

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

LAURENCE WOLF,  
individually and as trustee of  
LAURENCE G. WOLF CAPITAL  
MANAGEMENT TRUST AGREEMENT  
DATED MARCH 7, 1990,  
LAURENCE WOLF, d/b/a  
LAURENCE WOLF PROPERTIES, and  
WOLF PROPERTIES,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 14-138464-CZ  
Hon. Colleen O'Brien

Plaintiffs,

v.

CITY OF FERNDALE,  
a municipal corporation,

Defendant.

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Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

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Sonal Hope Mithani (P51984)  
Caroline B. Giordano (P76658)  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, MI 48104  
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Attorneys for Defendant

P. Daniel Christ (P45080)  
Hafeli Staran & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3085  
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 Pontiac, County of Oakland  
State of Michigan on **MAR 04 2015**  
**PRESENT: HON. COLLEEN A. O'BRIEN**  
Circuit Court Judge

Plaintiffs have commenced this action (the "Lawsuit") challenging the inclusion of two charges assessed against the City by the Oakland County Water Resources Commission, specifically a debt service charge ("the Kuhn Facility Debt Charge") and a stormwater disposal charge (the "Stormwater Charge") (collectively, the "Charges"), in the calculation of the water and sewer rates (the "Rates") the City assess upon the users of the City's water and sanitary sewage system as more particularly described in Plaintiffs' Complaint (the "Complaint") in the Lawsuit;

The Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class (the "Class") consisting of all persons or entities which paid the City for Water and Sanitary Sewer Service at any time after January 20, 2008;

Plaintiffs and Defendant have made a joint Motion for Preliminary Approval of Class Action Settlement in this matter;

Plaintiffs 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 Amended Class Action Settlement Agreement ("Agreement"), executed by counsel for the parties on February 27, 2015 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;

The Court has been made aware of the settlement process leading to the agreement reached, and counsel have demonstrated that the settlement was the result of arm's length bargaining of counsel well versed in all of the issues. The settlement was reached after extensive mediation sessions conducted with the parties by former Judge Barry Howard.

IT IS HEREBY ORDERED:

1. The Court preliminarily approves the terms of the Agreement. Pursuant to MCR 3.501, the "Class," including subclasses, as defined in Paragraph 2 of the Agreement, is hereby certified for settlement purposes only.

2. A hearing (the "Settlement Hearing") will be held before this Court on April 8, 2015 to determine whether the proposed settlement between Plaintiffs and Defendant, on the terms and conditions provided in the Agreement between such parties, 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.

3. The notification to the members of the Class regarding the Settlement, as authorized in Paragraphs 4 and 6, 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.

4. On or before seven (7) 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 "B," to be mailed to members of the Class.

5. The law firm of Kickham Hanley PLLC ("KH") is hereby appointed as Claims-Escrow Administrator for this Action. KH is authorized to use the services of the Garden City Group, as provided in the Agreement.

6. Any Class member 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, unless, no later than 14 days before the Hearing, such class member has served by hand delivery or by first-class mail a notice of intention to appear, proof of Class membership, written objections that indicate the basis for such opposition, and any supporting papers and briefs, upon each of the following attorneys:

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

and

Sonal Hope Mithani (P51984) \*\*  
Caroline B. Giordano (P76658)  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
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(734) 668-7786  
Attorneys for Defendant

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2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
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Attorneys for Defendant

and has filed said notice, objections, papers and briefs, as to the settlement with the Clerk of the Oakland County Circuit Court.

7. Any Class member who does not object in the manner provided above will be deemed to have waived such objection to the fairness, adequacy or reasonableness of the proposed settlements or the award of attorney's fees and expenses.

8. As stated in Paragraph 5, KH is authorized to serve as the Claims-Escrow Administrator. The Claims-Escrow Administrator, with the assistance of the Garden City Group, 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, filing a distribution report consistent with paragraph 11 of the Agreement and refunding to Defendant the unclaimed portion of the Net Settlement Fund as required by paragraph 13 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.

9. 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.

10. 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.

11. 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.

12. Subject to the terms of paragraphs 13-14, 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 27 of the Agreement is not entered within ninety (90) days after the entry of this Order; if the Settlement Date defined in paragraph 5 of the Agreement does not occur prior to May 30, 2015; 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 Plaintiffs and the Class;

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

c. The Court shall grant reasonable continuances of the Lawsuit for the Parties to prepare and file dispositive motions, prepare for trial, or prepare and file appellate briefs.

13. Defendant may, in its sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in paragraph 12. Such waiver must be memorialized in a writing signed by Defendant and/or its counsel and delivered via certified mail to Plaintiffs' counsel, or it will have no force or effect.

14. Defendant may, in its sole and exclusive discretion, elect to extend any or all of the deadlines stated in paragraph 12. Such extension must be memorialized in a writing signed

by Defendant and/or its counsel and delivered via certified mail to Plaintiffs' counsel, or it will have no force or effect.

IT IS SO ORDERED:

Dated: March 04, 2015.

/s/ Judge Colleen A. O'Brien  
Oakland County Circuit Court Judge  
COLLEEN A. O'BRIEN

MM

We hereby stipulate to the entry of the above order.  
**Approved as to form and substance:**

/s/ Gregory D. Hanley  
Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs and the Class

/s/ Sonal Hope Mithani  
Sonal Hope Mithani (P51984)  
Caroline B. Giordano (P76658)  
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Attorneys for Defendant

P. Daniel Christ (P45080)  
Hafeli Staran & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3085  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF filing Participants.

DATE: March 4, 2015  
KH141312

/s/ Kim Plets  
Kim Plets



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# EXHIBIT - 1

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STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

LAURENCE WOLF,  
individually and as trustee of  
LAURENCE G. WOLF CAPITAL  
MANAGEMENT TRUST AGREEMENT  
DATED MARCH 7, 1990,  
LAURENCE WOLF, d/b/a  
LAURENCE WOLF PROPERTIES, and  
WOLF PROPERTIES,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

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(248) 731-3085  
Attorneys for Defendant

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Action Settlement Agreement ("Agreement") is made this 27<sup>th</sup> day of February 2015 by and between the following (all of which are hereinafter collectively referred to as the "Parties"):

Plaintiffs Laurence Wolf, individually and as trustee of Laurence G. Wolf Capital Management Trust Agreement Dated March 7, 1990, Laurence Wolf d/b/a Laurence Wolf Properties, and Wolf Properties (the "Named Plaintiffs"), individually and on behalf of a class of similarly situated persons and entities, acting by and through their counsel, Kickham Hanley PLLC ("Class Counsel"), and Defendant City of Ferndale (the "City"), by and through its attorneys, Miller, Canfield, Paddock and Stone, P.L.C. and Hafeli Starn & Christ, P.C. ("Counsel for the City");

WHEREAS, Plaintiffs have commenced in Oakland County Circuit Court a lawsuit titled *Wolf et al v. City of Ferndale*, Case No. 14-138464-CZ, presiding Judge Colleen O'Brien, challenging the inclusion of two charges assessed against the City by the Oakland County Water Resources Commission, specifically, a debt service charge (the "Kuhn Facility Debt Charge") and a stormwater disposal charge (the "Stormwater Charge") (collectively, the "Charges"), in the calculation of the water and sewer rates (the "Rates") the City assesses upon the users of the City's water and sanitary sewage disposal services (the "Lawsuit");

WHEREAS, Count I of the Complaint alleges that the 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, and Count II of the Complaint alleges that the Charges are prohibited by the City's Ordinance 22-63;

WHEREAS, the Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class (the "Class") consisting of two subclasses; (1) with respect to Count I of the Complaint, all persons or entities which have paid the City for Water and Sanitary Sewer Service at any time after January 20, 2013; and (2) with respect to Count II of the Complaint, all persons or entities which have paid the City for Water and Sanitary Sewer Service at any time after January 20, 2008;

WHEREAS, the Parties desire to resolve and release all of the claims asserted by the Named Plaintiffs and the Class in the Lawsuit; and

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WHEREAS, the Named Plaintiffs 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 City denies that the inclusion of the Charges in the calculation of the City's Rates is 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 (the "Claims") have no substance in fact or law, and it has meritorious defenses to such Claims; but, nevertheless, has agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to obtain total and final peace, satisfaction and protection from the claims asserted 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 and the Settlement provided for herein.

#### **CLASS CERTIFICATION**

2. On October 10, 2014, the Court entered an order certifying a class (the "Class") consisting of all persons or entities which have paid the City for Water and Sanitary Sewer Service at any time after January 20, 2008. For settlement purposes, the parties have agreed that the Class will consist of two subclasses: (a) the "Headlee Subclass," which shall include all persons or entities which have paid the City for Water and Sanitary Sewer Service between

January 20, 2013 and December 31, 2014; and (b) the "Ordinance Subclass," which shall include all persons or entities which have paid the City for Water and Sanitary Sewer Service between January 20, 2008 and January 19, 2013. This Settlement Agreement is intended to settle all of the Claims of the Class, including the subclasses.

#### **SETTLEMENT FUND**

3. Within ten (10) business days after execution of this Settlement Agreement, the City shall deposit a Settlement Fund (the "Settlement Fund") in the amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000) into an IOLTA Trust Account to be held by Kickham Hanley PLLC. The Settlement Fund shall be administered by Kickham Hanley PLLC (the "Claims-Escrow Administrator") with the assistance of the Garden City Group ("GCG"). For purposes of this settlement, Two Million Five Hundred Fifty Thousand Dollars (\$2,550,000) of the Settlement Fund shall be allocated to the claims of the Headlee Subclass, and One Million Seven Hundred Thousand Dollars (\$1,700,000) shall be allocated to the claims of the Ordinance Subclass. The 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 shall be expressly conditioned upon an order of the Court permitting such disbursements.

4. Except as set forth in paragraphs, 30, 31, 32 and 33, the Class and Class Counsel shall not claim any attorneys' fees or costs.

5. Subject to paragraph 34, distribution of the Settlement Fund shall occur no later than ten (10) 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 Settlement 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 Plaintiffs and all members of the Class, 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 which is overruled by the Court.

6. As more specifically discussed below, and as provided in paragraph 5(f), 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 34, 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 30-33; (b) expenses reimbursed pursuant to paragraphs 30-33; and (c) out-of-pocket expenses of the Claims-Recrow Administrator.

9. The Net Settlement Fund shall be used to pay the Allowed Claims (as defined in paragraph 10) of Class Members as determined pursuant to paragraph 10. Sixty Percent (60%) of the Net Settlement Fund shall be distributed to the Headlee Subclass and Forty Percent (40%) of the Net Settlement Fund shall be distributed to the Ordinance Subclass. This allocation is based upon Class Counsel's judgment as to the relative merits of the Headlee Amendment claim.

asserted in Count I of the Complaint and the Ordinance Violation claim asserted in Count II of the Complaint, and the potential monetary recovery under each of those Claims.

10. All Class Members may participate in the settlement of this case by receiving a distribution from the Net Settlement Fund if they paid the City for water and sanitary sewer service at any time between January 20, 2008 and December 31, 2014. Class Members shall not be required to submit any information or documentation to the City or the Claims-Escrow Administrator in order to receive their portion of the Net Settlement Fund. Each Class Member's claim for a distribution from the Net Settlement Fund shall hereinafter be referred to as his, her or its "Allowed Claim." The size of each Claim Member's Allowed Claim shall be determined by calculating his, her or its Pro Rata Interest in the Net Settlement Fund based upon the amount of water and sewer service charges (the "Service Charges") each Class Member paid as members of each Subclass. Thus, by way of example, if a Class Member paid \$5000 in Service Charges as a member of the Headlee Subclass, they will receive a proportionally higher distribution than a Class Member who paid \$2500 in Service Charges as a member of the Headlee Subclass. As soon as practicable following the execution of this Agreement, and prior to the preliminary approval hearing, the City shall provide to Class Counsel records in electronic form which, to the best of the City's knowledge, information and belief, accurately identify all Class Members, their last known addresses, and the amount of Service Charges paid for each month from January 20, 2008 through December 31, 2014. Only those persons and entities identified in the records supplied by the City shall be entitled to a distribution from the Net Settlement Fund and the pro rata distribution to each person or entity shall be determined solely from those records. Because the City's records for the 2008 calendar year do not contain information identifying the actual payers of the Service Charges during that period of time, the Parties agree that the persons and entities identified in the City's records as of January 1, 2009 as the payers of the Service Charges for properties receiving water and sewer services at that time will be deemed to be the payers of the Service Charges during the 2008 calendar year for those properties. Further, although the City possesses records showing the actual amount of Service Charges paid by the City's water and sewer customers in 2008, those records are not in electronic form and the paper records

consist of thousands of pages filling five "banker" boxes. Creating an electronic database for the 2008 payments would require manual review of every page, the entering of all payments made as to all the properties into a database, and then integrating that into a database GCG has created for the 2009-2014 payments. It is the judgment of Class Counsel that the out-of-pocket costs required to perform those tasks with respect to the 2008 payment data would result in an inordinate reduction of the overall recovery for the Ordinance Subclass. It also is the judgment of Class Counsel that it is reasonable to assume that each payer's water usage for 2008 would be similar to their usage for 2009. Therefore, the parties agree that the total amount of Service Charges each class member paid in 2009 will be deemed to be the amount of Service Charges each class member paid in 2008, for purposes of calculating their pro rata shares of the Net Settlement Fund.

11. No later than fourteen (14) days prior to the Settlement Hearing provided for in Paragraph 27 of this Settlement Agreement, 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 Class Members with Allowed Claims and the percentage of the Net Settlement Fund to be paid to each such 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 seven (7) days after the filing of the Distribution Report to object to the Claims-Escrow Administrator's 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 five (5) days after the resolution of any objections to the Distribution Report, or within five (5) days after the deadline for submission of objections if no objections are submitted, or within seven days after the Court's entry of the Final Judgment as set forth in Paragraph 27 of this Agreement, whichever is later, shall submit to the Court a stipulated Distribution Order authorizing distribution from the



Settlement Fund to the Class Members with Allowed Claims ("Stipulated Distribution Order") in accordance with the Distribution Report; and;

c. The City, Named Plaintiffs, counsel for any Parties, the Claims-Escrow Administrator and GCG 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 Net Settlement Fund to any Class Member or determinations concerning the 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 the Allowed Claims to the Class Members from the Net Settlement Fund. If no Stipulated Distribution Order is entered, upon the entry of an Order of the Court resolving any objections to the Distribution Report, and upon the resolution of any appeals thereof, the Claims-Escrow Administrator shall cause the Allowed Claims to be distributed in accordance with the Order of the Court. The Claims-Escrow Administrator is authorized to utilize the services of GCG in disseminating notices to the Class and in distributing the Allowed Claims, and is further authorized to transfer the Net Settlement Fund to GCG so that GCG can (1) calculate the pro rata distribution of the Net Settlement Fund that is due to each Class Member based upon the City's records and (2) send checks made payable to Class Members to the address of each Class Member provided by the City. The expenses the Claims-Escrow Administrator incurs to GCG shall be recoverable by the Claims-Escrow Administrator as a cost of the litigation under Paragraphs 30-33 of this Agreement and payable out of the Settlement Fund. The parties acknowledge that, because the Service Charges were paid over a 7 year period of time and Class Members may have moved or ceased doing business in the interim, complete and current address information may not be available for all class members.

13. The amounts of money covered by checks distributing Allowed Claims 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 (b) have

not been cashed within six months of mailing, shall be refunded to the City within 30 days after the expiration of the six month period; and the Class Members to whom such checks were mailed shall be forever barred from obtaining any payment from the Settlement Fund. The City shall deposit any refund in its water and sewer fund and utilize any refund monies solely for the operation, maintenance and improvement of its water and sanitary sewer system. The Claims-Escrow Administrator shall also refund to the City on the Settlement Date any and all monies designated to pay the Allowed Claims of Class Members who request to be excluded from the Class pursuant to MCR 3.501(D).

14. 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 Class Members with Allowed Claims whose distribution checks have been returned or have not been cashed.

#### PROSPECTIVE RELIEF

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

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

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

18. For the duration of the Prospective Relief Period, the parties agree that the City may replace the revenue it will lose as a result of not including the Kuhn Facility Debt Charge and 40% of the Pollution Control Charge in the Rates by implementing an assessment under the Michigan Drain Code of 1936 (the "Drain Code") in an amount equal to the Kuhn Facility Debt Charge and 40% of the Pollution Control Charge (the "Drain Code Assessments"). The City believes that the proposed Drain Code Assessments are allowed by Michigan law. Plaintiffs and Class Counsel have agreed that the City can implement the Drain Code Assessments solely as part of an overall compromise of the Claims, and in consideration of the monetary distributions and water and sewer rate reductions authorized by this Agreement, and this agreement shall not be construed as an admission that such assessments are lawful under the Michigan Constitution, the Michigan statutes or regulations, or the City's own Ordinances.

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

20. So long as the City complies with the prospective relief established by Paragraphs 15 through 19 of this Agreement for the duration of the Prospective Relief Period, the Class Members who receive distributions from the Net Settlement Fund shall release and waive any and all claims that could be brought which arise during the Prospective Relief Period challenging the City's inclusion of 60% of the Pollution Control Charge in establishing the Rates during the

Prospective Relief Period, and/or challenging the propriety of the City's Drain Code Assessments during the Prospective Relief Period (the "Prospective Relief Period Claims").

21. In the event the City elects to extend the Prospective Relief Period beyond December 31, 2020 (as referenced in Paragraph 15), the City will provide written notice of its election to Class Counsel no later than thirty (30) days after December 31, 2020.

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

22. 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 GCG's charges), which shall be paid solely from the Settlement Fund.

23. The Claims-Escrow Administrator shall have the responsibilities set forth in this Settlement Agreement, including, without limitation, holding the Settlement Fund in escrow, determination of eligibility of Class Members to receive payments, determination of the size of each Allowed Claim, distribution of the payments to Class Members with Allowed Claims, filing a distribution report consistent with paragraph 11 and refunding to the City portions of the Net Settlement Fund as required by paragraph 13. The Claims-Escrow Administrator 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 (d) 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 GCG.

24. Any findings of fact of the Claims-Escrow Administrator and/or GCG shall be made solely for the purposes of the allocation and distribution of the Allowed Claims, and, in accordance with paragraph 37, 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**

25. As soon as practicable, but in no event later than five (5) days after the execution of this Agreement, Class Counsel and the City's Counsel shall submit this Agreement to the Court, 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 "A," 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 sixty (60) 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 "B," be given to the members of the Class advising them of the following:

i. the terms of the proposed Settlement consented to by 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 written objections at least fourteen (14) days prior to the hearing;

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

v. the binding effect on all members of the Class 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 Kiekham Hanley PLLC as Claims-Escrow Administrator;

26. 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 seven (7) 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 "B," and mailed by Class Counsel (or GCG) to the Class Members at the addresses provided by the City within seven (7) days of entry of the Order Regarding Preliminary Approval of this Agreement.

27. After the Notice discussed in paragraphs 25 and 26 has been mailed, the Court shall, consistent with paragraph 25(b), conduct a hearing at which it rules on any objections to this Settlement 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 "C," 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; (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**

28. 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, this 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.

29. In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which (1) arise out of the City's calculation of the Rates and/or the components of costs included in the Rates, (2) arise out of the fund balance maintained by the City in its water and sewer fund, (3) arise out of the Prospective Relief Period Claims, or (4)

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

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

30. 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.

31. 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. The parties agree that Class Counsel may seek an incentive award on behalf of class representative Laurence Wolf in an amount not to exceed Ten Thousand Dollars (\$10,000) to be paid solely from the Settlement Fund with the approval of the Court.

32. The award of attorneys' fees, costs and expenses to be paid from the Settlement Fund to Class Counsel pursuant to Paragraph 31 does not include any out-of-pocket expenses incurred by Kiekham Hanley PLLC acting in its capacity as Claims-Escrow Administrator. The Claims-Escrow Administrator shall make a separate application for such expenses.



33. The Court shall determine 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 Laurence Wolf 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 Laurence Wolf shall be paid from the Settlement Fund upon the Settlement Date.

### **TERMINATION**

34. 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 "A" within twenty-eight (28) days after its submission to the Court; if a final judgment on the terms set forth in paragraph 27 is not entered within ninety (90) days after the entry of the Order substantially in the form attached as Exhibit "A"; if the Settlement Date defined in paragraph 5 does not occur prior to May 30, 2015; 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 Plaintiffs and the Class;

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

c. Counsel for the Parties shall consent to reasonable continuances of the Lawsuit for the Parties to prepare and file dispositive motions, prepare for trial, or prepare and file appellate briefs.

35. The City may, in its sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in paragraph 34. Such waiver must be memorialized in

a writing signed by the City and/or its counsel and delivered via certified mail to Class Counsel, or it will have no force or effect.

36. The City may, in its sole and exclusive discretion, elect to extend any or all of the deadlines stated in paragraph 34. Such extension must be memorialized in a writing signed by the City and/or its counsel and delivered via certified mail to Class Counsel, or it will have no force or effect.

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

37. This Agreement, 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 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, members of the Class, 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.

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.

#### **WARRANTIES**

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

39. The undersigned counsel 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 intent this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the claims covered under Paragraph 29 of this Agreement.

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 Settlement Agreement, with the attached Exhibits A through C, 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.

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. 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**

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

49. 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.

50. This Agreement amends and supersedes the Class Action Settlement Agreement between the Parties dated February 10, 2015, and shall become effective and binding (subject to all terms and conditions herein) upon the Parties and their counsel 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 Plaintiffs in the Lawsuit and the  
Class

By:   
Gregory D. Hanley (P31204)

Attorneys for Plaintiffs  
26862 Woodward Ave.  
Royal Oak, MI 48067-0958  
(248) 544-1500

Dated: 2/27/15

**CITY OF FERRISDALE**

By: 

Its: MAYOR

Dated: 2/26/15

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# EXHIBIT - A

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

LAURENCE WOLF,  
individually and as trustee of  
LAURENCE G. WOLF CAPITAL  
MANAGEMENT TRUST AGREEMENT  
DATED MARCH 7, 1990,  
LAURENCE WOLF, d/b/a  
LAURENCE WOLF PROPERTIES, and  
WOLF PROPERTIES,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 14-138464-CZ  
Hon. Colleen O'Brien

Plaintiffs,

v.

CITY OF FERNDALE,  
a municipal corporation,

Defendant.

Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Kickham Hanley PLLC  
32121 Woodward, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

Sonal Hope Mithani (P51984)  
Caroline B. Giordano (P76658)  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, MI 48104  
(734) 668-7786  
Attorneys for Defendant

P. Daniel Christ (P45080)  
Hafeli Staran & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3085  
Attorneys for Defendant

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

At a session of said Court held in the  
City of Pontiac, County of Oakland  
State of Michigan on \_\_\_\_\_

PRESENT: HON. \_\_\_\_\_

Circuit Court Judge

Plaintiffs have commenced this action (the "Lawsuit") challenging the inclusion of two charges assessed against the City by the Oakland County Water Resources Commission, specifically a debt service charge ("the Kahn Facility Debt Charge") and a stormwater disposal charge (the "Stormwater Charge") (collectively, the "Charges"), in the calculation of the water and sewer rates (the "Rates") the City assess upon the users of the City's water and sanitary sewage system as more particularly described in Plaintiffs' Complaint (the "Complaint") in the Lawsuit;

The Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class (the "Class") consisting of all persons or entities which paid the City for Water and Sanitary Sewer Service at any time after January 20, 2008;

Plaintiffs and Defendant have made a joint Motion for Preliminary Approval of Class Action Settlement in this matter;

Plaintiffs 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 Amended Class Action Settlement Agreement ("Agreement"), executed by counsel for the parties on February \_\_, 2015 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;

The Court has been made aware of the settlement process leading to the agreement reached, and counsel have demonstrated that the settlement was the result of arm's length bargaining of counsel well versed in all of the issues. The settlement was reached after extensive mediation sessions conducted with the parties by former Judge Barry Howard.

**IT IS HEREBY ORDERED:**



1. The Court preliminarily approves the terms of the Agreement. Pursuant to MCR 3.501, the "Class," including subclasses, as defined in Paragraph 2 of the Agreement, is hereby certified for settlement purposes only.

2. A hearing (the "Settlement Hearing") will be held before this Court on April 8, 2015 to determine whether the proposed settlement between Plaintiffs and Defendant, on the terms and conditions provided in the Agreement between such parties, 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.

3. The notification to the members of the Class regarding the Settlement, as authorized in Paragraphs 4 and 6, 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.

4. On or before seven (7) 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 "B," to be mailed to members of the Class.

5. The law firm of Kiekham Hanley PLLC ("KH") is hereby appointed as Claims-Escrow Administrator for this Action. KH is authorized to use the services of the Garden City Group, as provided in the Agreement.

6. Any Class member 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,

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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, unless, no later than 14 days before the Hearing, such class member has served by hand delivery or by first-class mail a notice of intention to appear, proof of Class membership, written objections that indicate the basis for such opposition, and any supporting papers and briefs, 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

Sonal Hope Mithani (P51984)  
Caroline B. Giordano (P76658)  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, MI 48104  
(734) 668-7786  
Attorneys for Defendant

P. Daniel Christ (P45080)  
Hafeli Starn & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3085  
Attorneys for Defendant

and has filed said notice, objections, papers and briefs, as to the settlement with the Clerk of the Oakland County Circuit Court.

7. Any Class member who does not object in the manner provided above will be deemed to have waived such objection to the fairness, adequacy or reasonableness of the proposed settlements or the award of attorney's fees and expenses.

8. As stated in Paragraph 5, KH is authorized to serve as the Claims-Escrow Administrator. The Claims-Escrow Administrator, with the assistance of the Garden City Group, 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, filing a distribution report consistent with paragraph 11 of the Agreement and refunding to Defendant the unclaimed portion of the Net Settlement Fund as required by paragraph 13 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.

9. 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.

10. 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.

11. 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.

12. Subject to the terms of paragraphs 13-14, 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 27 of the Agreement is not entered within ninety (90) days after the entry of this Order; if the Settlement Date defined in paragraph 5 of the Agreement does not occur prior to May 30, 2015; 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 Plaintiffs and the Class;

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

c. The Court shall grant reasonable continuances of the Lawsuit for the Parties to prepare and file dispositive motions, prepare for trial, or prepare and file appellate briefs.

13. Defendant may, in its sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in paragraph 12. Such waiver must be memorialized in a writing signed by Defendant and/or its counsel and delivered via certified mail to Plaintiffs' counsel, or it will have no force or effect.

14. Defendant may, in its sole and exclusive discretion, elect to extend any or all of the deadlines stated in paragraph 12. Such extension must be memorialized in a writing signed

by Defendant and/or its counsel and delivered via certified mail to Plaintiffs' counsel, or it will have no force or effect.

**IT IS SO ORDERED:**

**Dated: March , 2015.**

**Oakland County Circuit Court Judge**

**We hereby stipulate to the entry of the above order.**

**Approved as to form and substance:**

**Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Klickham Hanley PLLC  
26862 Woodward  
Royal Oak, MI 48067  
(248) 544-1500  
Attorneys for Plaintiffs and the Class**

**Sonal Hope Mithani (P51984)  
Caroline B. Giordano (P76658)  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, MI 48104  
(734) 668-7786  
Attorneys for Defendant**

**P. Daniel Christ (P45080)  
Hafeli Staran & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3085  
Attorneys for Defendant**

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# EXHIBIT - B

### NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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

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

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

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

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

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

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

For settlement purposes, the parties have agreed that the Class will consist of two subclasses: (a) the "Headlee Subclass," which shall include all persons or entities which have paid the City for Water and Sanitary Sewer Service between January 22, 2013 and December 31, 2014; and (b) the "Ordinance Subclass," which shall include all persons or entities which have paid the City for Water and Sanitary Sewer Service between January 22, 2008 and January 21,

2013. Many Class Members are members of both Subclasses. The Settlement Agreement is intended to settle all of the Claims of the Class, including the subclasses.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the City has agreed to create a settlement fund in the aggregate amount of \$4,250,000 for the benefit of the Class ("Settlement Amount"). For purposes of this settlement, Two Million Five Hundred Fifty Thousand Dollars (\$2,550,000) of the Settlement Fund shall be allocated to the claims of the Headlee Subclass, and One Million Seven Hundred Thousand Dollars (\$1,700,000) shall be allocated to the claims of the Ordinance Subclass. The Settlement Amount will be utilized, with Court approval, to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

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

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

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

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

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



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

For the duration of the Prospective Relief Period, the parties agree that the City may replace the revenue it will lose as a result of not including the Kuhn Facility Debt Charge and 40% of the Pollution Control Charge in the Rates by implementing an assessment under the Michigan Drain Code of 1956 (the "Drain Code") in an amount equal to the Kuhn Facility Debt Charge and 40% of the Pollution Control Charge (the "Drain Code Assessments").

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

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

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiff's claims and many of the substantive legal and factual issues have not been resolved. This request for exclusion must be postmarked no later than fourteen (14) days after the mailing of this notice and mailed to: Kiekham Hanley PLLC, 32121 Woodward Avenue, Royal Oak, Michigan 48073.

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the City for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund if you do not request exclusion from the Class. If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Order of the Court dated March 4, 2015, a Settlement Hearing will be held in the Oakland County Circuit Court, 1200 Telegraph Road, Pontiac, Michigan 48341 at 8:30 a.m., on April 8, 2015, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated February 27, 2015, is fair, reasonable, and adequate and should be

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approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement and whether counsel for Plaintiff Class should be awarded counsel fees and expenses. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before March 25, 2015, such Class member (i) files with the Clerk of the Court notice of that person's intention to appear, proof of class membership, written objections that indicate the basis for such opposition, and any supporting papers and briefs; and (ii) serves by first class mail copies thereof upon each of the following attorneys:

**Attorneys for Plaintiffs**

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

**Attorneys for Defendants**

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

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

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

Any Class member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

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

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

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

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which (1) arise out of the City's calculation of the Rates and/or the components of costs included in the Rates, (2) arise out of the fund balance maintained by the City in its water and sewer fund, (3) the Prospective Relief Period Claims, or (4) were asserted in the Lawsuit. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances.

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# EXHIBIT - C

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

LAURENCE WOLF,  
individually and as trustee of  
LAURENCE G. WOLF CAPITAL  
MANAGEMENT TRUST AGREEMENT  
DATED MARCH 7, 1990,  
LAURENCE WOLF, d/b/a  
LAURENCE WOLF PROPERTIES, and  
WOLF PROPERTIES,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 14-138464-CZ  
Hon. Colleen O'Brien

Plaintiffs,

v.

CITY OF FERRISDALE,  
a municipal corporation,

Defendant.

---

Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Kickham Hanley PLLC  
32121 Woodward, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

---

Sonal Hope Mithani (P51984)  
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Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, Seventh Floor  
Ann Arbor, MI 48104  
(734) 668-7786  
Attorneys for Defendant

P. Daniel Christ (P45080)  
Hafeli Stara & Christ, P.C.  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 731-3085  
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 Pontiac, County of Oakland  
State of Michigan on \_\_\_\_\_

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

**WHEREAS, Plaintiffs and Defendant in this action have moved this Court pursuant to MCR 3.501(E), for an order approving the settlement of this class action in accordance with the terms set forth in the Amended Class Action Settlement Agreement ("Agreement") executed by counsel for the parties and filed with the Court on February 27, 2015, and**

**WHEREAS, this Court having held a hearing, as noticed, on April 8, 2015 pursuant to the Order Regarding Preliminary Approval of Settlement, Notice and Scheduling, dated March 4, 2015 (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 4 and 6 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 in the amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000), which has been deposited into and remains in the Kickham Hanley PLLC Client Trust Account pending this Court's final approval of the settlement, and which will be disbursed in accordance with the Agreement,**

**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. Plaintiffs 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, counsel for the Class, is hereby awarded attorneys' fees and costs in the amount of \$\_\_\_\_\_, to be paid as set forth in the Agreement. Plaintiff Laurence Wolf is granted an incentive award of \$\_\_\_\_\_, to be paid as set forth in the Agreement.

6. Without any further action by anyone, Plaintiffs and all members of the Class as certified by the Order dated March 4, 2015 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:

Each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which (1) arise out of the City's

calculation of the Rates and/or the components of costs included in the Rates, (2) arise out of the fund balance maintained by the City in its water and sewer fund, (3) the Prospective Relief Period Claims, or (4) were asserted in the Lawsuit. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances.

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:

Dated: April 8, 2015.

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Oakland County Circuit Court Judge



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We hereby stipulate to the entry of the above order.  
Approved as to form and substance:

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Gregory D. Hanley (P51204)  
Jamie K. Warron (P61521)  
Kieckhafer Hanley PLLC  
26862 Woodward  
Royal Oak, MI 48067  
(248) 544-1500  
Attorneys for Plaintiffs and the Class

---

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Attorneys for Defendant

## Kim Plets

---

**From:** no-reply@tylerhost.net  
**Sent:** Wednesday, March 04, 2015 2:40 PM  
**To:** Kim Plets  
**Subject:** Service Notification of Filing Case(WOLF,LAURENCE,, VS FERNDAL CITY) Document Code:(ORD) Filing Type:(EFS) Repository ID(8a6a81134be403f3014be5672fac08df)

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Case title: WOLF,LAURENCE,, VS FERNDAL CITY  
Document title: Order Regarding Preliminary Approval of Class Action Settlement, Notice and Scheduling.  
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No Firm Specified

Gregory D. Hanley