

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and  
JOYCE BANNON,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 2015-149751-CZ  
Hon. Leo Bowman

Plaintiff,

v.

CITY OF OAK PARK,  
a Michigan municipal corporation,

Defendant.

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Gregory D. Hanley (P51204)  
Edward F. Kickham (P23447)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

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John Gillooly (P41948)  
Ebony Duff (P65431)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

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**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement”) is made this 18th day of October, 2018, by and between the following (all of which are hereinafter collectively referred to as the “Parties”): Plaintiffs Judy Kish and Joyce Bannon (“Named Plaintiffs”), individually, and on behalf of a class of similarly situated persons and entities (as more specifically defined in Paragraph 2 below, the “Class”), acting by and through their counsel, Kickham Hanley PLLC (“Class Counsel”), and Defendant City of Oak Park (the “City”).

WHEREAS, the above captioned lawsuit (the “Lawsuit”) commenced by Plaintiffs and pending in Oakland County Circuit Court challenges two cost components included in the City’s water and sewer rates, specifically (1) a mandatory debt service charge (the “Kuhn Facility Debt Charge”) and (2) 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. Plaintiffs allege that the inclusion of such Charges in the City’s water and sewer rates (“Rates”) is motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the City’s actual costs of providing water and sewer services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution; the (2) Charges are unlawful under the Prohibited Taxes by Cities and Villages Act, MCL 141.91; (3) the Charges are unlawful under the County Public Improvement Act, MCL 46.171 *et seq.*; (4) the Charges are unlawful under the Michigan Drain Code; (5) the Charges are unlawful under the City’s Charter, § 14.3; (6) the Charges are unlawful under the City’s Ordinance § 82-312; and (7) the City is liable for a refund of the Charges under a theory of unjust enrichment.

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

WHEREAS, on April 5, 2016, the Court entered a Stipulated Order Certifying the Class;

WHEREAS, on January 18, 2017, the Court entered an Opinion and Order denying the City’s motion for summary disposition on the grounds that genuine issues of material fact exist concerning Plaintiffs’ claims;

WHEREAS, the City filed an application for leave to appeal the Court's decision on summary disposition in the Michigan Court of Appeals, which was denied, and filed an application for leave to appeal in the Michigan Supreme Court, which was also denied;

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

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

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

**IMPLEMENTATION OF AGREEMENT**

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

### **CLASS CERTIFICATION**

2. The Court certified a Class as follows: With respect to Count I of Plaintiffs' Complaint, the Class includes all persons or entities which have paid the City for water and/or sewer service at any time since October 22, 2014 and all persons or entities which pay the City for water and/or sewer service during the pendency of this action. With respect to Counts II, III, IV, V, VI, and VII, the Class includes all persons or entities which have paid the City for water and/or sewer service at any time since October 22, 2009 and all persons or entities which pay the City for water and/or sewer service during the pendency of this action (the "Class"). The parties agree that the Court shall permanently certify the Class upon final approval of this Settlement. For purposes of this Agreement, the "Class Period" is defined as October 22, 2009 through August 31, 2018. This Agreement is intended to settle all of the claims of the members of the Class ("Class Members").

### **SETTLEMENT FUND**

3. Subject to the payment schedule set forth below, the City will fund a Settlement Fund (the "Settlement Fund") in the total amount of Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000) in order to resolve the claims of the Class. Within 7 days after the "Settlement Date" (as defined in Paragraph 7 below), the City shall deposit the sum of Five Hundred Thousand Dollars (\$500,000) into the IOLTA Trust Account of Class Counsel,

Kickham Hanley PLLC. The City shall deposit the remainder of the Settlement Fund into the IOLTA Trust Account of Kickham Hanley PLLC in accordance with the following schedule:

- \$587,500 on or before the date that is one year after the “Settlement Date”;
- \$587,500 on or before the date that is two years after the “Settlement Date”;
- \$587,500 on or before the date that is three years after the “Settlement Date”; and
- \$587,500 on or before the date that is four years after the “Settlement Date.”

In lieu of the payment schedule set forth above, the City may discharge its payment obligations by depositing a total of \$2,500,000 into the IOLTA Trust Account of Kickham Hanley PLLC on or before the date that is one year after the “Settlement Date.”

4. [This paragraph is intentionally left blank.]

5. The Settlement Fund shall be administered by Kickham Hanley PLLC (the “Claims-Escrow Administrator”) with the assistance of the Angeion Group (“Angeion”) or some other third-party claims administrator (“TPA”). The expenses the Claims-Escrow Administrator incurs to the TPA shall be recoverable by the Claims-Escrow Administrator as a cost of the litigation under Paragraphs 35-38 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.

6. Except as set forth in Paragraphs 35-38 of this Agreement, the Class and Class Counsel shall not claim any attorneys’ fees or costs.

7. Subject to Paragraph 39, the initial \$500,000 distribution of the Settlement Fund shall occur no later than twenty-one (21) 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 Plaintiffs 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 Court’s entry of the Distribution Order described in Paragraph 13 below; and

e. 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.

8. As more specifically discussed below, and as provided in Paragraph 7, the Settlement Fund shall be distributed only pursuant to and in accordance with orders of the Court, as appropriate.

9. 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 39, the Settlement Fund shall immediately be returned to the City.

## **DISTRIBUTION OF SETTLEMENT FUND**

10. 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 representatives awarded pursuant to Paragraphs 35-38; and (b) Class Counsel and Claims-Escrow Administrator expenses reimbursed pursuant to Paragraphs 35-38.

11. 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 12.

12. All Class Members may participate in the Settlement by receiving from the Net Settlement Fund a cash distribution Payment (as defined in Paragraph 12.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 (October 22, 2009 through August 31, 2018) 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 the TPA in disseminating notices to the Class. Such forms of notice will not be required to be exclusive and the Claims-Escrow Administrator will be allowed to use any appropriate means to give notice to Class Members of the Settlement and the opportunity to obtain a refund.

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 City for water and sewer service (the “W&S Charges”) in order to participate in the Settlement. Class Members who do not submit timely claims will not be entitled to any payment from the Settlement Fund. 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 33 (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. The TPA will assist in implementing a process designed to minimize fraud and maximize dissemination of the refunds to the appropriate parties. In the event that two or more parties claim to have paid or incurred W&S Charges for the same water and/or sewer account for the same time period, 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 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 Angeion 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 W&S Charges the Claiming Class Member paid during the Class Period and then (2) dividing that number by the total amount of W&S 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 -- \$7,000

Total Charges paid during the Class Period by all Claiming Class Members -- \$10,000,000

Net Settlement Fund -- \$1,775,500

Claiming Class Member's Pro Rata Share –  $7,000/10,000,000 \times 1,775,500 = \$1,242$

d. Claiming Class Members will receive their Pro Rata Shares in a maximum of five payments, each of which will occur within 14 days after the City deposits each installment of the funds into the IOLTA Trust Account of Class Counsel, Kickham Hanley PLLC, pursuant to Paragraph 3 of this Agreement. The amount of each such payment for each Claiming Class Member will be determined by multiplying the Class Member's Pro Rata Share by the portion of the Net Settlement Fund attributable to the amount of each installment payment by the City.

13. No later than fourteen (14) days prior to the hearing on the final approval of this settlement (as described in Paragraph 33), the Claims-Escrow Administrator shall submit to the Court a report setting forth the proposed disposition of the Net Settlement Fund including, without limitation, a list of Claiming Class Members and the percentage of the Net Settlement Fund to be paid to each such Claiming Class Member (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.

c. The Parties acknowledge that, because Class Members may have moved or ceased doing business since October 22, 2009, 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 Angeion or any other TPA shall not have any liability for or to any member of the Class with respect to determinations of the amount of any distribution of the Settlement Fund to any Class Member or determinations concerning the names or addresses of the Class Members.

14. At times consistent with Paragraphs 7 and 12.d, following the entry of the Stipulated Distribution Order, the Claims-Escrow Administrator shall distribute from the Net Settlement Fund the Pro Rata Share of each Claiming Class Member. The Claims-Escrow Administrator is authorized to send checks reflecting Payments due to Claiming Class Members to

the address provided by each Claiming Class Member. The Claims-Escrow Administrator is further authorized to transfer the Net Settlement Fund to the TPA so that the TPA can distribute Payments in accordance with this Agreement.

15. The amounts of money covered by checks distributing the Payments 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 for the amount of the check that was not cashed. 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.

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

#### **DEFAULT**

17. The following will be considered events of default by the City under this Agreement: (1) the City's failure to make any deposit of funds required under Paragraph 3 on or

before its due date; and (2) the City's failure to comply with any other provision of this Agreement.

18. In order to further secure its obligations under this Agreement, the City will provide a "pocket judgment" in the amount of Three Million Dollars (\$3,000,000) in the form attached hereto as Exhibit A.

19. In the event of a default, Class Counsel, on behalf of the Class, may exercise any one of two options, at their discretion: (1) enter the "pocket judgment" in the amount of \$3,000,000, less any payments made by the City prior to the default; or (2) reinstate the Lawsuit with Plaintiffs and the Class retaining all rights they had against the City prior to the date of the Court's final approval of this Settlement.

20. The parties agree that, in the event of a default which results in entry of the "pocket judgment," Class Counsel, on behalf of the Class, will be entitled to collect the judgment in any manner authorized by law, including garnishment and execution. The parties agree that the provisions of the Judgment Levy Act, MCL 600.6093, will not apply and the City will not impose or attempt to impose a tax to pay the "pocket judgment."

#### **ASSIGNMENT OF CLAIMS AGAINST OAKLAND COUNTY**

21. 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 “B.”

22. 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 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**

23. The City shall utilize its current Water and Sewer Rates through June 30, 2020 (the “FY 2019-20 Period”). Beginning July 1, 2020, and ending June 30, 2025 (the “Prospective Relief Period”), the City shall adjust its Rates so that the Kuhn Facility Debt Charge is not a component of cost that is included in the Rates, unless later authorized by legislation.

24. During the Prospective Relief Period the City will retain the discretion to adjust the Rates as necessary in order to reflect increases in expenses for treated water from the Great Lakes Water Authority and expenses for sewage disposal from Oakland County, to reflect increases in operating expenses, and to allow for future repair to its water and sewer system and for future capital replacement(s), provided the City utilizes a recognized rate setting method in adjusting the Rates.

25. 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. Regardless of the source of the funds the City uses to establish the Settlement 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.

26. The Class Members shall release the City as provided in Paragraph 34 below. In addition to the release set forth in Paragraph 34 below, if the City complies with the prospective relief described above for the duration of the FY 2019-20 Period and the Prospective Relief Period, the Class Members who do not timely request exclusion from the Class shall be deemed to have released and waived any and all claims that could be brought which (a) arise during the FY 2019-20 Period challenging the inclusion of the Stormwater Charges and the Kuhn Facility Drainage Charges in the Rates for the FY 2019-20 Period (the “FY 2019-20 Period Claims”) and (b) arise during the Prospective Relief Period challenging the inclusion of the Stormwater Charges in the City’s Rates during the Prospective Relief Period (the “Prospective Relief Period Claims”).

27. The Lawsuit will be dismissed with prejudice, subject only to the Court’s continuing jurisdiction to enforce the terms of the settlement agreement and potential reinstatement of the Lawsuit in the event of a default by the City.

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

28. The Claims-Escrow Administrator shall not receive a separate fee for its services as Claims-Escrow Administrator. Because Class Counsel is acting as the Claims-Escrow Administrator, the fee awarded to Class Counsel shall be deemed to include compensation for its

service as Claims-Escrow Administrator. The Claims-Escrow Administrator, however, shall be entitled to be reimbursed for its out-of-pocket expenses incurred in the performance of its duties (including but not limited to the TPA's charges), which shall be paid solely from the Settlement Fund.

29. The Claims-Escrow Administrator, with the assistance of the TPA, shall have the responsibilities set forth in this Agreement, including, without limitation, holding the Settlement Fund in escrow, determining the eligibility of Class Members to receive Payments, determining the Pro Rata Shares, distributing the Payments to Class Members receiving a Pro Rata Share, filing a Distribution Report consistent with Paragraph 13 and overseeing distribution of the remainder of the Net Settlement Fund as required by Paragraph 15. The Claims-Escrow Administrator, with the assistance of the TPA, shall also be responsible for: (a) recording receipt of all responses to the notice; (b) preserving until further Order of the Court any and all written communications from Class Members or any other person in response to the notice; and (c) making any necessary filings with the Internal Revenue Service. The Claims-Escrow Administrator may respond to inquiries, but copies of all written answers to such inquiries will be maintained and made available for inspection by all counsel in this Lawsuit. The Claims-Escrow Administrator may delegate some or all of these responsibilities to the TPA.

30. Any findings of fact of the Claims-Escrow Administrator and/or the TPA shall be made solely for the purposes of the allocation and distribution of the Pro Rata Shares, and, in accordance with Paragraph 41, 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**

31. 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 "C," 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 one hundred and twenty (120) days thereafter to determine the fairness, reasonableness, and adequacy of this Agreement and the Settlement; whether the Agreement and Settlement should be approved by the Court; and whether to award the attorneys' fees and expenses requested by Class Counsel;

b. directing that notice, substantially in the form of Exhibit "D," 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

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

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

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

32. 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 “D,” and mailed by Class Counsel (or the TPA) to the Class Members at the addresses provided by the City within 28 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 “E” and shall be published in the Oakland Press on two occasions prior to November 16, 2018.

33. After the notice described in Paragraph 31 has been mailed and published, the Court shall 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 “F,” 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**

34. On the Settlement Date, subject to the potential right to reinstate the Lawsuit pursuant to Paragraph 19 of this Agreement, each Class Member who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue, and the Final Order and Judgment to be entered by the Court in connection with the approval of this Settlement shall so provide:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, 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 the date of this Final Order and Judgment concerning (a) the City's calculation or assessment of Water and Sewer Rates or Charges; (b) the components of costs included in the Water and Sewer Rates; and (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 this 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/or 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**

35. 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.

36. 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 representatives Judy Kish and Joyce Bannon in an amount not to exceed Ten Thousand Dollars (\$10,000) each, to be paid solely from the Settlement Fund.

37. The award of attorneys' fees, costs and expenses to be paid from the Settlement Fund to Class Counsel pursuant to Paragraph 36 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.

38. 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 Judy Kish and Joyce Bannon 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 Judy Kish and Joyce Bannon shall be paid from the Settlement Fund. The total fees, costs and expenses awarded to Class Counsel and the Claims-Escrow Administrator will be paid over time pursuant to the payment schedule identified in Paragraphs 3 and 12.d above. For example, if Class Counsel is awarded 33% of the Settlement Fund as a fee, Class Counsel will receive that fee by receiving 33% of the initial \$500,000 payment, and 33% of each successive payment.

#### **TERMINATION**

39. 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 "C" within twenty-eight (28) days after its submission to the Court; if a final judgment on the terms set forth in Paragraph 33 is not entered within one hundred twenty (120) days after the entry of the Preliminary Approval Order substantially in the form attached as Exhibit "F"; if the Settlement Date defined in Paragraph 7 does not occur prior to March 28, 2019; 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 to Strike Jury Demand is ripe for disposition by the Court.

40. The City and Class Counsel may, in their sole and exclusive discretion, agree to waive any or all of the terms, conditions or requirements stated in Paragraph 39. Such waiver must be memorialized in a writing signed by the City and/or its Counsel and Class Counsel and delivered via certified mail to Class Counsel, or it will have no force or effect.

41. In the event the Settlement is terminated in accordance with Paragraph 39, 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**

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

a. construed by anyone for any purpose whatsoever as, or deemed to be, evidence of a presumption, concession or an admission by the City of the truth of any fact alleged

or the validity of any claims, or of the deficiency or waiver of any defense that has or could have been asserted in the Lawsuit, or of any liability, fault or wrongdoing on the part of the City; or

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

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

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**

43. 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.

44. 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.

45. 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.

46. 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.

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

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

48. 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.

49. This Agreement, with the attached Exhibits A through F, 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.

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

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

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

53. 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**

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

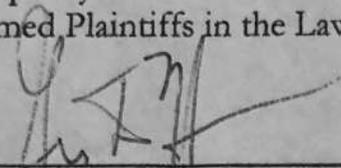
55. Change or modification of this Agreement, or waiver of any of its provisions, shall be valid only if contained in a writing executed on behalf of all the Parties hereto by their duly authorized representatives.

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

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

**KICKHAM HANLEY PLLC**

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

By:  \_\_\_\_\_

Gregory D. Hanley (P51204)

Attorneys for Plaintiffs

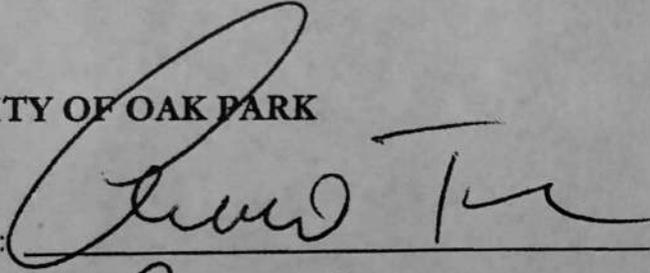
32121 Woodward Avenue, Suite 300

Royal Oak, MI 48073

(248) 544-1500

Dated: 10/18/18

**CITY OF OAK PARK**

By:  \_\_\_\_\_

Its: City Manager

Dated: 10/17/18

# EXHIBIT A

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and  
JOYCE BANNON,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 2015-149751-CZ  
Hon. Leo Bowman

Plaintiffs,

v.

CITY OF OAK PARK,  
a Michigan municipal corporation,

Defendant.

---

Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

---

John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

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**STIPULATED ORDER TO REOPEN THE CASE  
AND FOR ENTRY OF CONSENT JUDGMENT**

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

PRESENT: HONORABLE LEO BOWMAN  
Circuit Court Judge

This matter having come before the Court upon the stipulation of the parties, and the Court being otherwise advised in these premises:

IT IS HEREBY ORDERED that the above-captioned case is reopened;

IT IS FURTHER ORDERED that, pursuant to the Settlement Agreement dated \_\_\_\_, 2018, judgment is entered in favor of Plaintiffs and the Class in the amount of \$\_\_\_\_\_, which is

\$3,000,000, less \$\_\_\_\_\_ in payments made by Defendant to Plaintiff and the Class pursuant to the Settlement Agreement prior to the date of this Judgment.

IT IS FURTHER ORDERED that Class Counsel, on behalf of the Class, is entitled to collect the judgment in any manner authorized by law, including garnishment and execution.

IT IS FURTHER ORDERED that the provisions of the Judgment Levy Act, MCL 600.6093, do not apply to this Judgment and the City shall not impose or attempt to impose a tax to pay this Judgment or to recover the funds used to pay this Judgment.

This is a final order that resolves all claims and closes the case.

---

Circuit Court Judge

**STIPULATED AND AGREED:**

**KICKHAM HANLEY PLLC**

By: /s/ Gregory D. Hanley  
Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073  
(248) 544-1500  
Attorneys for Plaintiffs

**GARAN LUCOW MILLER PC**

By: /s/ John Gillooly  
John Gillooly (P41948)  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

KH156527

# EXHIBIT B

## ASSIGNMENT OF CLAIMS

THIS ASSIGNMENT OF CLAIMS (this “Assignment”) is made this \_\_\_ day of \_\_\_\_\_, 2018, by the City of Oak Park, Oakland County, Michigan (the “City”) based on the following recitals:

- A. A class action lawsuit is pending against the City entitled *Kish v. City of Oak Park* in Oakland County Circuit Court in which the plaintiff alleges that the City has overcharged for storm water management services (the “Lawsuit”).
- B. The Court has certified a class consisting of all persons or entities who/which paid the City for Water and Sewer Service on or after October 22, 2009. For settlement purposes, the parties agreed that the Class will include all persons or entities who/which paid the City for Water and Sewer Service between October 22, 2009 and August 31, 2018 (the “Class” and/or the “Plaintiff”).
- C. The City and the Class have resolved the lawsuit by entering into a Settlement Agreement, dated \_\_\_\_\_, 2018, and the Court has approved the Settlement Agreement by Final Judgment and Order Approving Class Settlement dated \_\_\_\_\_, 2018.
- D. Counsel to the Plaintiff Class is Kickham Hanley PLLC (“Class Counsel”).
- E. Plaintiff believes, based upon the advice of Class Counsel, that Oakland County has and continues to overcharge the City for the storm water component of the total flow of storm water and sanitary sewer discharge which flows into the Oakland County sewer system (the “Overcharges”). A more specific description of Plaintiff’s position regarding the Overcharges and its illustration of the Overcharges is attached hereto as Exhibit A. Plaintiff further believes that the City (and its water and sewer customers) are entitled to a refund of the amount of the Overcharges.
- F. The Court has appointed Class Counsel as Trustee of a litigation trust for the benefit of the Class members.

NOW, THEREFORE, in consideration of the terms and conditions of the Settlement Agreement, the City makes the following assignment subject to the conditions stated herein:

1. The term “Oakland County” shall mean Oakland County, Michigan, and all of its affiliates, political subdivisions, agents, employees or officers, including, but not limited to, the Oakland County Water Resources Commissioner, the Southeast Oakland County Sewage Disposal District, the George W. Kuhn Drainage District, and any other entity that imposed or imposes the Overcharges.

2. The City hereby assigns and transfers to Kickham Hanley PLLC, as trustee (“Assignee”), the City’s entire right, title and interest in and to any refund which may be owing to the City or to which the City is entitled by reason of Oakland County’s Overcharges, including, without limitation, all past Overcharges and all Overcharges imposed upon the City (and its water and sewer customers) hereafter until the Assignee’s intended suit against Oakland County for the Overcharges is resolved either by settlement or by a final nonappealable order of the Michigan Court having jurisdiction.

3. The City has not made and does not make any warranty or representation, express or implied, that Oakland County has, in fact, imposed any Overcharges or that any refund is owed. Through its counsel, the Assignee will rely solely on its own analysis of Oakland County’s practices with regard to billing for the County’s storm water and sanitary sewer disposal and management services. In determining to give this Assignment, the City has relied on the advice of its own consultants and not on any advice or information from the Class, Class Counsel, or Assignee.

4. The City does warrant and represent that (i) the City has not heretofore assigned or otherwise transferred its rights to a refund of Oakland County’s Overcharges to any third party, (ii) the City has not entered into any express agreement with Oakland County by means of which the City has surrendered or waived its claim for a refund of the County’s Overcharges, (iii) the City will maintain and preserve its records of the Overcharges and make them available through a qualified record keeper to the Class in its litigation against Oakland County, and (iv) to the best of its knowledge, the City is duly and legally authorized to enter into this Assignment.

5. The City will hereafter take no action to waive, surrender or compromise its right to a refund of the Overcharges.

6. Assignee, through Class Counsel, intends to bring an action against Oakland County. The City will pay the invoices it receives from the County in the ordinary course, notwithstanding the Overcharges, until the Assignee completes its litigation by settlement or final nonappealed judgment. Such payments shall be made without intention to prejudice Assignee’s rights against Oakland County and shall be deemed to be made “under protest.”

7. This Assignment represents the Class Counsel’s best judgment as to the proper and lawful way to give effect to the parties’ intentions; to wit: that the Class members shall be the owners or beneficial owners through the Assignee of the right to a refund of the Overcharges and have standing and are otherwise entitled to assert the claim to a refund against Oakland County. If for any reason it appears that Assignee or the Class will be unable to assert the claim to a refund by reason of some defect in this Assignment or the failure to follow some other procedure, the City will cooperate in a modification of this Assignment and in the fulfilling of some alternate procedure to give effect to the intentions hereof except to the extent that compliance with the alternative procedure would conflict with the terms and provisions of the Settlement Agreement.

8. This Assignment, together with the Settlement Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, representations or warranties of the parties. No alteration, amendment, modification or waiver of any of the terms or provisions hereof, and no future representation or warranty by either party with respect to this transaction, shall be valid or enforceable unless the same be in writing and signed by the party against whom enforcement of same is sought.

9. This Assignment may be executed and delivered by the parties in facsimile format and in any number of separate counterparts, all of which, when delivered, shall together constitute one and the same document

10. The Assignment given herein is irrevocable and unconditional except as expressly stated herein.

City of Oak Park

By: \_\_\_\_\_

Its: \_\_\_\_\_

City of Oak Park

By: \_\_\_\_\_

Its: City Clerk

ACCEPTED:

\_\_\_\_\_  
Kickham Hanley PLLC, Trustee

## EXHIBIT A

### PLAINTIFF'S DESCRIPTION OF OVERCHARGES

The City of Oak Park's sanitary sewage and storm water are collected in a combined sewer system and need to be disposed of. The City's combined sewer system flows to the Southeastern Oakland County Sewage Disposal System (the "County System"), which is owned and maintained by Oakland County.

Except during heavy rainfall when high volumes of combined sanitary sewage and storm water exceed the outlet capacity to Detroit causing excess flow to be diverted to the Kuhn Facility, the entire flow from the County System is conveyed to the Detroit Water and Sewer Department ("DWSD") treatment plant.

DWSD charges Oakland County for disposing of the sanitary sewage and storm water. In turn, Oakland County charges the municipalities which contribute flow to the County System for such disposal. Those municipalities which have a combined sewer system, including the City, are charged a flat rate per month for storm water disposal per a formula determined by the County.

Based upon information made available to Plaintiff's counsel, it appears that Oakland County has overcharged the City for storm water disposal.

The County's Final Order of Apportionment dated April 19, 2005, provides that the storm water charges to the City consist of two components: (1) the DWSD's charges to the George W. Kuhn Drain to treat the total storm water flow, and (2) the administrative costs of operating and maintaining the balance of the George W. Kuhn Drain System not included in the sanitary sewage portion of the charges. The County, therefore, was obligated to pass through to the City the City's proportionate share of DWSD's actual charges to the County for treating the storm water.

For example, for the fiscal year ending July 31, 2013:

DWSD apparently charged the County **\$40.18** million in total disposal charges;

DWSD apparently charged the County **\$24.31** million for sanitary sewage disposal; and

DWSD apparently charged the County **\$15.87** million in fixed charges for storm water and infiltration water disposal.

In contrast, the County represented to the City that, for the fiscal year ending July 31, 2013:

DWSD charged the County **\$41.38** million in total disposal charges;

DWSD charged the County **\$19.54** million for sanitary sewage disposal; and

DWSD charged the County **\$21.84** million in fixed charges for storm water and infiltration water disposal.

The County appears to have reallocated the total charges imposed by DWSD to increase the amount of the storm water charges by almost \$6 million. Because they allocated a higher percentage of the storm water disposal charges (29.7%) than sanitary sewage disposal charges (20.89%), the more of the total DWSD charges that the County allocates to storm water charges, the more the City pays in the aggregate.

Based upon the County's representations and the allocation percentage assigned to the City, the County charged the City aggregate disposal costs of **\$5.16** million for the fiscal year ending June 30, 2013. This was calculated as follows:

Sanitary -- \$20.898 million x .082634 = \$1.75 million

Storm water -- \$24.96 million x .136383 = \$3.4 million

If the DWSD records accurately reflect the amounts charged by DWSD to the City, however, the County should have charged the City **\$4.709** million for the fiscal year ending June 30, 2013. This is calculated as follows:

Sanitary -- \$25.665 million x .082634 = \$2.12 million

Storm water -- \$18.984 million x .136383 = \$2.589 million

Therefore, it appears that the County overcharged the City by \$451,000 for the fiscal year ending June 30, 2013. There appear to be similar overcharges for prior years and for the years since. The foregoing calculations are given for illustration purposes only to describe the nature of the Overcharge, and are not intended to limit the scope or size of the claim assigned to the Class.

KH156028

# EXHIBIT C

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and  
JOYCE BANNON,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 2015-149751-CZ  
Hon. Leo Bowman

Plaintiffs,

v.

CITY OF OAK PARK,  
a Michigan municipal corporation,

Defendant.

---

Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

---

John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

---

**STIPULATED ORDER REGARDING PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, NOTICE AND SCHEDULING**

At a session of said Court held in the  
City of Pontiac, County of Oakland  
State of Michigan on \_\_\_\_\_  
PRESENT: HON. \_\_\_\_\_  
Circuit Court Judge

Plaintiffs have commenced this action (the “Lawsuit”) challenging two cost components included in the City’s water and sewer rates, specifically (1) a mandatory debt service charge (the “Kuhn Facility Debt Charge”) and (2) 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, as more particularly described in Plaintiffs’ Complaint in the Lawsuit;

The Court on April 5, 2016 certified this action as a class action on behalf of a class (the “Class”) consisting of persons or entities who or which have paid or incurred the Charges during the permitted time periods preceding the filing of this Lawsuit and/or at any time during the pendency of this action;

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

Plaintiffs and Defendant in this action intend to make application to this Court, pursuant to MCR 3.501(E), for a Final Order approving the settlement of this class action in accordance with the terms set forth in the Class Action Settlement Agreement (“Agreement”), executed by counsel for the parties on October \_\_\_\_, 2018 and attached hereto as Exhibit 1, and they seek preliminary approval of the Agreement for purposes of, among other things, notifying class members of the proposed settlement;

The Court has been made aware of the settlement process leading to the agreement reached, and counsel have demonstrated that the settlement was the result of arm’s length bargaining of counsel well versed in all of the issues.

IT IS HEREBY ORDERED:

1. The Court preliminarily approves the terms of the Agreement.
2. A hearing (the “Settlement Hearing”) will be held before this Court on February 6, 2019 at 8:30 a.m. to determine whether the proposed settlement between Plaintiffs and Defendant, on the terms and conditions provided in the Agreement between such parties, is fair, reasonable and adequate and should be approved by the Court, to determine whether a final judgment should be entered dismissing this Lawsuit with prejudice, and without costs, and to determine whether to award attorneys’ fees and expenses to Class Counsel and the amount of such fees and expenses.

3. The notification to the members of the Class regarding the Settlement, as authorized in Paragraphs 4 and 6 of this Order, is the best notice practicable under the circumstances, is in compliance with MCR 3.501, and the requirements of due process of law, and will adequately inform class members of their rights.

4. On or before twenty eight (28) days from the entry of this Order, Plaintiff's Counsel shall cause a Notice of Proposed Class Action Settlement ("Notice"), substantially in the form attached to the Agreement as Exhibit "D," to be mailed to members of the Class. Plaintiff shall arrange for the publication of notice, substantially in the form attached to the Agreement as Exhibit "E", in the Oakland Press newspapers on three occasions prior to November 16, 2018.

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

6. Any Class member may appear personally, or by counsel of his or her own choice and at his or her own expense at the Settlement Hearing to show cause why: (a) the proposed settlement of the claims asserted should or should not be approved as fair, just, reasonable, adequate and in good faith; or (b) judgment should or should not be entered thereon; provided, however, that no Class member will be heard at the Hearing or be entitled to contest the approval of the terms and conditions of the proposed settlement, the judgment to be entered thereon approving the same, or the attorneys' fees and expenses to be paid, or other matter(s) that may be considered by the Court at or in connection with said settlement hearings, unless, no later than 14 days before the Hearing, such class member has served by hand delivery or by first-class mail written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times

in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

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

Counsel for Plaintiff

And

John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501

Counsel for Defendant

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

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

8. As stated in Paragraph 5, KH is authorized to serve as the Claims-Escrow Administrator. The Claims-Escrow Administrator, with the assistance of a third-party claims administrator, shall be responsible for holding the Settlement Fund in escrow, determining the eligibility of Class Members to receive payments or credits, determining the size of each Allowed Claim, distributing the payments to Class Members with Allowed Claims, filing a distribution report consistent with Paragraph 13 of the Agreement and refunding to Defendant the unclaimed portion

of the Net Settlement Fund as required by Paragraph 15 of the Agreement. The Claims-Escrow Administrator shall also be responsible for: (a) recording receipt of all responses to the Notice; (b) preserving until further Order of this Court any and all written communications from Class members or any other person in response to the Notice; and (c) making any necessary filings with the Internal Revenue Service. The Claims-Escrow Administrator may respond to inquiries, but copies of all written answers to such inquiries will be maintained and made available for inspection by all counsel in this action.

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

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

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

12. Subject to the terms of Paragraphs 13-14 below, if the Agreement and Settlement is disapproved, in part or in whole, by the Court, or any appellate court; if dismissal of the Lawsuit with prejudice against Defendant cannot be accomplished; if a final judgment on the terms set forth in Paragraph 33 of the Agreement is not entered within one hundred twenty (120) days after the entry of this Order; if the Settlement Date defined in Paragraph 7 of the Agreement does not occur prior to March 28, 2019; or if the Agreement and Settlement otherwise is not fully consummated and effected:

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

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

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

13. Defendant 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 12 hereof. Such waiver must be memorialized in a writing signed by Defendant and/or its counsel and Class Counsel and delivered via certified mail to opposing counsel, or it will have no force or effect.

14. Defendant and Class Counsel may, in their sole and exclusive discretion, elect to extend any or all of the deadlines stated in Paragraph 12 hereof. Such extension must be memorialized in a writing signed by Defendant and/or its counsel and Class Counsel and delivered via certified mail to opposing counsel, or it will have no force or effect.

IT IS SO ORDERED:

Dated: \_\_\_\_\_, 2018.

\_\_\_\_\_  
Oakland County Circuit Court Judge

**STIPULATED AND AGREED:**

**KICKHAM HANLEY PLLC**

By: /s/ Gregory D. Hanley  
Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073

(248) 544-1500  
Attorneys for Plaintiffs

**GARAN LUCOW MILLER PC**

By: /s/John Gillooly  
John Gillooly (P41948)  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

KH156533

# EXHIBIT D

Unique Identifying Number \_\_\_\_\_

**LEGAL NOTICE  
NOTICE OF CLASS ACTION**

**IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT,  
YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU PAID THE CITY OF OAK PARK FOR WATER AND SANITARY SEWER SERVICE  
AT ANY TIME BETWEEN OCTOBER 22, 2009 AND AUGUST 31, 2018 AND WISH TO  
RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST  
SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE JANUARY 4, 2019 AND MAIL  
IT TO \_\_\_\_\_, EMAIL THE COMPLETED FORM TO \_\_\_\_\_, OR SUBMIT AN  
ELECTRONIC FORM ONLINE AT \_\_\_\_\_**

**PLEASE RETAIN THIS NOTICE**

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and  
JOYCE BANNON,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Plaintiffs,

v.

CITY OF OAK PARK,  
a Michigan municipal corporation,

Defendant.

Case No. 2015-149751-CZ  
Hon. Leo Bowman

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Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
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32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

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John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

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TO: All persons and entities who/which have paid the City of Oak Park (the "City") for water and sanitary sewage disposal services at any time between October 22, 2009 and August 31, 2018

You are hereby notified that a proposed settlement in the amount of \$2,850,000 has been reached with the City in a class action lawsuit pending in Oakland County Circuit Court titled *Kish v. City of Oak Park*, Case No. 2015-149751-CZ, presiding Judge Leo Bowman, challenging two cost components included in the City's water and sewer rates, specifically (1) a mandatory debt service charge (the "Kuhn Facility Debt Charge") and (2) 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.

Plaintiffs are individuals who are water and sanitary sewer customers and who have paid the Charges imposed by the City. Plaintiffs contend 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 water and sewer services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and Michigan statutes, and (2) the City is liable for a refund of the Charges under a theory of unjust enrichment.

The Plaintiffs seek a judgment from the court against the City that would order and direct the City to refund all Charges to which plaintiff and the class are entitled and any other appropriate relief.

The City denies that the Charges are improper and therefore, denies the Plaintiff's claims and contends that it should prevail in the Lawsuit.

On April 5, 2016, the Court entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you paid for water and/or sanitary sewage disposal services between October 22, 2009 and August 31, 2018 and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid the City for water and sewer service between October 22, 2009 and August 31, 2018 (the "Class"). This Agreement is intended to settle all of the claims of the Class.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the City has agreed to create a settlement fund in the aggregate amount of Two Million Eight Hundred and Fifty Thousand Dollars (**\$2,850,000**) for the benefit of the Class ("Settlement Amount"). The Settlement Amount will be utilized, with Court approval, to pay refunds to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

Within 7 days after the "Settlement Date" (as defined in Paragraph 7 of the Agreement), the City shall deposit the sum of Five Hundred Thousand Dollars (\$500,000) into the IOLTA Trust Account of

Class Counsel, Kickham Hanley PLLC. The City shall deposit the remainder of the Settlement Fund into the IOLTA Trust Account of Kickham Hanley PLLC in accordance with the following schedule:

- \$587,500 on or before the date that is one year after the “Settlement Date”;
- \$587,500 on or before the date that is two years after the “Settlement Date”;
- \$587,500 on or before the date that is three years after the “Settlement Date”; and
- \$587,500 on or before the date that is four years after the “Settlement Date.”

In lieu of the payment schedule set forth above, the City may discharge its payment obligations by depositing a total of \$2,500,000 into the IOLTA Trust Account of Kickham Hanley PLLC on or before the date that is one year after the “Settlement Date.”

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

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

All Class Members may participate in the settlement of this case by receiving from the Net Settlement Fund cash distribution payments. To qualify to receive distributions 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 January 4, 2019. A claim form is enclosed with this Notice. Class members may also submit a claim online at \_\_\_\_\_.

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 (the “W&S Charges”) during the Class Period and who submit a timely Claim are entitled to distribution of a Pro Rata Share of the Net Settlement Fund. The size of each Claiming Class Member’s Pro Rata Share shall be determined by (1) calculating the total amount of W&S Charges the Claiming Class Member paid during the Class Period and then (2) dividing that number by the total amount of W&S 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.

Claiming Class Members will receive their Pro Rata Shares in a maximum of five payments, each of which will occur within 14 days after the City deposits each installment of the funds into the IOLTA Trust Account of Class Counsel, Kickham Hanley PLLC, pursuant to Paragraph 3 of the Agreement. The

amount of each such payment for each Claiming Class Member will be determined by multiplying the Class Member's Pro Rata Share by the portion of the Net Settlement Fund attributable to the amount of each installment payment by the City.

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").

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 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

In addition to the refund and assignment of claims described above, the parties have agreed that the City will change the method by which it charges for water and sanitary sewage disposal. The City shall utilize its current methodology for setting Rates charged by the City through June 30, 2020 (the "FY 2019-20 Period"). Beginning July 1, 2020, and ending June 30, 2025 (the "Prospective Relief Period"), the City shall adjust its Rates so that the Kuhn Facility Debt Charge is not a component of cost that is included in the Rates. During the Prospective Relief Period, but not before July 1, 2020, the Parties agree that the City otherwise retains its discretion to adjust the Rates in accordance with Michigan law.

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. Regardless of the source of the funds the City uses to establish the Settlement 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.

The Class Members shall release the City as provided below. In addition to the release set forth below, if the if the City complies with the prospective relief described above for the duration of the FY 2019-20 Period and the Prospective Relief Period, the Class Members who do not timely request exclusion from the Class shall be deemed to have released and waived any and all claims that could be brought

which (a) arise during the FY 2019-20 Period challenging the inclusion of the Stormwater Charges and the Kuhn Facility Drainage Charges in the Rates for the FY 2019-20 Period (the “FY 2019-20 Period Claims”) and (b) arise during the Prospective Relief Period challenging the inclusion of the Stormwater Charges in the City’s Rates during the Prospective Relief Period (the “Prospective Relief Period Claims”).

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain their right to file an action against the City. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the City have legal or factual merit. The City has challenged the validity of Plaintiff’s claims and many of the substantive legal and factual issues have not been resolved. **This request for exclusion must be postmarked no later than December 15, 2018 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073.**

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

Pursuant to the Order of the Court dated October 18, 2018, a Settlement Hearing will be held in the Oakland County Circuit Court, 1200 Telegraph Road, Pontiac, Michigan 48341 at 8:30 a.m., on February 6, 2019, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated October \_\_\_\_, 2018, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement and whether counsel for Plaintiffs and the Class should be awarded counsel fees and expenses. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before January 23, 2019, such Class member serves by first class mail written objections that set forth the name of this matter as defined in the Notice, the objector’s full name, address and telephone number, an explanation of the

basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

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

Counsel for Plaintiff

And

John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501

Counsel for Defendant

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

**AGAIN, IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU PAID THE CITY OF OAK PARK FOR WATER AND SEWER SERVICE AT ANY TIME BETWEEN OCTOBER 22, 2009 AND AUGUST 31, 2018 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE JANUARY 4, 2019 AND MAIL IT TO \_\_\_\_\_, EMAIL THE COMPLETED FORM TO \_\_\_\_\_, OR SUBMIT AN ELECTRONIC FORM ONLINE AT \_\_\_\_\_.**

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Oakland County, Michigan. You

may also view the Settlement Agreement and other important court documents at [www.kickhamhanley.com](http://www.kickhamhanley.com).

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

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

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, 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 the date of this Final Order and Judgment concerning (a) the City's calculation or assessment of Water and Sewer Rates or Charges; (b) the components of costs included in the Water and Sewer Rates; and (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 this 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.

KH156530

# EXHIBIT E

**ATTENTION: CURRENT AND FORMER  
CITY OF OAK PARK RESIDENTS AND PROPERTY OWNERS:  
IMPORTANT NOTICE OF CLASS ACTION SETTLEMENT**

**YOU HAVE A LIMITED TIME TO SUBMIT A CLAIM TO OBTAIN A REFUND.**

**CLAIM FORMS MAY BE OBTAINED AT [WWW.KICKHAMHANLEY.COM](http://WWW.KICKHAMHANLEY.COM) OR  
SUBMITTED ONLINE AT \_\_\_\_\_**

**SEE THE INFORMATION BELOW:**

TO: All persons and entities who/which have paid the City of Oak Park (the “City”) for water and sanitary sewage disposal services at any time between October 22, 2009 and August 31, 2018

You are hereby notified that a proposed settlement in the amount of \$2,850,000 has been reached with the City in a class action lawsuit pending in Oakland County Circuit Court titled *Kish v. City of Oak Park*, Case No. 2015-149751-CZ, presiding Judge Leo Bowman, challenging two cost components included in the City’s water and sewer rates, specifically (1) a mandatory debt service charge (the “Kuhn Facility Debt Charge”) and (2) 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.

Plaintiffs are individuals who are water and sanitary sewer customers and who have paid the Charges imposed by the City. Plaintiffs contend 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 water and sewer services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and Michigan statutes and (2) the City is liable for a refund of the Charges under a theory of unjust enrichment.

The Plaintiffs seek a judgment from the court against the City that would order and direct the City to refund all Charges to which plaintiff and the class are entitled and any other appropriate relief.

The City denies that the Charges are improper and therefore, denies the Plaintiff’s claims and contends that it should prevail in the Lawsuit.

On April 5, 2016, the Court entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City’s records indicate that you paid for water and/or sanitary sewage disposal services between October 22, 2009 and August 31, 2018 and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid the City for water and sewer service between October 22, 2009 and August 31, 2018 (the “Class”). This Agreement is intended to settle all of the claims of the Class.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the City expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs and uncertainty, the City has agreed to create a settlement fund in the aggregate amount of Two Million Eight Hundred and Fifty Thousand Dollars **(\$2,850,000)** for the benefit of the Class (“Settlement Amount”). The Settlement Amount will be utilized, with Court approval, to provide refunds to the Class, and to pay Class Counsel an award of attorneys’ fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation. The Settlement Amount will be paid by the City in five annual installments.

In addition to the Settlement Amount, the City has agreed to assign to Class Counsel, as trustee for the Class, claims that Class Counsel claims that the City has against Oakland County, and the City has further agreed to implement certain changes in the way it charges for sanitary sewer service.

All Class Members may participate in the settlement of this case by receiving from the Net Settlement Fund a cash distribution payment. **To qualify to receive a distribution of cash via check (a “Payment”) from the Net Settlement Fund, Class Members are required to submit sworn claims (the “Claims”) which identify their names, addresses, and the periods of time in which they paid the Charges in order to participate in the Settlement. Claims must be submitted no later than January 4, 2019.**

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

Should you have any questions about this Notice you should raise them with your own attorney or direct them to counsel for the Class, **IN WRITING OR BY EMAIL, NOT BY TELEPHONE**, identified below as Attorneys for Plaintiff and the Class. **DO NOT CONTACT THE COURT, CLERK OF THE COURT, OR ATTORNEYS FOR DEFENDANT.**

**Attorneys for Plaintiff and the Class:**

Gregory D. Hanley (P70332)  
Jamie Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue

Royal Oak, Michigan 48073

**AGAIN, IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN OR ELECTRONIC CLAIM BY JANUARY 4, 2019. THE CLAIM FORM IS AVAILABLE AT [WWW.KICKHAMHANLEY.COM](http://WWW.KICKHAMHANLEY.COM), AND YOU MAY SUBMIT AN ELECTRONIC CLAIM AT**

\_\_\_\_\_.

# EXHIBIT F

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and  
JOYCE BANNON,  
individually, and as representatives  
of a class of similarly-situated persons  
and entities,

Case No. 2015-149751-CZ  
Hon. Leo Bowman

Plaintiffs,

v.

CITY OF OAK PARK,  
a Michigan municipal corporation,

Defendant.

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Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
Attorneys for Plaintiffs

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John Gillooly (P41948)  
Garan Lucow Miller PC  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

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**FINAL JUDGMENT AND ORDER APPROVING CLASS SETTLEMENT**

At a session of said Court held in the  
City of Pontiac, County of Oakland  
State of Michigan on \_\_\_\_\_  
PRESENT: HON. \_\_\_\_\_  
Circuit Court Judge

WHEREAS, Plaintiffs and Defendant in this action have moved this Court pursuant to MCR 3.501(E), for an order approving the settlement of this class action in accordance with the terms set forth in the Class Action Settlement Agreement (“Agreement”) executed by counsel for the parties, and

WHEREAS, this Court having held a hearing, as noticed, on \_\_\_\_\_, 2018 pursuant to the Order Regarding Preliminary Approval of Settlement, Notice and Scheduling, dated October 18, 2018 (the “Order”), to determine the fairness, adequacy and reasonableness of a proposed settlement of the Class Action; and due and adequate notice (the “Notice”) having been made by mailing in a manner consistent with Paragraphs 4 and 6 of the Order; and all such persons (excluding those who previously requested exclusion from the applicable Class) having been given an opportunity to object to or participate in the settlement; and the Court having heard and considered the matter, including all papers filed in connection therewith and the oral presentations of counsel at said hearing; and good cause appearing therefor,

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

1. The terms of the Agreement are fair, reasonable and adequate and in the best interests of the members of the Class and are hereby approved.
2. Plaintiffs and Defendant are hereby ordered and directed to perform and consummate the settlement set forth in the Agreement in accordance with the terms and conditions of the Agreement.
3. The notification to the Class members regarding the Settlement is the best notice practicable under the circumstances and is in compliance with MCR 3.501(E) and the requirements of due process of law.
4. Subject to Paragraph 19 of the Settlement Agreement, his Lawsuit is hereby dismissed with prejudice, and without costs to any party except as provided for in the Agreement.

5. Kickham Hanley PLLC, counsel for the Class, is hereby awarded attorneys' fees and costs in the amount of \$\_\_\_\_\_, to be paid as set forth in the Agreement. Plaintiff Judy Kish is granted an incentive award of \$\_\_\_\_\_, to be paid as set forth in the Agreement. Plaintiff Joyce Bannon is granted an incentive award of \$\_\_\_\_\_, to be paid as set forth in the Agreement.

6. The Court takes specific notice of provisions of the Agreement which identify certain alleged overcharges by Oakland County or its agencies for storm water management services provided to Defendant ("Overcharges"). Pursuant to the Agreement, Defendant will assign to the Class members or for their benefit any and all claims for refund of the Overcharges that it has or may have against Oakland County Michigan and its affiliates, political subdivisions, agents, employees or officers including, but not limited to, the Oakland County Water Resources Commissioner, the Southeast Oakland County Sewage Disposal District, the George W. Kuhn Drainage Districts, and any other entity that imposed or imposes the Overcharges. Kickham Hanley PLLC is hereby appointed trustee of a litigation trust hereby established for the benefit of the Class members. As trustee, Kickham Hanley PLLC is authorized to pursue the claim for a refund of the Overcharges by lawsuit against Oakland County or its aforesaid agencies. Kickham Hanley PLLC is approved as counsel to the trust. Any monetary recovery from pursuit of the claim will be distributed, after counsel fees and costs, to the Class members based upon the methodology used 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 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.

7. In the event of a default by the Defendant, as defined in the Agreement, Class Counsel, on behalf of the Class, may exercise any one of two options, at their discretion: (1) enter the “pocket judgment” described in Paragraph 18 of the Agreement in the amount of \$3,000,000, less any payments made by the Defendant prior to the default; or (2) reinstate the Lawsuit with Plaintiffs and the Class retaining all rights they had against the Defendant prior to the date of the Court’s final approval of this Settlement.

8. In the event of a default which results in entry of the “pocket judgment,” Class Counsel, on behalf of the Class, will be entitled to collect the judgment in any manner authorized by law, including garnishment and execution. The provisions of the Judgment Levy Act, MCL 600.6093, will not apply and the Defendant may not impose or attempt to impose a tax to pay the “pocket judgment.”

9. Without any further action by anyone, Plaintiffs and all members of the Class as certified by the Order dated October 18, 2018 who previously did not submit a timely and valid Request for Exclusion are deemed to have executed the following Release and Covenant not to Sue which is hereby approved by the Court:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, 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 the date of this Final Order and Judgment concerning (a) the City’s calculation or assessment of Water and Sewer Rates or Charges; (b) the components of costs included in the Water and Sewer Rates; and (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 this 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.

8. If the Defendant complies with the prospective relief described in the Agreement for the duration of the "FY 2019-20 Period" and the "Prospective Relief Period," as defined in the Agreement, the Class Members who do not timely request exclusion from the Class shall be deemed to have released and waived any and all claims that could be brought which (a) arise during the FY 2019-20 Period challenging the inclusion of the Stormwater Charges and the Kuhn Facility Debt Charges in the Rates for the FY 2019-20 Period (the "FY 2019-20 Period Claims") and (b) arise during the Prospective Relief Period challenging the inclusion of the Stormwater Charges in the City's Rates during the Prospective Relief Period (the "Prospective Relief Period Claims").

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

IT IS SO ORDERED:

Dated: \_\_\_\_\_, 2018.

\_\_\_\_\_  
Oakland County Circuit Court Judge

**STIPULATED AND AGREED:**

**KICKHAM HANLEY PLLC**

By: /s/ Gregory D. Hanley

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

**GARAN LUCOW MILLER PC**

By: /s/ John Gillooly

John Gillooly (P41948)  
1155 Brewery Park Boulevard, Suite 200  
Detroit, MI 48207  
(313)446-5501  
Attorney for Defendant

KH156532