinuance of service.**

Any premises may be disconnected from the distribution pipes of the Royal Oak water system and the supply of water withheld from said premises when the ordinances, rules and regulations of the City pertaining to the water system have in any manner been violated by the owner or occupant of said premises.

### **§ 752-9. Fire hydrants.**

Proprietors of manufacturing institutions, lumberyards, hotels, stores, elevators, warehouses, halls and other public buildings wishing to lay large pipes with hydrant and hose coupling to be used only in case of fire will be permitted to connect with the street main at their own expense, upon application to the City Manager and under his direction, and will be allowed to use all water for fire purpose free of charge, but all such pipes must be provided with suitable valve which must be sealed by the City when building. When the seal is broken for the extinguishments of fire, such owner or party or proprietor shall immediately give notice to the City Manager, and in case the said seal shall have been broken for any other purpose, the owner or proprietor of such property shall be liable to the penalties prescribed herein for the

breach of any of the provisions of this article. No standpipe will be allowed on any premises where the water is not taken for other than fire purposes.

### **§ 752-10. Inspections; authority to require repairs and make repairs.**

The duly constituted authorities of the City of Royal Oak shall have power and authority at all reasonable hours to enter upon any premises where water service is established for the purpose of inspecting and making an examination of all pipes and fixtures connected with the said waterworks, and they shall have power and authority to require any pipes or fixtures to be repaired, removed, replaced or changed where the same are defective or not in compliance with the provisions of the ordinances of said City, or the rules and regulations in relation to the waterworks of said City, and they may make such alterations and repairs or do such other acts with relation thereto as they shall deem necessary.

### **§ 752-11. Fee to turn water on.**

Whenever the water is turned off from any premises at the request of the owner or because of default of the owner or occupant thereof, the same shall not be turned on again until the owner has deposited with the City Manager the sum of \$1 to cover the labor cost, and in cases where extraordinary labor is required such additional sum as will compensate for such additional labor.

### **§ 752-12. Payment of water rates; delinquent water roll; penalty charge.**

**[Amended 5-18-1936 by Ord. No. 302; 1-5-1976 by Ord. No. 76-3]**

- A. The owner or occupant of any land or premises against which water rates shall be assessed shall pay same to the City Treasurer quarter-annually or more frequently as may be required according to such rules and regulations as may be adopted from time to time by the City Commission.
- B. All water charges shall be a lien upon the premises from and after the due date thereof and a five-percent penalty shall immediately attach thereto. All unpaid water charges which upon the 31st day of December have remained delinquent for a period of two months shall be placed on the delinquent water roll and shall have appended thereto a five-percent penalty charge. If the items on the delinquent water roll remain unpaid as of February 28, they shall be reported by the City Clerk to the City Commission, and the City Commission may require such charges to be transferred by the City Treasurer to the delinquent tax rolls. In the process thereof, an additional five-percent penalty charge shall be added. Said delinquent charges shall then be dealt with by the City Treasurer and enforced in the same manner and by the same means as are similar lien interests.

City of Royal Oak, MI  
Thursday, January 16, 2014

## Chapter 600. SEWERS AND SEWAGE DISPOSAL

### Article I. Sewage Disposal Charges

[Adopted 4-17-1944 by Ord. No. 446]

#### § 600-1. Rates; billing.

[Amended 1-5-1976 by Ord. No. 76-2; 8-12-2013 by Ord. No. 2013-13]

The rates for sewage disposal services furnished by the City of Royal Oak shall be applied uniformly to all water consumers within its corporate limits whose premises have available a sewer or sewers from which the sanitary sewage is finally discharged into the Southeastern Oakland County Sewage Disposal System. Such rates shall be applied on the basis of the quantity of water used in or on said premises regardless of the purpose for which the water is used or the character or concentration of the sewage delivered from the property to the sewage disposal system. The amount thereof shall be measured by the water meter installed on the premises, or, if there be no such water meter, then for the purpose of determining sewage disposal charges the water consumption thereon shall be estimated in a manner prescribed or approved by the Detroit Board of Water Commissioners. The rate per quarter shall be an amount determined by the City Commission and established by Commission resolution taking into account all necessary and related costs of sewage disposal and bearing a reasonable relationship to the obligation imposed upon the City for sewage disposal. If the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable additional burden upon the sewage system of the City or upon said Southeastern Oakland County Sewage Disposal System or upon the sewage disposal system of the City of Detroit, then an additional charge shall be made over and above the regular rates, or it may be required that such sewage be treated by the person, firm or corporation responsible therefor being emptied into any public drain or sewer, or the right to so empty such sewage be denied, if necessary, for the protection of any of the above systems or the public health or safety. The City shall include each year in its tax budget an amount sufficient to pay for sewage disposal service of a general public nature furnished to the City at large, which charges shall be at the foregoing rate and shall be based upon water consumption, which shall be estimated by the legislative body of the City where the water is not actually metered. Charges for sewage disposal shall be billed and collected quarterly except where water charges are billed monthly, in which cases sewage disposal charges shall be billed monthly, according to such rules and regulations as may be adopted from time to time by the City Commission. Where possible, sewage disposal charges shall be billed along with the charges for water service.

## § 600-2. Enforcement of charges; penalty; charge to turn on water.

**[Amended 1-5-1976 by Ord. No. 76-2]**

- A. All sewage disposal charges shall be a lien upon the premises from and after the due date thereof, and a penalty of 5% shall immediately attach thereto. All unpaid sewage disposal charges which upon the 31st day of December have remained delinquent for a period of two months shall be placed on the delinquent water roll and shall have appended thereto a five-percent penalty charge. If the items on the delinquent water roll remain unpaid as of February 28, they shall be reported by the City Clerk to the City Commission, and the City Commission may require such charges to be transferred by the City Treasurer to the delinquent tax rolls. In the process thereof, an additional, five-percent penalty charge shall be added. Said delinquent charges shall then be dealt with by the City Treasurer and enforced in the same manner and by the same means as are similar lien interests.
- B. If any premises to which sewage disposal charges shall be made shall constitute a part only of any parcel of land assessed as a single unit upon the tax roll, then any such delinquent charges shall be entered against the entire parcel.
- C. Whenever the water is turned off from any premises at the request of the owner or because of default in payment of the water charges and/or sewage disposal charges by the owner or occupant thereof, the same shall not be turned on again until the owner has deposited with the City the sum estimated by the Department of Public Service for such actual labor. That portion of the deposit in excess of the actual labor costs to the City shall be refunded to the owner. The owner shall be liable for labor costs not covered by the deposit.

**[Amended 1-24-2005 by Ord. No. 2005-01]**

## § 600-3. Disposition of monies.

**[Amended 1-5-1976 by Ord. No. 76-2]**

All monies received from the collection of sewage disposal charges shall be used to pay the expenses in connection with the collection thereof and the charges rendered by the County of Oakland to the City for sewage disposal services. Any excess monies may be used for such purposes as the legislative body of the City shall determine.

## § 600-4. Administration by City Manager.

It shall be the duty of the City Manager of said City to carry out and enforce the provisions of this article, except where otherwise designated.

## **EXHIBIT B**

# City of Royal Oak, MI

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## Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2013

# CITY OF ROYAL OAK, MICHIGAN

## Statement of Net Position

Proprietary Funds

June 30, 2013

	BUSINESS-TYPE ACTIVITIES - Enterprise Funds			Governmental Activities
	Water & Sewer	Accessories & Paving	Nonmajor Enterprise Funds	Internal Service Funds
<b>Assets</b>				
Current assets:				
Cash and investments	\$ 6,612,156	\$ 6,213,793	\$ 881,686	\$ 13,707,635
Receivables, net of uncollectibles	7,162,314	10,543	108,692	7,281,549
Prepaid items	-	-	-	917,846
Inventories	161,608	45,624	-	236,756
Total current assets	13,936,078	6,269,960	990,378	21,196,416
Noncurrent assets:				
Receivables, net of uncollectibles	3,165,160	-	-	3,165,160
Due from other governmental units	463,488	-	-	463,488
Capital assets	120,754,774	31,268,537	12,188,315	164,211,626
Accumulated depreciation	(34,543,509)	(10,178,533)	(4,722,070)	(49,444,112)
Total noncurrent assets	89,839,913	21,090,004	7,466,245	118,396,162
<b>Total assets</b>	<b>103,775,991</b>	<b>27,359,964</b>	<b>8,456,623</b>	<b>139,592,578</b>
<b>Deferred outflows of resources</b>				
Deferred charge on refunding	-	265,181	-	265,181
<b>Liabilities</b>				
Current liabilities:				
Accounts payable	1,365,508	111,476	109,084	1,586,068
Accrued and other liabilities	351,880	145,781	11,125	508,786
Cash bonds and deposits	450	11,941	-	12,391
Bonds payable, due within one year	2,985,482	545,000	-	3,530,482
Other long-term liabilities, current	-	-	-	519,788
Unearned revenue	-	-	29,241	29,241
Compensated absences, current	103,124	22,070	13,806	139,000
Total current liabilities	4,806,444	836,268	163,256	5,805,968
Noncurrent liabilities:				
Bonds payable	32,910,360	10,446,036	-	43,356,396
Other long-term liabilities	-	-	-	519,788
Accrued compensated absences	102,943	22,031	13,782	138,756
Other postemployment benefit obligation	1,355,386	354,252	157,242	1,866,880
Total noncurrent liabilities	34,368,689	10,822,319	171,024	45,362,032
<b>Total liabilities</b>	<b>39,175,133</b>	<b>11,658,587</b>	<b>334,280</b>	<b>51,168,000</b>
<b>Net position</b>				
Net investment in capital assets	53,480,583	10,364,149	7,466,245	71,310,977
Unrestricted	11,120,275	5,602,409	656,098	17,378,782
<b>Total net position</b>	<b>\$ 64,600,858</b>	<b>\$ 15,966,558</b>	<b>\$ 8,122,343</b>	<b>\$ 88,689,759</b>

The accompanying notes are an integral part of these financial statements.

## CITY OF ROYAL OAK, MICHIGAN

### Reconciliation

Net Position of Enterprise Funds  
to Net Position of Business-Type Activities  
June 30, 2013

Net position - total enterprise funds	\$ 88,689,759
---------------------------------------	---------------

Amounts reported for *business-type activities* in the statement of net position  
are different because:

Internal service funds are used by management to charge the costs of certain activities, such as insurance and other centralized costs, to individual funds. A portion of the net position of the internal service funds is allocated to the enterprise funds and reported in the statement of net position.

Net position of business-type activities accounted for in governmental-type internal service funds	
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	<u>1,607,856</u>
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Net position of business-type activities	
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	<u>\$ 90,297,615</u>
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The accompanying notes are an integral part of these financial statements.

# CITY OF ROYAL OAK, MICHIGAN

## Statement of Revenues, Expenses and Changes in Fund Net Position

Proprietary Funds

For the Year Ended June 30, 2013

	Business-Type Activities - Enterprise Funds			Governmental Activities
	Water & Sewer	Arts & Parks System	Non-Utility Enterprise Funds	Municipal Services Funds
<b>Operating revenues</b>				
Charges for services	\$ 26,532,412	\$ 3,348,553	\$ 2,719,101	\$ 32,600,066
Other	14,782	8,975	23,763	47,520
<b>Total operating revenues</b>	<b>26,547,194</b>	<b>3,357,528</b>	<b>2,742,864</b>	<b>32,647,586</b>
<b>Operating expenses</b>				
Salaries and benefits	2,604,840	829,660	436,345	3,870,845
Supplies	291,050	145,580	103,616	540,246
Water purchases	3,611,154	-	-	3,611,154
Sewage disposal services	11,365,693	-	-	11,365,693
Other services and charges	1,866,584	1,066,123	1,807,690	4,740,397
Depreciation	2,561,090	552,551	300,134	3,413,775
<b>Total operating expenses</b>	<b>22,300,411</b>	<b>2,593,914</b>	<b>2,647,785</b>	<b>27,542,110</b>
<b>Operating income</b>	<b>4,246,783</b>	<b>763,614</b>	<b>95,079</b>	<b>5,105,476</b>
<b>Nonoperating revenues (expenses)</b>				
Federal grants	-	-	7,852	7,852
Interest income	33,313	155,493	2,153	190,959
Contributions and donations	150,919	500,863	376	652,158
Interest expense	(1,070,612)	(607,818)	-	(1,678,430)
Gain on sale of capital assets	-	-	-	212
<b>Total nonoperating revenues (expenses)</b>	<b>(886,380)</b>	<b>48,538</b>	<b>10,381</b>	<b>(827,461)</b>
<b>Income before transfers</b>	<b>3,360,403</b>	<b>812,152</b>	<b>105,460</b>	<b>4,278,015</b>
<b>Transfers</b>				
Transfers in	70,921	-	195,000	265,921
Transfers out	(46,866)	(1,269)	(100,088)	(148,223)
<b>Net transfers</b>	<b>24,055</b>	<b>(1,269)</b>	<b>94,912</b>	<b>117,698</b>
<b>Change in net position</b>	<b>3,384,458</b>	<b>810,883</b>	<b>200,372</b>	<b>4,395,713</b>
<b>Net position, beginning of year, as restated</b>	<b>61,216,400</b>	<b>15,155,675</b>	<b>7,921,971</b>	<b>84,294,046</b>
<b>Net position, end of year</b>	<b>\$ 64,600,858</b>	<b>\$ 15,966,558</b>	<b>\$ 8,122,343</b>	<b>\$ 88,689,759</b>

The accompanying notes are an integral part of these financial statements.

## CITY OF ROYAL OAK, MICHIGAN

### Reconciliation

Changes in Net Position of Enterprise Funds  
to Changes in Net Position of Business-Type Activities  
For the Year Ended June 30, 2013

Change in net position - total enterprise funds \$ 4,395,713

Amounts reported for *business-type activities* in the statement of activities  
are different because:

Internal service funds are used by management to charge the costs of certain activities, such as insurance and other centralized costs, to individual funds. A portion of the operating income (loss) of the internal service funds is allocated to the enterprise funds and reported in the statement of activities.

Net operating income (loss) from business-type activities accounted  
for in governmental-type internal service funds

584,844

Change in net position of business-type activities \$ 4,980,557

The accompanying notes are an integral part of these financial statements.

# CITY OF ROYAL OAK, MICHIGAN

## Statement of Cash Flows Proprietary Funds For the Year Ended June 30, 2013

	Business-Type Activities - Enterprise Funds			Governmental Activities
	Water System	Automobile Parking System	Nonmajor Enterprise Funds	Internal Service Funds
<b>Cash flows from operating activities</b>				
Receipts from customers	\$ 27,762,528	\$ 3,348,353	\$ 2,699,936	\$ 33,810,817
Internal activity - receipts from other funds	-	-	-	16,771,825
Other operating receipts	14,782	8,975	23,763	47,520
Payments to vendors	(18,145,595)	(1,201,034)	(1,829,806)	(21,176,435)
Payments to employees	(2,250,353)	(743,749)	(431,581)	(3,425,683)
Internal activity - payments to other funds	-	-	(134,097)	(134,097)
<b>Net cash provided by operating activities</b>	<b>7,381,362</b>	<b>1,412,545</b>	<b>328,215</b>	<b>9,122,122</b>
<b>Cash flows from noncapital financing activities</b>				
Federal operating grants	-	-	7,852	7,852
Contributions and donations	150,919	500,863	376	652,158
Transfers from other funds	70,921	-	195,000	265,921
Transfers to other funds	(46,866)	(1,269)	(100,088)	(148,223)
<b>Net cash provided by noncapital financing activities</b>	<b>174,974</b>	<b>499,594</b>	<b>103,140</b>	<b>777,708</b>
<b>Cash flows from capital and related financing activities</b>				
Purchase of capital assets	(2,993,781)	-	-	(2,993,781)
Principal paid on capital debt	(2,911,071)	(530,000)	-	(3,441,071)
Interest paid on capital debt	(1,063,927)	(573,437)	-	(1,637,364)
Proceeds from sale of capital assets	-	-	-	212
<b>Net cash used in capital and related financing activities</b>	<b>(6,968,779)</b>	<b>(1,103,437)</b>	<b>-</b>	<b>(8,072,216)</b>
<b>Cash flows from investing activities</b>				
Interest received on investments	33,313	155,493	2,153	190,959
<b>Net change in cash and investments</b>	<b>620,870</b>	<b>964,195</b>	<b>433,508</b>	<b>2,018,573</b>
<b>Cash and investments balances, beginning of year</b>	<b>5,991,286</b>	<b>5,249,598</b>	<b>448,178</b>	<b>11,689,062</b>
<b>Cash and investments balances, end of year</b>	<b>\$ 6,612,156</b>	<b>\$ 6,213,793</b>	<b>\$ 881,686</b>	<b>\$ 13,707,635</b>
				<b>\$ 17,661,304</b>

continued...

# CITY OF ROYAL OAK, MICHIGAN

## Statement of Cash Flows

Proprietary Funds

For the Year Ended June 30, 2013

	Business-Type Activities - Enterprise Funds				Governmental Activities
	Water & Sewer	Automobile Parking System	Nonmajor Enterprise Funds	Total	Internal Service Funds
<b>Reconciliation of operating income to net cash provided by operating activities:</b>					
Operating income	\$ 4,246,783	\$ 763,614	\$ 95,079	\$ 5,105,476	\$ 4,061,231
Adjustments to reconcile operating income to net cash provided by operating activities:					
Depreciation	2,561,090	552,551	300,134	3,413,775	822,894
Changes in assets and liabilities:					
Receivables, net	869,179	100	(48,406)	820,873	871,270
Prepaid items	-	-	-	-	(917,846)
Inventories	54,180	(39,859)	-	14,321	(28,566)
Long-term receivables	359,748	-	-	359,748	-
Due from other governmental units	1,189	-	-	1,189	-
Accounts payable	(1,065,294)	50,528	45,489	(969,277)	48,616
Accrued and other liabilities	44,591	(374)	1,927	46,144	98,975
Due to other funds	-	-	(134,097)	(134,097)	-
Cash bonds and deposits	-	(300)	-	(300)	-
Other long-term liabilities	-	-	-	-	(566,052)
Unearned revenue	-	-	29,241	29,241	-
Accrued compensated absences	(8,892)	(2,457)	2,837	(8,512)	11,589
Other postemployment benefits obligation	318,788	88,742	36,011	443,541	189,767
<b>Net cash provided by operating activities</b>	<b>\$ 7,381,362</b>	<b>\$ 1,412,545</b>	<b>\$ 328,215</b>	<b>\$ 9,122,122</b>	<b>\$ 4,591,878</b>

concluded.

The accompanying notes are an integral part of these financial statements.

## **EXHIBIT C**

# CITY OF ROYAL OAK, MICHIGAN

## Notes to Financial Statements

### 8. LONG TERM DEBT

The City issues bonds to provide for the acquisition and construction of major capital facilities. General obligation bonds are direct obligations and pledge the full faith and credit of the City. County contractual agreements are also general obligations of the City. Bond and contractual obligation activity and other long-term liabilities can be summarized as follows:

	Beginning Balance	Additions	Deduction	Ending Balance	Due Within One Year
<b>Governmental Activities</b>					
Limited tax general obligation - Court	\$ 4,755,000	\$ -	\$ (310,000)	\$ 4,445,000	\$ 325,000
Limited tax general obligation - Library	2,570,000	-	(190,000)	2,380,000	195,000
Limited tax general obligation bonds	3,185,000	-	(445,000)	2,740,000	465,000
Unlimited tax general obligation bonds	5,495,000	4,965,000	(5,495,000)	4,965,000	490,000
Total installment debt	16,005,000	4,965,000	(6,440,000)	14,530,000	1,475,000
Unamortized discount	(199,685)	-	63,318	(136,367)	-
Unamortized premium	10,668	292,966	(26,789)	276,845	-
Compensated absences	3,438,382	2,277,000	(2,188,110)	3,527,272	1,764,000
General liability claims	1,205,000	207,900	(861,630)	551,270	275,635
Workers compensation	400,628	412,791	(325,113)	488,306	244,153
<b>Total governmental activities</b>	<b>\$ 20,859,993</b>	<b>\$ 8,155,657</b>	<b>\$ (9,778,324)</b>	<b>\$ 19,237,326</b>	<b>\$ 3,758,788</b>
<b>Business-type Activities</b>					
Limited tax general obligation - Parking	\$ 11,710,000	\$ -	\$ (530,000)	\$ 11,180,000	\$ 545,000
Limited tax general obligation - Water	6,325,000	-	(295,000)	6,030,000	305,000
Drain bond - North Arm Relief Drain	6,922,387	-	(705,000)	6,217,387	720,000
Contractual obligations	25,650,523	-	(1,911,071)	23,739,452	1,960,482
Total installment debt	50,607,910	-	(3,441,071)	47,166,839	3,530,482
Unamortized discount	(300,366)	-	20,405	(279,961)	-
Compensated absences	286,268	178,000	(186,512)	277,756	139,000
<b>Total business-type activities</b>	<b>\$ 50,593,812</b>	<b>\$ 178,000</b>	<b>\$ (3,607,178)</b>	<b>\$ 47,164,634</b>	<b>\$ 3,669,482</b>
<b>Component Units</b>					
Compensated absences	\$ 14,288	\$ 7,000	\$ (8,254)	\$ 13,034	\$ 7,000

## CITY OF ROYAL OAK, MICHIGAN

## Notes to Financial Statements

**Obligations for George W. Kuhn Project.** The City is a participating community in the George W. Kuhn drain project. The project is administered by the Oakland County Drain Commission and financed through the sale of drain bonds, draw downs from the State of Michigan revolving fund, Federal and State of Michigan grants, and contributions from Oakland County, Michigan. The City along with thirteen other local communities are obligated for the payment of principal and interest of the outstanding debt. It is currently anticipated that the City's obligation at the end of construction will be approximately \$38,604,153 with an interest rate of 1.65-4.5%. As of June 30, 2013, the City's obligation is \$23,125,588 in principal.

**Advanced Refunding**

During fiscal year 2013, the City advance refunded \$5,060,000 of Building Authority Series 2001A unlimited tax general obligation bonds to provide resources to purchase U.S. government securities that were placed in an escrow fund for the purpose of generating resources for all future debt service payments of \$4,965,000 of refunded debt. As a result, the certificates are considered defeased and the liability has been removed from the statement of net position. The refunding resulted in a net present value savings of \$614,380 and an economic gain of \$661,854.

**RISK MANAGEMENT**

The government is exposed to various risks of loss related to property loss, torts, errors and omissions, and employee injuries (workers' compensation), as well as medical benefits provided to employees. The City participates in the Michigan Municipal Risk Management Authority for general property and liability claims.

The Michigan Municipal Risk Management Authority risk pool program operates as a common risk-sharing management program for local units of government in Michigan. Member premiums are used to purchase commercial excess insurance coverage and to establish a member loss fund. The loss fund is used to pay the member's self-insured retention portion of claims.

The City has a \$250,000 per occurrence self-insured retention for liability claims and \$15,000,000 per occurrence of excess liability insurance coverage. Coverage limits, retentions and deductibles for other types of coverage vary. All coverage is on an occurrence basis except for a stop loss policy which is on a claims paid basis. The stop loss policy limits the maximum total self-insured retention payments in any one fiscal year to \$872,000. Settlements have not exceeded coverages for each of the past three fiscal years.

Changes in the reported liability for the fiscal years 2012 and 2013 are as follows:

Fiscal Year	Liability at Beginning of Year	Current Year Claims and Current Year Payments	Liability at End of Year
2012	\$ 726,000	\$ 700,497	\$ 1,205,000
2013	1,205,000	207,900	551,270

## **EXHIBIT D**

George W. Kuhn Drainage District  
Schedule of Rates and Charges  
Page 3-

4. **Flat Rate Storm Charge**

	<u>FY 2014</u>
DWSD Purchased Expense	\$ 30,914,120
OCWRC Operating Expense	<u>3,635,673</u>
Interest Income	<u>(254,300)</u>
Total	24,295,504

The new apportionment percentages have been reflected effective July 1, 2003.

Municipality	Allocation In Percent	2013 Annual Charge	2014 Annual Charge	\$ Inc./Dec.	Quarterly Charge	Monthly Charge	% Change
City of Berkeley	6.4895%	\$1,919,879.24	\$1,676,682.54	-\$243,216.89	\$384,165.64	\$134,388.66	-2.7%
Village of Beverly Hills	0.8369%	208,903.14	203,328.82	-4,573.32	80,832.48	19,944.15	-2.7%
City of Birmingham	4.8837%	1,219,046.80	1,186,523.90	-32,522.90	236,630.98	96,876.99	-2.7%
City of Clawson	8.8282%	1,479,270.87	1,439,808.47	-39,466.41	369,651.37	119,983.79	-2.7%
City of Ferndale	10.2885%	2,668,188.20	2,499,682.14	-168,516.06	624,913.04	208,304.35	-2.7%
City of Hazel Park	2.2554%	582,982.61	547,982.82	-35,019.79	136,990.70	48,882.87	-2.7%
City of Huntington Woods	2.4671%	615,826.19	589,386.58	-26,439.60	146,843.15	49,348.72	-2.7%
City of Madison Heights	6.6410%	1,632,734.43	1,589,174.78	-43,559.65	397,293.69	132,431.23	-2.7%
City of Oak Park	13.6383%	3,404,328.92	3,313,506.94	-90,823.98	828,376.48	276,126.49	-2.7%
City of Pleasant Ridge	1.3390%	334,235.04	325,310.00	-8,917.04	81,328.60	27,109.83	-2.7%
City of Royal Oak	29.7028%	7,414,276.75	7,216,471.57	-197,805.19	1,804,117.85	601,372.63	-2.7%
Township of Royal Oak	1.2775%	318,883.89	310,378.21	-8,507.48	77,694.05	28,884.88	-2.7%
City of Southfield	7.7168%	1,925,932.70	1,874,680.82	-51,251.88	468,637.70	166,212.67	-2.7%
City of Troy	2.4789%	619,821.27	602,606.42	-16,614.84	150,626.61	60,208.87	-2.7%
Detroit Zoo	0.3384%	83,876.63	81,730.38	-2,146.25	20,432.59	6,810.86	-2.7%
Rackham Golf Course	0.1913%	47,761.43	46,477.47	-1,273.96	11,819.37	3,873.12	-2.7%
State of Michigan	2.1035%	525,086.03	511,057.51	-14,028.21	127,764.45	42,888.15	-2.7%
County of Oakland	1.5274%	381,262.88	371,080.90	-10,171.89	92,712.72	30,924.24	-2.7%
<b>Total</b>	<b>100.00%</b>	<b>\$24,981,641.81</b>	<b>\$24,295,593.57</b>	<b>(\$686,047.94)</b>	<b>\$6,073,896.39</b>	<b>\$2,024,632.80</b>	<b>-2.67%</b>

## **EXHIBIT E**

## City Manager's Transmittal Letter

To further increase flexibility, a building inspector position and a code enforcement officer position will be replaced with two building inspector/code enforcement officer positions. That gives him the ability to devote greater resources to building or to code enforcement, as needed.

We are restoring a full-time clerical position in building. This will move the existing shared Clerk/Steno III to the State Construction Code Fund and put a new Municipal Clerk I in the General Fund (Code Enforcement). The net cost of this to the general fund is negligible and the State Construction Code Fund can easily afford the increase. This will greatly reduce the all too frequent times when we have a certified Building Official working the front counter.

### Police and Fire

Thanks to the voters who supported our millage request, these departments will be in excellent shape. We are in the process of implementing the ICMA recommendations as modified by the Chiefs and the Commission.

Our biggest problem in these departments is hiring and retaining talent. It takes time to hire and train new personnel, as we are only able to train three or four officers at a time. While we are hiring to get to the goal of 79 sworn officers, we have existing officers retiring or leaving and some of the trainees not completing the program. This will be a long process.

### Strategic Plan

The Commission's 2013-2014 goals and objectives drive many of the changes for the 2013-2014 budget including the new economic development position, and the focus on roads, recreation and unfunded liabilities. Some other objectives also require budget action. An expenditure of \$30,000 is budgeted to create a program to manage the rodent population which residents recently identified as the most serious problem facing the City. There are several options for how we could tackle this problem, but we have not yet determined a specific solution. However, we do expect there will be an educational component to the program. We have also budgeted \$15,000 for a targeted talent and retention study.

This year's budget includes an objective to improve the City's measurement of outputs and outcomes. A potential means of achieving this objective is to join the ICMA's Center for Performance Measurement. The 2013-2014 budget includes a \$1,200 allocation in the event we decide that joining would help to realize the objective, and improve services. More analysis is needed before we can make that determination.

### Water and Sewer

We have stabilized the water and sewer costs we control, however those only represent 25 percent of the total. We are facing increases paid to third parties for water and sewer service and for debt service. SOCWA will be increasing our water purchase rates by 1.1% percent. The Oakland County Drain Commission will be increasing sanitary sewage disposal rates by 4.9% percent and decreasing flat rate storm water charges by 2.7% percent. Both are ultimately customers of the City of Detroit and must pass on any rate increases they receive to us. By the same token, we have no choice but to pass these changes on to our water and sewer customers. This fund must remain solvent as we cannot return to the position we found ourselves in eight years ago with the water and sewer fund in debt to the general fund. While

## City Manager's Transmittal Letter

the general fund is much stronger today than it was in 2005, it still can not be the "bank" for other funds. We are increasing the water and sewer rate by 1% percent.

### Automobile Parking System

We are not making the budgeted transfer from Auto Parking to the General fund for 2012-13. Because the millage increase for public safety came at the half way point of our fiscal year and it was impossible to ramp up spending to the recommended level in that time period, the general fund does not need the budgeted transfer. Since we have an extraordinary cost planned for the Automobile Parking System in 2013-14, the demolition of 225 S. Troy and the construction of a parking lot, we are leaving this money in APS and use it for that purpose in 2013-14. We are budgeting a \$900,000 transfer from APS to the general fund for 2013-14.

### Tax Rates

We have a slight decrease in the property tax rate for 2013-14 of 0.036 mill. We are keeping the new public safety rate at 3.475 mills which is .5 mill less than authorized by the voters. This is consistent with my original recommendation for this tax which called for the full amount not be levied until 2013-14. We are also keeping the public safety tax on the winter tax bill. This is the only city tax on the winter bill.

Respectfully submitted,



Donald E. Johnson  
City Manager

## Kim Plets

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**Sent:** Friday, February 14, 2014 1:32 PM  
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