

***SCHROEDER V. ROYAL OAK***

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

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

Case No. 2014-138919-CZ  
Hon. Shalina Kumar

Plaintiff,

v.

CITY OF ROYAL OAK,  
a municipal corporation,

Defendant.

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**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement”) is made this 22<sup>nd</sup> day of March, 2017, by and between the following (all of which are hereinafter collectively referred to as the “Parties”): Plaintiff Andrew Schroeder (“Named Plaintiff”), individually, and on behalf of a class of similarly situated persons and entities (as more specifically defined in Paragraph 2 below, the

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“Class”), acting by and through its counsel, Kickham Hanley PLLC and Ray M. Toma PC (“Class Counsel”), and Defendant City of Royal Oak (the “City”).

WHEREAS, Plaintiff commenced the above captioned lawsuit (the “Lawsuit”) in Oakland County Circuit Court challenging a mandatory debt service charge (the “Kuhn Facility Debt Charge”) and a mandatory stormwater disposal charge (the “Stormwater Charge”) (collectively the “Charges”) imposed by the City on users of its water and sanitary sewage disposal services. Plaintiff alleges that the inclusion of such Charges in the City’s water and sewer rates (“Rates”) are motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the City’s actual costs of providing stormwater disposal services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and (2) by collecting the Charges the City has been unjustly enriched.

WHEREAS, the Complaint alleges that the Lawsuit should be maintained as a class action on behalf of a class consisting of persons or entities who/which have paid the City for water and sanitary sewage disposal services after February 14, 2008. .

WHEREAS, on April 1, 2015, the Court entered an Opinion and Order granting Plaintiff’s Motion for Class Certification.

WHEREAS, on December 17, 2015, the Court entered an Opinion and Order granting the City’s Motion for Summary Disposition and dismissing each of the two claims in the Lawsuit with prejudice.

WHEREAS, on January 5, 2016, Plaintiff filed a Motion for Reconsideration of the December 17, 2015 Opinion and Order, which Motion remains pending before the Court.

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

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

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

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

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**IMPLEMENTATION OF AGREEMENT**

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

**CLASS CERTIFICATION**

2. On April 1, 2015, the Court entered an order certifying a class of plaintiffs (the “Class”) consisting of all persons or entities who/which paid the City of Royal Oak (the “City”) for Water and Sanitary Sewer Service since February 14, 2008 (the “Class”). For settlement purposes, the Class shall include all persons or entities who/which paid the City for Water and Sanitary Sewer Service between February 14, 2008 and January 31, 2017. This Agreement is intended to settle all of the claims of the members of the Class (“Class Members”).

**SETTLEMENT FUND**

3. The City will create a Settlement Fund (the “Settlement Fund”) in the amount of Two Million Dollars (\$2,000,000) in order to resolve the claims relating to the Kuhn Facility Debt Charge. Within 14 days after entry of an order preliminarily approving this settlement, the City shall deposit One Million Dollars (\$1,000,000) of the Settlement Fund into the IOLTA Trust Account of Class Counsel, Kickham Hanley PLLC. No later than 7 calendar days before the hearing for final approval of this settlement, the City shall deposit the remaining One Million Dollars (\$1,000,000) of the Settlement Fund into the IOLTA Trust Account of Class Counsel. Such funds, upon final Court approval of this settlement, will be used to pay refunds to the Class and compensation and cost reimbursement to Class Counsel, as determined by the Court. The Settlement Fund shall be administered by Kickham Hanley PLLC (the “Claims-Escrow

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Administrator”) with the assistance of the Garden City Group (“GCG”). The expenses the Claims-Escrow Administrator incurs to GCG shall be recoverable by the Claims-Escrow Administrator as a cost of the litigation under Paragraphs 30-33 of this Agreement (subject to Court approval) and payable out of the Settlement Fund. The Claims-Escrow Administrator may from time to time apply to the Court for instructions or orders concerning the administration of the Settlement Fund and may apply to the Internal Revenue Service for such rulings with respect thereto as it may consider appropriate. Disbursements from the Settlement Fund by the Claims-Escrow Administrator and the City shall be expressly conditioned upon an order of the Court permitting such disbursements.

4. Except as set forth in Paragraphs 30 through 33 of this Agreement, the Class and Class Counsel shall not claim any attorneys’ fees or costs.

5. Subject to Paragraph 34, distribution of the Settlement Fund shall occur no later than seven (7) days after the completion of the last of all of the following (the “Settlement Date”):

a. entry of an order of final judicial approval by the Court approving this Agreement pursuant to Michigan Court Rule 3.501(E);

b. entry of an order adjudicating Class Counsel’s motion for an award of attorneys’ fees and costs;

c. entry of a final judgment of dismissal of the Lawsuit with prejudice with respect to the claims of the Named Plaintiff and all Class Members, except those putative Class Members who have requested to be excluded from the Class pursuant to MCR 3.501(D);

d. the City’s deposit of the Settlement Fund described in Paragraph 3 above;

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e. the Court's entry of the Distribution Order described in Paragraph 11 below; and

f. the expiration of the 21-day time for appeal of all of the aforementioned orders and judgments and final resolution of any and all appeals of such orders and judgments, but only if any Class Member files a timely objection to any of the aforementioned orders and judgments.

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

7. In the event that this Settlement fails to be consummated pursuant to this Agreement or fails to secure final approval by the Court for any reason or is terminated pursuant to Paragraph 34, the Settlement Fund shall immediately be returned to the City.

**DISTRIBUTION OF SETTLEMENT FUND**

8. The "Net Settlement Fund" to be distributed to the Class is the Settlement Fund less the combined total of: (a) attorneys' fees and any incentive award to the Class representative awarded pursuant to Paragraphs 30-33; and (b) Class Counsel and Claims-Escrow Administrator expenses reimbursed pursuant to Paragraphs 30-33.

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

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

a. Within 7 days after the Court's entry of an order preliminarily approving this Settlement, the City shall provide the Claims-Escrow Administrator with billing and payment records in electronic form that, at a minimum, provide for the Class Period (February 14, 2008 through January 31, 2017) the service address, account number, and billing and payment history for each water and sewer customer account. The Claims-Escrow Administrator will provide notice to the Class Members through first-class mail. The Claims-Escrow Administrator is authorized to utilize the services of GCG in disseminating notices to the Class. Such forms of notice will not be required to be exclusive and the Claims-Escrow Administrator will be allowed to use any appropriate means to give notice to Class Members of the Settlement and the opportunity to obtain a refund.

b. To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members will be required to submit sworn claims (the "Claims") which identify their names, addresses, and the periods of time in which they paid the Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the "Claiming Class Members." The Claiming Class Members will be required to submit those claims no later than 30 days prior to the hearing on the final approval of this settlement, as described in Paragraph 28 (the "Claims Period"). The Claiming Class Members also will be required to provide a unique identifying number printed on the Class notice, as an additional verification of their identity. The foregoing is a general outline. GCG will assist in

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implementing a process designed to minimize fraud and maximize dissemination of the refunds to the appropriate parties. In the event that two or more parties claim to have paid or incurred Charges for the same water and/or sewer account, the Claims-Escrow Administrator shall have the absolute discretion to determine which party or parties are entitled to participate in the settlement, and the City shall cooperate by providing information in its possession concerning the disputed property.

c. The Claims-Escrow Administrator shall calculate each Claiming Class Member's pro rata share of the Net Settlement Fund (the "Pro Rata Share"). Only those Class Members who paid for water and/or sewer service during the Class Period and submit a timely Claim are entitled to distribution of a Pro Rata Share of the Net Settlement Fund. The Claims-Escrow Administrator is authorized to utilize the services of GCG to calculate the Pro Rata Shares distributable to the Claiming Class Members. The size of each Claiming Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of Charges the Claiming Class Member paid during the Class Period and then (2) dividing that number by the total amount of Charges the City assessed during the Class Period against all Claiming Class Members and then (3) multiplying that fraction by the amount of the Net Settlement Fund. An example appears below:

Total Charges paid by Claiming Class Member during the Class Period -- \$2,000

Total Charges paid during the Class Period by all Claiming Class Members -- \$4,000,000

Net Settlement Fund -- \$1,300,000

Claiming Class Member's Pro Rata Share --  $2,000 / 4,000,000 \times 1,300,000 = \$650$

11. No later than fourteen (14) days prior to the hearing on the final approval of this settlement (as described in Paragraph 28), the Claims-Escrow Administrator shall submit to the



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Court a report setting forth the proposed disposition of the Net Settlement Fund including, without limitation, a list of Claiming Class Members and the percentage of the Net Settlement Fund to be paid to each such Claiming Class Member (the “Distribution Report”). Upon filing of the Distribution Report, the Claims-Escrow Administrator shall serve copies of the Distribution Report on Counsel for the City.

a. The City shall have seven (7) days to object to the Distribution Report. All objections shall be resolved by the Court at or before the final approval hearing.

b. Class Counsel and Counsel for the City, within five (5) days after the resolution of any objections to the Distribution Report, or within five (5) days after the deadline for submission of objections if no objections are submitted, whichever is later, shall submit to the Court a stipulated Distribution Order authorizing distribution from the Settlement Fund to the Claiming Class Members entitled to a Pro Rata Share distribution of the Net Settlement Fund (“Stipulated Distribution Order”) in accordance with the Distribution Report, subject to the Court’s final approval of this Settlement.

d. The Parties acknowledge that, because Class Members may have moved or ceased doing business since February 14, 2008, complete and current address information may not be available for all Class Members. The City, Named Plaintiff, counsel for any Parties, the Claims-Escrow Administrator and GCG shall not have any liability for or to any member of the Class with respect to determinations of the amount of any distribution of the Settlement Fund to any Class Member or determinations concerning the names or addresses of the Class Members.

12. At a time consistent with Paragraph 5, following the entry of the Stipulated Distribution Order, the Claims-Escrow Administrator shall distribute from the Net Settlement

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Fund the Pro Rata Share of each Claiming Class Member. The Claims-Escrow Administrator is authorized to send checks reflecting Payments due to Claiming Class Members to the address provided by each Claiming Class Member. The Claims-Escrow Administrator is further authorized to transfer its held portion of the Net Settlement Fund to GCG so that GCG can distribute Payments in accordance with this Agreement.

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

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

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**JUDGMENT ON THE MERITS AS TO CLAIMS FOR STORMWATER CHARGES**

15. For settlement purposes, the Plaintiff and the City agree that the Final Judgment in this matter will dismiss the Class claims relating to the Stormwater Charge with prejudice and thus, this portion of the Final Judgment (along with this portion of the December 17, 2015 Opinion and Order) is a judgment on the merits.

16. As a result of the dismissal of the claims relating to the Stormwater Charges, and as part of the settlement, the Plaintiff and the City agree that the City may continue to include the Stormwater Charges in its calculation of the Rates.

**ASSIGNMENT OF CLAIMS AGAINST OAKLAND COUNTY**

17. Plaintiff believes that Oakland County has overcharged the City for the stormwater component of the total flow from the City that enters the Oakland County system for many years (the “Stormwater Overcharge”). As part of the settlement, the City will assign any and all claims it has or may have against Oakland County arising out of or relating to the Stormwater Overcharge to the Class or an entity formed for the benefit of the Class, and Class Counsel will pursue those claims through litigation and/or negotiation (the “Oakland County Action”). Within five (5) days after the Settlement Date, the City shall execute an Assignment of Claims in the form attached hereto as Exhibit “A.”

18. Any monetary recovery in the Oakland County Action will be distributed, after counsel fees and costs, to the Class based upon the same methodology for distributing the Settlement Fund. In the event the Oakland County Action is resolved through a settlement, that settlement, and any request by Class Counsel for an award of fees and expenses, will be subject to the same Court approval processes as those applied to the Settlement Fund. In the event that

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there is a monetary recovery in Oakland County Action by way of a litigated judgment, any request by Class Counsel for an award of fees and expenses will be subject to the same Court approval processes as those applied to the Settlement Fund.

**PROSPECTIVE RELIEF**

19. The City shall utilize its current methodology for setting Rates charged by the City through June 30, 2018. Beginning July 1, 2018, and ending December 31, 2024 or any date thereafter at the City's election (the "Prospective Relief Period"), the City shall adjust its Rates so that the amount Oakland County charges the City for the City's share of the cost of the Kuhn Facility Infrastructure Improvements (i.e., the Kuhn Facility Debt Charge) is not a component of cost that is included in the Rates. During the Prospective Relief Period, the Parties agree that the City otherwise retains its discretion to adjust the Rates in accordance with Michigan law

20. The City may not levy a tax or other assessment against property owners or water or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the City increase its Rates to finance, in whole or in part, the Settlement Fund. The Settlement Fund shall be financed solely from current assets of the City's Water and Sewer Fund. The City shall not include as a recoverable cost in the setting of the Rates any amounts that it has contributed to the Settlement Fund.

21. The Class Members shall release the City as provided in Paragraph 29 below. In addition to the release set forth in Paragraph 29 below, if the City complies with the prospective relief described above for the duration of the Prospective Relief Period, the Class Members who receive refunds as part of the settlement shall then release and waive any and all claims which arise during the FY 2017 (July 1, 2016 through June 30, 2017) and FY 2018 (July 1, 2017 through June

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30, 2018) Periods that could be brought challenging the City's inclusion of the Kuhn Facility Debt Charge in establishing the Rates for the FY 2017 and FY 2018 Periods.

22. The Lawsuit will be dismissed with prejudice, subject only to the Court's continuing jurisdiction to enforce the terms of the settlement agreement. As stated in Paragraph 15, the December 17, 2015 Opinion and Order dismissing the claims in the Lawsuit will for all purposes relating to the Lawsuit and this Settlement Agreement constitute a judgment on the merits of the claims relating to the Stormwater Charge only.

**CLAIMS-ESCROW ADMINISTRATOR**

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

24. The Claims-Escrow Administrator, with the assistance of GCG, shall have the responsibilities set forth in this Agreement, including, without limitation, holding the Settlement Fund in escrow, determining the eligibility of Class Members to receive Payments, determining the Pro Rata Shares, distributing the Payments to Class Members receiving a Pro Rata Share, filing a Distribution Report consistent with Paragraph 11 and overseeing distribution of the remainder of the Net Settlement Fund as required by Paragraph 13. The Claims-Escrow Administrator, with the assistance of GCG, shall also be responsible for: (a) recording receipt of all responses to the notice; (b) preserving until further Order of the Court any and all written communications from

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Class Members or any other person in response to the notice; and (c) making any necessary filings with the Internal Revenue Service. The Claims-Escrow Administrator may respond to inquiries, but copies of all written answers to such inquiries will be maintained and made available for inspection by all counsel in this Lawsuit. The Claims-Escrow Administrator may delegate some or all of these responsibilities to GCG.

25. Any findings of fact of the Claims-Escrow Administrator and/or GCG shall be made solely for the purposes of the allocation and distribution of the Pro Rata Shares, and, in accordance with Paragraph 38, shall not be admissible for any purpose in any judicial proceeding, except as required to determine whether the claim of any Class Member should be allowed in whole or in part.

**NOTICE AND APPROVAL OF SETTLEMENT**

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

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

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

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

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

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

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

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

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vi. the right of members of the Class to opt out of the Class, the procedures for doing so, and the deadlines for doing so, including the deadline with respect to filing and/or serving written notification of a decision to opt out of the Class (such deadline must be at least fourteen (14) days prior to the hearing);

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

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

e. appointing the Claims-Escrow Administrator as trustee of a litigation trust for the benefit of the Class Members with authority to pursue the Stormwater Overcharge claim and approving Kickham Hanley PLLC as counsel to the trust.

27. Notice to Class Members of the proposed settlement shall be the responsibility of Class Counsel pursuant to orders of the Court. Class Counsel shall be entitled to be reimbursed for the cost of such notice from the Settlement Fund, and Class Counsel shall make application for costs of notice to the Court at least seven (7) days before the Settlement approval hearing with the Court approving any costs at the time of the Settlement approval hearing. Such notice shall be substantially in the form attached hereto as Exhibit "C," and mailed by Class Counsel (or GCG) to the Class Members at the addresses provided by the City within fourteen (14) days of entry of the Order Regarding Preliminary Approval of this Agreement. Class Counsel will also provide publication notice to the Class, which shall be substantially in the form attached hereto as Exhibit "D" and shall be published in the Oakland Press and the Royal Oak Tribune newspapers on three occasions prior to April 5, 2017.



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28. After the notice discussed in Paragraphs 26 and 27 has been mailed, the Court shall, consistent with Paragraph 26, conduct a hearing at which it rules on any objections to this Agreement and a joint motion for entry of a Final Order approving of this Settlement and Agreement. If the Court approves this Agreement pursuant to Michigan Court Rule 3.501(E), a final judgment, substantially in the form of Exhibit "E," shall be entered by the Court: (a) finding that the notice provided to Class Members is the best notice practicable under the circumstances and satisfies the due process requirements of the United States and Michigan Constitutions; (b) approving the Settlement set forth in this Agreement as fair, reasonable, and adequate; (c) dismissing with prejudice and without costs to any Party any and all claims of the Class Members against the City, excluding only those persons who in timely fashion requested exclusion from the Class; (d) awarding Class Counsel attorneys' fees, costs and expenses; (e) reserving jurisdiction over all matters relating to the administration of this Agreement, including allocation and distribution of the Settlement Fund; and (f) retaining jurisdiction to protect and effectuate this judgment.

**RELEASE AND COVENANT NOT TO SUE**

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

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers,

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directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, elected and appointed officials, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through January 31, 2017 concerning (a) the City's calculation or assessment of Rates or Charges; (b) the components of costs included in the Rates; and/or (c) the City's Water and Sewer Fund balance. This release is intended to include all claims that were asserted or could have been asserted in the Lawsuit concerning the City's Rates and/or Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the City on account of any action or cause of action released hereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances. The foregoing shall not affect the claims of any Class Member whose individual water and sewer bills were calculated in error on the basis of facts or circumstances unique to such class member and not based on the claims that were or could have been asserted by the Class in the Lawsuit.

**ATTORNEYS' FEES AND EXPENSES**

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

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31. The amount of attorneys' fees, costs and expenses to be paid to Class Counsel shall be determined by the Court applying legal standards and principles applicable to awards of attorneys' fees and costs from common fund settlements in class action cases. Class Counsel agrees that it will not seek an award of attorneys' fees in excess of Thirty-Three Percent (33%) of the Settlement Fund, and the City agrees that it will not oppose Class Counsel's fee request, provided it complies with this Agreement. The Parties agree that Class Counsel may seek Court approval of an incentive award on behalf of class representative Andrew Schroeder in an amount not to exceed Ten Thousand Dollars (\$10,000) to be paid solely from the Settlement Fund. Further, if the pursuit of the Stormwater Overcharge claim results in the recovery of proceeds, Class Counsel may seek an award of attorneys' fees not exceeding 33% of such proceeds subject to approval by the Court.

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

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

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**TERMINATION**

34. If this Agreement and Settlement is disapproved, in part or in whole, by the Court, or any appellate court; if dismissal of the Lawsuit with prejudice against the City cannot be accomplished; if the Court does not enter an Order of Preliminary Approval substantially in the form attached as Exhibit "B" within twenty-eight (28) days after its submission to the Court; if a final judgment on the terms set forth in Paragraph 28 is not entered within ninety (90) days after the entry of the Order substantially in the form attached as Exhibit "B"; if the Settlement Date defined in Paragraph 5 does not occur prior to July 31, 2017; if the Court (or any appellate court) alters the terms of this Settlement in any material way not acceptable to the City or to Class Counsel; or if this Agreement and Settlement otherwise is not fully consummated and effected:

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

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

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

d. Counsel for the Parties shall inform the Court that the pending Motion for Reconsideration is ripe for disposition by the Court.

35. The City and Class Counsel may, in their sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in Paragraph 34. Such waiver

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

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

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

**USE OF THIS AGREEMENT**

38. Except to the extent required to enforce Paragraphs 15 and 22, this Agreement, the Class Period, the Settlement provided for herein (whether or not consummated), and any proceedings taken pursuant to this Agreement shall not be:

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

b. offered or received as evidence of a presumption, concession or an admission of any liability, fault, or wrongdoing, or referred to for any other reason by the Named Plaintiff, Class Members, or Class Counsel in the Lawsuit, or any other person or entity not a party

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to this Agreement in any other action or proceeding other than such proceedings as may be necessary to effectuate the provisions of this Agreement; or

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

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

**WARRANTIES**

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

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

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

42. The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the claims arising in the Lawsuit.

43. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have

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read and understand fully this Agreement, and have been fully advised as to the legal effect thereof by their respective Counsel and intend to be legally bound by the same.

**BINDING EFFECT AND ENFORCEMENT**

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

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

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

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

48. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and discuss submitting any disputes to

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non-binding mediation. The Parties shall also certify to the Court that they have consulted and either have been unable to resolve the dispute in mediation or are unwilling to submit the dispute to mediation and the reasons why.

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

**MODIFICATION AND EXECUTION**

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

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

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



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

**KICKHAM HANLEY PLLC**

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

By: 

Gregory D. Hanley (P51204)

Attorneys for Plaintiffs


32121 Woodward Avenue, Suite 300

Royal Oak, MI 48073

(248) 544-1500

Dated: 3/22/17

**CITY OF ROYAL OAK,**

By: 

Its: Mayor

Dated: 3.18.17

By: Melanie Halasz

Its: City Clerk

Dated: 3.16.17