

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,

Plaintiff,

v.

CITY OF FERNDALE,
a municipal corporation,

Defendant.

Case No. -CZ

Hon.

14-138464-CZ
JUDGE D. O'BRIEN

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**PLAINTIFFS' CLASS ACTION COMPLAINT BASED ON DEFENDANT'S
VIOLATION OF HEADLEE AMENDMENT TO THE MICHIGAN CONSTITUTION
AND FERNDALE ORDINANCE SECTION 22-65**

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 (collectively "Plaintiffs"), by their attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated persons and entities, state as follows for their Complaint against Defendant City of Ferndale (the "City"):

FEE

INTRODUCTION

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

2. This is an action challenging the City’s creative yet impermissible financing of its stormwater management obligations through purported “user fees” foisted upon a particularized subset of its citizenry. Plaintiffs challenge a mandatory debt service charge (the “Kuhn Facility Debt Charge”) and a mandatory stormwater disposal charge (the “Stormwater Charge”) imposed by the City on users of its water and sanitary sewage disposal services. The City persists in the exaction of these charges even though “the nature of a stormwater management system, which benefits the public without providing any individualized, measurable benefit to individual property owners, does not lend itself to a system of funding based on user fees.” *Dekalb County v. U.S.*, 108 Fed. Cl. 681 (U.S. Court of Claims 2013).

3. The Kuhn Facility Debt Charge, which is incorporated into the water and sanitary sewage disposal rates charged by the City, constitutes a “tax” that has not been authorized by the City’s voters in violation of Article 9, Section 31 of the Michigan Constitution of 1963 (the “Headlee Amendment”). The City uses the revenues generated by the Kuhn Facility Debt Charge – approximately \$800,000 per year -- to pay for its share of the costs of the construction of a major infrastructure improvement (a combined sewer overflow facility) designed to benefit the general public and which should be financed through general taxation. The Kuhn Facility Debt Charge finances an investment in infrastructure and is not a fee designed simply to defray the costs of a regulatory activity. Therefore, the charge is precisely the type of exaction the Michigan Supreme Court found was an unconstitutional tax in the seminal case of *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998).

4. Further, the Stormwater Charge – totaling approximately \$2.5 million per year -- also constitutes an unlawful tax under the *Bolt* decision because it imposes upon one subset of residents – water and sanitary sewage disposal customers – the financial burden of a governmental activity – stormwater disposal – which benefits the community at large. Indeed, through payment of the water and sewage disposal charges, Plaintiffs and the Class are paying the City’s entire cost of stormwater management and disposal.

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

6. The Kuhn Facility Debt Charge and the Stormwater Charge also are unlawful because those charges are specifically prohibited by the City’s ordinances, which require the City to use **tax revenues** to pay for services “of a general public nature furnished to the City at large.” Ferndale Ordinance Section 22-65.

7. Plaintiffs, individually and on behalf of a class of similarly situated persons and entities, seek, among other things, a refund of all Kuhn Facility Debt Charges and Stormwater Charges received by the City in the six years preceding the filing of this action and all such charges collected during the pendency of this action. The total amount of the refund required exceeds \$15 million.

JURISDICTION AND VENUE

8. Plaintiffs own improved real property situated in the City of Ferndale, Oakland County, Michigan and/or have paid the charges at issue in this case, and each seeks to act as a class representative for all similarly situated persons.

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

10. Venue and jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiff's claims occurred in this County. Venue and jurisdiction also are proper with this Court under Article 9, Section 31 of the Michigan Constitution of 1963, and MCL 600.308a.

GENERAL ALLEGATIONS

11. The City maintains and operates a water supply system (the "Water Supply System") to provide fresh water to inhabitants of the City. The City purchases its water at wholesale from the Detroit Water & Sewerage Department ("DWSD"). Per its ordinance (Section 22-20) and adopted resolutions, the City assesses water rates (the "Water Rates") and obligates the owner of such land or premises to pay the Water Rates. Plaintiffs have received water service from the City and paid the Water Rates imposed by the City. The City's ordinances and other applicable laws and regulations require or effectively require the structures used by its citizens to be connected to the City's Water Supply System.

11. Pursuant to its statutory authority, MCL 141.104, the City maintains and operates a sewer system (the "Sewer System") to provide sanitary sewage treatment and disposal services to inhabitants of the City and to collect snowmelt and rainwater ("stormwater") runoff. The City contracts with Oakland County (the "County") for the treatment of sewage and the County, in turn, contracts with the Detroit Water and Sewerage Department ("DWSD") for treatment of the sanitary sewage and ultimate discharge of the effluent. The City also contracts with the County for stormwater disposal and the County, in turn, contracts with DWSD for disposal of the stormwater. The County's stormwater disposal services are of a general public nature and are furnished to the City at large.

12. Plaintiffs, at all relevant times, have received sanitary sewage disposal service from the City and paid the sewage disposal rates ("Sewage Disposal Rates") imposed by the City. Plaintiffs are required by Michigan law, the City's ordinances, and other laws and

regulations to utilize the City's Sanitary Sewer System. *See, e.g.*, MCL 333.12753; Ferndale Ordinance Section 22-62.

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

14. The Kuhn Facility Debt Charge is included in the Water and Sewage Disposal Rates imposed by the City, and for the fiscal year ended June 30, 2012, the City collected Charges in excess of \$800,000. It appears that the Kuhn Facility Debt Charge is imposed by virtue of a "Readiness-To-Serve" or "Service" Charge of \$33.00 per quarter (\$132.00 per year) per water and sewer customer, which is a separate line-item charge on the City's Water and Sewage Disposal bills and which the City states is used "to offset the cost of capital acquisitions and its related debt service." *See* Ferndale Appropriations Resolution dated April 29, 2013 (Exhibit B hereto). The Stormwater Charge also is included in the Water and Sanitary Sewer Rates imposed by the City, and for the fiscal year ended June 30, 2012, the City collected charges in excess of \$2.5 million.

15. Even after taking into account payments to the County for its obligations relating to the Kuhn Facility Infrastructure Improvements and for stormwater treatment, the City has consistently experienced an operating profit in its Water and Sewer Fund as a result of imposing Water and Sewer Charges which generate revenues far exceeding the City's actual costs of supplying water and sanitary sewer services to its inhabitants. For example, in FY 2012 (July 1, 2011 to June 30, 2012) the City's Water and Sewer Fund had net cash provided by operating activities of **\$2.47 million**. *See* Exhibit C hereto. As of June 30, 2012, the Water and Sewer Fund had over \$6.7 million in cash and other current assets. *See Id.*

THE CRITICAL DISTINCTION BETWEEN SANITARY SEWAGE AND STORMWATER

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

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

18. Stormwater, in contrast, does not originate from any use of the water supply system or sanitary sewer system, and its presence in the combined system is wholly unrelated to the amount of tap water used, or sanitary sewage generated, by users of the system whose structures are physically connected to that system. Stormwater collects on both private and public land, roads and other physical surfaces during rainfall events, and the runoff enters the combined sewer system through catch-basins and other collection devices. As a result, "surface run-off cannot be fairly ascribed to individual land-owners' 'use' of the treatment system." *Hotel Employers Ass'n v. Gorsuch*, 669 F.2d 1305, 1309 (9th Cir. 1982).

19. Even though they have different origins, both sanitary sewage and stormwater collected in a combined sewer system need to be disposed of. The City's combined sewer system flows to the Southeastern Oakland County Sewage Disposal System (the "County System"), which is owned and maintained by the County. Except during heavy rainfall when high volumes of combined sanitary sewage and stormwater exceed the outlet capacity to Detroit causing excess flow to be diverted to the Kuhn Facility (as described below), the entire flow from the County System is conveyed to the DWSD treatment plant through Detroit's Dequindre Interceptor, which contains a master meter which measures the total flow passing from the

County System into the DWSD treatment plant. DWSD charges the County for disposing of the sanitary sewage and stormwater and, in turn, the County charges the municipalities who contribute flow to the County System for such disposal. Those municipalities which have a combined sewer system, including the City, are charged a flat rate per month for stormwater disposal per a formula determined by the County. Those municipalities serviced by separate sanitary and stormwater systems do not incur charges from the County for stormwater disposal, since the stormwater collected by those municipalities does not enter the DWSD system but rather is discharged into neighboring watercourses.

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

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

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

22. There are two recognized forms of corrective action to address CSOs: (1) separate the sewer system into two separate types of sewers: (a) sanitary sewers designed to carry only sanitary sewage to a wastewater treatment plant, and (b) storm water sewers designed to convey stormwater to nearby rivers, lakes or streams, or (2) install a retention and treatment system ("RTF"), which is designed to capture and treat the combined sanitary sewage and stormwater

that would otherwise flow to surface waters untreated. The City is serviced by an RTF, the "Kuhn Facility", as described below.

23. The City is a member of the George W. Kuhn Drainage District (the "District"), which was originally established in 1942 (it was then called the Twelve Towns Drain District), and now includes the City and the cities of Berkley, Birmingham, Clawson, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Southfield, Troy, and Royal Oak, Royal Oak Township and the Village of Beverly Hills. The District encompasses a drainage area of 24,500 acres upstream of the Red Run Drain, a tributary of the Clinton River.

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

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

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

Retention Treatment Basin (hereinafter, the "Kuhn Facility"). The cost of these improvements to the Kuhn Facility (the "Kuhn Facility Infrastructure Improvements") was originally expected to exceed \$140 million.

27. Construction of the Kuhn Facility Infrastructure Improvements commenced in 2000, and included the expansion of the existing retention treatment basin, the removal and re-routing of storm drains discharging into the basin (providing more volume to control combined sewer flows), and the installation of new screens and disinfection facilities. Construction was substantially complete by 2006 at a cost in excess of \$130 million.

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

29. The Kuhn Facility Infrastructure Improvements were administered and initially financed by the County through various debt obligations. Pursuant to contracts with the County, the City and the other communities in the District each agreed to pay to the County, over 20 years, with interest, their *pro rata* share (based upon contributed flow) of the costs of the Kuhn Facility Infrastructure Improvements. As of June 30, 2012, the City was obligated to pay the County \$8,598,600 in principal, plus interest, pursuant to a payment schedule that would pay off this obligation by 2029. *See* Exhibit D hereto. The City paid the County over \$600,000 in principal and approximately \$200,000 in interest for the City's share of the cost of the Kuhn Facility Infrastructure Improvements during the fiscal year ending June 30, 2012. *Id.* at p. 49.

30. Various of the communities in the District appropriately and correctly concluded that the costs associated with the Kuhn Facility Infrastructure Improvements should be a general fund obligation financed by general taxation. Certain communities did precisely what the Headlee Amendment requires by seeking and obtaining voter approval for new taxes to pay for the Improvements. For example, the City of Birmingham collects the funds necessary to pay its obligations to the County for the Kuhn Facility Infrastructure Improvements via a millage increase approved by Birmingham voters for that specific purpose. Similarly, Clawson collects the necessary funds pursuant to 2.35 mill tax increase approved by its own residents in 2010 for that specific purpose. Southfield, Huntington Woods and Troy did not increase taxes through voter millages, but nonetheless have treated their obligations for the Kuhn Facility Infrastructure Improvements as general obligations of their respective cities, and have funded those obligations from their respective general funds.

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

32. By virtue of the Kuhn Facility Debt Charge, the City has imposed and plans to continue to impose upon users of the water supply system and the sanitary sewer services, all or virtually all of the \$8.59 million cost of a major infrastructure improvement which should be financed by bonds, new property taxes and/or general fund revenues.

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

34. By imposing the cost of the Kuhn Facility Infrastructure Improvements only on water and sanitary sewage disposal customers, the City's charges do not correspond to the benefits conferred for at least three reasons. First, the Kuhn Facility Infrastructure Improvements do not confer a unique benefit upon Plaintiffs or the Class based upon their status as users of the water supply system and sanitary sewer services. While public water used, and sanitary sewage generated by, Plaintiffs may, under certain circumstances, be routed through the Kuhn Facility, the purpose of the Kuhn Facility Infrastructure Improvements is to address CSO events during heavy rainfall by providing a facility to receive combined sewer flows which exceed the outlet capacity to DWSD, and to store, screen, and disinfect that flow prior to discharge to the Red Run Drain. Significantly, up to 93% of the flow treated at the Kuhn Facility in the course of those events is stormwater that originates not from public water supply or sanitary sewer usage, but rather from runoff from impervious surfaces during rain events. Indeed, the stormwaters collected in a combined sewer system are not "used" in any meaningful sense by any particular landowner or user.

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

36. The City's use of the revenues generated by the Kuhn Facility Debt Charge to pay for the Kuhn Facility Infrastructure Improvements has the effect of forcing one subset of the citizenry (water and sanitary sewage disposal customers) to bear all of the costs of the construction of those public facilities, even though there are other "users" of those facilities and even though the facilities benefit the general public. Importantly, the Water and Sewer Rates are based exclusively on the volume of water each user extracts from the water supply system. A

property owner's "use" of the Kuhn Facility, however, is not dependent upon the volume of tap water the owner extracts from the water supply system, but rather by a number of other factors, including the amount of rainfall and the area of impervious surface that is present on his or her property. Accordingly, by incorporating the Kuhn Facility Debt Charges, the Water Rates and Sanitary Sewer Rates do not reflect the actual costs of use of the Kuhn Facility, metered with relative precision in accordance with available technology and including an appropriate capital investment component.

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

38. Third, under *Bolt*, the Kuhn Facility Debt Charge is impermissibly designed to amortize the expense of the Kuhn Facility Infrastructure Improvements and to enable the City to fully recoup its investment in a period significantly shorter than the actual useful service life of the Improvements. The City must pay the County for the Kuhn Facility Infrastructure Improvements over a 20 year program, and that debt will be repaid by 2029. However, the Kuhn Facility Infrastructure Improvements will have an actual useful service life of more than 50

years. Nonetheless, the City has made no effort to allocate even that portion of the City's cost of the Kuhn Facility Infrastructure Improvements that will have a useful service life in excess of the financing period to the City's general fund.

39. The Kuhn Facility Infrastructure Improvements constitute an investment in infrastructure that will substantially outlast the current "mortgage" that the Kuhn Facility Debt Charge requires water and sanitary sewage disposal customers to amortize. At the end of 20 years, those persons and entities will have fully paid for a tangible asset that will serve the City for many years thereafter.

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

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

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

42. While the charges for sanitary sewage disposal are based upon tap water usage and sanitary sewage volumes, the charges for stormwater disposal have no connection to usage of the City's water supply system or sanitary sewage disposal. The County charges the City in excess of \$2 million per year for such services. *See* Exhibit E. The City charges all of that cost to the

Water and Sewer fund and imposes Stormwater Charges in order to recover the entire amount of that cost on an annual basis. *See* Exhibit F hereto. By virtue of the Stormwater Charges, the City has imposed and plans to continue to impose upon water and sanitary sewage disposal customers, all of the cost of stormwater treatment.

43. The Stormwater Charges are being used to fund costs for services which provide a benefit to the City and all its citizens. The revenues being derived from the Stormwater Charges are clearly in excess of the direct and indirect costs of the current “use” of the stormwater disposal services by the persons paying those exactions.

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

45. Any “benefit” of stormwater disposal conferred on the City’s water and sanitary sewage disposal customers is no different than the benefit conferred on the general public. Storm water systems help prevent erosion, collect contaminated water for cleansing, keep roadways from flooding, and prevent the formation of standing pools of stagnant water. The benefits resulting from this management are shared by nearly every member of the public.

46. The City’s use of the revenues generated by the Stormwater Charges to pay for stormwater disposal has the effect of forcing one subset of the citizenry (water and sanitary sewage disposal customers) to bear all of the costs of a public service, even though there are other “users” of those services and even though the services benefit the general public. Importantly, the Water and Sanitary Sewer Rates are based exclusively on the volume of water each user extracts from the water supply system. A property owner’s “use” of stormwater

treatment services, however, is not dependent upon the volume of tap water the owner extracts from the water supply system, but rather by a number of other factors, including the amount of rainfall and the area of impervious surface that is present on his or her property. Accordingly, by incorporating the Stormwater Charges, the Water and Sanitary Sewer Rates do not reflect the actual costs of stormwater disposal services, metered with relative precision in accordance with available technology and including an appropriate capital investment component.

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

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

PAYMENT OF THE CHARGES IS MANDATED BY THE CITY'S ORDINANCES

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

50. In this regard, the City's Ordinance Section 22-62 provides that "[a]ny person being the owner, occupant or interested party in any property, building or dwelling wherein any sewer or drain has been constructed adjacent to, or adjoining said property shall within 60 days after said sewer or drain has been constructed, connect or cause to be connected to said sewer or drain any and all sewerage of any kind and nature from said lot or parcel of land, and from any and all buildings in connection therewith."

51. Not only must Plaintiffs and the Class use the City's water supply and sewer system, but the City further requires them to pay whatever Water and Sanitary Sewage Disposal Rates the City establishes, including the Kuhn Facility Debt Charge and the Stormwater Charge. If Plaintiffs and the Class do not pay the water and sewer bills, the City's ordinances (Section 22-67) authorize the City to place a lien upon the premises served, and, if such bills are not paid within six months, the charges "shall be certified by the city commission to the city assessor who shall enter the same upon the next succeeding county tax roll against the premises to which such services shall have been rendered, and the same shall be collected and said lien shall be enforced in accordance with the provisions of the charter and the general tax laws of the state." City Ordinance Section 22-68.

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

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

53. Ferndale Ordinance Section 22-63 (Rates) states:

The rates for **sewage disposal services** furnished by the city to each premises within its corporate limits having a connection with sewers from which **the sanitary sewage** is finally discharged into the county sewage disposal system, shall be at the rate prescribed by resolution of the city commission. See Exhibit A hereto [emphasis added].

54. Ferndale Ordinance Section 22-65 (Services of a general public nature) states:

The city shall include each year in its **tax budget** an amount sufficient to pay for sewage disposal services **of a general public nature furnished to the city at large**, which charges shall be at the rate prescribed in section 22-63. *Id.* [emphasis added].

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

56. While Ordinance Section 22-63 authorizes the City to impose user fees for sewage disposal services furnished to premises which contribute sanitary sewage to the City's combined sewer system, Ordinance Section 22-63 requires sewage disposal services "of a general public nature furnished to the City at large" to be funded by taxes, not by fees imposed on Plaintiffs and the Class.

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

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

59. Further, storm water systems help prevent erosion, collect contaminated water for cleansing, keep roadways from flooding, and prevent the formation of standing pools of stagnant water. The benefits resulting from the County's disposal of the City's stormwater are shared by

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

59. The Stormwater Charges are illegal and void because they have been imposed, and continue to be imposed in violation of Ferndale Ordinance Sections 22-62 and/or 22-65.

CLASS ALLEGATIONS

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

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

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

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

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

- a. whether the Kuhn Facility Debt Charges and Stormwater Charges imposed by the City are taxes;
- b. whether the Kuhn Facility Debt Charges and Stormwater Charges imposed by the City violate the Headlee Amendment;
- c. whether the Kuhn Facility Debt Charges and Stormwater Charges have a revenue-raising purpose;
- d. whether the Kuhn Facility Debt Charges and Stormwater Charges are

disproportionate to the benefits conferred upon the payers of those charges;

- e. Whether the Kuhn Facility Debt Charges and Stormwater Charges are voluntary;
- f. Whether the Kuhn Facility Debt Charges and Stormwater Charges are authorized by the City's ordinances; and
- g. Whether the City has been unjustly enriched by its collection of the Kuhn Facility Debt Charges and Stormwater Charges.

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

66. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. Plaintiffs anticipate no difficulty in the management of this action as a class action.

COUNT I VIOLATION OF THE HEADLEE AMENDMENT

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

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

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

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

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

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

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

f. Various other indicia of a tax described in *Bolt v. City of Lansing* are present.¹

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

73. Plaintiffs seek their attorneys' fees and costs as allowed by Article 9, Section 32 of the Michigan Constitution of 1963 and MCL 600.308a.

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

COUNT II

UNJUST ENRICHMENT

75. Plaintiffs incorporate the allegations of Paragraphs 1 through 66 of this Complaint as if fully set forth herein.

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

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

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

¹ Pursuant to MCR 2.1112(M), Plaintiffs identify subparts (a) through (f) of Paragraph 71 as "factual questions that are anticipated to require resolution by the Court."

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

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

PRAYER FOR RELIEF

Plaintiffs requests that the Court grant the following relief:

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

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

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

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

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

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

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

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

I. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

By: /s/Gregory D. Hanley
Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Attorneys for Plaintiffs and the Class
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073

Date: January 22, 2014
KH137504

EXHIBIT A

Ferndale, Michigan, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 22 - WATER AND SEWERAGE DISPOSAL SYSTEMS >> ARTICLE II. - WATER >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

- Sec. 22-16. - Connection permit; fee.
- Sec. 22-17. - Application to turn on water.
- Sec. 22-18. - Fee for residential consumers.
- Sec. 22-19. - Reserved.
- Sec. 22-20. - Rates.
- Sec. 22-21. - Reserved.
- Sec. 22-22. - Liability for failure to pay rates and charges.
- Sec. 22-23. - New tenants entitled to supply after arrearages are paid.
- Sec. 22-24. - Right of entry to examine pipes and fixtures, etc.
- Sec. 22-25. - Maintenance of pipes and fixtures and protection from frost.
- Sec. 22-26. - Nonliability of the city for use or failure of the system.
- Sec. 22-27. - Concealment of purpose of use prohibited.
- Sec. 22-28. - Use of water on premises for all purposes: restriction on service pipe.
- Sec. 22-29. - Restricted use of private fire supply.
- Sec. 22-30. - Interference with fire hydrants prohibited.
- Sec. 22-31. - Selling or giving away water without permission prohibited.
- Sec. 22-32. - Tampering with stop or valve boxes prohibited.
- Sec. 22-33. - Wasting water prohibited.
- Sec. 22-34. - Emergency reduction of water use.
- Sec. 22-35. - Water supply may be stopped for violation of article provisions.
- Sec. 22-36. - Cross-connections with public water supply system regulated; penalty.
- Secs. 22-37—22-45. - Reserved.

Sec. 22-16. - Connection permit; fee.

No connection shall be made with the distributing pipes of the water system until an application is made in the form prescribed, stating fully and truly all the uses to which the water is to be supplied, and a permit issued for same. Payment shall be made before the permit is granted for the expense of the connection. The permit fee shall be as prescribed by resolution of the city commission.

(Ord. No. 17, § 89, 12-31-19)

Sec. 22-17. - Application to turn on water.

Before the water is turned on from service pipes, an application must be made for same on a regular form which can be had by applying at the office of the department of public works.

(Ord. No. 17, § 90, 12-31-19)

Sec. 22-18. - Fee for residential consumers.

There shall be required from each residential consumer of city water a fee for each application for water service from the city. Such fee shall be set by city council resolution.

(Ord. No. 849, 6-8-92)

Editor's note—

Ord. No. 849, adopted June 8, 1992, repealed § 22-18, which pertained to deposit for residential consumers and derived from Ord. No. 553, § 1, adopted June 9, 1969. Ord. No. 849 enacted new provisions which have been included herein as § 22-18 at the discretion of the editor.

Sec. 22-19. - Reserved.

Editor's note—

Ord. No. 849, adopted June 8, 1992, repealed § 22-19, which pertained to deposit for temporary purposes and derived from Ord. No. 17, § 91, adopted Dec. 31, 1919.

Sec. 22-20. - Rates.

A uniform schedule of water rates shall be established by resolution of the city commission.

(Ord. No. 17, § 111, 12-31-19; Ord. No. 35, 7-25-21)

Sec. 22-21. - Reserved.

Editor's note—

Ord. No. 849, adopted June 8, 1992, repealed § 22-21, which pertained to payment of rates; penalty for failure to pay and derived from Ord. No. 17, §§ 41, 42, adopted Dec. 31, 1919 and Ord. No. 35, adopted July 25, 1921.

Sec. 22-22. - Liability for failure to pay rates and charges.

Any person failing to pay his water bill whenever the same becomes due, or for work and labor done, or materials furnished by the department of public works, shall be liable in an action for the amount thereof, to be brought in the name of said department.

(Ord. No. 17, § 43, 12-31-19)

Sec. 22-23. - New tenants entitled to supply after arrearages are paid.

Owners shall be so far responsible for tenants that new tenants shall not be entitled to a supply of city water until all arrearages on the premises are paid.

(Ord. No. 17, § 101, 12-31-19)

Sec. 22-24. - Right of entry to examine pipes and fixtures, etc.

The officers of the department of public works shall have the right at all proper hours to enter into or upon any premises where the water is taken, for the purpose of examining the pipes and fixtures, and the manner in which the water is used, and the quantity.

(Ord. No. 17, § 108, 12-31-19)

Sec. 22-25. - Maintenance of pipes and fixtures and protection from frost.

Persons using city water must keep their own water pipes and all fixtures connected therewith, in good repair and protected from frost at their own expense.

(Ord. No. 17, § 98, 12-31-19)

Sec. 22-26. - Nonliability of the city for use or failure of the system.

All parties using city water for any purpose whatever, will do so at their own risk, as the city will not in any case be liable or responsible for any damages occasioned by or growing out of a stoppage of said water, or an insufficient supply of the same, or for accidents or damages of any kind caused by or growing out of the use or failure of such water. Nor shall any payment be refunded or abatement be made for nonuse, absence or other cause. The city reserves the right to shut off the water at any time for repairs, additions or alterations.

(Ord. No. 17, § 100, 12-31-19)

Sec. 22-27. - Concealment of purpose of use prohibited.

There shall be no concealment of the purpose for which city water is used.

(Ord. No. 17, § 106, 12-31-19)

Sec. 22-28. - Use of water on premises for all purposes; restriction on service pipe.

Water from the city water system may be used for any and all purposes on the premises where the meter is located. No service pipes, however, will be allowed to be laid across a street.

(Ord. No. 17, § 39, 12-31-19)

Sec. 22-29. - Restricted use of private fire supply.

Persons who have provided themselves with fixtures for a private fire supply, will not be allowed to use water through such fixtures for other purposes, except upon a written permit from the department of public works.

(Ord. No. 17, § 105, 12-31-19)

Cross reference— Fire prevention and protection, Ch. 9.

Sec. 22-30. - Interference with fire hydrants prohibited.

Hydrants of the city constructed for purposes of extinguishing fires are public hydrants, and no person not duly authorized shall open the same, nor intermeddle therewith, nor break nor injure any of the said hydrants.

(Ord. No. 17, § 44, 12-31-19)

Cross reference— Fire prevention and protection, Ch. 9.

Sec. 22-31. - Selling or giving away water without permission prohibited.

It shall be unlawful for any person, except duly authorized parties, to sell or give away water for any object or purpose without permission.

(Ord. No. 17, § 48, 12-31-19)

Sec. 22-32. - Tampering with stop or valve boxes prohibited.

It shall be unlawful for any person to tamper with or willfully place or deposit any dirt or other material in any stop or valve box.

(Ord. No. 17, § 48, 12-31-19)

Sec. 22-33. - Wasting water prohibited.

It shall be unlawful for any person to waste water or permit the waste of water on his premises.

(Ord. No. 345, § 2, 7-14-52)

Sec. 22-34. - Emergency reduction of water use.

- (a) The city manager is hereby authorized to impose temporary restrictions upon the use of water from the public water system in the manner provided in this section.
- (b) Temporary restrictions on the use of water from the public water system under the authority of this section shall be implemented only after the city manager has made a determination that one or more of the following conditions exist and that the specific restrictions imposed are needed to protect the health, safety or general welfare of the public or to protect the water system from damage or failure:
 - (1) The user demand for water may exceed the sustained delivery capability of the system.
 - (2) The system is operating at such a high volume or such low main pressures that insufficient capacity or reserve remains to safely respond to an increase in demand created by a fire, water main failure, system malfunction or other emergency.
 - (3) Any other condition or situation, extant or reasonably anticipated, that may expose or threaten the system, its operating flows, residual pressures or integrity to the point that the system is jeopardized or the public safety endangered.
- (c) The temporary restrictions on the use of water from the system as determined necessary by the city manager under the authority of this section shall remain in effect until rescinded by the city manager or until the next meeting of the city council. The council, after review of the temporary restrictions imposed by the city manager, may continue, amend, modify or suspend such restrictions by the adoption of a resolution setting forth the nature and duration of such restrictions.
- (d) Temporary restrictions imposed either by the city manager or by the city council under the authority of this section shall be effective at the time they are posted in not less than two conspicuous locations at the city hall.
- (e) Any person informed of existing temporary restrictions promulgated under the provisions of this section who refuses or neglects to comply therewith shall be guilty of a *minor offense*, as defined in Section 1(k) of 1927 PA 175 as amended (MCLA 761.1 et seq.), and shall be punished by a fine not exceeding \$500.00 or by imprisonment for a period not exceeding 90 days or both such fine and imprisonment in the discretion of the court.
- (f) The city manager or his delegate may enter upon any property where a violation of temporary water use restrictions is believed to exist and may abate any such violation found

and may discontinue water service to that property until such time as the temporary restrictions are removed.

(Ord. No. 816, § 1, 9-25-89)

Editor's note—

Former § 22-34 pertained to sprinkling permitted by city manager, was amended by Ord. No. 816, adopted Sept. 25, 1989, and originated from Ord. No. 345, § 3, adopted July 14, 1952.

Sec. 22-35. - Water supply may be stopped for violation of article provisions.

For a violation of any of the provisions, rules and regulations under this article or refusal to comply with any direction of agents of the department of public works, or for nonpayment of water rates within five days after due, the department of public works reserves the right to stop the supply of water without any preliminary notice; nor will it be restored until all damages, penalties and back rents shall have been paid.

(Ord. No. 17, §§ 41, 55, 110, 12-31-19; Ord. No. 35, 7-25-21)

Sec. 22-36. - Cross-connections with public water supply system regulated; penalty.

- (a) The city adopts by reference the Water Supply Cross Connection Rules of the Michigan Department of Environmental Quality being R 325.11401 to R 325.11407 of the Michigan Administrative Code.
- (b) It shall be the duty of the city to cause inspections to be made of all properties served by the public water supply where cross-connections with the public water supply is deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the city and as approved by the Michigan Department of Environmental Quality.
- (c) A representative of the city shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the city for the purpose of inspecting the piping system or systems thereof for cross connections. On request the owner, lessees or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections.
- (d) The city is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this section exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross-connection(s) has been eliminated in compliance with the provisions of this section.
- (e) All testable backflow prevention devices shall be tested initially upon installation to be sure that the device is working properly. Subsequent testing of devices shall be conducted at a time interval specified by the city and in accordance with Michigan Department of Environmental Quality requirements. Only individuals approved by the city shall be qualified to perform such testing. That individual(s) shall certify the results of his/her testing.
- (f) The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the state and city plumbing code. Any water outlet which could be used for potable or domestic

purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

"Water Unsafe for Drinking"

- (g) This section does not supersede the state plumbing code and the city plumbing code, but is supplementary to those codes.
- (h) Any person or customer found guilty of violating any of the provisions of this section, or any written order of the city, in pursuance thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$100.00 for each violation. Each day upon which a violation of the provisions of this section shall occur shall be deemed a separate and additional violation for the purposes of this section.

(Ord. No. 685, §§ 1—6, 4-10-79; Ord. No. 922, Pt. I, 12-27-99)

Secs. 22-37—22-45. - Reserved.

Ferndale, Michigan, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 22 - WATER AND SEWERAGE DISPOSAL SYSTEMS >> ARTICLE III. - SEWAGE DISPOSAL >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 22-61. - Enforcement of article provisions by city manager.

Sec. 22-62. - Connection required.

Sec. 22-63. - Rates.

Sec. 22-64. - Additional charges or treatment may be required for burdensome sewage.

Sec. 22-65. - Services of a general public nature.

Sec. 22-66. - Billing; penalty for delinquency.

Sec. 22-67. - Charges as lien upon premises.

Sec. 22-68. - Collection following delinquency; shut off of sewage and water services.

Sec. 22-69. - Use of charges collected.

Sec. 22-70. - Reserved.

Sec. 22-61. - Enforcement of article provisions by city manager.

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

(Ord. No. 219, § 4, 4-24-44)

Sec. 22-62. - Connection required.

Any person being the owner, occupant or interested party in any property, building or dwelling wherein any sewer or drain has been constructed adjacent to, or adjoining said property shall within 60 days after said sewer or drain has been constructed, connect or cause to be connected to said sewer or drain any and all sewerage of any kind and nature from said lot or parcel of land, and from any and all buildings in connection therewith.

(Ord. No. 61, § 1, 1-19-25)

Sec. 22-63. - Rates.

The rates for sewage disposal services furnished by the city to each premises within its corporate limits having a connection with sewers from which the sanitary sewage is finally discharged into the county sewage disposal system, shall be at the rate prescribed by resolution of the city commission.

(Ord. No. 219, § 1, 4-24-44; Ord. No. 220, 5-28-45)

Sec. 22-64. - Additional charges or treatment may be required for burdensome sewage.

If the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable additional burden upon the sewage system of the city or upon the county sewage disposal system or upon the sewage disposal system of the City of Detroit, then an additional charge shall be made over and above the regular rates, or it may be required that such sewage be treated by the person responsible therefor before being emptied into any public drain or sewer, or the right to so empty such sewage may be denied, if necessary, for the protection of any of the above systems or the public health or safety.

(Ord. No. 219, § 1, 4-24-44; Ord. No. 220, 5-28-45)

Sec. 22-65. - Services of a general public nature.

The city shall include each year in its tax budget an amount sufficient to pay for sewage disposal services of a general public nature furnished to the city at large, which charges shall be at the rate prescribed in section 22-63.

(Ord. No. 219, § 1, 4-24-44; Ord. No. 220, 5-28-45)

Sec. 22-66. - Billing; penalty for delinquency.

Charges for sewage disposal shall be billed and collected quarterly except where water charges are billed monthly, in which cases sewage disposal charges shall be billed monthly. Where possible, sewage disposal charges shall be billed along with the charges for water service. Such charges shall be discounted as provided by resolution of the city commission.

(Ord. No. 219, § 1, 4-24-44; Ord. No. 220, 5-28-45)

Sec. 22-67. - Charges as lien upon premises.

All charges for sewage disposal services in the city shall constitute a lien upon the premises served, effective immediately upon the rendering of service thereto, and the official records of the city shall constitute notice of the pendency of said lien.

(Ord. No. 219, § 2, 4-24-44)

Sec. 22-68. - Collection following delinquency; shut off of sewage and water services.

Any charges for sewage disposal services by the city remaining unpaid and delinquent for a period of six months or more, shall be certified by the city commission to the city assessor who shall enter the same upon the next succeeding county tax roll against the premises to which such services shall have been rendered, and the same shall be collected and said lien shall be enforced in accordance with the provisions of the charter and of the general tax laws of the state. If any premises to which sewage disposal charges shall be made, shall constitute a part only of any parcel of land assessed as a single unit upon the tax roll, then any such delinquent charges shall be entered against the entire parcel. In the event that a user shall fail to pay the charges for such sewage disposal services furnished to any premises, within 30 days after they shall become delinquent, then sewage disposal services shall be shut off to such premises or the water service to such premises shall be discontinued. Services so shut off or discontinued, shall not be reinstated until the delinquent charges shall have been paid plus a fee as prescribed by resolution of the city commission for such reinstatement. Nothing contained in this article shall prevent the city from

bringing action in any proper court for a judgment for the amount of any such delinquent charges, and the commencement of any such action shall not destroy the lien therefor.

(Ord. No. 219, § 2, 4-24-44)

Sec. 22-69. - Use of charges collected.

All moneys received from the collection of sewage disposal charges shall be used to pay the expenses in connection with the collection thereof and the charges rendered by the county to the city for sewage disposal services. Any excess shall be used first to build up and maintain a reserve equal to not less than the amount of the county's charges to the city for a three-months' period, which reserve shall be used to pay the county's charges in event that other available moneys are not sufficient therefor.

(Ord. No. 219, § 3, 4-24-44)

Sec. 22-70. - Reserved.

EXHIBIT B



**CITY OF FERNDAL
APPROPRIATIONS RESOLUTION**

A RESOLUTION TO PROVIDE FOR A LEVY OF TAXES, WATER/SEWER RATES, AND SANITATION FEES FOR FISCAL YEARS 2013-2014 AND 2014-2015.

Motion by Council Member Lennon, seconded by Council Member Martin, that the following resolution be adopted:

In accordance with Chapter IX, Section 8 through 10 of the Charter of the City of Ferndale and State Law MCL141.412, it is provided that the City Council shall adopt a resolution to levy taxes and fees to support the proposed expenditure budget, and

On April 29, 2013, a Public Hearing was held in accordance with Chapter IX, Section 8 of the Charter of the City of Ferndale, and the statutes of the State of Michigan:

IT IS RESOLVED AS FOLLOWS:

1. The millage rates shall be levied as follows:
 - a. For the fiscal year ending June 30, 2014, a rate of 29.1282 mills shall be levied on the Taxable Valuation of Real and Personal property in the City of Ferndale to provide 14.5448 mills for General Operating purposes, 2.1815 mills for Refuse Collection, 7.7004 mills for General Obligation Debt Service, 0.1015 mills for Publicity and Advertising, and 4.6000 mills for an additional voted operating levy, as passed affirmatively on May 4, 2011.
 - b. A rate of 1.9601 mills shall be levied for a Municipal Library, 0.9601 mills as authorized under Act 164, and 1.0000 mills as approved by the voters on 5/8/07.
 - c. A rate of 1.3794 mills shall be levied for DDA Operating purposes.
2. The millage rate upon which the fiscal year ending June 30, 2015 budget is based shall be the same as a through c above, but with an additional voted operating levy of 5.4552 instead of 4.6000, and debt service levy of 7.9484 instead of 7.7004, for a total levy of 32.1930 including the Library millages.
3. The following rates and policies shall apply to customers of the City of Ferndale Water and Sewage Disposal System:
 - a. The combined water/sewage-disposal rate shall remain at \$110.00 per thousand cubic feet of consumption for all bills rendered on or after July 1, 2013 through June 30, 2014. A sewage-disposal rate shall be established at 50% of the combined

water/sewer rate, for commercial customers designated by the County, or **\$55.00**, as follows:

| <u>CUBIC FEET</u> | <u>Combined Rate</u> | <u>Sewer Rate</u> |
|--------------------------------------|----------------------|-------------------|
| At 100 (1 billed unit, or 1/10 MCF) | \$ 11.00 | \$ 5.50 |
| At 1,000 (10 billed units, or 1 MCF) | \$110.00 | \$ 55.00 |

- b. Consumers shall be billed at their actual use starting with 1 billed unit (equal to 100 cubic feet or 1/10 MCF). The "minimum bill" was eliminated effective July 1, 2006.
- c. A readiness-to-serve charge of **\$33.00** per billing cycle shall be assessed on all properties connected to the water and/or sewer system to offset the cost of capital acquisitions and its related debt service.
- d. There will be a 10% penalty on the current portion of the billed amount for non-payment of a water/sewer bill by its due date.
- e. The charge for shutting off water service will continue in the amount of \$50 during regular DPW business hours. The charge for reconnecting service after regular DPW business hours will be \$100.
- f. Service may be shut-off and a customer charged the shut-off fee due to: non-payment of an outstanding bill for more than 30 days after the due date, failure to respond to a service notice left at the property, and/or failure of a new customer to sign for service.
- g. It is the City of Ferndale's policy to bill each customer based on an actual meter read that is obtained by the water service personnel each month and/or quarter. In the event that the service personnel are not able to obtain an actual read, a service card may be left at the service address. If the water billing staff does not receive a revised meter reading from the service personnel or the customer before the estimated billing invoice is generated, an estimated reading will be calculated. Estimated reads will be calculated at the discretion of the City, using either the highest read on the property over the past two years or an estimate of 30 units per quarter (the standard quarterly estimate of a residential property with four household members, per AWWA).
- h. In the event a customer receives an estimated water/sewer bill and a subsequent actual read is taken which indicates less water use than the amount originally billed, the customer will be responsible for paying the estimated bill if a service card was left and the customer did not respond to the service card within the time required per the card. Any credit for an overpayment will remain on the account until the customer subsequently uses the amount of water billed using the estimated meter reading.
- i. The charge for meter repairs will be continued as required or requested.
- j. A fire sprinkler maintenance charge will apply to those services in the amount of \$45.00 per quarter, or \$15.00 per month.
- k. The high-strength industrial surcharge as adjusted according to charges levied by the City of Detroit and passed through to those customers exceeding the limits.

- i. The industrial waste-control charges on non-residential (commercial or industrial) meters as adjusted according to the charges levied by the City of Detroit and passed through to those customers designated as "non-residential."
4. That the following rates shall apply to customers who are provided refuse collection and disposal services:
 - a. For the 2013-2014 fiscal year, a Sanitation Fee of **\$128** per single-family residential property, **\$110** per apartment unit, and **\$220** per commercial property.
 - b. For the 2014-2015 fiscal year, a Sanitation Fee of **\$144** per single-family residential property, **\$124** per apartment unit, and **\$248** per commercial property.
 - c. A rental charge for dumping refuse to a City-provided truck at **\$250** per use.

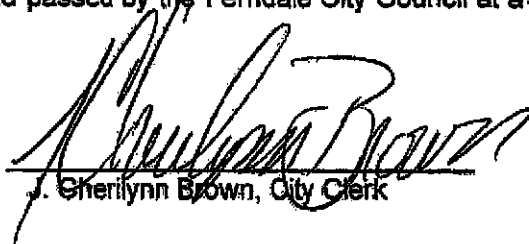
The resolution being put to a vote on roll call, the Council voted as follows:

AYES: Council Members Galloway, Lennon, Martin, Piana and Mayor Coulter

NAYS: None

Motion Carried.

I, J. Cherilynn Brown, City Clerk of the City of Ferndale, do hereby certify that the foregoing is a true and compared copy of a resolution duly made and passed by the Ferndale City Council at a meeting held on April 29, 2013.


J. Cherilynn Brown, City Clerk

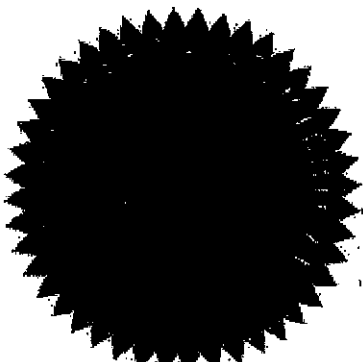


EXHIBIT C

**CITY OF FERNDALE,
MICHIGAN**

**FINANCIAL STATEMENTS
AND
SUPPLEMENTARY INFORMATION**

**For the Year Ended
June 30, 2012**

**City of Ferndale
Statement of Net Assets
Proprietary Funds
June 30, 2012**

| | Business-Type Activities - Enterprise Funds | | | Governmental Activities |
|---|--|----------------------|----------------------|------------------------------------|
| | Major Fund | Nonmajor Fund | | Internal |
| | Water & Sewer | Auto Parking | Total | Service Funds |
| Current assets | | | | |
| Cash and investments | \$ 4,668,641 | \$ 1,676,250 | \$ 6,344,891 | \$ 1,432,825 |
| Accounts receivable | 2,090,186 | 14,467 | 2,104,653 | 24,213 |
| Intergovernmental receivable | 2,990 | - | 2,990 | - |
| Inventories | - | - | - | 148,720 |
| Prepaid expenses | - | - | - | 24,500 |
| Total current assets | 6,761,817 | 1,690,717 | 8,452,534 | 1,630,258 |
| Noncurrent assets | | | | |
| Capital assets | 58,293,837 | 1,888,008 | 60,181,845 | 6,670,040 |
| Less accumulated depreciation | (22,509,462) | (876,119) | (23,385,581) | (4,215,537) |
| Total noncurrent assets | 35,784,375 | 1,211,889 | 36,996,264 | 2,454,503 |
| Total assets | 42,546,192 | 2,902,606 | 45,448,798 | 4,084,761 |
| Liabilities | | | | |
| Current liabilities | | | | |
| Accounts payable | 794,421 | 226,533 | 1,020,954 | 222,120 |
| Accrued liabilities | 112,836 | 4,057 | 116,893 | 7,509 |
| Current portion of long-term debt | 958,287 | - | 958,287 | - |
| Total current liabilities | 1,865,544 | 230,590 | 2,096,134 | 229,629 |
| Noncurrent liabilities | | | | |
| Long term debt | 13,813,579 | - | 13,813,579 | - |
| Total noncurrent liabilities | 13,813,579 | - | 13,813,579 | - |
| Total liabilities | 15,679,123 | 230,590 | 15,909,713 | 229,629 |
| Net Assets | | | | |
| Investment in capital assets, net of related debt | 21,012,509 | 1,211,889 | 22,224,398 | 2,454,503 |
| Unrestricted | 5,854,560 | 1,460,127 | 7,314,687 | 1,400,829 |
| Total net assets | \$ 26,867,069 | \$ 2,672,016 | \$ 29,539,085 | \$ 3,855,132 |

The notes to the financial statements are an integral part of this statement

City of Ferndale
Statement of Revenues, Expenses, and Changes in Fund Net Assets
Proprietary Funds
For the Year Ended June 30, 2012

| | Business-Type Activities - Enterprise Funds | | | Governmental Activities |
|--|--|----------------------|----------------------|--------------------------------|
| | Major Fund | Nonmajor Fund | | Internal |
| | Water & Sewer | Auto Parking | Total | Service Funds |
| Operating revenues | | | | |
| Charges for services | \$ 8,048,985 | \$ - | \$ 8,048,985 | \$ 1,518,010 |
| Parking meter receipts | - | 785,001 | 785,001 | - |
| Water penalties | 479,295 | - | 479,295 | - |
| Water meter repairs | 1,015 | - | 1,015 | - |
| Miscellaneous income | 6,735 | 23,768 | 30,503 | 275 |
| Total operating revenues | 8,536,030 | 808,769 | 9,344,799 | 1,518,285 |
| Operating expenses | | | | |
| Personal services | 1,099,291 | 134,581 | 1,233,872 | 302,086 |
| General and administrative | 100,620 | 21,845 | 122,465 | 532,346 |
| Utilities | 73,706 | 19,902 | 93,608 | 24,052 |
| Rental Expense | 151,551 | 40,475 | 192,026 | 44,140 |
| Contractual services | 94,905 | 14,001 | 108,906 | 68,487 |
| Water and sewer expense | 4,285,163 | - | 4,285,163 | - |
| Maintenance expense | 308,594 | 11,143 | 319,737 | 158,505 |
| Depreciation | 2,132,547 | 91,346 | 2,223,893 | 451,164 |
| Medical and benefit payments | - | - | - | (93,963) |
| Total operating expenses | 8,246,377 | 333,293 | 8,579,670 | 1,486,817 |
| Operating income (loss) | 289,653 | 475,476 | 765,129 | 31,468 |
| Nonoperating revenues (expenses) | | | | |
| Interest income | 57,688 | 19,601 | 77,289 | - |
| Interest expense | (386,958) | - | (386,958) | - |
| Gain on sale of capital assets | 33,757 | - | 33,757 | 6,485 |
| Total nonoperating revenues (expenses): | (295,513) | 19,601 | (275,912) | 6,485 |
| Income (loss) before transfers: | (5,860) | 495,077 | 489,217 | 37,953 |
| Contributed capital | 2,685,160 | - | 2,685,160 | - |
| Change in net assets | 2,679,300 | 495,077 | 3,174,377 | 37,953 |
| Total net assets - beginning | 24,187,769 | 2,176,939 | 26,364,708 | 3,817,179 |
| Total net assets - ending | \$ 26,867,069 | \$ 2,672,016 | \$ 29,539,085 | \$ 3,855,132 |

The notes to the financial statements are an integral part of this statement

**City of Ferndale
Statement of Cash Flows
Proprietary Funds
for the Year Ended June 30, 2012**

| | Business-Type Activities - Enterprise Funds | | | Governmental Activities |
|--|--|----------------------|---------------------|------------------------------------|
| | Major Fund | Nonmajor Fund | | Internal |
| | Water & Sewer | Auto Parking | Total | Service Funds |
| Cash flows from operating activities | | | | |
| Cash received from customers and others | \$ 8,448,012 | \$ 794,303 | \$ 9,242,315 | \$ - |
| Cash received from interfund services | - | - | - | 1,512,389 |
| Cash payments to employees | (1,093,358) | (132,981) | (1,226,339) | (299,722) |
| Cash payments to suppliers for goods, services | (4,731,082) | 155,985 | (4,575,097) | (1,094,216) |
| Cash payments for interfund services | (151,551) | (40,475) | (192,026) | - |
| Net cash provided by operating activities | 2,472,021 | 776,832 | 3,248,853 | 118,451 |
| Cash flows from investing activities | | | | |
| Investment income | 57,688 | 19,801 | 77,289 | - |
| Cash flows from capital and related financing activities | | | | |
| Purchase of capital assets | - | (239,276) | (239,276) | (441,641) |
| Proceeds from sale of capital assets | 33,757 | - | 33,757 | 6,485 |
| Bond/note principal payments | (935,297) | - | (935,297) | - |
| Bond/note interest payments | (386,958) | - | (386,958) | - |
| Net cash used in capital and related financing activities | (1,288,498) | (239,276) | (1,527,774) | (435,156) |
| Net Increase in cash and cash equivalents | 1,241,211 | 557,157 | 1,798,368 | (316,705) |
| Cash and cash equivalents, beginning of year | 3,427,430 | 1,119,093 | 4,546,523 | 1,749,530 |
| Cash and cash equivalents, end of year | \$ 4,668,641 | \$ 1,676,250 | \$ 6,344,891 | \$ 1,432,825 |

The notes to the financial statements are an integral part of this statement

| | Business-Type Activities - Enterprise Funds | | | Governmental Activities |
|--|---|-------------------|---------------------|----------------------------|
| | Major Fund | Nonmajor Fund | Total | Internal |
| | Water & Sewer | Auto Parking | | Service Funds |
| Reconciliation of operating income to net cash provided by operating activities | | | | |
| Operating income (loss) | \$ 289,653 | \$ 475,476 | \$ 765,129 | \$ 31,468 |
| Adjustments to reconcile operating income to net cash provided by operating activities: | | | | |
| Depreciation | 2,132,547 | 91,346 | 2,223,893 | 451,164 |
| Changes in assets and liabilities: | | | | |
| Accounts receivable - customers | (88,018) | (14,486) | (102,484) | (5,896) |
| Inventories | 9,757 | - | 9,757 | 671 |
| Accounts payable | 128,100 | 222,876 | 350,976 | (362,721) |
| Accrued liabilities | (18) | 1,600 | 1,582 | 3,765 |
| Net cash provided by operating activities | \$ 2,472,021 | \$ 776,832 | \$ 3,248,853 | \$ 118,451 |

Note: During the year \$2,685,160 in capital assets was transferred from the governmental activities to the Water & Sewer Fund.

EXHIBIT D

CITY OF FERNDALE, MICHIGAN

NOTES TO FINANCIAL STATEMENTS

F. Long-Term Debt

General obligation bonds. The City issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds have been issued for governmental activities and business type activities. The original amount of general obligation bonds issued in prior years for the items listed below for the primary government were \$46,624,457 to finance the repair and/or reconstruction of water, sewer and street infrastructure, \$4,700,000 for library renovations and \$933,152 to finance the City's boiler and HVAC improvements.

During the current fiscal year, the City made debt repayments against its General Obligation Bonds totaling \$3,240,000. No new general obligation debt was issued in the current fiscal year.

George W. Kuhn project bonds and revolving fund obligations. The City is a participating community in the George W. Kuhn drain project. The project is administered by the Oakland County Drain Commission, and financed through the sale of drain bonds, draws from the State of Michigan revolving fund, Federal and State of Michigan grants, and contributions from Oakland County, Michigan. The City is one of fourteen local communities obligated for the payment of principal and interest of the outstanding debt. It is anticipated that the City's total obligation at the end of construction will be approximately \$13,228,411 or 9.77% of the projects total cost of \$135,398,270. The bond sales were initiated on an as-needed basis during construction, which is now materially complete. Accordingly, the following schedule of debt service requirements for business-type activities is based on final estimates.

State revolving fund. The City has obtained \$7,598,266 in state revolving fund loans to finance the cost of water mains and sewer lining expenditures incurred since 2007. There were no new draws during the current fiscal year. The loan acts like a line-of-credit to the City. Repayment of this loan began in fiscal year 2008.

| <u>Purpose</u> | <u>Interest Rate</u> | <u>Amount</u> |
|--------------------------------------|----------------------|----------------------------|
| Governmental activities | | |
| Public improvement bonds | 4.3% - 4.5% | \$ 239,152 |
| Library facility bonds | 3.0% - 4.0% | 4,205,000 |
| 2003 refunding bonds | 2.0% - 5.0% | 5,805,000 |
| 2005 refunding bonds | 2.5% - 4.0% | 4,955,000 |
| 2007 infrastructure bonds | 4.3% - 4.4% | <u>1,750,000</u> |
| Total governmental activities | | <u>\$16,954,152</u> |

CITY OF FERNDALE, MICHIGAN

NOTES TO FINANCIAL STATEMENTS

Business-type activities

| | | |
|------------------------------|-------------|------------------|
| George W. Kuhn drain project | 2.0% - 5.0% | \$ 8,598,600 |
| State revolving fund | 2.125% | <u>6,173,266</u> |

Total business-type activities **\$14,771,866**

Annual debt service requirements to maturity for general obligation bonds are as follows:

| | <u>Governmental Activities</u> | |
|-------------|--------------------------------|-----------------------------|
| | <u>Principal</u> | <u>Interest and Premium</u> |
| 2013 | \$ 3,350,000 | \$ 731,099 |
| 2014 | 3,359,152 | 583,674 |
| 2015 | 3,380,000 | 435,575 |
| 2016 | 3,430,000 | 286,875 |
| 2017 | 230,000 | 136,250 |
| 2018 - 2022 | 1,380,000 | 537,000 |
| 2023 - 2027 | <u>1,825,000</u> | <u>225,200</u> |
| | <u>\$16,954,152</u> | <u>\$ 2,935,673</u> |

Estimated annual debt service requirements to maturity for business-type activities are as follows:

| | <u>Business-Type Activities -- (estimated)</u> | |
|-------------|--|-----------------------------|
| | <u>Principal</u> | <u>Interest and Premium</u> |
| 2013 | \$ 958,287 | \$ 367,478 |
| 2014 | 983,769 | 343,179 |
| 2015 | 1,009,777 | 318,228 |
| 2016 | 1,033,763 | 292,640 |
| 2017 | 1,062,249 | 266,370 |
| 2018 - 2022 | 5,703,587 | 912,793 |
| 2023 - 2027 | 3,659,120 | 248,148 |
| 2028 - 2029 | <u>361,314</u> | <u>6,416</u> |
| | <u>\$14,771,866</u> | <u>\$ 2,755,252</u> |

CITY OF FERNDALE, MICHIGAN

NOTES TO FINANCIAL STATEMENTS

Advance and Current Refundings

The City has issued refunding bonds in previous years to purchase U.S. Government securities that were placed in an irrevocable trust for the purpose of generating resources for all future debt service payments on \$25,000,000 of refunded debt. As a result, the refunded bonds are considered to be defeased. On June 30, 2012, the City had total defeased debt outstanding of approximately \$11,175,000.

Changes in Long-Term Debt.

Long-term liability activity for the year ended June 30, 2012, was as follows:

| | Beginning Balance | Additions | Reductions | Ending Balance | Due Within One Year |
|---------------------------------------|----------------------|-------------------|-----------------------|----------------------|------------------------|
| Primary Government | | | | | |
| Governmental Activities: | | | | | |
| Public improvement bonds | \$ 349,152 | \$ - | \$ (110,000) | \$ 239,152 | \$ 115,000 |
| Library facilities bonds | 4,360,000 | - | (155,000) | 4,205,000 | 170,000 |
| Refunding bonds, 2003 | 7,355,000 | - | (1,550,000) | 5,805,000 | 1,455,000 |
| Refunding bonds, 2005 | 5,980,000 | - | (1,025,000) | 4,955,000 | 1,210,000 |
| Infrastructure bonds, series 2007 | 2,150,000 | - | (400,000) | 1,750,000 | 400,000 |
| Total general obligation debt | 20,194,152 | - | (3,240,000) | 16,954,152 | 3,350,000 |
| Premium on refunding bonds | 162,204 | - | (32,440) | 129,764 | 32,440 |
| Discount/issuance - refunding bonds | (139,911) | - | 27,983 | (111,928) | (27,983) |
| Discount/issuance - library bonds | (115,828) | - | 7,239 | (108,589) | (7,239) |
| Accrued compensated absences | 471,622 | 531,460 | (471,622) | 531,460 | - |
| Total governmental activities | 20,572,239 | 531,460 | (3,708,840) | 17,394,859 | 3,347,218 |
| Business-type activities: | | | | | |
| George W. Kuhn drain | 9,203,897 | - | (605,297) | 8,598,600 | 623,287 |
| State revolving fund | 6,503,266 | - | (330,000) | 6,173,266 | 335,000 |
| Total business-type activities | 15,707,163 | - | (935,297) | 14,771,866 | 958,287 |
| Total primary government | \$ 36,279,402 | \$ 531,460 | \$ (4,644,137) | \$ 32,166,725 | \$ 4,305,505 |

For the governmental activities, compensated absences are generally liquidated by the General Fund.

EXHIBIT E

George W. Kuhn Drainage District
Schedule of Rates and Charges
Page 43

4. Flat Rate Storm Charge

| | |
|-------------------------|---------------------|
| | <u>FY 2014</u> |
| DWSD Purchased Expense | \$ 20,914,120 |
| OCWRC Operating Expense | <u>3,035,671</u> |
| Interest Income | <u>(251,960)</u> |
| Total | <u>\$23,697,831</u> |

The new appointment percentages have been reflected effective July 1, 2005.

| Municipality | Allocation In Percent | 2013 Annual Charge | 2014 Annual Charge | \$ Inc./Dec. | Quarterly Charge | Monthly Charge | % Change |
|--------------------------|--------------------------|-----------------------|-----------------------|-----------------|---------------------|-------------------|-------------|
| City of Berkeley | 0.4885% | \$1,010,879.24 | \$1,076,962.84 | \$66,083.60 | \$334,168.64 | \$111,389.55 | -2.7% |
| Village of Beverly Hills | 0.0369% | 206,903.14 | 203,329.82 | \$-3,573.32 | \$60,832.46 | \$16,944.16 | -2.7% |
| City of Birmingham | 4.8837% | 1,219,046.90 | 1,186,523.90 | \$-32,522.90 | 298,630.98 | \$8,876.99 | -2.7% |
| City of Clawson | 0.0282% | 1,479,270.87 | 1,439,805.47 | \$-39,465.41 | \$369,861.37 | \$119,983.79 | -2.7% |
| City of Ferndale | 10.2885% | 2,568,190.20 | 2,499,682.74 | \$-68,507.46 | \$624,813.04 | \$208,304.35 | -2.7% |
| City of Hazel Park | 2.2864% | 682,882.61 | 647,962.82 | \$-34,919.79 | \$168,990.70 | \$56,330.57 | -2.7% |
| City of Huntington Woods | 2.4671% | 616,828.79 | 599,396.69 | \$-17,432.10 | \$149,849.16 | \$49,949.72 | -2.7% |
| City of Madison Heights | 6.6418% | 1,632,754.43 | 1,588,174.78 | \$-44,579.65 | \$397,293.69 | \$132,431.23 | -2.7% |
| City of Oak Park | 13.0383% | 3,404,328.82 | 3,313,506.84 | \$-90,821.98 | \$828,376.46 | \$276,125.49 | -2.7% |
| City of Pleasant Ridge | 1.0390% | 334,235.04 | 325,378.00 | \$-8,857.04 | \$81,319.60 | \$27,106.83 | -2.7% |
| City of Royal Oak | 26.7028% | 7,114,276.76 | 7,119,471.57 | \$5,194.81 | \$1,804,147.89 | \$601,372.63 | -2.7% |
| Township of Royal Oak | 1.2775% | 318,683.89 | 310,378.21 | \$-8,305.68 | \$77,594.05 | \$25,864.68 | -2.7% |
| City of Southfield | 7.7166% | 1,925,632.70 | 1,874,560.82 | \$-51,071.88 | \$498,637.70 | \$166,212.57 | -2.7% |
| City of Troy | 2.4798% | 619,021.27 | 602,506.42 | \$-16,514.85 | \$150,626.61 | \$50,208.87 | -2.7% |
| Detroit Zoo | 0.3354% | 88,970.63 | 81,730.38 | \$-7,240.25 | \$20,432.59 | \$6,810.86 | -2.7% |
| Rackham Golf Course | 0.1913% | 47,751.43 | 46,477.47 | \$-1,273.96 | \$11,819.37 | \$3,873.12 | -2.7% |
| State of Michigan | 2.1036% | 526,056.03 | 511,087.81 | \$-14,968.22 | \$127,764.46 | \$42,588.15 | -2.7% |
| County of Oakland | 1.5274% | 381,282.69 | 371,090.90 | \$-10,191.79 | \$92,772.72 | \$30,923.24 | -2.7% |
| Total | 100.00% | \$24,861,541.61 | \$24,299,693.57 | (\$561,848.04) | \$6,073,698.39 | \$2,024,632.80 | -2.67% |

EXHIBIT F

ENTERPRISE FUNDS

WATER/SEWER FUND

The Water/Sewer Fund provides funding for maintaining water lines, meter reading, billing, and for treating and disposing sanitary and industrial liquid wastes. The Fund maintains about 80 miles of water mains and 86 miles of sewers, and provides about 561 million gallons of safe, potable water to over 10,000 customers.

The City purchases its wholesale water from the Detroit Water and Sewerage Department (DWSD). The City's wholesale rate is calculated on its distance and location from DWSD's five treatment facilities and on the City's contracted max-day/peak-hour usage and volume.

Because of a continued decline in water sales to its wholesale customers, resulting in less revenue to fund fixed operational costs, debt service, and interest expenses, the DWSD is expected to increase customers' fiscal 2012 flat rate from \$8,363/month to \$21,406/month. The City's current rate of \$7.64 per MCF is estimated to decrease to \$6.27 per MCF, for a total purchase cost based on 72,500 MCF of \$711,000.

The City currently contracts with the Southeastern Oakland County Sewage Disposal System for sewage treatment at \$13.07/MCF, plus a flat rate for storm-water treatment of \$178,000/month. For 2012, the rate for sewage and storm water treatment is expected to increase by 8% for a total of \$3,434,000.

Despite the above increases, staff recommends a continued water/sewer rate of \$101 per MCF from 2011 to 2012, with an alternative increase to the readiness-to-serve charge from \$12/quarter to \$33/quarter and elimination of the meter replacement charges a year ahead of schedule. The readiness-to-serve charge addresses the inequity in the cost sharing of the City's investment in infrastructure over vacant properties without water consumption.

The debt service costs for the City's Water/Sewer system are \$9.9M through 2029 for the George W. Kuhn Retention Treatment Facility, and \$6.8M for the Drinking Water Revolving Fund (DWRF) loans through 2028 as noted in Section 4, beginning on page 11. Debt service and interest expenses for 2011 total \$1,340,000.

Voters in Clawson elected to transfer their sewer debt to their tax bills effective July 2010, making their payments tax deductible. Voters in Ferndale should be asked to consider the same question. The approximate millage required to pay the debt service is 2.3500 mills.

Major initiatives for 2010 and 2011 included:

1. The replacement of customer water meters, last installed between 1987 and 1989, which are now running slowly and not recording all of the water usage throughout the system. The City will expend \$1,896,600 for the two-year project, which includes installing a fixed-network system to read meters remotely.
2. The installation of new water mains on Fern and East Chesterfield Streets at an estimated cost of \$344,150, with both streets being reconstructed under an American Recovery and Reinvestment grant.

An additional 4.2 miles of main built between 1920 and 1935 also needs to be replaced because of significant tuberculation and breaks that have compromised reliability and pressures, including to fire hydrants. The estimated replacement cost is \$4,164,000 and funding strategies are currently being considered by staff.

As noted in prior years, the system continues to struggle to keep up with its expenses due to the debt service related to past capital investments, an aging infrastructure, the loss of major commercial water customers over the past several years, and a decline in water sales due to reduced usage and foreclosures.

DPW requested the services of the following personnel for 2012:

| | | | |
|-------------------------|---------|-----------------------|-------|
| DPW Director | (.25) | Parks/Blvd Supervisor | (.25) |
| Water System Supervisor | (1) | Public Works Leader | (1) |
| Clerk Typist II | (.25) | Public Works Grade 3 | (3) |
| Receiving Teller | (1) | Public Works Grade 1 | (5) |
| Full-time Employees | (11.75) | | |