

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BRAD M. PATRICK  
individually, and as representative  
of a class of similarly-situated persons  
and entities,

Plaintiff,

v.

CITY OF ST. CLAIR SHORES,  
a Michigan municipal corporation,

Defendant.

Case No. 2017-003018-CZ  
Hon. Jennifer Faunce

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**Stipulated Order Regarding Preliminary Approval of**

## **Class Action Settlement, Notice and Scheduling**

At a session of said Court held in the  
City of Mt. Clemens, County of Macomb,  
State of Michigan on 05/29/2020

PRESENT: HON. Jennifer M. Faunce  
Circuit Court Judge

WHEREAS, Plaintiff commenced the above captioned lawsuit in Macomb County Circuit Court (the “Lawsuit”) challenging stormwater service charges (the “Stormwater Charges”) the City imposes upon owners of real property.

WHEREAS, Plaintiff contends that: (a) the Stormwater Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are unlawful because they are unreasonable; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City’s collection and retention of the Stormwater Charges.

WHEREAS, the Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class consisting of persons or entities who or which have paid or incurred the Stormwater Charges during the permitted time periods preceding the filing of this Lawsuit and/or at any time during the pendency of this action.

WHEREAS, the City denies that the City’s Stormwater Charges are improper; denies that it has intentionally or negligently committed any unlawful, wrongful or tortious acts or omissions, violated any constitutional provision or statute, or breached any duties of any kind whatsoever; denies that it is in any way liable to any member of the Class; and states that the claims asserted in

the Lawsuit have no substance in fact or law, and the City has meritorious defenses to such claims; but, nevertheless, has agreed to enter into this Agreement to avoid further expense, inconvenience, and distraction and risks of burdensome and protracted litigation, and to obtain total and final peace, satisfaction and protection from the claims asserted in the Lawsuit.

WHEREAS, the Named Plaintiff in the Lawsuit and Class Counsel have been provided with discovery and have conducted investigations into the facts of the Lawsuit, have made a thorough study of the legal principles applicable to the claims in the Lawsuit, and have concluded that a class settlement with the City in the amount and on the terms hereinafter set forth (the "Settlement") is fair, reasonable, and adequate, and is in the best interest of the Class.

WHEREAS, the Parties desire to compromise their differences and to resolve and release all of the claims asserted by the Named Plaintiff and the Class in the Lawsuit.

WHEREAS Plaintiff and Defendant are submitting this Stipulated Order for Preliminary Approval of Class Action Settlement in this matter;

WHEREAS Plaintiff and Defendant in this action intend to make application to this Court, pursuant to MCR 3.501(E), for a Final Order approving the settlement of this class action in accordance with the terms set forth in the Class Action Settlement Agreement ("Agreement"), executed by counsel for the parties on May 11, 2020, and attached hereto as Exhibit 1, and they seek preliminary approval of the Agreement for purposes of, among other things, notifying class members of the proposed settlement;

WHEREAS the Court has been made aware of the settlement process leading to the agreement reached, and counsel have demonstrated that the settlement is within a range of reasonableness and is the result of arm's length bargaining of counsel well versed in the issues.

IT IS HEREBY ORDERED:

1. Unless defined otherwise herein, all capitalized terms shall have the definitions and meanings accorded to them in the Agreement.

2. The Court preliminarily approves the terms of the Agreement as fair, reasonable and adequate. The Court finds that the Settlement was reached in the absence of collusion, and is the product of informed, good-faith, arm's length negotiations between the Parties and their counsel. Pursuant to MCR 3.501, the "Class," as defined in Paragraph 2 of the Agreement, is hereby certified for settlement purposes only.

3. A hearing (the "Settlement Hearing") will be held before this Court on August 31, 2020, to determine whether the proposed settlement between Plaintiff and Defendant, on the terms and conditions provided in the Agreement, is fair, reasonable and adequate and should be approved by the Court, to determine whether a final judgment should be entered dismissing this Lawsuit with prejudice, and without costs, and to determine whether to award attorneys' fees and expenses to Class Counsel and the amount of such fees and expenses.

4. The Court approves the notification to the members of the Class regarding the Settlement and right to hearing, as authorized in Paragraphs 5 and 7 of this Order, finding that such notification is the best notice practicable under the circumstances, is in compliance with MCR 3.501, and the requirements of due process of law, and will adequately inform Class Members of their rights.

5. On or before fourteen (14) days from the entry of this Order, Plaintiff's Counsel shall cause a Notice of Proposed Class Action Settlement ("Notice"), substantially in the form attached to the Agreement as Exhibit "C," to be mailed to members of the Class.

6. The law firms of Kickham Hanley PLLC ("KH") and Randal Toma & Associates PC are hereby appointed as Class Counsel in this Action. KH is further appointed as Claims-Escrow Administrator for this Action. KH is authorized to use the services of a third-party administrator

(“TPA”), as provided in the Agreement. Defendant will administer a portion of the Settlement Fund to apply credits as described in Paragraphs 9, 10, 11, and 21 of the Agreement. KH (with the assistance of a TPA) is authorized to implement the notice requirements set forth in and approved by this Order.

7. The Court directs anyone within the Class definition who wishes to be excluded from the Class and to exercise their right to opt-out of the Class to follow the opt-out procedures and deadlines set forth in the Notice. Any Class Member who does not opt-out may appear personally, or by counsel of his or her own choice and at his or her own expense at the Settlement Hearing to show cause why: (a) the proposed settlement of the claims asserted should or should not be approved as fair, just, reasonable, adequate and in good faith; or (b) judgment should or should not be entered thereon; provided, however, that no Class member will be heard at the Hearing or be entitled to contest the approval of the terms and conditions of the proposed settlement, the judgment to be entered thereon approving the same, or the attorneys’ fees and expenses to be paid, or other matter(s) that may be considered by the Court at or in connection with said settlement hearings. If any Class member chooses to appear, the Class member shall file with the Court and serve upon counsel listed below at least fourteen (14) days prior to the hearing written objections that set forth the name of this matter as defined in the Notice, the objector’s full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector’s attorney):

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(248) 544-1500  
Counsel for Plaintiff

and

Ronald A. King  
Clark Hill PLC  
212 E. Grand River Ave.  
Lansing, MI 48906  
(517) 318-3015  
Counsel for Defendant

8. Any Class member who does not opt out and who does not object in the manner provided above shall be deemed to have waived any and all objections to the fairness, adequacy or reasonableness of the proposed settlements or the award of attorney's fees and expenses, and shall be bound by all determinations and judgments in the Lawsuit concerning the Settlement, including, but not limited to the Release and Covenant set forth in Paragraph 26 of the Agreement.

9. As stated in Paragraph 6, KH is authorized to serve as the Claims-Escrow Administrator. The Claims-Escrow Administrator, with the assistance of a TPA, shall be responsible for holding the Settlement Fund in escrow, determining the eligibility of Class Members to receive payments, determining the size of each Allowed Claim, distributing the payments to Class Members with Allowed Claims, preparing a distribution report along with the monetary amount of each Class Member's share of the settlement in accordance with Paragraph 10 of the Agreement, and transferring to Defendant the unclaimed portion of the Net Settlement Fund as required by Paragraph 10 of the Agreement. The Claims-Escrow Administrator shall also be responsible for: (a) recording receipt of all responses to the Notice; (b) preserving until further Order of this Court any and all written communications from Class members or any other person in response to the Notice; and (c) making any necessary filings with the Internal Revenue Service. The Claims-Escrow

Administrator may respond to inquiries, but copies of all written answers to such inquiries will be maintained and made available for inspection by all counsel in this action.

10. All papers in support of the settlement shall be filed with the Court and served on the other parties no later than seven (7) days prior to the Settlement Hearing.

11. The Court expressly reserves its right to adjourn the Settlement Hearing without any further notice to members of the Class. The Court retains jurisdiction of this action to consider all further applications arising out of or connected with the proposed settlement herein.

12. All pretrial and trial proceedings in the Lawsuit are stayed and suspended until further order of the Court. Pending the final determination of the fairness, reasonableness and adequacy of the settlements, no Plaintiff or member of the class may institute or commence any action or proceeding against Defendant asserting any of the claims asserted in this action.

13. Subject to the terms of Paragraphs 14-15 of this Order, if the Agreement and Settlement is disapproved, in part or in whole, by the Court, or any appellate court; if dismissal of the Lawsuit with prejudice against Defendant cannot be accomplished; if a final judgment on the terms set forth in Paragraph 26 of the Agreement is not entered within one hundred (150) days after the entry of this Order; if the Settlement Date defined in Paragraph 5 of the Agreement does not occur prior to October 15, 2020; or if the Agreement and Settlement otherwise is not fully consummated and effected:

a. The Agreement shall have no further force and effect and it and all negotiations and proceedings connected therewith shall be without prejudice to the rights of Defendant, the Named Plaintiff and the Class;

b. Any discussions, offers, negotiations, or information exchanged in association with the Settlement shall not be discoverable or offered into evidence or used in the Lawsuit or any other action or proceeding for any purpose. No publicly disseminated information regarding the


Settlement, including, without limitation, the Notice, court filings, orders and public statements may be used as evidence, or construed as admissions or concessions of fact by or against either Party on any point of fact or law. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence or construed as an admission or concession by the City or by Plaintiff on any point of fact or law. All Parties to the Lawsuit shall stand in the same position as if the Agreement had not been negotiated, made or filed with the Court; and

c. The Claims-Escrow Administrator shall immediately return to Defendant any and all monies provided by Defendant for settlement purposes.

14. Defendant and Class Counsel may, in their sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in Paragraph 13 of this Order. Such waiver must be memorialized in a writing signed by Defendant and/or its counsel and/or Class Counsel and delivered via certified mail to all counsel of record, or it will have no force or effect.

15. Defendant and Class Counsel may, in their sole and exclusive discretion, elect to extend any or all of the deadlines stated in Paragraph 13 of this Order. Such extension must be memorialized in a writing signed by Defendant and/or its counsel and/or Class Counsel and delivered via certified mail to all counsel of record, or it will have no force or effect.



  
Circuit Court Judge

/S/ JENNIFER M. FAUNCE  
CIRCUIT COURT JUDGE, P43816

05/29/2020



**STIPULATED TO AND AGREED:**

**KICKHAM HANLEY PLLC**

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Attorneys for Defendant

# EXHIBIT - 1

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BRAD M. PATRICK  
individually, and as representative  
of a class of similarly-situated persons  
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Plaintiff,

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Defendant.

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Attorneys for Defendant

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**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement ("Agreement") is made this 11<sup>th</sup> day of ~~April~~ <sup>May</sup>, 2020, by and between the following (collectively referred to as the "Parties"): Plaintiff Brad Patrick ("Named Plaintiff"), individually, and on behalf of a certified class of similarly situated persons and entities (as more specifically defined in Paragraph 2 below, the "Class"), acting by

and through his counsel, Kickham Hanley PLLC and Randal Toma & Associates, PC ("Class Counsel"), and Defendant City of St. Clair Shores, Michigan (the "City").

WHEREAS Plaintiff commenced this action in the 16th Judicial Circuit Court (Macomb County) titled *Patrick v. City of St. Clair Shores*, Case No. 2017-003018-CZ, presiding Judge Jennifer Faunce (the "Lawsuit"), challenging stormwater service charges (the "Stormwater Charges") the City imposes upon owners of real property. Plaintiff brought these claims on behalf of himself and a class of all others similarly situated.

WHEREAS Plaintiff is an individual who owns property in the City and who has paid the Stormwater Charges imposed by the City. Plaintiff contends that: (a) the Stormwater Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are unlawful because they are unreasonable; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City's collection and retention of the Stormwater Charges.

WHEREAS Plaintiff sought a judgment from the Court against the City that would order and direct the City to refund all Stormwater Charges to which Plaintiffs and the class are entitled and grant any other appropriate relief.

WHEREAS The City maintained and continues to maintain that the City's imposition of the Stormwater Charges is proper and not unlawful. The City contends that it should ultimately prevail in the Lawsuit.

WHEREAS On May 14, 2018, Judge Faunce entered an Order certifying the Lawsuit as a class action. On December 4, 2019, Judge Faunce entered a Judgment in favor of Plaintiff and the Class and against the City in the total amount of \$3,744,764.61 (the "Judgment").

WHEREAS both Plaintiff and the City have appealed the Judgment to the Michigan Court of Appeals. Plaintiff's appeal is COA Case No. 351946 and the City's appeal is COA Case No. 351936.

WHEREAS, the Named Plaintiff in the Lawsuit and Class Counsel have been provided with discovery and have conducted investigations into the facts of the Lawsuit, have made a thorough study of the legal principles applicable to the claims in the Lawsuit, and have concluded that a class settlement with the City in the amount and on the terms hereinafter set forth (the "Settlement") is fair, reasonable, and adequate, and is in the best interest of the Class.

WHEREAS, the Parties desire to compromise their differences and to resolve and release all of the claims asserted by the Named Plaintiff and the Class in the Lawsuit.

NOW, THEREFORE, in consideration of the covenants and agreements herein, and intending to be legally bound, the Parties hereby agree as follows:

#### **IMPLEMENTATION OF AGREEMENT**

1. The Parties agree to cooperate in good faith, to use their best efforts, and to take all steps necessary to implement and effectuate this Agreement.

#### **CLASS CERTIFICATION**

2. The Court has already certified a class consisting of all persons or entities who/which paid or incurred the Stormwater Charges at any time after August 15, 2011. For settlement purposes only, the parties will agree that the Court will certify a class (the "Class") consisting of all persons or entities who/which paid or incurred the Stormwater Charges at any

time between August 15, 2011 and February 29, 2020 (the "Class Period") and who do not request to be excluded from the Class pursuant to MCR 3.501(D). The City is excluded from the Class. This Agreement is intended to settle all of the claims of the members of the Class ("Class Members").

### **SETTLEMENT FUND**

3. The City will create a Settlement Fund (the "Settlement Fund") in the amount of Three Million Four Hundred Eighty Three Thousand Eight Hundred Eighty Two Dollars and Ninety-Five Cents (\$3,483,882.95) in order to resolve the claims of the Class. No more than 30 days after the execution of this Agreement, the City shall deposit the Settlement Fund into the IOLTA Trust Account of Class Counsel, Kickham Hanley PLLC ("KH"). The Settlement Fund shall be administered by KH (the "Claims-Escrow Administrator") with the assistance of a third-party administrator ("TPA"). The expenses the Claims-Escrow Administrator incurs to the TPA shall be recoverable by the Claims-Escrow Administrator as a cost of the litigation under Paragraphs 27-30 of this Agreement (subject to Court approval) and payable out of the Settlement Fund. The Claims-Escrow Administrator may from time to time apply to the Court for instructions or orders concerning the administration of the Settlement Fund and may apply to the Internal Revenue Service for such rulings with respect thereto as it may consider appropriate. Disbursements from the Settlement Fund by the Claims-Escrow Administrator and the City shall be expressly conditioned upon an order of the Court permitting such disbursements.

4. Except as set forth in Paragraphs 27 through 30 of this Agreement, the Class and Class Counsel shall not claim any attorneys' fees or costs.

5. Subject to Paragraph 31, distribution of the Settlement Fund shall occur no later than seven (7) days after the completion of the last of all of the following (the "Settlement Date"):

- a. entry of an order of final judicial approval by the Court approving this Agreement pursuant to Michigan Court Rule 3.501(E);
- b. entry of an order adjudicating Class Counsel's motion for an award of attorneys' fees and costs;
- c. entry of a final judgment of dismissal of the Lawsuit with prejudice with respect to the claims of the Named Plaintiff and all Class Members, except those putative Class Members who have requested to be excluded from the Class pursuant to MCR 3.501(D);
- d. the City's deposit of the Settlement Fund described in Paragraph 3 above;
- e. the Court's entry of the Distribution Order described in Paragraph 11 below; and
- f. the expiration of the 21-day time for appeal of all of the aforementioned orders and judgments and final resolution of any and all appeals of such orders and judgments, but only if any Class Member files a timely objection to any of the aforementioned orders and judgments.

6. As more specifically discussed below, and as provided in Paragraph 5, the Settlement Fund shall be distributed only pursuant to and in accordance with orders of the Court, as appropriate.

7. In the event that this Settlement fails to be consummated pursuant to this Agreement or fails to secure final approval by the Court for any reason or is terminated pursuant to Paragraph 31, the Settlement Fund shall immediately be returned to the City.

#### **DISTRIBUTION OF SETTLEMENT FUND**

8. The "Net Settlement Fund" to be distributed to the Class is the Settlement Fund less the combined total of: (a) attorneys' fees and any incentive award to the Class representative

awarded pursuant to Paragraphs 27-30; and (b) Class Counsel and Claims-Escrow Administrator expenses reimbursed pursuant to Paragraphs 27-30.

9. Each Class Member's share in the Net Settlement Fund shall be referred to herein as his, her or its "Pro Rata Share," and each Class Member's Pro Rata Share of the Net Settlement Fund will be distributed via a refund payment or credit. The Pro Rata Share to be allocated to each Class Member shall be determined according to Paragraph 10.

10. All Class Members may participate in the Settlement by receiving from the Net Settlement Fund a cash distribution Payment or Credit (as defined in Paragraph 10(b) and (c)). The Net Settlement Fund shall be distributed as follows:

a. Within 14 days after the Court's entry of an order preliminarily approving this Settlement, the City shall provide the Claims-Escrow Administrator with billing and payment records in electronic form that, at a minimum, provide for the Class Period (August 15, 2011 through February 29, 2020) the service address, account number, and billing and payment history for each person or entity which paid or incurred the Stormwater Charges. The Claims-Escrow Administrator will provide notice to the Class Members through first-class mail. The Claims-Escrow Administrator is authorized to utilize the services of the TPA in disseminating notices to the Class. Such forms of notice will not be required to be exclusive and the Claims-Escrow Administrator will be allowed to use any appropriate means to give notice to Class Members of the Settlement and the opportunity to obtain a refund. Class Counsel will also provide newspaper publication notice to the Class as provided in Paragraph 24.

b. To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members will be required to submit sworn claims (the "Claims") which identify their names, addresses, and the periods of time in which they paid the Stormwater



Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the "Claiming Class Members." The Claiming Class Members will be required to submit those claims no later than 30 days prior to the hearing on the final approval of this settlement, as described in Paragraph 25 (the "Claims Period"). The foregoing is a general outline. The TPA will assist in implementing a process designed to minimize fraud and maximize dissemination of the refunds to the appropriate parties. In the event that two or more parties claim to have paid or incurred Stormwater Charges for the same account, after notifying the City of the competing claims and considering any City information, documents, and recommendation provided in response to the notice, the Claims-Escrow Administrator shall have the absolute discretion to determine which party or parties are entitled to participate in the settlement, and the City shall cooperate by providing information in its possession concerning the disputed property.

c. The Claims-Escrow Administrator shall calculate each Class Member's pro rata share of the Net Settlement Fund (the "Pro Rata Share"). Only those Class Members who paid Stormwater Charges during the Class Period and submit a timely Claim are entitled to distribution by a cash Payment of a Pro Rata Share of the Net Settlement Fund. The Pro Rata Shares of the Net Settlement Fund for Class Members who/which do not submit a timely claim will be distributed by the Claims-Escrow Administrator returning those funds (the "City Administered Portion") to the City at least three (3) days prior to the Settlement Date to be used solely to fund and provide Credits on the water and/or sewer service accounts associated with the Stormwater Charges in the amount of those Class Members' Pro Rata Shares. Any Credit will attach to the water and sewer account associated with the Stormwater Charges and will remain until water and sewer charges accrued by that account after the Settlement Date exceed the amount of the Credit. The City shall apply the Credits as of the Settlement Date. The Claims-

Escrow Administrator is authorized to utilize the services of the TPA to calculate the Pro Rata Shares distributable to the Claiming Class Members. The size of each Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of Charges the Class Member paid during the Class Period and then (2) dividing that number by the total amount of Charges the City collected from Class Members during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

d. Now that the Court has enjoined the future imposition and collection of the Stormwater Charges, it is not possible to apply the Credits against future Stormwater Charges. However, because the overwhelming majority of properties which currently incur Stormwater Charges are also water and sewer customers, the Credits constitute an effective surrogate remedy for virtually all Class Members who do not submit timely claims for a Refund. Further, the Class notice of settlement will prominently highlight the need for the extremely limited number of persons/entities without water and sewer service who/which have paid or incurred Stormwater Charges in the past to submit timely claims for Refunds because, in the absence of such claims, those Class Members cannot receive Credits and therefore necessarily will not be able to otherwise share in the benefits of the settlement.

11. No later than 21 days prior to the hearing on the final approval of this settlement (as described in Paragraph 25), the Claims-Escrow Administrator shall submit to the Court a report setting forth the proposed disposition of the Net Settlement Fund including, without limitation, a list of Claiming Class Members and the percentage of the Net Settlement Fund to be paid to each such Claiming Class Member, and a list of properties associated with Non-Claiming Class Members and the percentage of the Net Settlement to be credited to the water and sewer account of each Non-Claiming Class Member (the "Distribution Report"). Upon filing of the

Distribution Report, the Claims-Escrow Administrator shall serve copies of the Distribution Report on Counsel for the City.

a. The City shall have 14 days to object to the Distribution Report. All objections shall be resolved by the Court at or before the final approval hearing.

b. Class Counsel and Counsel for the City, within seven (7) days after the resolution of any objections to the Distribution Report, or within seven (7) days after the deadline for submission of objections if no objections are submitted, whichever is later, shall submit to the Court a stipulated Distribution Order authorizing distribution from the Settlement Fund to the Class Members entitled to a Pro Rata Share distribution of the Net Settlement Fund ("Stipulated Distribution Order") in accordance with the Distribution Report, subject to the Court's final approval of this Settlement.

d. The Parties acknowledge that, because Class Members may have moved or ceased doing business since August 15, 2011, complete and current address information may not be available for all Class Members. The City, Named Plaintiff, counsel for any Parties, the Claims-Escrow Administrator and the TPA shall not have any liability for or to any member of the Class with respect to determinations of the amount of any distribution of the Settlement Fund to any Class Member or determinations concerning the names or addresses of the Class Members.

12. At a time consistent with Paragraph 5, following the entry of the Stipulated Distribution Order, the Claims-Escrow Administrator shall distribute from the Net Settlement Fund the Pro Rata Share of each Claiming Class Member. The Claims-Escrow Administrator is authorized to send checks reflecting Payments due to Claiming Class Members to the address provided by each Claiming Class Member in his, her, or its sworn Claim.

13. The Claims-Escrow Administrator is further authorized to transfer the Net Settlement Fund, less the City Administered Portion, to the TPA so that the TPA can distribute Payments in accordance with this Agreement.

14. The amounts of money covered by checks distributing the Payment of the Pro Rata Shares which: (a) are returned and cannot be delivered by the U.S. Postal Service after the Claims-Escrow Administrator (i) confirms that the checks were mailed to the identified addresses, and (ii) re-mails any checks if errors were made or it becomes aware of an alternative address or payee; or (b) have not been cashed within six (6) months of mailing, shall be refunded to the City within thirty (30) days after the expiration of the six (6) month period; and the Class Members to whom such checks were mailed shall be forever barred from obtaining any payment from the Settlement Fund.

15. The City shall deposit any refund of money under Paragraph 14 in its water and sewer fund and utilize any refund monies solely for the operation, maintenance and improvement of its storm sewer system.

16. Within thirty (30) days after the date on which the remaining Net Settlement Fund is distributed back to the City, the Claims-Escrow Administrator shall file with the Court and serve on counsel for the Parties a document setting forth the names and addresses of, and the amounts paid to, each distributee of funds from the Settlement Fund together with a list of Claiming Class Members entitled to receive a Pro Rata Share but whose distribution checks have been returned or have not been cashed.

17. The City may not levy a tax or other assessment against property owners or water and/or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or

assessment receives voter approval), nor may the City increase its water and sewer rates to finance, in whole or in part, the Settlement Fund. The Settlement Fund shall be financed solely from current assets of the City's Water and Sewer Fund.

18. The Class Members shall release the City as provided in Paragraph 26 below.

19. The Lawsuit will be dismissed with prejudice.

#### **CLAIMS-ESCROW ADMINISTRATOR**

20. The Claims-Escrow Administrator shall not receive a separate fee for its services as Claims-Escrow Administrator. Because Class Counsel is acting as the Claims-Escrow Administrator, the fee awarded to Class Counsel shall be deemed to include compensation for its service as Claims-Escrow Administrator. The Claims-Escrow Administrator, however, shall be entitled to be reimbursed for its out-of-pocket expenses incurred in the performance of its duties (including but not limited to the TPA's charges), which shall be paid solely from the Settlement Fund.

21. The Claims-Escrow Administrator, with the assistance of the TPA, shall have the responsibilities set forth in this Agreement, including, without limitation, holding the Settlement Fund in escrow, determining the eligibility of Class Members to receive Payments and Credits, determining the Pro Rata Shares, distributing the Payments to Class Members receiving a Pro Rata Share, filing a Distribution Report consistent with Paragraph 11 and transferring to the City portions of the Net Settlement Fund as required by Paragraph 10(c). The Claims-Escrow Administrator, with the assistance of the TPA, shall also be responsible for: (a) recording receipt of all responses to the notice; (b) preserving until further Order of the Court any and all written communications from Class Members or any other person in response to the notice; and (c)

making any necessary filings with the Internal Revenue Service. The Claims-Escrow Administrator may respond to inquiries, but copies of all written answers to such inquiries will be maintained and made available for inspection by all counsel in this Lawsuit. The Claims-Escrow Administrator may delegate some or all of these responsibilities to the TPA except only the Claims-Escrow Administrator may determine eligibility of Class Members to receive Payments and Credits.

22. Any findings of fact of the Claims-Escrow Administrator and/or the TPA shall be made solely for the purposes of the allocation and distribution of the Pro Rata Shares, and, in accordance with Paragraph 35, shall not be admissible for any purpose in any judicial proceeding, except as required to determine whether the claim of any Class Member should be allowed in whole or in part.

#### **NOTICE AND APPROVAL OF SETTLEMENT**

23. As soon as practicable, but in no event later than five (5) days after the execution of this Agreement, Class Counsel and Counsel for the City shall submit this Agreement to the Court, either by stipulation or joint motion, pursuant to Michigan Court Rule 3.501, for the Court's preliminary approval, and shall request an Order of the Court, substantially in the form attached as Exhibit "B," including the following terms:

a. scheduling of a Settlement approval hearing to be held as soon as practicable after the entry of such Order but in no event later than ninety (90) days thereafter to determine the fairness, reasonableness, and adequacy of this Agreement and the Settlement; whether the Agreement and Settlement should be approved by the Court; and whether to award the attorneys' fees and expenses requested by Class Counsel;

b. directing that notice, substantially in the form of Exhibit "C," be given to the members of the Class advising them of the following:

i. the terms of the proposed Settlement consented to by the Named Plaintiff and the City;

ii. the scheduling of a hearing for final approval of the Agreement and Settlement;

iii. the rights of the members of the Class to appear at the hearing to object to approval of the proposed Settlement or the requested attorneys' fees and expenses, provided that, if they choose to appear, they must file and serve at least fourteen (14) days prior to the hearing written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney);

iv. the nature of the release to be constructively entered upon approval of the Agreement and Settlement;

v. the binding effect on all Class Members of the judgment to be entered should the Court approve the Agreement and Settlement; and

vi. the right of members of the Class to opt out of the Class, the procedures for doing so, and the deadlines for doing so, including the deadline with respect to

filing and/or serving written notification of a decision to opt out of the Class (such deadline must be at least fourteen (14) days prior to the hearing);

c. providing that the manner of such notice shall constitute due and sufficient notice of the hearing to all persons entitled to receive such notice and requiring that proof of such notice be filed at or prior to the hearing; and

d. appointing Kickham Hanley PLLC as Claims-Escrow Administrator.

24. Notice to Class Members of the proposed settlement shall be the responsibility of Class Counsel pursuant to orders of the Court. Class Counsel shall be entitled to be reimbursed for the cost of such notice from the Settlement Fund, and Class Counsel shall make application for costs of notice to the Court at least Twenty-eight (28) days before the Settlement approval hearing with the Court approving any costs at the time of the Settlement approval hearing. Such notice shall be substantially in the form attached hereto as Exhibit "C," and mailed by Class Counsel (or the TPA) to the Class Members at the addresses provided by the City within fourteen (14) days of entry of the Order Regarding Preliminary Approval of this Agreement. Class Counsel will also provide publication notice to the Class, which shall be substantially in the form attached hereto as Exhibit "A" and shall be published in the Macomb Daily on two occasions at least 30 days prior to the end of the Claims Period.

25. After the notice discussed in Paragraphs 23 and 24 has been mailed, the Court shall, consistent with Paragraph 23, conduct a hearing at which it rules on any objections to this Agreement and a joint motion for entry of a Final Order approving of this Settlement and Agreement. If the Court approves this Agreement pursuant to Michigan Court Rule 3.501(E), a final judgment, substantially in the form of Exhibit "D," shall be entered by the Court: (a) finding that the notice provided to Class Members is the best notice practicable under the



circumstances and satisfies the due process requirements of the United States and Michigan Constitutions; (b) approving the Settlement set forth in this Agreement as fair, reasonable, and adequate; (c) dismissing with prejudice and without costs to any Party any and all claims of the Class Members against the City, excluding only those persons who in timely fashion requested exclusion from the Class; (d) awarding Class Counsel attorneys' fees, costs and expenses as granted by the Court upon motion of Class Counsel, and awarding the Named Plaintiff an incentive award as granted by the Court upon motion of Class Counsel; (e) reserving jurisdiction over all matters relating to the administration of this Agreement, including allocation and distribution of the Settlement Fund; and (f) retaining jurisdiction to protect and effectuate this judgment.

#### **RELEASE AND COVENANT NOT TO SUE**

26. On the Settlement Date, each Class Member who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue, and the Final Order and Judgment to be entered by the Court in connection with the approval of this Settlement shall so provide:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through the date of this Final Order and Judgment concerning (1) the City's calculation or assessment of the

Stormwater Charges; (2) the components of costs included in the Stormwater Charges; and/or (3) the City's efforts to charge and/or collect Stormwater Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances.

### **ATTORNEYS' FEES AND EXPENSES**

27. Class Counsel shall be paid an award of attorneys' fees, costs, and expenses from the Settlement Fund. For purposes of an award of attorneys' fees and costs, the Settlement Fund shall be deemed to be a "common fund," as that term is used in the context of class action settlements. Class Counsel shall not make an application for any attorneys' fees and costs which are in addition to the "common fund" attorneys' fees and costs contemplated by this Agreement. Plaintiff and Class Counsel waive any statutory right to recover fees from the City under MCL 600.308a.

28. The amount of attorneys' fees, costs and expenses to be paid to Class Counsel shall be determined by the Court applying legal standards and principles applicable to awards of attorneys' fees and costs from common fund settlements in class action cases. Class Counsel agrees that it will not seek an award of attorneys' fees in excess of Thirty-Three Percent (33%) of the Settlement Fund. Class Counsel will file and serve a motion to approve attorneys' fees, costs and expenses, and to approve an incentive award to the Named Plaintiff, no later than seven (7) days before the hearing for final approval of the Settlement. The City will not join in that motion,

however the City will not oppose Class Counsel's motion, provided the motion complies with this Agreement. The City will also not oppose any request for an incentive award on behalf of class representative Brad Patrick, in an amount not to exceed Twenty Thousand Dollars (\$20,000) to be paid solely from the Settlement Fund.

29. The award of attorneys' fees, costs and expenses to be paid from the Settlement Fund to Class Counsel pursuant to Paragraph 28 does not include any out-of-pocket expenses incurred by Kickham Hanley PLLC acting in its capacity as Class Counsel and/or Claims-Escrow Administrator. Kickham Hanley PLLC shall make a separate application for such expenses.

30. The Court shall determine and approve the award of attorneys' fees and costs to Class Counsel, reimbursement of the expenses incurred by the Claims-Escrow Administrator, and any incentive award to Brad Patrick in connection with the final approval hearing. The attorneys' fees, costs and expenses awarded to Class Counsel and the Claims-Escrow Administrator and any incentive award to Brad Patrick shall be paid from the Settlement Fund upon the Settlement Date.

### **TERMINATION**

31. If this Agreement and Settlement is disapproved, in part or in whole, by the Court, or any appellate court; if dismissal of the Lawsuit with prejudice against the City cannot be accomplished; if the Court does not enter an Order of Preliminary Approval substantially in the form attached as Exhibit "B" within twenty-eight (28) days after its submission to the Court; if a final judgment on the terms set forth in Paragraph 25 is not entered within one hundred fifty (150) days after the entry of the Order substantially in the form attached as Exhibit "B"; if the Settlement Date defined in Paragraph 5 does not occur prior to November 15, 2020; if the Court (or any appellate court) alters the terms of this Settlement in any material way not acceptable to the

City or to Class Counsel; or if this Agreement and Settlement otherwise is not fully consummated and effected:

a. This Agreement shall have no further force and effect and it and all negotiations and proceedings connected therewith shall be without prejudice to the rights of the City, the Named Plaintiff and the Class;

b. The Claims-Escrow Administrator shall immediately return the Settlement Fund to the City;

c. The Parties shall return to the status quo ante in the Lawsuit as if the Parties had not entered into this Agreement, and all of the Parties' respective pre-Settlement claims and defenses will be preserved; and

d. Counsel for the Parties shall file a motion in the Court of Appeals seeking to lift any stay of proceedings in COA Case No. 351946 and the City's appeal is COA Case No. 351936 so that those appeals can proceed.

32. The City and Class Counsel may, in their sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in Paragraph 31. Such waiver must be memorialized in a writing signed by the City and/or its Counsel and Class Counsel and delivered via certified mail to all counsel or it will have no force or effect.

33. The City and Class Counsel may, in their sole and exclusive discretion, elect to extend any or all of the deadlines stated in Paragraph 31. Such extension must be memorialized in a writing signed by the City and/or its Counsel and/or Class Counsel and delivered via certified mail to all counsel of record, or it will have no force or effect.

34. In the event the Settlement is terminated in accordance with Paragraph 31, any discussions, offers, negotiations, or information exchanged in association with this Settlement shall not be discoverable or offered into evidence or used in the Lawsuit or any other action or proceeding for any purpose. In such event, all Parties to the Lawsuit shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

#### **USE OF THIS AGREEMENT**

35. This Agreement, the Class Period, the Settlement provided for herein (whether or not consummated), and any proceedings taken pursuant to this Agreement shall not be:

a. construed by anyone for any purpose whatsoever as, or deemed to be, evidence of a presumption, concession or an admission by the City of the truth of any fact alleged or the validity of any claims, or of the deficiency or waiver of any defense that has or could have been asserted in the Lawsuit, or of any liability, fault or wrongdoing on the part of the City; or

b. offered or received as evidence of a presumption, concession or an admission of any liability, fault, or wrongdoing, or referred to for any other reason by the Named Plaintiff, Class Members, or Class Counsel in the Lawsuit, or any other person or entity not a party to this Agreement in any other action or proceeding other than such proceedings as may be necessary to effectuate the provisions of this Agreement; or

c. construed by anyone for any purpose whatsoever as an admission or concession that the Settlement amount represents the amount which could be or would have been recovered after trial, or the applicable time frame for any purported amounts of recovery; or

d. construed more strictly against one Party than the other, this Agreement having been prepared by Counsel for the Parties as a result of arms-length negotiations between the Parties.

### **PENDING APPEALS**

36. Within five days after execution of this Settlement Agreement, the parties will file a joint motion in the Michigan Court of Appeals requesting that the Court stay proceedings (including briefing) in COA Case No. 351946 and COA Case No. 351936 pending final approval of the Settlement by the Circuit Court.

37. In the event this Settlement receives final approval from the Circuit Court, within three days after the Settlement Date, the parties shall file joint stipulations to dismiss COA Appeal 351946 and COA Appeal 351936.

### **WARRANTIES**

38. Class Counsel further warrants that in its opinion the Settlement Fund represents fair consideration for and an adequate settlement of the claims of the Class released herein.

39. The undersigned have secured the consents of all persons necessary to authorize the execution of this Agreement and related documents and they are fully authorized to enter into and execute this Agreement on behalf of the Parties.

40. Class Counsel deems this Agreement to be fair and reasonable, and has arrived at this Agreement in arms-length negotiations taking into account all relevant factors, present or potential.

41. The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the claims giving rise to the Lawsuit.

42. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Agreement, and have been fully advised as to the legal effect thereof by their respective Counsel and intend to be legally bound by the same.

#### **BINDING EFFECT AND ENFORCEMENT**

43. All covenants, terms, conditions and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective predecessors and successors, and past and present assigns, heirs, executors, administrators, legal representatives, trustees, subsidiaries, divisions, affiliates, parents (and subsidiaries thereof), partnerships and partners, and all of their officers, directors, agents, employees and attorneys, both past and present, of each of the Parties hereto. It is understood that the terms of this paragraph are contractual and not a mere recital.

44. This Agreement, with the attached Exhibits A through D, constitutes a single, integrated written contract and sets forth the entire understanding of the Parties. Any previous discussions, agreements, or understandings between or among the Parties regarding the subject matter herein are hereby merged into and superseded by this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

45. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

46. This Agreement shall be construed and governed in accordance with the laws of the State of Michigan.

47. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and discuss submitting any disputes to non-binding mediation. The Parties shall also certify to the Court that they have consulted and either have been unable to resolve the dispute in mediation or are unwilling to submit the dispute to mediation and the reasons why.

48. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and the Parties shall submit to jurisdiction of the Court for purposes of implementing and enforcing the settlement reflected in this Agreement.

#### **MODIFICATION AND EXECUTION**

49. This Agreement may be executed in counterparts, all of which shall constitute a single, entire agreement.

50. Change or modification of this Agreement, or waiver of any of its provisions, shall be valid only if contained in a writing executed on behalf of all the Parties hereto by their duly authorized representatives.

51. This Agreement shall become effective and binding (subject to all terms and conditions herein) upon the Parties when it has been executed by the undersigned representatives of the Parties.



IN WITNESS WHEREOF, each of the Parties executes this Agreement through his, her  
or its duly authorized representatives.

KICKHAM HANLEY PLLC

In its capacity as Class Counsel and on behalf of  
the Named Plaintiff in the Lawsuit and the Class

By: 

Gregory D. Hanley (P51204)  
Attorneys for Plaintiffs  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500

Dated: 5/11/2020

CITY OF ST. CLAIR SHORES

By: 

Its: Mayor

Dated: 5-7-2020

By: 

Its: City Clerk

Dated: 5/7/2020

## EXHIBIT A

**EXHIBIT B**

**LEGAL NOTICE  
NOTICE OF CLASS ACTION**

**IF YOU PAID THE CITY OF ST. CLAIR SHORES FOR STORMWATER DISPOSAL SERVICE AT ANY TIME BETWEEN AUGUST 15, 2011 AND FEBRUARY 29, 2020 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE \_\_\_\_\_, 2020 AND MAIL IT TO \_\_\_\_\_, EMAIL THE COMPLETED FORM TO \_\_\_\_\_, OR SUBMIT AN ELECTRONIC FORM ONLINE AT \_\_\_\_\_**

**IN ORDER TO RECEIVE A CASH REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM. IF YOU DO NOT HAVE A WATER AND SEWER BILLING ACCOUNT WITH THE CITY OF ST. CLAIR SHORES, YOU ARE NOT ELIGIBLE TO RECEIVE YOUR PRO RATA SHARE IN THE FORM OF A CREDIT. YOU MUST SUBMIT A WRITTEN CLAIM IN ORDER TO RECEIVE ANY PORTION OF THE SETTLEMENT FUND.**

ATTN: All persons and entities who/which have paid the City of St. Clair Shores (the "City") for stormwater disposal services at any time between August 15, 2011 and February 29, 2020.

You are hereby notified that a proposed settlement in the amount of \$3,483,882.95 has been reached with the City in a class action lawsuit pending in Macomb County Circuit Court titled *Patrick v. City of St. Clair Shores*, Case No. 2017-003018-CZ, presiding Judge Jennifer Faunce (the "Lawsuit"), challenging stormwater service charges the City imposes upon owners of real property. The amounts Plaintiff and the Class paid or incurred for stormwater disposal between August 15, 2011 and February 29, 2020 shall be referred to herein as the "Stormwater Charges."

Plaintiff is an individual who owns property in the City and who has paid the City's Stormwater Charges. Rates. Plaintiff contends that: (a) the Stormwater Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are unlawful because they are unreasonable; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City's collection and retention of the Stormwater Charges.

The Plaintiff sought a judgment from the Court against the City that would order and direct the City to refund all Stormwater Charges to which Plaintiffs and the class are entitled and grant any other appropriate relief. In an Opinion and Order dated October 18, 2018, Judge Faunce declared that the Stormwater Charges were an unlawful tax in violation of the Headlee Amendment to the Michigan Constitution. On December

4, 2019, Judge Faunce entered a Judgment in favor of Plaintiff and the Class and against the City in the total amount of \$3,744,764.61 (the "Judgment").

The City maintained and continues to maintain that the City's imposition of the Stormwater Charges is proper and not unlawful, and thus denies the Plaintiff's claims and contends that it should prevail in the Lawsuit. The City contends that it should ultimately prevail in the Lawsuit.

Plaintiff and the City have appealed the Judgment to the Michigan Court of Appeals.

On May 14, 2018, the Court entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you paid for stormwater disposal services between August 15, 2011 and February 29, 2020 and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid or incurred the Stormwater Charges between August 15, 2011 and February 29, 2020 (the "Class"). This Agreement is intended to settle all of the claims of the Class.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the City has agreed to create a settlement fund in the aggregate amount of Three Million Four Hundred Eighty Three Thousand Eight Hundred Eighty Two Dollars and Ninety-Five Cents (\$3,483,882.95) for the benefit of the Class (the "Settlement Amount"). The Settlement Amount will be utilized, with Court approval, to pay refunds or provide credits to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

The "Net Settlement Fund" is the Settlement Amount less the combined total of: (a) the attorneys' fees awarded to Class Counsel by the Court; (b) expenses reimbursed pursuant to the terms of the Settlement; (c) out-of-pocket expenses of the Claims-Escrow Administrator, Kickham Hanley PLLC, and (d) any incentive award made by the Court to the class representative in an amount not to exceed \$20,000.

The Net Settlement Fund shall be used to compensate Class Members as described below.

Each Class Member's share in the Net Settlement Fund shall be referred to herein as his, her or its "Pro Rata Share," and each Class Member's Pro Rata Share of the Net Settlement Fund will be distributed via a refund payment or credit.

All Class Members may participate in the Settlement by receiving from the Net Settlement Fund a cash distribution Payment or Credit (as defined in Paragraph 10 of the Settlement Agreement). To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members are required to submit sworn claims (the "Claims") which identify their names, addresses, and the periods of time in which they paid the Stormwater Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the "Claiming Class Members." The Claiming Class

Members are required to submit those claims no later than 30 days prior to the hearing on the final approval of this settlement, as described in Paragraph 25 of the Settlement Agreement (the "Claims Period").

The Claims-Escrow Administrator will calculate each Class Member's pro rata share of the Net Settlement Fund (the "Pro Rata Share"). Only those Class Members who paid Stormwater Charges during the Class Period and submit a timely Claim are entitled to distribution by a cash Payment of a Pro Rata Share of the Net Settlement Fund. The Pro Rata Shares of the Net Settlement Fund for Class Members who/which do not submit a timely claim will be distributed by the Claims-Escrow Administrator returning those funds to the City at least three (3) days prior to the Settlement Date (as defined in the Settlement Agreement) to be used solely to fund and provide credits on the water and/or sewer service accounts in the amount of those Class Members' Pro Rata Shares. Any Credit will attach to the water and sewer billing account associated with the property that was subject to the Stormwater Charges and will remain until water and sewer charges accrued after the Settlement Date exceed the amount of the Credit. The City will apply the Credits as of the Settlement Date. **For this reason, it is very important for any Class Member who paid Stormwater Charges but does not have a water and sewer billing account to submit a Claim. If a Class Member does not have a water and sewer billing account, it will not be possible for the City to apply any credit. The only way for Class Members without water and sewer billing accounts to receive a portion of the Net Settlement Fund is for them to file Claims.**

The size of each Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of Stormwater Charges the Class Member paid during the Class Period and then (2) dividing that number by the total amount of Stormwater Charges the City collected from Class Members during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

The City may not levy a tax or other assessment against property owners or water and/or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the City increase its water and sewer rates to finance, in whole or in part, the Settlement Fund. The Settlement Fund shall be financed solely from current assets of the City's Water and Sewer Fund.

The Class Members shall release the City as provided below.

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiff's claims. **This request for exclusion must be postmarked no later than \_\_\_\_\_, 2020 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073 or emailed to khtemp@kickhamhanley.com.**

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the City for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund via a Refund or Credit. **Again, however, where a Class Member does not have a water and sewer billing account, it will not be possible for the City to apply any credit. The only way for Class Members without water and sewer billing accounts to receive a portion of the Net Settlement Fund is for them to file Claims.**

If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Order of the Court dated \_\_\_\_\_, 2020, a Settlement Hearing will be held in the Macomb County Circuit Court, 40 N. Main Street, Mt. Clemens, MI 48043 at 8:30 a.m. on \_\_\_\_\_, 2020, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated \_\_\_\_\_, 2020, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement, whether counsel for Plaintiffs and the Class should be awarded fees and expenses, and whether the Class Representative should receive an incentive award. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before \_\_\_\_\_, 2020, such Class member serves by first class mail written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

Gregory D. Hanley  
Kickham Hanley PLLC  
300 Balmoral Centre  
32121 Woodward Avenue

Royal Oak, Michigan 48073

Counsel for Plaintiff

and

Ronald A. King  
Clark Hill PLC  
212 E Grand River Ave  
Lansing, MI 48906-4328

Counsel for Defendant

and has filed said notice, objections, papers and briefs, as to the settlement with the Clerk of the Macomb County Circuit Court. Any Class member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Macomb County, Michigan. You may also view the Settlement Agreement and other important court documents at [www.kickhamhanley.com](http://www.kickhamhanley.com).

**AGAIN, IN ORDER TO RECEIVE A CASH REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM. IF YOU DO NOT HAVE A WATER AND SEWER BILLING ACCOUNT WITH THE CITY OF ST. CLAIR SHORES, YOU ARE NOT ELIGIBLE TO RECEIVE YOUR PRO RATA SHARE IN THE FORM OF A CREDIT. YOU MUST SUBMIT A WRITTEN CLAIM IN ORDER TO RECEIVE ANY PORTION OF THE SETTLEMENT FUND.**

**IF YOU PAID THE CITY OF ST. CLAIR SHORES FOR STORMWATER DISPOSAL SERVICE AT ANY TIME BETWEEN AUGUST 15, 2011 AND FEBRUARY 29, 2020 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE \_\_\_\_\_, 2020 AND MAIL IT TO \_\_\_\_\_, EMAIL THE COMPLETED FORM TO \_\_\_\_\_, OR SUBMIT AN ELECTRONIC FORM ONLINE AT \_\_\_\_\_**



STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BRAD M. PATRICK  
individually, and as representative  
of a class of similarly-situated persons  
and entities,

Plaintiff,

Case No. 2017-003018-CZ  
Hon. Jennifer Faunce

v.

CITY OF ST. CLAIR SHORES,  
a Michigan municipal corporation,

Defendant.

---

Gregory D. Hanley (P51204)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiff and the Class

Randal S. Toma (P56166)  
Randal Toma & Associates PC  
500 S. Old Woodward Ave., Floor 2  
Birmingham, MI 48009  
(248) 948-1500  
Attorney for Plaintiff and the Class

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Robert D. Ihrie (P26451)  
Richard S. Albright (P57060)  
Calvin C. Brown (P61725)  
Ihrie O'Brien  
24055 Jefferson Ave., Suite 2000  
St. Clair Shores, MI 48080  
(586) 778-7778  
Attorneys for Defendant

Ronald A. King (P45088)  
Clark Hill PLC  
212 E Grand River Ave  
Lansing, MI 48906-4328  
(517) 318-3015  
Attorneys for Defendant

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**Order Regarding Preliminary Approval of Class Action Settlement, Notice and Scheduling**

At a session of said Court held in the  
City of Mt. Clemens, County of Macomb,  
State of Michigan on \_\_\_\_\_

PRESENT: HON. \_\_\_\_\_  
Circuit Court Judge

WHEREAS, Plaintiff commenced the above captioned lawsuit in Macomb County Circuit Court (the "Lawsuit") challenging stormwater service charges (the "Stormwater Charges") the City imposes upon owners of real property.

WHEREAS, Plaintiff contends that: (a) the Stormwater Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are unlawful because they are unreasonable; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City's collection and retention of the Stormwater Charges.

WHEREAS, the Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class consisting of persons or entities who or which have paid or incurred the Stormwater Charges during the permitted time periods preceding the filing of this Lawsuit and/or at any time during the pendency of this action.

WHEREAS, the City denies that the City's Stormwater Charges are improper; denies that it has intentionally or negligently committed any unlawful, wrongful or tortious acts or omissions, violated any constitutional provision or statute, or breached any duties of any kind whatsoever; denies that it is in any way liable to any member of the Class; and states that the claims asserted in the Lawsuit have no substance in fact or law, and the City has meritorious defenses to such claims; but, nevertheless, has agreed to enter into this Agreement to avoid further expense, inconvenience, and distraction and risks of burdensome and protracted litigation, and to obtain total and final peace, satisfaction and protection from the claims asserted in the Lawsuit.

WHEREAS, the Named Plaintiff in the Lawsuit and Class Counsel have been provided with discovery and have conducted investigations into the facts of the Lawsuit, have made a thorough study of the legal principles applicable to the claims in the Lawsuit, and have concluded that a class settlement with the City in the amount and on the terms hereinafter set forth (the "Settlement") is fair, reasonable, and adequate, and is in the best interest of the Class.

WHEREAS, the Parties desire to compromise their differences and to resolve and release all of the claims asserted by the Named Plaintiff and the Class in the Lawsuit.

WHEREAS Plaintiff and Defendant have made a joint Motion for Preliminary Approval of Class Action Settlement in this matter:

WHEREAS Plaintiff and Defendant in this action intend to make application to this Court, pursuant to MCR 3.501(E), for a Final Order approving the settlement of this class action in accordance with the terms set forth in the Class Action Settlement Agreement ("Agreement"), executed by counsel for the parties on \_\_\_\_\_, 2020, and attached hereto as Exhibit 1, and they seek preliminary approval of the Agreement for purposes of, among other things, notifying class members of the proposed settlement;

WHEREAS the Court has been made aware of the settlement process leading to the agreement reached, and counsel have demonstrated that the settlement is within a range of reasonableness and is the result of arm's length bargaining of counsel well versed in the issues.

IT IS HEREBY ORDERED:

1. Unless defined otherwise herein, all capitalized terms shall have the definitions and meanings accorded to them in the Agreement.
2. The Court preliminarily approves the terms of the Agreement as fair, reasonable and adequate. The Court finds that the Settlement was reached in the absence of collusion, and is the produce of informed, good-faith, arm's length negotiations between the Parties and their counsel.

Pursuant to MCR 3.501, the "Class," as defined in Paragraph 2 of the Agreement, is hereby certified for settlement purposes only.

3. A hearing (the "Settlement Hearing") will be held before this Court on \_\_\_\_\_, 2020, to determine whether the proposed settlement between Plaintiff and Defendant, on the terms and conditions provided in the Agreement, is fair, reasonable and adequate and should be approved by the Court, to determine whether a final judgment should be entered dismissing this Lawsuit with prejudice, and without costs, and to determine whether to award attorneys' fees and expenses to Class Counsel and the amount of such fees and expenses.

4. The Court approves the notification to the members of the Class regarding the Settlement and right to hearing, as authorized in Paragraphs 5 and 7 of this Order, finding that such notification is the best notice practicable under the circumstances, is in compliance with MCR 3.501, and the requirements of due process of law, and will adequately inform Class Members of their rights.

5. On or before fourteen (14) days from the entry of this Order, Plaintiff's Counsel shall cause a Notice of Proposed Class Action Settlement ("Notice"), substantially in the form attached to the Agreement as Exhibit "C," to be mailed to members of the Class.

6. The law firms of Kickham Hanley PLLC ("KH") and Randal Toma & Associates PC are hereby appointed as Class Counsel in this Action. KH is further appointed as Claims-Escrow Administrator for this Action. KH is authorized to use the services of a third-party administrator ("TPA"), as provided in the Agreement. Defendant will administer a portion of the Settlement Fund to apply credits as described in Paragraphs 9, 10, 11, and 21 of the Agreement. KH (with the assistance of a TPA) is authorized to implement the notice requirements set forth in and approved by this Order.

7. The Court directs anyone within the Class definition who wishes to be excluded from the Class and to exercise their right to opt-out of the Class to follow the opt-out procedures and deadlines set forth in the Notice. Any Class Member who does not opt-out may appear personally, or by counsel of his or her own choice and at his or her own expense at the Settlement Hearing to show cause why: (a) the proposed settlement of the claims asserted should or should not be approved as fair, just, reasonable, adequate and in good faith; or (b) judgment should or should not be entered thereon; provided, however, that no Class member will be heard at the Hearing or be entitled to contest the approval of the terms and conditions of the proposed settlement, the judgment to be entered thereon approving the same, or the attorneys' fees and expenses to be paid, or other matter(s) that may be considered by the Court at or in connection with said settlement hearings. If any Class member chooses to appear, the Class member shall file with the Court and serve upon counsel listed below at least fourteen (14) days prior to the hearing written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney):

Gregory D. Hanley  
Kirkham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073  
(248) 544-1500  
Counsel for Plaintiff

and

Ronald A. King  
Clark Hill PLC  
212 E. Grand River Ave.  
Lansing, MI 48906  
(517) 318-3015  
Counsel for Defendant

8. Any Class member who does not opt out and who does not object in the manner provided above shall be deemed to have waived any and all objections to the fairness, adequacy or reasonableness of the proposed settlements or the award of attorney's fees and expenses, and shall be bound by all determinations and judgments in the Lawsuit concerning the Settlement, including, but not limited to the Release and Covenant set forth in Paragraph 26 of the Agreement.

9. As stated in Paragraph 6, KH is authorized to serve as the Claims-Escrow Administrator. The Claims-Escrow Administrator, with the assistance of a TPA, shall be responsible for holding the Settlement Fund in escrow, determining the eligibility of Class Members to receive payments, determining the size of each Allowed Claim, distributing the payments to Class Members with Allowed Claims, preparing a distribution report along with the monetary amount of each Class Member's share of the settlement in accordance with Paragraph 10 of the Agreement, and transferring to Defendant the unclaimed portion of the Net Settlement Fund as required by Paragraph 10 of the Agreement. The Claims-Escrow Administrator shall also be responsible for: (a) recording receipt of all responses to the Notice; (b) preserving until further Order of this Court any and all written communications from Class members or any other person in response to the Notice; and (c) making any necessary filings with the Internal Revenue Service. The Claims-Escrow Administrator may respond to inquiries, but copies of all written answers to such inquiries will be maintained and made available for inspection by all counsel in this action.

10. All papers in support of the settlement shall be filed with the Court and served on the other parties no later than seven (7) days prior to the Settlement Hearing.

11. The Court expressly reserves its right to adjourn the Settlement Hearing without any further notice to members of the Class. The Court retains jurisdiction of this action to consider all further applications arising out of or connected with the proposed settlement herein.

12. All pretrial and trial proceedings in the Lawsuit are stayed and suspended until further order of the Court. Pending the final determination of the fairness, reasonableness and adequacy of the settlements, no Plaintiff or member of the class may institute or commence any action or proceeding against Defendant asserting any of the claims asserted in this action.

13. Subject to the terms of Paragraphs 14-15 of this Order, if the Agreement and Settlement is disapproved, in part or in whole, by the Court, or any appellate court; if dismissal of the Lawsuit with prejudice against Defendant cannot be accomplished; if a final judgment on the terms set forth in Paragraph 26 of the Agreement is not entered within one hundred (150) days after the entry of this Order; if the Settlement Date defined in Paragraph 5 of the Agreement does not occur prior to October 15, 2020; or if the Agreement and Settlement otherwise is not fully consummated and effected:

a. The Agreement shall have no further force and effect and it and all negotiations and proceedings connected therewith shall be without prejudice to the rights of Defendant, the Named Plaintiff and the Class;

b. Any discussions, offers, negotiations, or information exchanged in association with the Settlement shall not be discoverable or offered into evidence or used in the Lawsuit or any other action or proceeding for any purpose. No publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders and public statements may be used as evidence, or construed as admissions or concessions of fact by or against either Party on any point of fact or law. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or

any objections or interventions may be used as evidence or construed as an admission or concession by the City or by Plaintiff on any point of fact or law. All Parties to the Lawsuit shall stand in the same position as if the Agreement had not been negotiated, made or filed with the Court; and

c. The Claims-Escrow Administrator shall immediately return to Defendant any and all monies provided by Defendant for settlement purposes.

14. Defendant and Class Counsel may, in their sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in Paragraph 13 of this Order. Such waiver must be memorialized in a writing signed by Defendant and/or its counsel and/or Class Counsel and delivered via certified mail to all counsel of record, or it will have no force or effect.

15. Defendant and Class Counsel may, in their sole and exclusive discretion, elect to extend any or all of the deadlines stated in Paragraph 13 of this Order. Such extension must be memorialized in a writing signed by Defendant and/or its counsel and/or Class Counsel and delivered via certified mail to all counsel of record, or it will have no force or effect.

---

Circuit Court Judge



**STIPULATED TO AND AGREED:**

**KICKHAM HANLEY PLLC**

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

**CLARK HILL PLC**

By: /s/ Ronald A. King  
Ronald A. King (P45088)  
Ronald A. King  
212 E. Grand River Ave.  
Lansing, MI 48906  
(517) 318-3015  
Attorneys for Defendant

EXHIBIT C

**LEGAL NOTICE  
NOTICE OF CLASS ACTION**

**IF YOU PAID THE CITY OF ST. CLAIR SHORES FOR STORMWATER DISPOSAL SERVICE AT ANY TIME BETWEEN AUGUST 15, 2011 AND FEBRUARY 29, 2020 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE \_\_\_\_\_, 2020 AND MAIL IT TO \_\_\_\_\_, EMAIL THE COMPLETED FORM TO \_\_\_\_\_, OR SUBMIT AN ELECTRONIC FORM ONLINE AT \_\_\_\_\_**

**IN ORDER TO RECEIVE A CASH REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM. IF YOU DO NOT HAVE A WATER AND SEWER BILLING ACCOUNT WITH THE CITY OF ST. CLAIR SHORES, YOU ARE NOT ELIGIBLE TO RECEIVE YOUR PRO RATA SHARE IN THE FORM OF A CREDIT. YOU MUST SUBMIT A WRITTEN CLAIM IN ORDER TO RECEIVE ANY PORTION OF THE SETTLEMENT FUND.**

**PLEASE RETAIN THIS NOTICE**

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BRAD M. PATRICK  
individually, and as representative  
of a class of similarly-situated persons  
and entities,

Plaintiff,

Case No. 2017-003018-CZ.  
Hon. Jennifer Faunce

v.

CITY OF ST. CLAIR SHORES,  
a Michigan municipal corporation,

Defendant.

---

Gregory D. Hanley (P51204)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiff and the Class

Randal S. Toma (P56166)  
Randal Toma & Associates PC  
500 S. Old Woodward Ave., Floor 2  
Birmingham, MI 48009  
(248) 948-1500

---

Robert D. Ihrie (P26451)  
Richard S. Albright (P57060)  
Calvin C. Brown (P61725)  
Ihrie O'Brien  
24055 Jefferson Ave., Suite 2000  
St. Clair Shores, MI 48080  
(586) 778-7778  
Attorneys for Defendant

Ronald A. King (P45088)  
Clark Hill PLC  
212 E. Grand River Ave  
Lansing, MI 48906-4328  
(517) 318-3015

TO: All persons and entities who/which have paid the City of St. Clair Shores (the "City") for stormwater disposal services at any time between August 15, 2011 and February 29, 2020

You are hereby notified that a proposed settlement in the amount of \$3,483,882.95 has been reached with the City in a class action lawsuit pending in Macomb County Circuit Court titled *Patrick v. City of St. Clair Shores*, Case No. 2017-003018-CZ, presiding Judge Jennifer Faunce (the "Lawsuit"), challenging stormwater service charges the City imposes upon owners of real property. The amounts Plaintiff and the Class paid or incurred for stormwater disposal between August 15, 2011 and February 29, 2020 shall be referred to herein as the "Stormwater Charges."

Plaintiff is an individual who owns property in the City and who has paid the City's Stormwater Charges. Rates. Plaintiff contends that: (a) the Stormwater Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are unlawful because they are unreasonable; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City's collection and retention of the Stormwater Charges.

The Plaintiff sought a judgment from the Court against the City that would order and direct the City to refund all Stormwater Charges to which Plaintiffs and the class are entitled and grant any other appropriate relief. In an Opinion and Order dated October 18, 2018, Judge Faunce declared that the Stormwater Charges were an unlawful tax in violation of the Headlee Amendment to the Michigan Constitution. On December 4, 2019, Judge Faunce entered a Judgment in favor of Plaintiff and the Class and against the City in the total amount of \$3,744,764.61 (the "Judgment").

The City maintained and continues to maintain that the City's imposition of the Stormwater Charges is proper and not unlawful, and thus denies the Plaintiff's claims and contends that it should prevail in the Lawsuit. The City contends that it should ultimately prevail in the Lawsuit.

Plaintiff and the City have appealed the Judgment to the Michigan Court of Appeals.

On May 14, 2018, the Court entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you paid for stormwater disposal services between August 15, 2011 and February 29, 2020 and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid or incurred the Stormwater Charges between August 15, 2011 and February 29, 2020 (the "Class"). This Agreement is intended to settle all of the claims of the Class.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the City has agreed to create a settlement fund in the aggregate amount of Three Million Four Hundred Eighty Three Thousand Eight Hundred Eighty Two Dollars and Ninety-Five Cents (\$3,483,882.95) for the benefit of the Class (the "Settlement Amount"). The Settlement Amount will be utilized, with Court approval, to pay refunds or provide credits to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

The "Net Settlement Fund" is the Settlement Amount less the combined total of: (a) the attorneys' fees awarded to Class Counsel by the Court; (b) expenses reimbursed pursuant to the terms of the Settlement; (c) out-of-pocket expenses of the Claims-Escrow Administrator, Kickham Hanley PLLC, and (d) any incentive award made by the Court to the class representative in an amount not to exceed \$20,000.

The Net Settlement Fund shall be used to compensate Class Members as described below.

Each Class Member's share in the Net Settlement Fund shall be referred to herein as his, her or its "Pro Rata Share," and each Class Member's Pro Rata Share of the Net Settlement Fund will be distributed via a refund payment or credit.

All Class Members may participate in the Settlement by receiving from the Net Settlement Fund a cash distribution Payment or Credit (as defined in Paragraph 10 of the Settlement Agreement). To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members are required to submit sworn claims (the "Claims") which identify their names, addresses, and the periods of time in which they paid the Stormwater Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the "Claiming Class Members." The Claiming Class Members are required to submit those claims no later than 30 days prior to the hearing on the final approval of this settlement, as described in Paragraph 25 of the Settlement Agreement (the "Claims Period").

The Claims-Escrow Administrator will calculate each Class Member's pro rata share of the Net Settlement Fund (the "Pro Rata Share"). Only those Class Members who paid Stormwater Charges during the Class Period and submit a timely Claim are entitled to distribution by a cash Payment of a Pro Rata Share of the Net Settlement Fund. The Pro Rata Shares of the Net Settlement Fund for Class Members who/which do not submit a timely claim will be distributed by the Claims-Escrow Administrator returning

those funds to the City at least three (3) days prior to the Settlement Date (as defined in the Settlement Agreement) to be used solely to fund and provide credits on the water and/or sewer service accounts in the amount of those Class Members' Pro Rata Shares. Any Credit will attach to the water and sewer billing account associated with the property that was subject to the Stormwater Charges and will remain until water and sewer charges accrued after the Settlement Date exceed the amount of the Credit. The City will apply the Credits as of the Settlement Date. **For this reason, it is very important for any Class Member who paid Stormwater Charges but does not have a water and sewer billing account to submit a Claim. If a Class Member does not have a water and sewer billing account, it will not be possible for the City to apply any credit. The only way for Class Members without water and sewer billing accounts to receive a portion of the Net Settlement Fund is for them to file Claims.**

The size of each Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of Stormwater Charges the Class Member paid during the Class Period and then (2) dividing that number by the total amount of Stormwater Charges the City collected from Class Members during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

The City may not levy a tax or other assessment against property owners or water and/or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the City increase its water and sewer rates to finance, in whole or in part, the Settlement Fund. The Settlement Fund shall be financed solely from current assets of the City's Water and Sewer Fund.

The Class Members shall release the City as provided below.

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiff's claims. **This request for exclusion must be postmarked no later than \_\_\_\_\_, 2020 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073 or emailed to [khtemp@kickhamhanley.com](mailto:khtemp@kickhamhanley.com).**

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the City for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund via a Refund or Credit. **Again, however, where a Class Member does not have a water and sewer billing account, it will not be possible for the City to apply any credit. The only way for Class Members without water and sewer billing accounts to receive a portion of the Net Settlement Fund is for them to file Claims.**

If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Order of the Court dated \_\_\_\_\_, 2020, a Settlement Hearing will be held in the Macomb County Circuit Court, 40 N. Main Street, Mt. Clemens, MI 48043 at 8:30 a.m. on \_\_\_\_\_, 2020, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated \_\_\_\_\_, 2020, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement, whether counsel for Plaintiffs and the Class should be awarded fees and expenses, and whether the Class Representative should receive an incentive award. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before \_\_\_\_\_, 2020, such Class member serves by first class mail written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

Gregory D. Hanley  
Kickham Hanley PLLC  
300 Balmoral Centre  
32121 Woodward Avenue  
Royal Oak, Michigan 48073

Counsel for Plaintiff

and

Ronald A. King  
Clark Hill PLC  
212 E Grand River Ave  
Lansing, MI 48906-4328

Counsel for Defendant

and has filed said notice, objections, papers and briefs, as to the settlement with the Clerk of the Macomb County Circuit Court. Any Class member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Macomb County, Michigan. You may also view the Settlement Agreement and other important court documents at [www.kickhamhanley.com](http://www.kickhamhanley.com).

Should you have any questions with respect to this Notice of the proposed settlement of the Lawsuit generally, you should raise them with your own attorney or direct them to counsel for the Class, **IN WRITING OR BY EMAIL TO KHTEMP@KICKHAMHANLEY.COM, NOT BY TELEPHONE**, identified as Attorneys for Plaintiffs, above. **DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE DEFENDANT OR THE ATTORNEYS FOR DEFENDANT.**

On the Settlement Date, each member of the Class who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through the date of this Final Order and Judgment concerning (1) the City's calculation or assessment of the Stormwater Charges; (2) the components of costs included in the Stormwater Charges; and/or (3) the City's efforts to charge and/or collect Stormwater Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release



and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances.

**AGAIN, IN ORDER TO RECEIVE A CASH REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM. IF YOU DO NOT HAVE A WATER AND SEWER BILLING ACCOUNT WITH THE CITY OF ST. CLAIR SHORES, YOU ARE NOT ELIGIBLE TO RECEIVE YOUR PRO RATA SHARE IN THE FORM OF A CREDIT. YOU MUST SUBMIT A WRITTEN CLAIM IN ORDER TO RECEIVE ANY PORTION OF THE SETTLEMENT FUND.**

**IF YOU PAID THE CITY OF ST. CLAIR SHORES FOR STORMWATER DISPOSAL SERVICE AT ANY TIME BETWEEN AUGUST 15, 2011 AND FEBRUARY 29, 2020 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE \_\_\_\_\_, 2020 AND MAIL IT TO \_\_\_\_\_, EMAIL THE COMPLETED FORM TO \_\_\_\_\_, OR SUBMIT AN ELECTRONIC FORM ONLINE AT \_\_\_\_\_**

EXHIBIT D

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BRAD M. PATRICK  
individually, and as representative  
of a class of similarly-situated persons  
and entities,

Plaintiff,

Case No. 2017-003018-CZ  
Hon. Jennifer Faunce

v.

CITY OF ST. CLAIR SHORES,  
a Michigan municipal corporation,

Defendant.

---

Gregory D. Hanley (P51204)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiff and the Class

Randal S. Toma (P56166)  
Randal Toma & Associates PC  
500 S. Old Woodward Ave., Floor 2  
Birmingham, MI 48009  
(248) 948-1500  
Attorney for Plaintiff and the Class

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Robert D. Ihrie (P26451)  
Richard S. Albright (P57060)  
Calvin C. Brown (P61725)  
Ihrie O'Brien  
24055 Jefferson Ave., Suite 2000  
St. Clair Shores, MI 48080  
(586) 778-7778  
Attorneys for Defendant

Ronald A. King (P45088)  
Clark Hill PLC  
212 E Grand River Ave  
Lansing, MI 48906-4328  
(517) 318-3015  
Attorneys for Defendant

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**FINAL JUDGMENT AND ORDER APPROVING CLASS SETTLEMENT**

At a session of said Court held in the  
City of Mt. Clemens, County of Macomb,  
State of Michigan on \_\_\_\_\_

PRESENT: HON. \_\_\_\_\_  
Circuit Court Judge

WHEREAS, Plaintiff and Defendant in this action have moved this Court, pursuant to  
MCR 3.501(F), for an order approving the settlement of this class action in accordance with the

terms set forth in the Class Action Settlement Agreement ("Agreement") executed by counsel for the parties.

WHEREAS, this Court having held a hearing, as noticed, on \_\_\_\_\_, 2020, pursuant to the Order Regarding Preliminary Approval of Settlement, Notice and Scheduling, dated \_\_\_\_\_, 2020 (the "Order"), to determine the fairness, adequacy and reasonableness of a proposed settlement of the Class Action; and due and adequate notice (the "Notice") having been made by mailing in a manner consistent with Paragraphs 5 and 7 of the Order; and all such persons (excluding those who previously requested exclusion from the applicable Class) having been given an opportunity to object to or participate in the settlement; and the Court having heard and considered the matter, including all papers filed in connection therewith and the oral presentations of counsel at said hearing; and good cause appearing therefor.

WHEREAS, Defendant has funded the settlement by providing a check or wire in the amount of Three Million Four Hundred Eighty Three Thousand Eight Hundred Eighty Two Dollars and Ninety-Five Cents (\$3,483,882.95), which has been deposited into and remains in the Kickham Hanley PLLC Client Trust Account.

For the reasons stated on the record, IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The terms of the Agreement are fair, reasonable and adequate and in the best interests of the members of the Class and are hereby approved.
2. Plaintiff and Defendant are hereby ordered and directed to perform and consummate the settlement set forth in the Agreement in accordance with the terms and conditions of the Agreement.

3. The notification to the Class members regarding the Settlement is the best notice practicable under the circumstances and is in compliance with MCR 3.501(E) and the requirements of due process of law.

4. This Lawsuit is hereby dismissed with prejudice, and without costs to any party except as provided for in the Agreement.

5. Kickham Hanley PLLC and Randal Toma & Associates PC, counsel for the Class, are hereby awarded attorneys' fees and costs in the amount of \$\_\_\_\_\_, to be paid as set forth in the Agreement. Plaintiff Brad M. Patrick is granted an incentive award of \$\_\_\_\_\_, to be paid as set forth in the Agreement.

6. Without any further action by anyone, Plaintiff and all members of the Class as certified by the Order dated \_\_\_\_\_, 2020, who previously did not submit a timely and valid Request for Exclusion are deemed to have executed the following Release and Covenant not to Sue which is hereby approved by the Court:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through the date of this Final Order and Judgment concerning (1) the City's calculation or assessment of the Stormwater Charges; (2) the components of costs included in the Stormwater Charges; and/or (3) the City's efforts to charge and/or collect Stormwater Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights

provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances.

6. This Court retains continuing jurisdiction to effectuate the provisions of the Agreement and the terms of this Order.

7. The provisions of Paragraph 6 hereof respecting the retention of jurisdiction shall not affect the finality of this judgment as to matters not reserved.

IT IS SO ORDERED:

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Circuit Court Judge

**STIPULATED TO AND AGREED:**

**KICKHAM HANLEY PLLC**

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