

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

SANDRA HAHN and ROBERT SHARP,
individually and as
representatives of a class of
similarly-situated persons and entities,

Case No. 20-000732-CZ

Hon. David S. Swartz

Plaintiff,

v.

CITY OF ANN ARBOR,
a municipal corporation,

Defendant.

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PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT
AND JURY DEMAND

Plaintiffs Sandra Hahn and Robert Sharp ("Plaintiffs"), by their attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated class members, state the following for their Class Action Complaint against the City of Ann Arbor, Michigan (the "City"):

INTRODUCTION

1. The Michigan courts have long recognized that a “municipally-owned utility is built and operated, not for a corporate profit, but for the purpose of providing utility services at a reasonable cost to the citizens of the municipality, who are generally identical with the customers.” *Wolgamood v. Village of Constantine*, 302 Mich. 384, 404-405, 4 N.W.2d 697 (1942). The City has disregarded this fundamental principle for many years, to the detriment of its citizens and inhabitants.

2. This is an action challenging the reasonableness of (a) the City’s water and sewer rates (collectively the “W&S Rates”) and the resulting water and sewer charges (“the W&S Charges”) imposed by the City on citizens who draw water from the City’s water supply system and who dispose of their sanitary sewage through the City’s sanitary sewer system; and (b) the stormwater sewer system rates (the “Stormwater Rates”) and the resulting charges (the “Stormwater Charges”) imposed on virtually all property owners in the City.

3. The City’s overall W&S Rates and Stormwater Rates have been unreasonable because they were designed to generate, and actually did generate, revenues far in excess of those necessary to supply water and sewer services to the City’s inhabitants (the “W&S Rate Overcharges”) and to operate, maintain and improve its stormwater sewer system (the “Stormwater Rate Overcharges”) (collectively, the “Overcharges” or the “Rate Overcharges”). As the Michigan Supreme Court recently observed, “[i]f the fees for a particular service consistently generate revenue exceeding the costs for the service, the reasonableness of the fee for that service would be suspect.” *Mich. Ass’n of Home Builders v. City of Troy*, 504 Mich. 204, 220, 934 N.W.2d 713, 722 (2019) (quoting *Mich. Ass’n of Home Builders v. City of Troy*, No. 331708, 2017 Mich. App. LEXIS 1521 (2017)).

4. The Overcharges are unlawful because (a) the Rates that produced those Overcharges were arbitrary, capricious and/or unreasonable under common law; (b) they violate the

Prohibited Taxes by Cities and Villages Act, MCL 141.91; and (c) they violate the City's own Charter, Sec. 15.4, which requires the City to establish "just and reasonable" utility Rates.

JURISDICTION AND VENUE

5. Plaintiffs reside in the City and are property owners and water and sewer customers of the City who incur W&S Charges and Stormwater Charges. Plaintiffs have paid the Charges at issue and seek to act as class representatives for all similarly-situated persons.

6. Defendant City of Ann Arbor (the "City") is a municipality located in Washtenaw County, Michigan. The City maintains a Water Supply System Fund (the "Water Fund") and a Sewage Disposal System Fund (the "Sewer Fund") and prepares financial statements for those Funds. The City also maintains a separate Stormwater Sewer System Fund (the "Stormwater Fund") and prepares financial statements for that Fund.

7. 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.

GENERAL ALLEGATIONS

8. The City has a municipal water supply system (the "Water Supply System") to provide treated water to inhabitants of the City. The Water Supply System supplies approximately 125,000 people with an average daily water volume of 14 million gallons per day. The City's water supply is sourced primarily from the Huron River (85%) and then mixed with ground water from wells (15%). Once treated, the City distributes the water to its customers through five pressure districts, four remote pump stations, and two elevated storage tanks.

9. The City establishes Water Rates from time to time through the actions of the City Council.

10. Plaintiffs have received water service from the City and paid the Water Rates and Water Charges imposed by the City. The City's ordinances require the structures used by its citizens to be connected to the City's Water Supply System. City Ordinance, Chapter 27 § 2:21.

11. The City has a sanitary sewer system (the "Sanitary Sewer System") to provide sanitary sewage disposal services to inhabitants of the City. The City owns and operates two wastewater treatment facilities with a combined treatment capacity of 29.5 million gallons per day, and a collection system consisting of both gravity sewers and force main sewers (which use pumps or compressors to push the sewage from lower to higher elevations) to collect and deliver wastewater to the plants for treatment and disposal.

12. The City establishes Sewer Rates from time to time through the actions of the City Council.

13. Plaintiffs have received sewer service from the City and paid the Sewer Rates and Sewer Charges imposed by the City. The City's ordinances require the structures used by its citizens to be connected to the City's Sanitary Sewer System. City Ordinance, Chapter 28 § 2:42.2(7).

14. The City maintains a storm sewer system (the "Stormwater Sewer System") that is separate from its Sanitary Sewer System and which is used to collect stormwater that falls on the City's land area and to convey that stormwater to nearby waterways.

15. The City assesses Stormwater Charges for the purpose of operating, maintaining and improving the Stormwater Sewer System and, as discussed below, for certain unrelated purposes. Plaintiffs have been assessed, and have paid, Stormwater Charges.

16. In Michigan, municipal water, sewer and stormwater utilities, which essentially operate as businesses, enjoy three distinct advantages virtually unheard-of in the private sector: (1) they enjoy absolute monopolies over the market for their services, (2) their customers must purchase those services and (3) their prices are completely unregulated by any governmental agency. These

governmental units provide essential services to their inhabitants with no competition. Customers have no realistic alternative. Residents whose homes and businesses are serviced by the City's water and sewer lines are required to hook up to those facilities. As a result, people who want to use their showers, sinks and toilets must pay the City for that "privilege." As Justice Markman observed (in his dissent to the COA's original decision in *Bolt v. City of Lansing* that was later adopted in substantial part by the majority in *Bolt*):

City ordinances mandate that all property owners connect to the sanitary sewer and it does not seem unreasonable to assume that Ordinance 925 will eventually be amended to impose the same requirement with respect to the newly separated storm sewer system. **The use of such indispensable services cannot be considered a matter of choice when there is a municipal monopoly and mandate over them.** The property owner wishing not to use the service, or to use another service, has no alternatives. **The charge is effectively compulsory.** [221 Mich. App. at 97 (emphasis added)]

17. The City is allowed its monopoly, but various state laws governing municipal utility rates place clear and reasonable limits on the City's right to charge for the services. The trade-off is that a municipal utility is required to set Rates at a level that recovers no more than its actual "cost of service." Simply, the City is not Apple Inc., tasked with maximizing the profits for its shareholders. Instead, the City is required to impose Rates that are designed to pay for the current expenses properly associated with its water, sewer and stormwater functions, but no more. Unfortunately, the City has disregarded this fundamental principle of municipal rate-making, to the detriment of tens of thousands of its citizens.

18. The City has continuously and systematically violated the common law, MCL 141.91, and its own Charter Section 15.4(a) by imposing W&S Rates that exceed the City's actual cost of providing water and sewer service by millions of dollars and by imposing Stormwater Rates that exceed the City's actual costs of operating, maintaining and improving its Stormwater Sewer System by millions of dollars.

THE RATE OVERCHARGES

19. Since at least 2014, the City has set its W&S Rates at a level far in excess of the rates that were necessary to finance the actual costs of providing water and sewage disposal services (the “W&S Rate Overcharge”). The W&S Rates during this period were established in contravention of established water and sewer rate-setting methodologies, and resulted in W&S Charges which allowed the City to accumulate cash reserves far in excess of those necessary to support the City’s water and sewer function. Prior to 2018, the City had not performed a “cost of service” study – *i.e.*, a detailed analysis of the revenue requirements and rate structure of the Water Supply System or the Sanitary Sewer System -- since 2003.

20. Between June 30, 2014 and June 30, 2019, the City increased its cash and investments in the Water and Sewer Funds from an already excessive **\$61.9 million to over \$91 million** through its continuing imposition of the W&S Rate Overcharge. *Compare* Exhibit A hereto (June 30, 2014 financial statement excerpt) *with* Exhibit B hereto (June 30, 2019 financial statement excerpt).

21. In addition, since at least 2014, the City has set its Stormwater Rates at a level far in excess of the rates that were necessary to finance the actual costs of operating, maintaining and improving its Stormwater Sewer System (the “Stormwater Rate Overcharge”). The Rates during this period were established in contravention of established rate-setting methodologies, and resulted in Stormwater Charges which allowed the City to accumulate cash reserves far in excess of those necessary to support the City’s Stormwater Sewer System. Indeed, between June 30, 2014 and June 30, 2019, the City increased its cash and investments in the Stormwater Fund from an already excessive **\$7.2 million to over \$15 million** through its continuing imposition of the Stormwater Rate Overcharge. *Compare* Exhibit C hereto (June 30, 2014 financial statement excerpt) *with* Exhibit D hereto (June 30, 2019 financial statement excerpt).

22. This excessive accumulation of cash was not serendipitous but was undertaken pursuant to a plan to dramatically increase the cash in the Water and Sewer Funds and Stormwater Fund through 2019 after paying all of the expenses of the Water and Sewer Funds and Stormwater Fund, including capital improvements and debt service.

23. The City accumulated an additional \$30 million in its Water and Sewer Funds between June 30, 2014 and June 2019 and accumulated an additional \$7 million in its Stormwater Fund between June 30, 2014 and June 2019 by imposing the Overcharges. As demonstrated below, however, the Overcharges were actually much higher due to the City's practice of diverting monies from the Water and Sewer Funds and/or Stormwater Funds to other, impermissible, uses.

24. The Overcharges are even more excessive and egregious when one considers that the City has included in its W&S Rates and Stormwater Rates amounts designed to generate millions of dollars that the City has transferred to other City funds or otherwise used to finance general governmental obligations wholly or partially unrelated to its water, sewer and stormwater systems.

25. For example, the Stormwater Charges finance the vast majority of the expenses of the City's Forestry Department, a separate department tasked with managing all aspects of the City's "urban forest." The amounts included in the Stormwater Rates to finance the City's Forestry Department (the "Forestry Charges") exceed \$1 million per year. (The Forestry Charges are one type of Rate Overcharge.) The activities of the Forestry Department, however, confer benefits on the entire community, and not just on persons who pay Stormwater Charges. Indeed, prior to July 1, 2012, those expenses were the responsibility of the City's General Fund.

26. The City itself has touted the public benefits conferred by its "Urban Forest," which is maintained and preserved by the activities of the Forestry Department and financed through Forestry Charges. On the City's website, the City states:

The urban and community forest is a defining and valuable characteristic of the city of Ann Arbor, which residents affectionately call "Tree Town," helping make it a

desirable place to live, work and play. It is made up of the trees, shrubs and woody vegetation growing along city streets; in public parks; and on institutional and private property. **The urban community forest provides many environmental, economic and social benefits to the community**, including reducing stormwater runoff, **improving water and air quality, moderating summer temperatures, lowering utility costs, improving quality of life and beautifying the city.** [“The Urban Forest”, Exhibit E hereto (emphasis added)].

27. The connection between the Forestry Charge included in the Stormwater Rates and the management of stormwater is extremely attenuated at best, and the City concedes that even though the Forestry Department is financed by the Stormwater Fund, the stormwater management benefits provided by the activities of the Forestry Department represent just a fraction of the total benefits purportedly conferred by those activities. Indeed, the City estimates that a “typical tree in Ann Arbor” provides \$149 in benefits every year, but less than 10% of the value of those purported benefits is attributable to enhanced stormwater management. *See* Exhibit F hereto.

28. In October 2020, the City’s Council awarded a tree pruning contract valued at \$674,000 to be financed by Forestry Charges included in the Stormwater Charge Rates. The City did so even though the Forestry Department’s tree pruning program provides public benefits, and does not specifically benefit payers of Stormwater Charges. In this regard, the City’s website lists a number of “benefits” of tree pruning, all of which are unrelated to stormwater management:

Trees pruned on a routine basis develop proper form and structure leading to a variety of benefits, including

- * Lower cost per tree trimmed compared to reactive pruning done in response to storm damage, sight clearance or immediate hazards
- * Healthier tree canopy as a result of removing dead, dying or diseased limbs, earlier identification and correction of insect/disease problems
- * Reduction in storm related tree damage
- * Better clearance and less obstructions in the public right-of-way as well as better sight lines for signs, signals and intersections
- * Lower future maintenance costs

* Improvement of tree's structure to better withstand stresses from wind, ice and rain. ["Routine Street Tree Pruning", Exhibit G hereto (emphasis added).]

29. At an October 19, 2020 meeting at which the Council approved the tree pruning contract, certain council members expressed that the City's practice of including the Forestry Charges in the Stormwater Charge Rates rendered those Charges unlawful taxes under the *Bolt v. Lansing* case. For example, Councilman Eaton stated:

I want to remind council that this is an essential service, but its relationship to the stormwater fee is marginal at best. In the *Bolt v. Lansing* case, the City of Lansing tried to use its stormwater fees to finance the separation of its sewer system, stormwater and wastewater systems that had been mandated by a regulatory agency. So it was required to do that, and nonetheless, because the benefit being conferred was a benefit that was generalized throughout the community and wasn't particularized to the fee payer based on the amount they were paying, it was considered to be more appropriate for a tax than for a fee. Similarly, with this, if a tree is planted in my front yard, it doesn't benefit somebody in the second ward and there's nobody that person in the second ward can do to minimize their cost for the tree planting elsewhere in the city. **It's so general that it should be funded by a tax, not by a user fee.** The user fee should be for the cost of providing the actual service.

Another factor in this kind of case is when the service was previously funded from the general fund and then it shifted into this kind of fund. Historically, our forestry department was funded from the general fund, and it was just a number of years ago that it was shifted into our stormwater funding. And that is not going to help us in this litigation, I believe. So I understand that the next council might want to take this risk, I'm just not willing to impose this risk on them on my way out the door. So if you want to vote in favor of this, **I understand, this is an essential service, it just not appropriately funded with this fee.** So I will be voting against it. If the plaintiff in the Hahn case prevails, we'll have to come up with the \$674,000 somewhere anyways to repay it. So I just think you need to be more cautious with how you use fee revenue in this kind of general operational sense. [Exhibit H hereto at pp. 8-9 (emphasis added)]

30. Unfortunately, the City Council ultimately did not side with Councilman Eaton, voting 6-5 to approve the tree pruning contract, further confirming that the Forestry Charge constitutes a tax on City landowners.

31. In addition, in the six years preceding the filing of this Complaint, the Stormwater Fund transferred almost \$10 million to the City's Street Repair Millage Fund. Those Transfers

purportedly were made to pay the costs of various alleged capital improvements to the City's Stormwater System that were undertaken as part of more comprehensive capital improvement projects. If the value of those alleged capital improvements was commensurate with the amount of money transferred, the value of the capital assets of the City's Stormwater System should have increased by almost \$10 million during that period of time. Instead, there was only a nominal increase in the stated value of the capital assets of the Stormwater System during that time.

32. On information and belief, the Transfers were made without adequate consideration and thus had the effect of forcing the City's water and sewer customers and/or property owners who pay Stormwater Charges to finance governmental activities such as road improvements that should have been financed through general taxation or other sources.

33. Moreover, the Transfers were in addition to other monies transferred by the Water and Sewer Funds and Stormwater Fund each year to other City Funds to reimburse those Funds for purported administrative and other services provided to the Water and Sewer Funds and the Stormwater Fund.

34. The excessive cash reserves cannot be justified as being needed for planned or still-unplanned capital improvements to the water, sanitary sewer or storm sewer systems because, among other things, the City has not traditionally funded capital improvements by tapping cash reserves. Instead, as reflected in its annual budgets and financial statements, the City has traditionally planned to fund, and actually funded, its water and sewer capital improvements through a "pay as you go" approach – *i.e.*, including in its Rates on an annual basis the amount needed to fund current period capital improvements – or through the issuance of long-term debt, which has been used to finance major upgrades to the system, such as a recent upgrade to the wastewater treatment plant.

35. The City confirmed this policy in its FY 2020 Budget (page 46), where the City stated:

It will be a long-term goal that each utility or enterprise will ensure future capital financing needs are met by using a **combination of current operating revenues and revenue bond financing**. Therefore a goal is established that 15% of total project costs should come from operating funds of the utility or enterprise. [Exhibit I hereto (emphasis added)].

36. Remarkably, the City continues to accumulate excessive cash reserves in its Water and Sewer Funds and Stormwater Fund even though its professional consultants have counseled against that practice.

37. In 2017, the City retained Stantec Consulting Service Inc. (“Stantec”) to perform a comprehensive “Cost of Service” study of its Water and Sewer Funds, something the City had not done since 2003. After conducting a detailed analysis of the cost structure associated with the City’s Water Supply System and its Sanitary Sewer System, Stantec recognized that the City’s cash and investments in its Water and Sewer Funds were far in excess of appropriate reserve amounts, thus confirming that the City’s prior Charges were unreasonable because they did not reflect the City’s “cost of service.” Stantec determined that, as of June 30, 2016, the Water Fund had at least \$15.8 million more than it needed and the Sewer Fund had at least \$13 million more than it needed.

38. In a report issued in June 2018 (excerpts attached as Exhibit J hereto), Stantec recommended that the City “draw down” those excessive reserves over time by utilizing them to partially or completely finance ongoing and future water and sewer capital improvement projects instead of completely funding those projects through Rates or other sources like long-term debt. For example, Stantec recommended that, for the fiscal year ending June 30, 2019, the City use \$4 million of its excess cash and investments in its Water Fund to pay for Water System capital improvements. Contrary to the recommendation, however, the City financed its Water System

capital improvements through Rates and other sources, and actually increased its Water Fund cash and investments by \$2.8 million during the fiscal year ending June 30, 2019.

39. In 2017, the City retained Stantec to perform a comprehensive “Cost of Service” study of its Stormwater Fund. After conducting a detailed analysis of the cost structure associated with the City’s Stormwater System, Stantec recognized that the City’s cash and investments in its Stormwater Fund were far in excess of appropriate reserve amounts, thus confirming that the City’s prior Stormwater Charges were unreasonable because they did not reflect the City’s “cost of service.” Stantec determined that, as of June 30, 2016, the Stormwater Fund, which had \$10.1 million in cash and investments at the time, had at least \$8 million more than it needed.

40. In a report issued in May 2018 (excerpts attached as Exhibit K hereto), Stantec recommended that the City “draw down” those excessive reserves over time by utilizing them to partially or completely finance ongoing and future stormwater capital improvement projects instead of completely funding those projects through Rates or other sources like long-term debt. Contrary to the recommendation, however, the City actually increased its Stormwater Fund cash and investments by almost \$5 million between July 1, 2016 and June 30, 2019.

41. By virtue of the Rate Overcharges described above, the City has accumulated cash reserves in the Water and Sewer Fund far beyond those necessary to ensure the continued provision of water and sewage disposal service to its residents and has accumulated cash reserves in the Stormwater Fund far beyond those necessary to ensure the continued provision of storm sewer service to its residents.

42. Because the W&S Rate Overcharges were included in the Water and Sewer Rates imposed by the City, each class member paid the Rate Overcharge when they paid their water and sewer bill.

43. Because the Stormwater Rate Overcharges were included in the Stormwater Rates, each property owner paid the Stormwater Rate Overcharges when they paid the Stormwater Charges.

44. Payment of the Overcharges was not voluntary. In this regard, City Charter Section 15.5 provides:

SECTION 15.5.

- (a) The Council shall provide by ordinance for the collection of rates and charges for public utility services furnished by the City. When any person fails or refuses to pay to the City any sums due on utility bills, the service upon which such delinquency exists may be discontinued and suit may be brought for the collection thereof.
- (b) Except as otherwise provided by law, the City shall have as security for the collection of all charges for utility services furnished by it a lien upon the premises to which such utility services were supplied and, for such purposes, shall have all the powers granted to cities by law. Such lien shall become effective immediately on the distribution or supplying of such utility services to such premises.
- (c) Except as otherwise provided by law, all unpaid charges for utility services furnished to any such premises, which, on the thirty-first day of March of each year, have remained unpaid for a period of three months or more, shall be reported by the Controller to the Council at the first meeting thereof in the month of April. The Council thereupon shall order the publication in a newspaper of general circulation in the City of notice that all such unpaid utility charges not paid by the thirtieth day of April will be assessed upon the City's tax roll against the premises to which such utility services were supplied or furnished, and such charges shall then be spread upon the City's tax roll and shall be collected in the same manner as the city taxes.
- (d) As further security for the payment of charges for utility services, the Council may require meter deposits of occupants of premises to which such services are supplied.

CLASS ALLEGATIONS

45. 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 who/which have paid the City for

water and sanitary sewer service and/or paid the Stormwater Charges during the relevant class periods.

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

47. 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.

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

49. 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 Rate Overcharges imposed by the City are taxes;
- b. whether the Rate Overcharges violate MCL 141.91;
- c. Whether the Rates are unreasonable because they include the Rate Overcharges and/or the Forestry Charges;
- d. Whether the City has been unjustly enriched by collecting the Rate Overcharges;
- e. Whether the Rate Overcharges violate Section 15.4 of the City's Charter; and
- f. Whether the City should be forced to disgorge the improperly collected Rate Overcharges.

50. 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.

51. 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. At the same time, it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action. Plaintiffs anticipate no difficulty in the management of this action as a class action.

COUNT I

UNJUST ENRICHMENT UNREASONABLE WATER AND SEWER RATES AND CHARGES

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

53. Water and Sewer Rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

54. The City's overall W&S Rates have been, and are, arbitrary, capricious, and unreasonable.

55. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

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

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

COUNT II

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91 WATER AND SEWER RATES AND CHARGES

58. Plaintiffs incorporates each of the preceding allegations as if fully set forth herein.

59. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

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

60. The City has violated MCL 141.91 by imposing and collecting the W&S Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

61. The W&S Rate Overcharges are motivated by a revenue-raising purpose, the W&S Rate Overcharges render the W&S Rates disproportionate to the City's actual costs of providing water and sewer service, and payment of the Rate Overcharges is not voluntary.

62. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

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

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

COUNT III

UNJUST ENRICHMENT – CHARTER VIOLATION WATER AND SEWER RATES AND CHARGES

65. Plaintiffs incorporate each of the preceding allegations as if fully set forth herein.

66. City Charter § 15.4(a), entitled “Rates” provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

67. The City has contravened Charter Section § 15.4(a) by setting and imposing W&S Rates that are not “just and reasonable.”

68. As a direct and proximate result of the City’s improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

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

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

COUNT IV

ASSUMPSIT – MONEY HAD AND RECEIVED UNREASONABLE WATER AND SEWER RATES AND CHARGES

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

72. Water and Sewer Rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

73. The City’s overall Rates have been, and are, arbitrary, capricious, and unreasonable.

74. As a direct and proximate result of the City’s improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

75. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

76. By virtue of the City's inclusion of the W&S Rate Overcharges in the W&S Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiffs are entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT V

ASSUMPSIT – MONEY HAD AND RECEIVED VIOLATION OF MCL 141.91 WATER AND SEWER RATES AND CHARGES

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

78. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

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

79. The City has violated MCL 141.91 by imposing and collecting the W&S Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

80. The Rate Overcharges are motivated by a revenue-raising purpose, the Rate Overcharges render the Rates disproportionate to the City's actual costs of providing water and sewer service, and payment of the W&S Rate Overcharges is not voluntary.

81. As a direct and proximate result of the City's improper conduct, the City has collected tens of millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

82. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

83. By virtue of the City's inclusion of the W&S Rate Overcharges in the Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiffs are entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT VI

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS WATER AND SEWER RATES AND CHARGES

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

85. City Charter § 15.4(a), entitled "Rates" provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

87. The City has contravened Charter Section § 15.4(a) by setting and imposing W&S Rates that are not "just and reasonable."

88. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled. By paying the W&S Rate Overcharges, Plaintiffs and the Class have conferred a benefit upon on the City.

89. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

90. By virtue of the City's inclusion of the W&S Rate Overcharges in the W&S Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiffs are entitled to maintain an equitable action of assumpsit to recover back the amount of the

illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT VII

UNJUST ENRICHMENT UNREASONABLE STORMWATER RATES AND CHARGES

91. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

92. Municipal utility rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

93. The City's overall Stormwater Rates have been, and are, arbitrary, capricious, and unreasonable.

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

95. The City has been unjustly enriched because it received Stormwater Rate Overcharges to which it was not entitled, and it would be unfair for the City to retain the Overcharges under the circumstances.

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

COUNT VIII

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91 STORMWATER RATES AND CHARGES

97. Plaintiffs incorporate each of the preceding allegations as if fully set forth herein.

98. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

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

99. The City has violated MCL 141.91 by imposing and collecting the Stormwater Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

100. The Stormwater Rate Overcharges are motivated by a revenue-raising purpose, the Stormwater Rate Overcharges render the Stormwater Rates disproportionate to the City's actual costs of providing stormwater disposal services, and payment of the Stormwater Rate Overcharges is not voluntary.

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

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

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

COUNT IX

UNJUST ENRICHMENT – CHARTER VIOLATION STORMWATER RATES AND CHARGES

104. Plaintiffs incorporates each of the preceding allegations as if fully set forth herein.

105. City Charter § 15.4(a), entitled "Rates" provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

106. The City has contravened Charter Section § 15.4(a) by setting and imposing Stormwater Rates that are not “just and reasonable.”

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

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

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

COUNT X

ASSUMPSIT – MONEY HAD AND RECEIVED UNREASONABLE STORMWATER RATES AND CHARGES

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

111. Municipal utility rates must be reasonable. *Mapleview Estates v. City of Brown City*, 258 Mich. App. 412 (2003).

112. The City’s overall Stormwater Rates have been, and are, arbitrary, capricious, and unreasonable.

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

114. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

115. By virtue of the City’s inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiffs are entitled to maintain an equitable action of assumpsit to recover

back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT XI

ASSUMPSIT – MONEY HAD AND RECEIVED VIOLATION OF MCL 141.91 STORMWATER RATES AND CHARGES

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

117. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

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

118. The City has violated MCL 141.91 by imposing and collecting the Stormwater Rate Overcharges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

119. The Stormwater Rate Overcharges are motivated by a revenue-raising purpose, the Stormwater Rate Overcharges render the Stormwater Rates disproportionate to the City's actual costs of providing stormwater disposal services, and payment of the Stormwater Rate Overcharges is not voluntary.

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

121. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

122. By virtue of the City's inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiffs are entitled to maintain an equitable action of assumpsit to recover

back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT XII

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS STORMWATER RATES AND CHARGES

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

124. City Charter § 15.4(a), entitled “Rates” provides in pertinent part that:

The Council shall fix just and reasonable rates and such other charges as may be deemed advisable for supplying municipal utility services to the inhabitants of the City and others. ...

125. The City has contravened Charter Section § 15.4(a) by setting and imposing Stormwater Rates that are not “just and reasonable.”

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

127. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

128. By virtue of the City’s inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

COUNT XIII

UNJUST ENRICHMENT – VIOLATION OF MCL 141.91 STORMWATER RATES AND CHARGES

129. Plaintiffs incorporate each of the preceding allegations as if fully set forth herein.

130. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

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

131. The City has violated MCL 141.91 by imposing and collecting the Forestry Charges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

132. The Forestry Charges are motivated by a revenue-raising purpose, the Forestry Charges render the Stormwater Rates disproportionate to the City's actual costs of providing stormwater disposal services, and payment of the Forestry Charges is not voluntary.

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

134. The City has been unjustly enriched because it received Forestry Charges to which it was not entitled, and it would be unfair for the City to retain the Forestry Charges under the circumstances.

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

COUNT XIV

ASSUMPSIT – MONEY HAD AND RECEIVED VIOLATION OF MCL 141.91 STORMWATER RATES AND CHARGES

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

137. The Michigan Prohibited Taxes by Cities and Villages Act, MCL 141.91 provides:

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

138. The City has violated MCL 141.91 by imposing and collecting the Forestry Charges, which are disguised taxes that are not ad valorem property taxes, and were first imposed after January 1, 1964.

139. The Forestry Charges are motivated by a revenue-raising purpose, the Forestry Charges render the Stormwater Rates disproportionate to the City's actual costs of providing stormwater disposal services, and payment of the Forestry Charges is not voluntary.

140. As a direct and proximate result of the City's improper conduct, the City has collected tens of millions of dollars to which it is not entitled. By paying the Forestry Charges, Plaintiffs and the Class have conferred a benefit upon on the City.

141. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received.

142. By virtue of the City's inclusion of the Stormwater Rate Overcharges in the Stormwater Rates, the City has collected amounts in excess of the amounts it was legally entitled to collect. Therefore, Plaintiffs are entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

PRAYER FOR RELIEF

Plaintiffs request that the Court grant the following relief:

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

B. Define the Class to include all persons or entities who/which have paid the City or incurred charges for Water Service or Sewer Service and/or have paid or incurred Stormwater Charges to the City at any time in the six years preceding the filing of this lawsuit and/or who/which pay the City or incur charges for Water Service or Sewer Service and/or pay or incur Stormwater Charges during the pendency of this action (the “Class Period”);

C. With regard to Counts I through XIV, enter judgment in favor of Plaintiff and the Class and against the City;

D. Order and direct the City to disgorge and refund all Rate Overcharges and Forestry Charges collected during the Class Period and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Rate Overcharges and Forestry Charges to which Plaintiff and the Class are entitled;

E. Find and declare that the Rate Overcharges and Forestry Charges violate MCL 141.91, the City’s Charter, as well as find that the Rate Overcharges and Forestry Charges are arbitrary, capricious, and unreasonable under common law principles;

F. Permanently enjoin the City from imposing or collecting Rates which exceed the City’s actual costs of providing water and sewer service or storm sewer service;

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

H. Grant any other appropriate relief.

JURY DEMAND

As prayed in the original Complaint, Plaintiffs, individually and on behalf of the Class, demand a trial by jury on all issues so triable.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

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

Date: October 29, 2020

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2020, I served the foregoing document on all counsel of record using the Court's electronic filing system.

/s/ Kim Plets

Kim Plets

EXHIBIT A

CITY OF ANN ARBOR, MICHIGAN

Statement of Net Position

Proprietary Funds

June 30, 2014

	Business-type Activities - Enterprise Funds				
	Water Supply System	Sewage Disposal System	Parking System	Market	Airport
Assets					
Current assets:					
Cash	\$ 4,104,338	\$ 5,905,098	\$ -	\$ -	\$ 30
Equity in pooled cash and investments	23,704,697	28,228,365	1,837,725	-	631,917
Investments	-	-	-	-	-
Receivables:					
Accounts, net	4,180,150	4,107,200	-	-	90,081
Special assessments	1,676	29,525	-	-	-
Improvement charges	12,094	29,629	-	-	-
Taxes receivable	38,311	1,256	-	-	-
Due from other governments	3,747,513	6,507,022	-	-	-
Prepaid items	-	3,008,429	-	-	-
Inventories, at cost	780,891	99,839	-	-	-
Total current assets	36,569,670	47,916,363	1,837,725	-	722,028
Noncurrent assets:					
Receivables:					
Special assessments	86,732	123,897	-	-	-
Improvement charges	109,292	179,941	-	-	-
Capital assets not depreciated	16,683,458	112,116,756	3,934,897	84,120	708,927
Capital assets being depreciated, net	85,374,250	53,828,963	36,057,737	135,705	1,267,340
Total noncurrent assets	102,253,732	166,249,557	39,992,634	219,825	1,976,267
Total assets	138,823,402	214,165,920	41,830,359	219,825	2,698,295
Deferred outflows of resources					
Deferred charge on refunding	-	315,291	558,241	-	-
Liabilities					
Current liabilities:					
Accounts payable	3,288,901	10,441,315	-	-	35,553
Accrued liabilities	217,824	206,930	-	-	6,993
Accrued interest payable	531,154	994,864	201,223	-	2,749
Advance from other funds	-	-	-	-	71,057
Deposits	147,250	-	-	-	-
Estimated claims payable, current	-	-	-	-	-
Bonds payable, current	3,133,947	2,649,116	2,240,000	-	-
Compensated absences, current	367,472	314,174	-	3,455	9,112
Capital lease payable, current	-	-	-	-	-
Total current liabilities	7,686,548	14,606,399	2,441,223	3,455	125,464
Noncurrent liabilities:					
Advance from other funds	-	-	-	-	735,629
Bonds payable, net	42,967,063	80,471,286	12,817,173	-	-
Estimated claims payable, net	-	-	-	-	-
Compensated absences, net	613,794	501,036	-	-	5,147
Capital lease payable	-	-	-	-	-
Total noncurrent liabilities	43,580,857	80,972,322	12,817,173	-	740,776
Total liabilities	51,267,405	95,578,721	15,258,396	3,455	866,240
Net position					
Net investment in capital assets	55,956,698	83,140,608	25,493,702	219,825	1,976,267
Restricted for debt service	3,954,857	7,647,150	-	-	-
Restricted for equipment replacement	10,364,766	7,934,083	-	-	-
Restricted for landfill	-	-	-	-	-
Unrestricted (deficit)	17,279,676	20,180,649	1,636,502	(3,455)	(144,212)
Total net position	\$ 87,555,997	\$ 118,902,490	\$ 27,130,204	\$ 216,370	\$ 1,832,055

continued...

EXHIBIT B

City of Ann Arbor
Proprietary Funds
Statement of Net Position
June 30, 2019

	Enterprise Funds							Internal Service Funds
	Water Supply System	Sewage Disposal System	Parking System	Airport	Stormwater Sewer System	Solid Waste	Total	
Assets								
Current assets								
Cash and cash equivalents	\$ 450	\$ -	\$ -	\$ 30	\$ -	\$ 185,818	\$ 186,298	\$ 26,126
Equity in pooled cash and investments	35,758,942	42,139,190	1,908,414	1,639,513	15,089,966	23,328,161	119,864,186	34,637,839
Investments	2,986,792	10,557,770	-	-	-	-	13,544,562	-
Receivables								
Taxes, net	16,418	-	-	-	-	5,579	21,997	-
Accounts, net	4,865,827	6,028,133	3,600	67,238	2,465,581	841,374	14,271,753	151,038
Special assessments, current	2,270	11,744	-	-	4,685	-	18,699	-
Improvement charges	14,948	22,124	-	-	1,977	-	39,049	-
Due from other units of government	488,308	-	-	-	-	-	488,308	-
Inventories	431,808	54,854	-	-	-	-	486,662	1,032,296
Prepaid items	-	3,373,616	-	-	308,278	-	3,681,894	3,145,896
Total current assets	44,565,763	62,187,431	1,912,014	1,706,781	17,870,487	24,360,932	152,603,408	38,993,195
Noncurrent assets								
Special assessments receivable	7,275	683	-	-	-	-	7,958	-
Improvement charges	45,289	193,980	-	-	59,545	-	298,814	-
Due from other units of government	3,652,100	-	-	-	-	-	3,652,100	-
Capital assets not being depreciated	17,229,183	3,484,299	3,934,897	708,927	1,558,501	1,927,071	28,842,878	90,005
Capital assets, net of accumulated depreciation	102,537,827	230,693,571	27,590,896	1,234,668	18,888,683	9,913,065	390,858,710	10,376,372
Total noncurrent assets	123,471,674	234,372,533	31,525,793	1,943,595	20,506,729	11,840,136	423,660,460	10,466,377
Total assets	168,037,437	296,559,964	33,437,807	3,650,376	38,377,216	36,201,068	576,263,868	49,459,572
Deferred Outflows of Resources								
Deferred amount on refunding	881,995	1,653,380	128,170	-	-	-	2,663,545	-
Deferred amount relating to net pension liability	766,533	618,378	-	-	347,837	334,954	2,067,702	-
Deferred amount relating to net OPEB liability	1,266,723	1,189,943	-	-	240,964	595,237	3,292,867	-
Total deferred outflows of resources	2,915,251	3,461,701	128,170	-	588,801	930,191	8,024,114	-

See Accompanying Notes to the Financial Statements

EXHIBIT C

CITY OF ANN ARBOR, MICHIGAN

Statement of Net Position
Proprietary Funds
June 30, 2014

	Business-type Activities - Enterprise Funds			Governmental Activities
	Stormwater Sewer System	Solid Waste	Total	Internal Service Funds
Assets				
Current assets:				
Cash	\$ -	\$ -	\$ 10,009,466	\$ 350
Equity in pooled cash and investments	7,295,944	17,189,519	78,888,167	34,960,331
Investments	-	180,985	180,985	-
Receivables:				
Accounts, net	1,311,033	743,646	10,432,110	50,195
Special assessments	640	-	31,841	-
Improvement charges	3,449	-	45,172	-
Taxes receivable	924	-	40,491	-
Due from other governments	717,451	-	10,971,986	-
Prepaid items	-	-	3,008,429	1,873,228
Inventories, at cost	-	-	880,730	925,490
Total current assets	9,329,441	18,114,150	114,489,377	37,809,594
Noncurrent assets:				
Receivables:				
Special assessments	-	-	210,629	-
Improvement charges	-	-	289,233	-
Capital assets not depreciated	5,402,066	1,802,248	140,732,472	90,005
Capital assets being depreciated, net	13,223,162	13,150,977	203,038,134	9,396,528
Total noncurrent assets	18,625,228	14,953,225	344,270,468	9,486,533
Total assets	27,954,669	33,067,375	458,759,845	47,296,127
Deferred outflows of resources				
Deferred charge on refunding	-	-	873,532	-
Liabilities				
Current liabilities:				
Accounts payable	304,525	920,511	14,990,805	1,351,663
Accrued liabilities	70,200	84,992	586,939	200,398
Accrued interest payable	55,691	-	1,785,681	-
Advance from other funds	-	-	71,057	-
Deposits	-	-	147,250	-
Estimated claims payable, current	-	62,566	62,566	2,532,029
Bonds payable, current	509,926	-	8,532,989	-
Compensated absences, current	104,943	144,538	943,694	473,329
Capital lease payable, current	-	86,084	86,084	-
Total current liabilities	1,045,285	1,298,691	27,207,065	4,557,419
Noncurrent liabilities:				
Advance from other funds	-	-	735,629	-
Bonds payable, net	9,422,364	-	145,677,886	-
Estimated claims payable, net	-	2,118,385	2,118,385	1,986,678
Compensated absences, net	108,034	183,118	1,411,129	609,201
Capital lease payable	-	105,765	105,765	-
Total noncurrent liabilities	9,530,398	2,407,268	150,048,794	2,595,879
Total liabilities	10,575,683	3,705,959	177,255,859	7,153,298
Net position				
Net investment in capital assets	8,692,937	14,761,376	190,241,413	9,486,533
Restricted for debt service	-	-	11,602,007	-
Restricted for equipment replacement	-	251,628	18,550,477	-
Restricted for landfill	-	180,220	180,220	-
Unrestricted (deficit)	8,686,049	14,168,192	61,803,401	30,656,296
Total net position	\$ 17,378,986	\$ 29,361,416	\$ 282,377,518	\$ 40,142,829

concluded.

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

EXHIBIT D

City of Ann Arbor
Proprietary Funds
Statement of Net Position
June 30, 2019

	Enterprise Funds							Internal Service Funds
	Water Supply System	Sewage Disposal System	Parking System	Airport	Stormwater Sewer System	Solid Waste	Total	
Assets								
Current assets								
Cash and cash equivalents	\$ 450	\$ -	\$ -	\$ 30	\$ -	\$ 185,818	\$ 186,298	\$ 26,126
Equity in pooled cash and investments	35,758,942	42,139,190	1,908,414	1,639,513	15,089,966	23,328,161	119,864,186	34,637,839
Investments	2,986,792	10,557,770	-	-	-	-	13,544,562	-
Receivables								
Taxes, net	16,418	-	-	-	-	5,579	21,997	-
Accounts, net	4,865,827	6,028,133	3,600	67,238	2,465,581	841,374	14,271,753	151,038
Special assessments, current	2,270	11,744	-	-	4,685	-	18,699	-
Improvement charges	14,948	22,124	-	-	1,977	-	39,049	-
Due from other units of government	488,308	-	-	-	-	-	488,308	-
Inventories	431,808	54,854	-	-	-	-	486,662	1,032,296
Prepaid items	-	3,373,616	-	-	308,278	-	3,681,894	3,145,896
Total current assets	44,565,763	62,187,431	1,912,014	1,706,781	17,870,487	24,360,932	152,603,408	38,993,195
Noncurrent assets								
Special assessments receivable	7,275	683	-	-	-	-	7,958	-
Improvement charges	45,289	193,980	-	-	59,545	-	298,814	-
Due from other units of government	3,652,100	-	-	-	-	-	3,652,100	-
Capital assets not being depreciated	17,229,183	3,484,299	3,934,897	708,927	1,558,501	1,927,071	28,842,878	90,005
Capital assets, net of accumulated depreciation	102,537,827	230,693,571	27,590,896	1,234,668	18,888,683	9,913,065	390,858,710	10,376,372
Total noncurrent assets	123,471,674	234,372,533	31,525,793	1,943,595	20,506,729	11,840,136	423,660,460	10,466,377
Total assets	168,037,437	296,559,964	33,437,807	3,650,376	38,377,216	36,201,068	576,263,868	49,459,572
Deferred Outflows of Resources								
Deferred amount on refunding	881,995	1,653,380	128,170	-	-	-	2,663,545	-
Deferred amount relating to net pension liability	766,533	618,378	-	-	347,837	334,954	2,067,702	-
Deferred amount relating to net OPEB liability	1,266,723	1,189,943	-	-	240,964	595,237	3,292,867	-
Total deferred outflows of resources	2,915,251	3,461,701	128,170	-	588,801	930,191	8,024,114	-

EXHIBIT E

The Urban Forest

The urban and community forest is a defining and valued characteristic of the city of Ann Arbor, which residents affectionately call "Tree Town," helping make it a desirable place to live, work and play. It is made up of the trees, shrubs and woody vegetation growing along city streets; in public parks; and on institutional and private property.

The urban and community forest provides many environmental, economic and social benefits to the community, including reducing stormwater runoff, improving water and air quality, moderating summer temperatures, lowering utility costs, improving quality of life and beautifying the city. It is estimated that Ann Arbor's city-managed urban and community forest, which includes trees growing along streets and in mowed areas of parks, provides nearly \$4.6 million in benefits each year.



Learn more in the [Urban and Community Forest Management plan](#) (/departments/forestry/Documents/UCFMP_FINAL_022515.pdf) (PDF).

Tree inventory

Ann Arbor takes advantage of an [online mapping tool](#) ([AnnArborTrees](#)) that allows staff and residents alike to see the location and species of each city maintained tree within the City of Ann Arbor. Users can see this map on any computer or mobile device with internet access.

Cool calculator

Estimate the benefits of trees around your home using the [National Tree Benefit Calculator](#) (<http://www.treebenefits.com/calculator/>) -- type in your zip code, tree species and tree diameter.

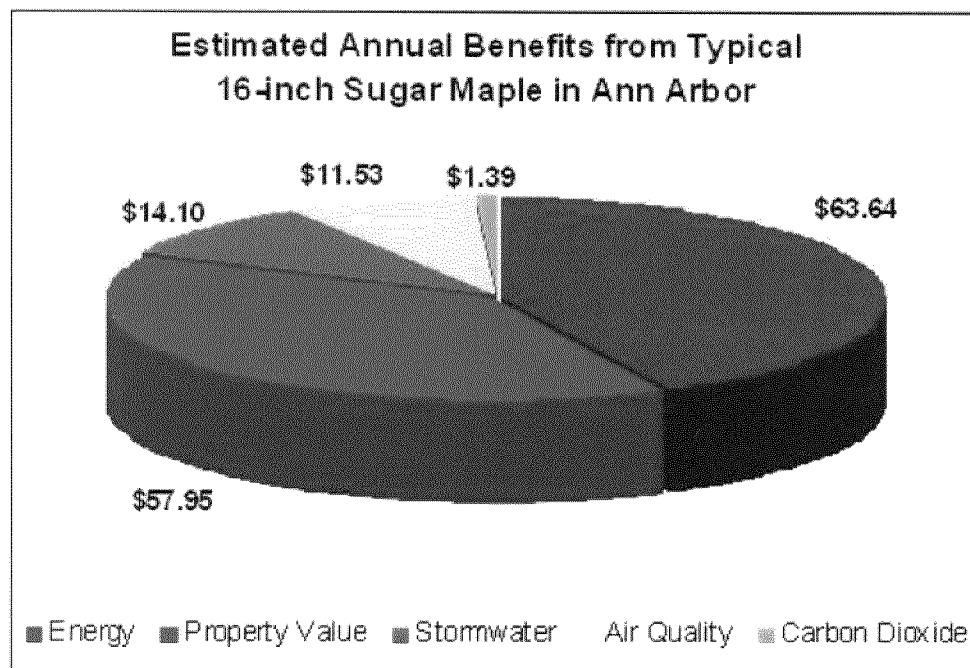
iTree Eco analysis

In 2012, the city partnered with Davey Resource Group and the Michigan Department of Natural Resources with funding from the USDA Forest Service Urban and Community Forestry program to conduct an i-Tree Eco Analysis in Ann Arbor. The [iTree Eco Analysis](#) (/departments/forestry/Documents/AnnArbor_iTreeEcoReport.pdf) (1.45MB PDF) calculated the benefits that Ann Arbor's urban forest, both public and private trees, provides to the City. The analysis estimates that Ann Arbor has over 1.45 million trees; these trees remove 405/tons of pollution per year which is equivalent to the pollution produced by 358,000 automobiles annually.

How much does the community benefit from one tree?

EXHIBIT F

To demonstrate the value trees provide to our community, consider the benefits generated by a typical tree in Ann Arbor. A 16-inch diameter sugar maple planted on a single family residential lot provides \$149 in benefits every year ([National Tree Benefit Calculator \(http://www.treebenefits.com/calculator/\)](http://www.treebenefits.com/calculator/)).



Lower energy costs

Value of one tree: \$63.64

Value of all Ann Arbor Public Trees: \$2,252,055

An individual sugar maple tree conserves 98 kilowatt-hours of electricity for cooling and reduces consumption of natural gas by 35 therms. Trees modify and conserve building energy use in three principle ways:

- Shading reduces the amount of heat absorbed and stored by buildings.
- Evapotranspiration converts liquid water to water vapor and cools the air by using solar energy that would otherwise result in heating of the air.
- Tree canopies slow down winds thereby reducing the amount of heat lost from a home, especially where conductivity is high (e.g., glass windows).

Strategically placed trees can increase home energy efficiency. In summer, trees shading east and west walls keep buildings cooler. In winter, allowing the sun to strike the southern side of a building can warm interior spaces. If southern walls are shaded by dense evergreen trees there may be a resultant increase in winter heating costs.

Higher property values

Value of one tree: \$57.95

Value of all Ann Arbor Public Trees: \$1,368,302

Research shows homebuyers will pay more for a property with mature trees than for a property with few or no trees. This analysis is based on the tree's leaf surface area, and the property value benefit will increase as the tree grows.

Cleaner water

Value of one tree: \$14.10

Value of all Ann Arbor Public Trees: \$519,895

Stormwater run-off is the most prevalent water quality problem in the nation. One sugar maple tree can intercept 1763 gallons of stormwater run-off each year. Together, Ann Arbor's public trees intercept 65 million gallons of stormwater. Trees in the urban environment decrease the quantity of stormwater run-off and improve the quality of run-off that eventually reaches local lakes, streams, and reservoirs.

- The urban forest canopy, along with tree branches, bark, and mosses, captures and stores precipitation, delaying the onset of peak flows and reducing the total amount of run-off that reaches urban waterways via the storm drain system.
- Trees slow down stormwater run-off and promote groundwater infiltration.
- Trees take up water through their root systems and release it to the atmosphere through evapotranspiration, facilitating greater water storage potential in soils and increasing the amount of time before rainfall becomes run-off.
- Tree roots take up nutrients and potentially harmful chemicals from stormwater run-off. Pollutants are filtered out as water moves through the ground.

Healthier air

Value of one tree: \$11.53

Value of all Ann Arbor Public Trees: \$477,402

Air pollution is a serious health threat that causes asthma, coughing, headaches, respiratory and heart disease, and cancer. The urban forest mitigates the health effects of pollution by:

- Absorbing pollutants like ozone, nitrogen dioxide and sulfur dioxide through leaves
- Intercepting particulate matter like dust, ash and smoke
- Releasing oxygen through photosynthesis
- Lowering air temperatures, reducing the production of ozone
- Reducing energy use and subsequent pollutant emissions from power plants

Reduced carbon dioxide levels

Value of one tree: \$1.39

Value of all Ann Arbor Public Trees: \$52,450

One sugar maple reduces atmospheric carbon dioxide (CO₂) levels by 502 pounds per year. Collectively, Ann Arbor's public tree resource reduces CO₂ by 7,851 tones per year.

- Trees sequester, or lock up, carbon in roots, trunks, branches, and leaves while growing, and in wood products after harvest.
- Trees near buildings can reduce heating and air conditioning demands, thereby reducing emissions associated with power production.

Forestry Public Works

Wheeler Service Center

4251 Stone School Road

734.794.6320

customerservice@a2gov.org (<mailto:customerservice@a2gov.org>)

EXHIBIT G

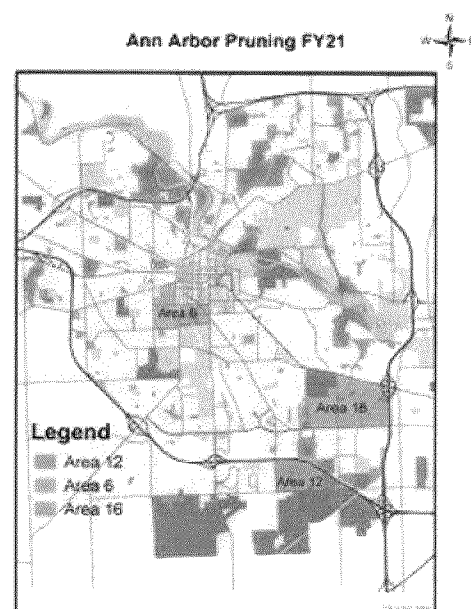
Routine Street Tree Pruning

The fourth year of the city's routine street tree pruning program will begin in late summer/early fall 2020 and will be completed by the end of June 2021. This program is funded through the stormwater utility.

The map to the right shows the areas that will be part of the pruning ([/departments/forestry/Documents/FY21%20Pruning%20Map%20\(Year%204\).pdf](https://departments/forestry/Documents/FY21%20Pruning%20Map%20(Year%204).pdf)) program. Please note these areas are subject to change. Based on current resources, it will take approximately 10 years to prune all city street trees.

Pruning will be done by professionals, in accordance with city specifications. Most street trees have not been pruned in over 15 years; and some may require extensive pruning to ensure safety and to improve the health of the tree.

City staff and the city's tree care contractor will make every effort to keep driveways clear and roads accessible during work. Streets will be posted "No Parking", when necessary.



What are the benefits of a routine street tree pruning?

Trees pruned on a routine basis develop proper form and structure leading to a variety of benefits, including:

- Lower cost per tree trimmed compared to reactive pruning done in response to storm damage, sight clearance or immediate hazards
- Healthier tree canopy as a result of removing dead, dying or diseased limbs, earlier identification and correction of insect/disease problems
- Reduction in storm related tree damage
- Better clearance and less obstructions in the public right-of-way as well as better sight lines for signs, signals and intersections
- Lower future maintenance costs
- Improvement of tree's structure to better withstand stresses from wind, ice and rain.

Reminders

- At this time, we are unable to provide a schedule of when a street will be pruned.
- No requests will be accepted to exempt a street tree from the program.
- Some tree species require pruning during the dormant season to prevent the spread of diseases. These tree species will be pruned first. Pruning crews will return to prune the remaining trees at a later date.
- Debris created during the pruning program will be removed.

EXHIBIT H

In The Matter Of:
Ann Arbor City Council Meeting

Hearing
October 19, 2020



Original File CCHEARING201019.txt
Min-U-Script® with Word Index

<p style="text-align: right;">Page 1</p> <p>1 MAYOR TAYLOR: CA-1 resolution to award a 2 contract to Davey Tree Expert Company for routine 3 street pruning in the amount of \$674,020 moved by 4 council member Eaton, seconded by council member 5 Ramlawi. Discussion please on CA-1, council member 6 Eaton.</p> <p>7 COUNCILMAN EATON: Thank you. In light of 8 the Hahn versus Ann Arbor litigation that's pending 9 right now, I can't support spending stormwater funds 10 in this quantity for a purpose not directly related to 11 stormwater services. I realize there's this 12 extenuated relationship between trees and stormwater, 13 but I don't feel that it falls within the Bolt v. 14 Lansing definition of a fee, and so I won't be 15 supporting this. I think this is a lot of money to be 16 pulling out of a stormwater fund for a matter that 17 just kind of relates to the subject matter.</p> <p>18 This amount of money is actually even more 19 than the repeated amendments that we've funded our 20 outside council with water supply funds with. That's 21 only accumulated to about \$475,000. This is 674,000. 22 This is an incredible amount of money all at once. 23 And so I will be opposing this resolution. Thank you.</p> <p>24 MAYOR TAYLOR: Counsel member Ackerman. 25 COUNCILMAN ACKERMAN: Mr. Mayor, I will be</p>	<p style="text-align: right;">Page 3</p> <p>1 but I appreciate you pulling it off. I understand, I 2 obviously looked through the EPA manual on the tree 3 trees, the paper. I get where it's coming from, but 4 at the same time, we have the situation here in the 5 city where we also, for other reasons that aren't 6 completely clear, we really look down on folks who do 7 large gardening near the stormwaters and the sidewalks 8 and the easements, and over the years I've had to 9 dramatically reduce the amount of plantings on my 10 easement, even after my street tree was gone, or 11 especially after, I should say, because as soon as 12 that street tree was gone, everything got like eight 13 feet tall out there and now it's exposed to the sun 14 again.</p> <p>15 And so every spring I go out there and I 16 remove -- and I finally got rid of most of them last 17 year -- I took almost 900 pounds of materials out of 18 there last year and that was just that sprouted, and I 19 tell you what, if you want to talk about holding water 20 back, take a look at -- pull out some, dig out some 21 day lilies, or native grasses or things like that, and 22 the roots on those things and tubers and so one, it's 23 incredible how much water plants retain, and so I have 24 no doubt that street trees do the same thing. But I 25 do have doubts about paying for it from the</p>
<p style="text-align: right;">Page 2</p> <p>1 glad to support this. Our street trees, while they 2 beautify our neighborhoods and are a defining 3 characteristic in our community, they're also our 4 first line of defense against flooded basements in 5 increased rainfall as our climate changes. If 6 (inaudible) are uncertain and unclear about the 7 connection between street trees and the impact on 8 keeping our homes safe, I'll refer them to the EPA's 9 manual and guide on stormwater to street trees. It's 10 a really useful 31-page document that directly draws 11 the link from experts in a number of fields between 12 exactly how this infrastructure keeps us safe and uses 13 these dollars to their truest and fullest extent.</p> <p>14 MAYOR TAYLOR: Council member Griswold. 15 COUNCILWOMAN GRISWOLD: I agree with 16 counsel member Ackerman. I fully support maintenance 17 of our street trees, and they were not maintained as 18 they should have been for many years. However, I 19 think that it is taking the conservative route to fund 20 that activity from the general fund until such time as 21 this lawsuit is decided. Thank you.</p> <p>22 MAYOR TAYLOR: Further discussion. I've 23 got counsel member Hayner. 24 COUNCILMAN HAYNER: Thanks, Mr. Mayor. 25 This rarely comes up, an opportunity to discuss this,</p>	<p style="text-align: right;">Page 4</p> <p>1 stormwater. And so I certainly understand where 2 council member Eaton is coming from, and I'm going to 3 go along with him in this case and suggest that maybe 4 this come back and be paid for from another place 5 until we sort all this out. Thank you.</p> <p>6 MAYOR TAYLOR: Council member Ramlawi. 7 COUNCILMAN RAMLAWI: Thank you. Hopefully 8 my audio is working today. I appreciate the 9 acknowledgment on that. I appreciated council member 10 Eaton pulling this up for discussion and the concern 11 he has about the litigation that will be coming forth 12 with the stormwater and sewer water and water rates. 13 But I think it's premature to start pulling the plug 14 on programs and funding sources in light of that. I 15 don't believe, for me, at least, that the concern of 16 that being challenged when it comes to stormwater and 17 its connection to controlling rain events and using 18 our stormwater monies to protect the infrastructure 19 and the environment in the way we have. We are behind 20 schedule with our maintenance, which will lead to 21 bigger problems if we don't do the preventative 22 maintenance that's already behind schedule. I'll just 23 say that I appreciate the concern but it hasn't risen 24 to the level where I would decide to pull the plug on 25 this program or shift the funding sources. In fact, I</p>

<p style="text-align: right;">Page 5</p> <p>1 applaud the progressive thought of using the 2 stormwater money on programs like this rather than 3 general fund dollars, because we are challenged with a 4 lot of priorities and not enough resources. So I 5 think it's, in fact, a good way to redirect the 6 resources that we have to prescribe programs as such. 7 MAYOR TAYLOR: Council member Ackerman. 8 COUNCILMAN ACKERMAN: Thanks, Mr. Mayor. 9 Exactly what counsel member Ramlawi said. I will just 10 add that at any given time, we're defending dozens of 11 different lawsuits, and if we stopped doing public 12 service in response to every single one of those and 13 started questioning our experts and our attorneys 14 about the right and fair way to do that, we would shut 15 down as a city hall. We wouldn't have a fire 16 department, we wouldn't issue liquor licenses, we 17 wouldn't balance our budget. The city would come to a 18 screeching halt. And so we should let the lawsuit run 19 its course in the judicial system, in the court 20 system, and we should carry on with the advice of our 21 professionals and our attorneys. 22 MAYOR TAYLOR: Counsel member Grand. 23 COUNCILWOMAN GRAND: Thank you. Much of 24 what I wanted to say has just been said by the prior 25 couple of speakers. I would also like to point out</p>	<p style="text-align: right;">Page 7</p> <p>1 not looked at that. 2 MAYOR TAYLOR: Council member Ramlawi. 3 COUNCILMAN RAMLAWI: Thank you for the 4 opportunity a second time. I would just say as we go 5 further along and kind of enhance our community and 6 the services that we provide, this is an ongoing 7 program, we are just in year five of a ten year cycle, 8 I'm sure we're going to have to repeat this cycle 9 every ten years. And I would just try to advocate for 10 bringing this back inhouse so we're not constantly 11 outsourcing this. This adds up, and I think when we 12 start talking about democratic values of good working, 13 good paying jobs, people living in the city, working 14 in the city, I think this is a job that should be 15 honestly inhouse. It's ongoing, it's not a one off, 16 it's not seasonal, it's not like peaking like it does 17 in the construction department, permitting kind of 18 thing when I speak of seasonal. I feel like this is 19 something, if we have a dedicated source of funding, a 20 reliable source of funding as we identified here with 21 the stormwater, that we should really be looking at 22 having this kind of activity done with city employees 23 on an ongoing basis. I just find it hard to think 24 that a for-profit company would be able to provide a 25 better service for a better price than if we did it</p>
<p style="text-align: right;">Page 6</p> <p>1 that I don't know where we're going to find \$674,000 2 in our general fund and what would you not pay for 3 instead, if you're going to pay for this with \$674,000 4 in our general fund. So I don't see the trade-off 5 (inaudible), and I won't comment on the lawsuit, but 6 we definitely shouldn't be changing policy as a result 7 of it. Thanks. 8 MAYOR TAYLOR: Council member Bannister. 9 COUNCILWOMAN BANNISTER: Thank you. I see 10 that Molly has joined us here at the meeting tonight, 11 and I was wondering if she had any thoughts about 12 this, particularly I'm wondering is there any way to 13 minimize the 674,000, and are there any other sources 14 of funds besides this stormwater fund that is 15 currently being subject of the lawsuit. 16 MS. MACIEJEWSKI: I would say the only way 17 that we could minimize or bring down the cost would be 18 to do less pruning, and the city's goal is to prune 10 19 percent of the trees each year. This is consistent 20 with industry standards and what we would want to see 21 to keep our healthy urban forest. So if we do that, 22 we are not going to be maintaining our trees as we 23 should and as council member Griswold had talked about 24 that we have been trying so hard to get back on track 25 with. As far as alternate funding sources, we have</p>	<p style="text-align: right;">Page 8</p> <p>1 ourselves. 2 MAYOR TAYLOR: Counsel member Lumm. 3 COUNCILWOMAN LUMM: I will follow counsel 4 member Eaton. You called on us in the right order. I 5 just want to defer to him first. 6 MAYOR TAYLOR: Counsel member Eaton. 7 COUNCILMAN EATON: Thank you. I want to 8 remind council that this is an essential service, but 9 its relationship to the stormwater fee is marginal at 10 best. In the Bolt v Lansing case, the City of Lansing 11 tried to use its stormwater fees to finance the 12 separation of its sewer system, stormwater and 13 wastewater systems that had been mandated by a 14 regulatory agency. So it was required to do that, and 15 nonetheless, because the benefit being conferred was a 16 benefit that was generalized throughout the community 17 and wasn't particularized to the fee payer based on 18 the amount they were paying, it was considered to be 19 more appropriate for a tax than for a fee. Similarly, 20 with this, if a tree is planted in my front yard, it 21 doesn't benefit somebody in the second ward and 22 there's nobody that person in the second ward can do 23 to minimize their cost for tree planting elsewhere in 24 the city. It's so general that it should be funded by 25 a tax, not by a user fee. The user fee should be for</p>

Page 9

1 the cost of providing the actual service.
 2 Another factor in this kind of case is when
 3 the service was previously funded from the general
 4 fund and then it shifted into this kind of fund.
 5 Historically, our forestry department was funded from
 6 the general fund, and it was just a number of years
 7 ago that it was shifted into our stormwater funding.
 8 And that is not going to help us in this litigation, I
 9 believe. So I understand that the next council might
 10 want to take this risk, I'm just not willing to impose
 11 this risk on them on my way out the door. So if you
 12 want to vote in favor of this, I understand, this is
 13 an essential service, it's just not appropriately
 14 funded with this fee. So I will be voting against it.
 15 If the plaintiff in the Hahn case prevails, we'll have
 16 to come up with the \$674,000 somewhere anyways to
 17 repay it. So I just think you need to be more
 18 cautious with how you use fee revenue in this kind of
 19 general operational sense.

20 MAYOR TAYLOR: Thank you. Counsel member
 21 Lumm.

22 COUNCILWOMAN LUMM: Thank you. I'm glad
 23 you spoke councilman Eaton. Thank you for that value
 24 add. I think that's critical information for us to
 25 consider. One of my questions is going to be, how do

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1 other communities fund this type of tree pruning, tree
 2 maintenance, three programs, and I do not question at
 3 all that this is important work or that Molly -- Miss
 4 Maciejewski's department needs this money. It is a
 5 lot of money, but again -- we just have not kept up
 6 with the work out there that needs to be done. And so
 7 my only concern here is the funding source, and I hope
 8 that going forward, if this doesn't past -- I just
 9 think it's prudent to identify another funding source
 10 to do this work. I know that's a challenge
 11 (inaudible) but I think it's in the city's best
 12 interest to do that. Thank you.

13 MAYOR TAYLOR: Further discussion? For my
 14 part, I will just state that I unequivocally reject
 15 the suggestion that our practice is without basis in
 16 law. I think it is consistent with, certainly with
 17 the legal advice we've received but also consistent
 18 with Michigan law. The connection between street
 19 trees and stormwater is undeniable. The street
 20 tree -- our street trees are a critical component of
 21 our stormwater system and they have played in obvious
 22 other benefits -- other benefits as well. But that is
 23 ancillary, ancillary to their demonstrated and
 24 scientifically proven stormwater benefit. Further
 25 discussion? Roll call vote please.

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1 CLERK BEAUDRY: Council member Nelson.
 2 COUNCILWOMAN NELSON: Yes.
 3 CLERK BEAUDRY: Council member Smith.
 4 COUNCILMAN SMITH: Yes.
 5 CLERK BEAUDRY: Council member Ramlawi.
 6 COUNCILMAN RAMLAWI: Yes.
 7 CLERK BEAUDRY: Council member Hayner.
 8 COUNCILMAN HAYNER: No.
 9 CLERK BEAUDRY: Counsel member Bannister.
 10 COUNCILWOMAN BANNISTER: No.
 11 CLERK BEAUDRY: Counsel member Griswold.
 12 COUNCILWOMAN GRISWOLD: No.
 13 CLERK BEAUDRY: Counsel member Lumm.
 14 COUNCILWOMAN LUMM: No.
 15 CLERK BEAUDRY: Counsel member Grand.
 16 COUNCILWOMAN GRAND: Yes.
 17 CLERK BEAUDRY: Counsel member Ackerman.
 18 COUNCILMAN ACKERMAN: Yes.
 19 CLERK BEAUDRY: Mayor Taylor.
 20 MAYOR TAYLOR: Yes.
 21 CLERK BEAUDRY: Counsel member Eaton.
 22 COUNCILMAN EATON: No.
 23 CLERK BEAUDRY: Motion carries.
 24
 25

EXHIBIT I



FY 2020
Adopted Budget

Christopher Taylor
Mayor

Council Members

Zachary Ackerman
Jack Eaton
Kathy Griswold
Jane Lumm
Ali Ramlawi

Anne Bannister
Julie Grand
Jeff Hayner
Elizabeth Nelson
Chip Smith

Howard Lazarus
City Administrator

Information Pages: Debt Policy

8.2.d A project may be financed when the analysis shows the impact to the organization is in the best interest of the City for the long-term.

9. Revenue Bonded Debt

- 9.1 It will be a long-term goal that each utility or enterprise will ensure future capital financing needs are met by using a combination of current operating revenues and revenue bond financing. Therefore a goal is established that 15% of total project costs should come from operating funds of the utility or enterprise.
- 9.2 It is City policy that each utility or enterprise should provide adequate debt service coverage. A specific factor is established by City Council that projected operating revenues in excess of operating expenses less capital expenditures, depreciation and amortization in the operating fund should be at least 1.25 times the annual debt service costs. An example of the debt coverage calculation is below.

Debt Coverage Example:

Operating Revenues	\$19,897,796
Operating Investment Income	<u>488,768</u>
Total Operating Revenue	\$20,386,564
Operating Expenses	\$15,043,747
Less: Depreciation and Amortization	<u>2,602,875</u>
Net Expenses	\$12,440,872
Net Revenue Available for Debt Service	\$ 7,945,692 (1*)
Principal	\$ 3,850,000
Interest	<u>1,890,994</u>
Total Debt Service	\$ 5,740,994 (2*)
Debt Coverage Ratio (1* divided by 2*)	1.38

10. Short Term Financing/Capital Lease Debt

- 10.1 Short-term financing or capital lease debt will be considered to finance certain equipment and rolling stock purchases when the aggregate cost of equipment to be purchased exceeds \$25,000. Adequate funds for the repayment of principal and interest must be included in the requesting service area's approved budget.
- 10.2 The term of short-term financing will be limited to the usual useful life period of the vehicle or equipment, but in no case will exceed fifteen years.
- 10.3 Service areas requesting capital financing must have an approved budget appropriation. Service areas shall submit documentation for approved purchases to the Financial Services area each year within 60 days after the annual budget is adopted. The Financial Services area will consolidate all requests and may

EXHIBIT J



City of Ann Arbor, MI

Water and Sewer Cost of Service Study Final Report

June 27, 2018



Forecast of Net Revenues and Debt Service Coverage

Schedule 7

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
1	Rate Revenue Subject to Growth & Rate Adjustments										
2	Volume Rate Revenue	\$ 20,786,605	20,786,605	21,177,479	22,217,557	23,311,635	24,462,570	25,673,374	26,947,219	28,287,445	29,697,572
3	Additional Rate Revenue From Growth	-	(91,981)	(91,000)	(92,700)	(94,653)	(96,207)	(98,017)	(99,866)	(101,754)	(103,682)
4	Proposed Water Rate Adjustments	0.00%	2.60%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%
5	Additional Rate Revenue From Rate Adjustment	-	538,060	1,265,189	1,327,491	1,393,032	1,461,982	1,534,521	1,610,841	1,691,141	1,775,633
6	Price Elasticity Adjustment	-	(55,205)	(134,110)	(140,714)	(147,661)	(154,970)	(162,659)	(170,749)	(179,261)	(188,217)
7	Base Rate Revenue	\$ 2,081,166	2,081,166	2,081,166	2,227,498	2,383,898	2,526,932	2,678,548	2,839,261	3,009,616	3,190,193
8	Additional Rate Revenue From Growth	-	-	20,247	21,462	-	-	-	-	-	-
9	Proposed Water Rate Adjustments	0.00%	0.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%
10	Additional Rate Revenue From Rate Adjustment	-	-	126,085	134,938	143,034	151,616	160,713	170,356	180,577	191,412
11	Total Rate Revenue	\$ 22,867,771	23,258,445	24,445,065	25,695,533	26,989,502	28,351,922	29,786,480	31,297,062	32,887,745	34,562,911
12	Plus: Other Operating Revenues										
13	Other Operating Revenues	\$ 645,611	665,500	674,500	674,500	674,500	674,500	674,500	674,500	674,500	674,500
14	Equals: Total Operating Revenue	\$ 23,513,382	23,924,145	25,119,555	26,370,033	27,664,002	29,026,422	30,460,980	31,971,562	33,562,245	35,237,411
15	Less: Operating Expenses										
16	Personnel Services	\$ (4,652,376)	(4,757,232)	(4,852,163)	(6,711,785)	(6,879,580)	(7,051,569)	(7,227,858)	(7,408,555)	(7,593,749)	(7,783,613)
17	Variable O&M	(2,544,404)	(2,124,190)	(2,233,632)	(2,294,101)	(2,351,453)	(2,410,496)	(2,470,496)	(2,535,565)	(2,600,454)	(2,726,965)
18	Fixed O&M	(7,145,576)	(6,898,025)	(6,471,277)	(6,628,191)	(6,793,895)	(6,963,743)	(7,137,836)	(7,316,282)	(7,499,199)	(7,686,669)
19	Equals: Net Operating Income	\$ 9,171,026	10,144,498	9,842,483	10,735,956	11,639,073	12,600,870	13,624,789	14,714,466	15,873,742	17,106,675
20	Plus: Non-Operating Income/(Expense)										
21	Non-Operating Revenue	\$ 112,288	558,200	2,902,200	2,902,200	265,200	265,200	265,200	265,200	265,200	265,200
22	Interest Income	374,628	453,291	493,822	499,891	482,980	482,277	524,167	571,639	614,896	643,940
23	Equals: Net Income	\$ 9,657,941	11,156,189	13,258,505	14,128,047	12,386,853	13,348,347	14,414,156	15,551,305	16,753,838	18,015,815
24	Cash Flow Test										
25	Net Income Available For Debt Service	\$ 9,657,941	11,156,189	13,258,505	14,128,047	12,386,853	13,348,347	14,414,156	15,551,305	16,753,838	18,015,815
26	Transfers In	1,402,891	1,440,905	1,462,640	1,462,640	1,462,640	1,462,640	1,462,640	1,462,640	1,462,640	1,462,640
27	Transfers Out	(1,579,796)	(1,550,919)	(1,449,562)	(1,449,562)	(1,449,562)	(1,449,562)	(1,449,562)	(1,449,562)	(1,449,562)	(1,449,562)
28	Senior Debt Service	(2,110,264)	(1,387,228)	(2,665,716)	(2,690,764)	(3,051,812)	(4,335,623)	(6,304,130)	(8,466,421)	(9,487,411)	(10,694,086)
29	State Revolving Loans	(1,309,094)	(1,362,553)	(1,446,647)	(1,475,009)	(1,442,872)	(1,440,234)	(1,437,097)	(1,446,409)	(1,409,009)	(1,294,123)
30	CAPITAL OUTLAY	(689,463)	(811,875)	(529,160)	(541,860)	(555,406)	(569,291)	(583,524)	(598,112)	(613,065)	(644,101)
31	Net Cash Flow	\$ 5,372,216	\$ 7,484,519	\$ 8,630,059	\$ 9,433,491	\$ 7,349,841	\$ 7,016,277	\$ 6,102,483	\$ 5,053,441	\$ 5,257,431	\$ 5,412,292
32	Unrestricted Working Capital Reserve Fund Test										
33	Balance At Beginning Of Fiscal Year	\$ 22,880,216	22,973,938	20,288,207	15,278,167	10,380,061	8,012,464	8,212,776	8,418,095	8,628,548	8,844,261
34	Cash Flow Surplus/(Deficit)	5,372,216	7,484,519	8,630,059	9,433,491	7,349,841	7,016,277	6,102,483	5,053,441	5,257,431	5,412,292
35	Reserve Fund Balance Used for Cash Flow Deficit	-	-	-	-	-	-	-	-	-	-
36	Projects Paid with Cash	(5,278,494)	(10,172,250)	(12,638,100)	(15,331,596)	(19,717,438)	(26,236,328)	(34,527,909)	(44,108,646)	(55,041,717)	(67,191,186)
37	Balance At End Of Fiscal Year	\$ 22,973,938	20,288,207	16,278,167	10,380,061	8,012,464	8,212,776	8,418,095	8,628,548	8,844,261	9,065,368
38	Minimum Working Capital Reserve Target	7,171,178	6,899,723	7,628,536	7,817,038	8,012,464	8,212,776	8,418,095	8,628,548	8,844,261	9,065,368
39	Excess Working Capital Above Target	\$ 15,802,760	13,376,484	8,649,630	2,563,023	-	-	-	-	-	-

EXHIBIT K



City of Ann Arbor, MI

Stormwater Utility Rate Study

Final Report
May 3, 2018



	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
1 TOTAL RATE REVENUE										
2 STORMWATER FEE RATE REVENUE	\$ 6,301,018	\$ 8,506,375	\$ 9,357,012	\$ 10,760,564	\$ 11,836,620	\$ 12,428,451	\$ 13,049,874	\$ 13,702,368	\$ 14,387,486	\$ 15,106,860
3 STORMWATER CUSTOMER CHARGE REVENUE	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485	\$ 676,485
4 ADDITIONAL REVENUE FROM GROWTH	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5 SUBTOTAL: BASE REVENUE WITH GROWTH	\$ 6,977,504	\$ 9,182,860	\$ 10,033,497	\$ 11,437,049	\$ 12,513,105	\$ 13,104,936	\$ 13,726,359	\$ 14,378,853	\$ 15,063,971	\$ 15,783,345
6 WEIGHTED AVERAGE RATE INCREASE	0.00%	27.52%	9.65%	14.47%	9.71%	4.90%	4.90%	4.90%	4.91%	4.91%
7 ADDITIONAL RATE REVENUE FROM RATE INCREASE	\$ -	\$ 1,919,935	\$ 858,459	\$ 1,411,530	\$ 1,084,194	\$ 600,131	\$ 629,889	\$ 661,129	\$ 683,926	\$ 728,359
8 TOTAL RATE REVENUE	\$ 6,977,504	\$ 8,897,439	\$ 9,755,898	\$ 11,167,427	\$ 12,251,621	\$ 12,851,752	\$ 13,481,641	\$ 14,142,770	\$ 14,836,696	\$ 15,565,055
9 PLUS: OTHER OPERATING REVENUE	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510	\$ 189,510
10 EQUALS: TOTAL OPERATING REVENUE	\$ 7,167,014	\$ 9,086,949	\$ 9,945,408	\$ 11,356,937	\$ 12,441,131	\$ 13,041,262	\$ 13,671,151	\$ 14,332,280	\$ 15,026,206	\$ 15,754,565
11 LESS: OPERATING EXPENSES										
12 PERSONAL SERVICES	\$ (2,231,980)	\$ (2,309,849)	\$ (2,365,286)	\$ (2,422,053)	\$ (2,480,182)	\$ (2,539,706)	\$ (2,600,659)	\$ (2,663,075)	\$ (2,726,989)	\$ (2,792,437)
13 O&M VARIABLE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14 O&M FIXED	\$ (1,861,694)	\$ (2,054,509)	\$ (3,350,217)	\$ (4,317,022)	\$ (5,014,950)	\$ (5,064,029)	\$ (5,114,286)	\$ (5,165,749)	\$ (5,218,447)	\$ (5,272,410)
15 EQUALS: NET OPERATING INCOME	\$ 3,073,340	\$ 4,722,591	\$ 4,229,905	\$ 4,617,863	\$ 4,945,999	\$ 5,437,526	\$ 5,956,205	\$ 6,503,456	\$ 7,080,770	\$ 7,689,718
16 PLUS: NON-OPERATING INCOME/(EXPENSE)										
17 INTEREST	\$ 72,768	\$ 39,459	\$ 38,062	\$ 54,497	\$ 62,428	\$ 69,370	\$ 74,003	\$ 78,691	\$ 82,623	\$ 86,397
18 LESS: NON-OPERATING EXPENDITURES										
19 NET INTERFUND TRANSFERS (IN - OUT)	\$ (1,941,600)	\$ (447,340)	\$ (453,196)	\$ (459,168)	\$ (465,260)	\$ (471,474)	\$ (477,812)	\$ (484,276)	\$ (490,870)	\$ (497,596)
20 DEBT SERVICE PAYMENT	\$ (1,124,829)	\$ (1,159,115)	\$ (1,514,768)	\$ (1,854,855)	\$ (2,320,359)	\$ (2,637,190)	\$ (2,774,532)	\$ (2,957,355)	\$ (3,201,746)	\$ (3,419,656)
21 CAPITAL OUTLAY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
22 EQUALS: NET INCOME	\$ 79,679	\$ 3,155,594	\$ 2,300,003	\$ 2,358,336	\$ 2,222,807	\$ 2,398,232	\$ 2,777,865	\$ 3,140,516	\$ 3,470,777	\$ 3,858,863
23 UNRESTRICTED RESERVE FUND TEST										
24 BALANCE AT BEGINNING OF FISCAL YEAR	\$ 9,314,151	\$ 3,739,455	\$ 1,091,089	\$ 1,316,672	\$ 1,538,356	\$ 1,560,411	\$ 1,691,869	\$ 1,928,736	\$ 1,957,206	\$ 1,986,359
25 CASH FLOW SURPLUS/(DEFICIT)	\$ 79,679	\$ 3,155,594	\$ 2,300,003	\$ 2,358,336	\$ 2,222,807	\$ 2,398,232	\$ 2,777,865	\$ 3,140,516	\$ 3,470,777	\$ 3,858,863
26 RESERVE FUND BALANCE USED FOR CASH FLOW DEFICIT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
27 PROJECTS DESIGNATED TO BE PAID WITH CASH	\$ (514,000)	\$ (2,014,000)	\$ (2,074,420)	\$ (2,136,653)	\$ (2,200,752)	\$ (2,266,775)	\$ (2,334,778)	\$ (2,404,821)	\$ (2,476,966)	\$ (2,551,275)
28 PROJECTS PAID WITH RESERVE FUNDS (NON SPECIFIED FUNDS)	\$ (5,140,375)	\$ (3,789,960)	\$ -	\$ -	\$ -	\$ -	\$ (206,219)	\$ (707,225)	\$ (964,659)	\$ (1,277,735)
29 BALANCE AT END OF FISCAL YEAR	\$ 3,739,455	\$ 1,091,089	\$ 1,316,672	\$ 1,538,356	\$ 1,560,411	\$ 1,691,869	\$ 1,928,736	\$ 1,957,206	\$ 1,986,359	\$ 2,016,212
30 MINIMUM WORKING CAPITAL RESERVE TARGET	\$ 1,023,419	\$ 1,051,089	\$ 1,428,876	\$ 1,684,769	\$ 1,873,783	\$ 1,900,934	\$ 1,928,736	\$ 1,957,206	\$ 1,986,359	\$ 2,016,212
31 EXCESS/(DEFICIENCY) OF WORKING CAPITAL TO TARGET	\$ 2,716,037	\$ -	\$ (112,203)	\$ (146,413)	\$ (313,372)	\$ (209,065)	\$ -	\$ -	\$ -	\$ -