

**CITY OF BERKLEY PUBLIC NOTICE  
ELECTRONIC CITY COUNCIL MEETING  
7:00 P.M. MONDAY, DECEMBER 21, 2020  
248-658-3300**

**CALL 38<sup>th</sup> COUNCIL TO ORDER  
APPROVAL OF AGENDA  
INVOCATION — PASTOR ZACK DUNLAP  
PLEDGE OF ALLEGIANCE  
PUBLIC COMMENT — ITEMS ON THE AGENDA  
ORDER OF BUSINESS**

**Consent Agenda**

1. **APPROVAL OF THE MINUTES:** Matter of [approving the minutes](#) of the 38<sup>th</sup> Regular City Council Meeting on Monday, December 7, 2020.
2. **RESOLUTION NO. R-45-20:** Matter of [authorizing a resolution](#) of the Council of the City of Berkley, Michigan recognizing and celebrating Robert Damery on the occasion of his 100<sup>th</sup> birthday.

**Regular Agenda**

1. **PRESENTATION:** Matter of recognizing the 2020 Berkley Beautification Advisory Committee Holiday Spirit Award recipients.
2. **MOTION NO. M-68-20:** Motion to [approve the Mayor and City Manager to enter into an Intergovernmental Agreement](#) for Lockup Services, Animal Control Services, Use of the Berkley DPS Range, and Dispatch Services between the City of Berkley and the City of Pleasant Ridge for a \$6,500 fixed yearly fee for each full-time equivalent (FTE) reflected in the Michigan Commission on Law Enforcement Standards (MCOLES) Fall Semi-Annual Law Enforcement Distribution Report for Pleasant Ridge Police Department. This Agreement shall be effective for a term commencing approximately March 1, 2021 and continuing until June 30, 2023.
3. **MOTION NO. M-69-20:** Matter of [authorizing Hubbell, Roth & Clark \(HRC\) for engineering design services](#) related to the 2021 Sidewalk Replacement Program at a cost not to exceed \$20,097 from the Sidewalk Fund, account number 470-938-821-000.
4. **MOTION NO. M-70-20:** Matter of [approving the Intergovernmental Agreement](#) between the City of Berkley and the Berkley School District for Shared Resources and Services.
5. **PUBLIC HEARING:** Matter of holding a Public Hearing regarding the updated Parks & Recreation Master Plan.
6. **RESOLUTION NO. R-46-20:** Matter of [authorizing a resolution of the Council](#) of the City of Berkley, Michigan adopting the Five-Year Recreation Master Plan for the period of 2021-2025.
7. **RESOLUTION NO. R-47-20:** Matter of [authorizing a resolution of the Thirty-eighth Council](#) of the City of Berkley, Michigan designating the time and place of City Council Meetings and its Rules and Order of Procedure.
8. **CLOSED SESSION:** Matter of considering whether to meet in closed session to consult with the City's attorneys regarding trial or settlement strategy in connection with specific pending litigation, specifically Doot, et al v City of Berkley, et al; Hanover Insurance Group v City of Berkley; and Jacob v City of Berkley, Oakland County Circuit Court Case Nos. 2017-157459-NZ, 2017-160247-NZ, and 2019-178474-NZ, respectively.
9. **MOTION NO. M-71-20:** Matter of [authorizing Class Action Settlement Agreement](#) to compromise and settle pending litigation, specifically Doot, et al v City of Berkley, et al; Hanover Insurance Group v City of Berkley; and Jacob v City of Berkley, Oakland County Circuit Court Case Nos. 2017-157459-NZ, 2017-160247-NZ,

and 2019-178474-NZ, respectively, and further authorizing the City's Attorneys to sign on behalf of the City any necessary documents and undertake appropriate actions to finalize the settlement.

**PUBLIC COMMENT — ITEMS NOT ON THE AGENDA**

**COMMUNICATIONS**

**ADJOURN**

**NOTE: TO JOIN THE ELECTRONIC MEETING, VISIT [HTTPS://berkleymich.ZOOM.US/J/94929846645](https://berkleymich.zoom.us/j/94929846645) OR CALL 1-312-626-6799. THE MEETING ID IS 949 2984 6645.**

The City of Berkley is hosting electronic meetings in cooperation with the Michigan Open Meetings Act, as amended. Anyone wishing to submit correspondence for inclusion during the meeting may send an email to [clerk@berkleymich.net](mailto:clerk@berkleymich.net) or call 248-658-3310. The City of Berkley will provide necessary reasonable auxiliary aids and services to individuals with disabilities at the meeting upon four working days' notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Victoria Mitchell, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).

**THE ELECTRONIC REGULAR MEETING OF THE THIRTY-EIGHTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, DECEMBER 7, 2020 BY MAYOR TERBRACK**

**PRESENT:** Steve Baker, Berkley, Oakland County, Michigan  
Jack Blanchard, Berkley, Oakland County, Michigan  
Bridget Dean, Berkley, Oakland County, Michigan  
Ross Gavin, Berkley, Oakland County, Michigan  
Dennis Hennen, Berkley, Oakland County, Michigan  
Natalie Price, Berkley, Oakland County, Michigan  
Daniel Terbrack, Berkley, Oakland County, Michigan

**APPROVAL OF AGENDA**

Councilmember Baker moved to approve the Agenda  
Seconded by Councilmember Blanchard  
Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack  
Nays: None  
Motion Approved.

**INVOCATION:** Reverend Tal Sullivan

**PUBLIC COMMENT – ITEMS ON THE AGENDA**

There was no one present wishing to speak.

***Consent Agenda***

Councilmember Price moved to approve the following Consent Agenda, seconded by Councilmember Blanchard:

**APPROVAL OF THE MINUTES:** Matter of approving the minutes of the 38<sup>th</sup> Regular City Council Meeting on Monday, November 16, 2020 with the changes proposed by Mayor Pro Tem Dean in her portion of the communications. She requested “Berkley Dance Club” changed to read “Berkley Dads’ Club” and “MOMS Club” changed to read “Berkley MOMS Club.”

**WARRANT:** Matter of approving Warrant No. 1357.

**ORDINANCE NO. O-17-20:** Matter of considering the Second Reading and Adoption of an Ordinance of the Council of the City of Berkley, Michigan Amending Section 138-222 of Division 1 of Article IV of Chapter 138, Zoning, of the City of Berkley Code of Ordinance to Permit Permeable Pavement for Parking Areas.

Ayes: Dean, Gavin, Hennen, Price, Baker, Blanchard, and Terbrack  
Nays: None  
Motion Approved.

***Regular Agenda***

**PRESENTATION:** Matter of receiving a report from Plante & Moran regarding the Audit Results for the Fiscal Year Ended June 30, 2020.

City Manager Matt Baumgarten introduced the presentation and discussed where to find the Comprehensive Annual Financial Report (CAFR).

Finance Director Mark Pollock thanked everyone involved, including Sue Reddin and Laurie Fielder, in the audit process especially considering this was the first virtual audit.

Plante Moran Partner Lisa Plonka thanked Mark Pollock, Sue Reddin, and Laurie Fielder for handling the virtual audit. She said the effort was certainly there and it did go very smoothly. She stated during the firm's few weeks of auditing virtually, auditors did go through the same kinds of tests they would in a typical year. She explained they made sure to really dig into balances, particularly where there are greater risks of material misstatements or significant activities. Ms. Plonka stated the results are revealed in what the industry refers to as an Unmodified Opinion, which is the highest form of assurance one can get and hope to receive every year. She stated this means that everything within that comprehensive annual financial report was materially correct and in accordance with all of the applicable accounting standards. Ms. Plonka stated there were no significant changes due to GASB as there was a one-year deferral. Ms. Plonka further discussed other items impacting the budget including COVID, investments in infrastructure, and demolition of the ice arena.

Plante Moran Senior Manager Keith Szymanski provided a slide presentation of audit findings. He stated that General Fund revenue has been increasing the past couple of years, with property tax comprising two-thirds of the General Fund revenue. Mr. Szymanski stated the second largest revenue source is State Shared Revenue. He stated revenue decreased just two percent as a result in decreased sales tax revenue at the statewide level. He said the financial impact of the pandemic was fairly minimal in this audit period. He also reviewed the Water & Sewer Fund; total revenue and expenses; long-term challenges including funding OPEB; and unfunded liabilities.

Mayor Terbrack pointed out there are so many questions especially regarding State Shared Revenue.

Ms. Plonka said it is important to discuss fund balance. It was explained that since the expenditures were slightly greater than revenue in the fiscal year, there was a use of fund balance of just under \$200,000. The general fund balance was 6.5 million dollars. Ms. Plonka then discussed the letter that were sent to Council and that were included in the packet. She discussed a Covid-19 resource center provided by the firm. She also discussed the vigilance with IT and provided a reminder of upcoming financial statement changes and new reporting requirements.

Councilmember Baker said he appreciates these audits every year and the thoughtful information provided. He asked about how other communities are fairing in the Berkley region.

Ms. Plonka said those in southeast Michigan that she deals with are in similar positions as Berkley. She stated communities are starting to feel stronger and that now is the point to be cautious and reevaluate.

Mayor Terbrack thanked Ms. Plonka for pointing out the City's internal controls. He stated handling the budget and the resources of the residents is the most important duty of Council. He thanked the auditors and the finance team.

**MOTION NO. M-66-20:** Matter of authorizing the City Manager to execute a contract for Senior Home Chore Snow Removal Service to A1 Lawn and Snow Services LLC. 5405 Williamson Street, Dearborn, MI 48126. \$3,500 will be paid from account #275-940-818-043 and remaining expenses will be paid from 614-105-818-000.

Mayor Pro Tem Dean moved to approve Motion No. M-66-20

Seconded by Councilmember Price

Ayes: Gavin, Hennen, Price, Baker, Blanchard, Dean, and Terbrack

Nays: None  
Motion Approved.

**RESOLUTION NO. R-44-20:** Matter of authorizing a resolution appointing new members to the Planning Commission and Master Plan Steering Committee naming Shiloh Dahlin and Jennifer Finney, respectively.

Councilmember Gavin moved to approve Resolution No. R-44-20  
Seconded by Councilmember Hennen  
Ayes: Hennen, Price, Baker, Blanchard, Dean, Gavin, and Terbrack  
Nays: None  
Motion Approved.

**MOTION NO. M-67-20:** Motion to consider an Interlocal Agreement with Oakland County to Approve the Designated Assessor for the period January 1, 2021 through December 31, 2025 and authorize the City Manager to sign on the City's behalf.

Councilmember Gavin moved to approve Motion No. M-67-20  
Seconded by Councilmember Hennen  
Ayes: Price, Baker, Blanchard, Dean, Gavin, Hennen, and Terbrack  
Nays: None  
Motion Approved.

## **PUBLIC COMMENT – ITEMS NOT ON THE AGENDA**

Scott Sehi, Berkley, commented that people have received warnings from the city ordinance officer regarding removing political signs. He stated the laws have changed recently after a Supreme Court ruling and according to the Michigan Municipal League. He said based on the City's current law, political signs must be taken down 10 days after the election which has been deemed unconstitutional. He would like to know when Berkley's ordinance will be updated?

## **COMMUNICATIONS**

**COUNCILMEMBER BAKER:** provided updates on the committees he has the pleasure of speaking for. He said the Technology Advisory Committee is scheduled to meet next week at 6:30 p.m. on December 16<sup>th</sup>. He provided a friendly reminder not to let your computers catch any viruses. He advised not to click on links from untrusted sources, to create strong passwords, and to make sure to secure your home router and Wi-Fi. Councilmember Baker said the Downtown Development Authority is meeting 8:30 a.m. Wednesday, December 9<sup>th</sup>. He said some highlights include that Merry Month continues. He said from November 28<sup>th</sup> through February 1<sup>st</sup>, a number of great events are happening including the Holiday Window Display from November 28<sup>th</sup> through January 18<sup>th</sup>. He said to click the link on the DDA website to vote for your favorite window display. Councilmember Baker stated donations are being collected for Gleaners Community Food Bank from November 28<sup>th</sup> through the 31<sup>st</sup> at Berkley Common, Sum Girls Boutique, Yellow Door, and Vitrine Gallery. He said there are also a variety of Berkley bucks available, and \$750 worth of Berkley Bucks will be awarded to select shoppers. He stated anyone may acquire these through our virtual Main Street. He said anyone with local business receipts may send them to [marketing@downtownberkley.com](mailto:marketing@downtownberkley.com) to be entered to win that prize. He stated there is a winter-themed scavenger hunt throughout the city, that will be a fun and socially distant way to get out of the house while safely interacting with the city. He said this will be happening from December 1<sup>st</sup> through February 1<sup>st</sup>. He said to look for the link on the DDA site. He said the first three individuals to complete the scavenger hunt successfully will receive \$50 in downtown Berkley Bucks. He stated that on December 10<sup>th</sup> and December 11<sup>th</sup>, select businesses will be open until 8 p.m. or later and are all offering great promotions. He said there will be a virtual holiday concert coming up Saturday, December 12<sup>th</sup>, featuring Lilian Dean from 3-4 p.m. He thanked everyone who coordinated with the Santa Parade and Story Time with Santa. He said Santa will be back from noon-1 p.m. December 19<sup>th</sup> and there is a link to access.

Councilmember Baker said finally, the Historical Committee is working on more organization and scanning of various materials that are in the archives. He asks that if anyone has anything to donate, please feel free to reach out to the museum through the city's website or contact city hall. The new coffee mug is still available as well.

**COUNCILMEMBER PRICE:** thanked Santa for making a special stop in Berkley on Saturday. She thanked all the city staff and volunteers who made his visit possible. She said it brought great joy to the city. Councilmember Price said on a related note, she wants to thank all the residents who added festive glow to the streets by displaying lights on their homes this year. She stated the Beautification Advisory Committee is currently canvassing in preparation for its Holiday Spirit Awards. Councilmember Price said the Berkley Public Library continues to offer virtual programs and digital resources along with curbside and porch deliveries of materials.

**COUNCILMEMBER BLANCHARD:** stated that as the liaison for the Berkley Area Chamber of Commerce, he would like to encourage everyone to shop local and dine local. He said, as you know, the Michigan Department of Health and Human Services extended its epidemic order 12 days today, continuing the same conditions through December 20th. Councilmember Blanchard said on another note, winter is coming and everyone should be prepared for winter conditions. He said to stay off the roads during and after a winter storm, so that snowplows can get out there; have your carbon monoxide alarms in place, especially if you are using any alternative heating devices; and to be sure to check on your neighbors, especially if they are senior citizens, to make sure they are doing okay. He added to make sure holiday lights are safely wired up as well.

**MAYOR PRO TEM DEAN:** stated The Parks and Recreation Department continues to offer ideas for at-home recreation. She said anyone looking for inspiration may check out the Department's Facebook page for further suggestions. She stated Parks and Recreation has two activities coming up this month, one is a holiday park treasure hunt and the other is a coloring contest. She stated the winners in each age group will have their masterpiece as the Parks and Recreation Facebook cover page. She said more information may be found by visiting the Parks and Recreation Facebook page. Mayor Pro Tem Dean said work continues on the new Oxford/Merchant Park. She said work will be slowing down soon because of winter weather. She said they look forward to seeing work start up again in the spring. Mayor Pro Tem Dean said there will be a public hearing for the Five-year Recreation Master Plan that will be coming before council at the next city council meeting. She said the recreation master plan may be viewed on the city's website. Mayor Pro Tem Dean said as we know this past Saturday, we had Santa drive by the city of Berkley. She said what struck her the most was the number of adults that lined the streets to catch a glimpse of Santa. She said it brought so much joy and was a great community effort. She offered thanks to the Berkley Holiday Parade Committee, Berkley Department of Public Safety, Berkley Department of Public Works, Berkley Community Engagement Officer Torri Mathes, and Berkley Chief Information Officer Stan Lisica. She also thanked Mayor Terbrack as he was truly committed to making something work.

**COUNCILMEMBER HENNEN:** stated neither the Zoning Board of Appeals nor the Tree Board have met since our last meeting. He stated they won't be meeting again until January and therefore he has nothing to report. Councilmember Hennen echoed the thanks for everyone who did a great job on the Santa Parade around the city.

**COUNCILMEMBER GAVIN:** stated the Planning Commission met last month continuing its discussion on side-yard setbacks and exterior appliances. He said the Commission also discussed façade changes on Coolidge Highway and some site improvements for Vibe Credit Union on Coolidge as well. He said Planning also had a work session to discuss draft language on the early part of the master plan and are hoping to provide some feedback on that front. He said they will next meet 7 p.m. Tuesday, the 15<sup>th</sup>. He said the Environmental Advisory Committee (EAC) met last month and continued its discussion on the implementation of the energy plan, green infrastructure, and the possibility of a community garden. He said the EAC will meet 6:30 p.m. January 21<sup>st</sup>. Councilmember Gavin said the Master Plan Steering Committee will meet 7 p.m. next Monday the 17<sup>th</sup>. Councilmember Gavin said he would like to echo all of

his colleagues with a huge thank you for the Santa driving through the streets event. He said it was such a pick-me-up and uplifting event. He thanked everyone that made it possible.

**CITY MANAGER BAUMGARTEN:** stated the city has halted its enforcement of the particular sign ordinance that was brought up in public discussion portion of the meeting. He said City staff has been discussing this matter throughout this year, and does anticipate bringing a full revision of the city's entire sign ordinance back to Council. He stated to make sure everyone is reading the newsletter. He said there are some great updates from each department included and it can be a great guide on how to enjoy Berkley. Mr. Baumgarten said everyone involved with bringing Santa to Berkley did a fantastic job.

**CITY ATTORNEY DAN CHRIST:** provided a quick legislative update regarding Public Act 228, allowing for electronic and remote meetings through the end of this year for any reason. He said that as it stands now, beginning January 1<sup>st</sup>, the only basis for electronic meetings will be for military duty, a medical condition, or a declared state or local emergency. Mr. Christ discussed House Bill 6207 which has come out of Committee that would extend the any circumstance provision for a public body to have an electronic meeting through March 30, 2021. He stated it has not been voted on and is likely to be considered within the next week or two.

**CITY CLERK MITCHELL:** offered a huge thank you to Deputy Clerk Gina Harold and Election Specialist Ashley Merz. She said they did a tremendous job and were very tenacious during the long election season. She said she is very appreciative of their help. She offered a quick thank you to Sue Reddin in the Finance department who donated her time and counted and balanced over 7,500 ballots. She said she is very appreciative of everyone's help, treasury for answering all the calls and questions, the city manager's office, the DPW and Public Safety. Ms. Mitchell also thanked the workers for volunteering during a global pandemic. She also thanked the residents for their participation as the city saw an about 81% of turnout.

**MAYOR TERBRACK:** stated the City of Berkley is heavily involved with the Michigan Municipal League (MML), and Mayor Pro Tem Dean was asked by the MML to participate in the elected officials academy as a moderator for a breakout session and a panelist for a training that took place via zoom November 23<sup>rd</sup>. He stated she did a tremendous job representing Berkley. Mayor Terbrack said that Saturday evening was not our usual way to usher in the holidays. He said it was difficult to cancel our usual parade and activities, but the parade committee was still committed to finding a way to bring joy to the community at a time when it was tremendously needed. He said the Santa event that took place started with an idea that sounded great, but we knew it would be going to be difficult to pull off. He discussed the logistics of what needed to be done to make this happen. He said he can't thank everyone enough for making it a success including, Cinda Coon, Denise Kallas, Shawn Young, Corey Miller, Jordan Kobernick, Scott Smith, Chief Koehn, Rick Chalmers, Stan Lisica, Torri Mathes, and the entire DPW department and Department of Public Safety for bringing so much joy to the community. He said it felt like a true Christmas miracle and the feedback was incredibly positive. He said it was an event for all ages and he doesn't know what other communities could have really pulled this off in the time that we did. Mayor Terbrack told everyone to stay safe and frequent our local businesses and restaurants for takeout throughout the holiday season.

## **ADJOURNMENT**

Mayor Pro Tem Dean moved to adjourn the Regular Meeting at 8:24 p.m.

Seconded by Councilmember Baker

Ayes: Blanchard, Dean, Gavin, Hennen, Price, Baker, and Terbrack

Nays: None

Motion Approved.

**A RESOLUTION**  
**Of the Council of the City of Berkley, Michigan**  
**Recognizing and Celebrating Robert Damery**  
**on the occasion of his 100<sup>th</sup> birthday**

- WHEREAS,** Robert Damery was born December 20, 1920 in Skibbereen, Ireland, and
- WHEREAS,** in 1950 Robert Damery immigrated to the United States and settled in Berkley where his Uncle, James Damery, served as Fire Chief, and
- WHEREAS,** Robert and his wife, Frances, first resided on Thomas Avenue until later moving to Oakshire Avenue where they would raise their three children, and now welcome their seven grandchildren; and
- WHEREAS,** in his seventy years residing in Berkley, Robert worked for Chrysler Automotive as a Master Wood Model Maker in Highland Park, until his retirement in 1986; and
- WHEREAS,** Robert has been a member of the Freemasons, in which he is a three-time Past Master of the Berkley Masonic Lodge and held the District Deputy Instructor role for many years, in addition to serving as the Grand Steward for the Grand Lodge of Michigan; and
- WHEREAS,** Robert contributes his good fortune in years to his devoted wife, family, and his many meaningful and abiding friendships he has kept through his affiliations with the Freemasons, Eastern Star, and the residents of Berkley.

***Now, Therefore, the City of Berkley Resolves:***

**Section 1:** *That the City Council does hereby recognize and celebrate*

***Robert Damery***

*For reaching this momentous occasion and for his longevity as a longtime friend of the Berkley community at-large. We are grateful for this opportunity to join with the family and many friends of Robert as we honor an individual who truly understands and has cared for his community and neighbors for the past seventy years. May the health and happiness his years so richly merit be with him always.*

*Introduced and passed at a Regular City Council Meeting on Monday, December 21, 2020.*

Attest:

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*Daniel J. Terbrack, Mayor*

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*Victoria Mitchell, City Clerk*



December 21, 2020 Council Meeting

Moved by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ to approve the Mayor and City Manager to enter into an Intergovernmental Agreement for Lockup Services, Animal Control Services, Use of the Berkley DPS Range, and Dispatch Services between the City of Berkley and the City of Pleasant Ridge for a \$6,500 fixed yearly fee for each full-time equivalent (FTE) reflected in the Michigan Commission on Law Enforcement Standards (MCOLES) Fall Semi-Annual Law Enforcement Distribution Report for Pleasant Ridge Police Department. This agreement shall be effective for a term commencing approximately March 1, 2021 and continuing until June 30, 2023.

Ayes:

Nays:

Motion:

**Justification:**

The Public Safety Director and City Manager recommend this agreement.



City of Berkley  
Department of Public Safety



INTEROFFICE CORRESPONDENCE

**DATE:** December 9, 2020

**TO:** Matthew Baumgarten, City Manager

**FROM:** Matt Koehn, Director of Public Safety *MBK*

**SUBJECT:** INTERGOVERNMENTAL AGREEMENT FOR LOCKUP SERVICES, ANIMAL CONTROL SERVICES, USE OF BERKLEY DPS FIREARMS RANGE, AND DISPATCH SERVICES BETWEEN CITY OF BERKLEY AND CITY OF PLEASANT

As you are aware, the City of Berkley provided dispatch and lockup services for the City of Pleasant Ridge until July of 2017, when they contracted with the City of Ferndale for those services. Recently, the City of Pleasant Ridge approached the Berkley Department of Public Safety to again provide dispatch and lockup services, as well as animal control services and the use of the BDPS range. This is essentially the same agreement that was recently approved by City Council for the City of Huntington Woods.

The attached comprehensive interlocal agreement for Lockup Services, Animal Control Services, the use of the BDPS range, and Dispatch Services, was reviewed by City Attorney John Staran. There were three minor modifications to the Huntington Woods agreement to meet the needs of Pleasant Ridge:

- Section 5(b)(ii) was modified to remove Commission on Accreditation for Law Enforcement Agencies (CALEA) language (Pleasant Ridge does not participate) and was replaced with "Berkley Department of Public Safety will transfer all calls received that require a fire/medical response in Pleasant Ridge to the Ferndale Fire Department for their response" (due to the fact the Ferndale Fire Department provides fire/medical services for Pleasant Ridge).
- Section 5(i) was added to provide "Warrant Entry/Cancellation Services" for Pleasant Ridge.
- Section 11 compensation was modified from an escalating fee to the flat FTE fee (the intent is to make this change to the Huntington Woods contract upon renewal)

The City of Berkley will provide these Services for the City of Pleasant Ridge for a \$6,500 fixed yearly fee for each full-time equivalent (FTE) reflected in the Michigan Commission on Law Enforcement Standards (MCOLES) Fall Semi-Annual Law Enforcement Distribution Report for Pleasant Ridge Police Department. The fee for the

remainder of this fiscal year, as well as fiscal year 2021/2022 will be \$39,000, based on the current FTE number of six for the Pleasant Ridge Police Department.

Pleasant Ridge will be billed on a quarterly basis, in equal installments. Payment is due within thirty (30) days after invoicing. This Agreement shall be effective for a term commencing approximately March 1, 2021 and continuing until June 30, 2023.

This agreement is mutually beneficial to both cities.

The City of Pleasant Ridge approved this agreement at their December 8, 2020 City Commission Meeting.

The Department of Public Safety recommends the approval of this agreement.

**INTERLOCAL AGREEMENT FOR LAW ENFORCEMENT SERVICES BETWEEN  
THE CITY OF PLEASANT RIDGE AND THE CITY OF BERKLEY**

The City of Pleasant Ridge, Michigan ("Pleasant Ridge"), a Michigan Municipal Corporation with offices at 23925 Woodward, Pleasant Ridge, Michigan 48069, and the City of Berkley, Michigan, ("Berkley"), a Michigan Municipal Corporation with offices at 3338 Coolidge Highway, Berkley, Michigan 48072, hereby enter into the following agreement:

**RECITALS:**

A. Pleasant Ridge has concluded that it would be beneficial to contract for certain law enforcement services with Berkley.

B. Berkley agrees to provide such law enforcement services under the terms and conditions of this Agreement.

C. This Agreement is consistent with the charters of Berkley and Pleasant Ridge, and is authorized under the Urban Cooperation Act of 1967, MCL 124.501 *et seq.*, and MCL 124.531 *et seq.*

**IT IS THEREFORE AGREED:**

1. **Definitions.** For the purposes of this Agreement, the terms listed below shall be defined as follows:

a. "Berkley," "Berkley City Council," and "Berkley City Manager" shall mean the City of Berkley, its City Council, and its City Manager, respectively.

b. "Pleasant Ridge," "Pleasant Ridge City Commission," and "Pleasant Ridge City Manager" shall mean Pleasant Ridge, its Commission, and its City Manager, respectively.

c. "Lockup Services" shall mean the detention of persons awaiting processing, booking, court appearances, or transportation to a jail, for a period not to exceed seventy-two (72) hours in accordance with MCL 791.262(1)(e) and such other services as described in paragraph 2.a.

d. "Municipality" shall mean either the City of Berkley or the City of Pleasant Ridge, and when plural it shall mean both Berkley and Pleasant Ridge.

2. **Lockup Services.** The Municipalities agree that Berkley shall provide Lockup Services to Pleasant Ridge as follows:

a. Lockup Services shall include, but not be limited to:

(i) Detention of persons awaiting processing, booking, court appearances, or transportation to a jail, for a period not to exceed seventy-two (72) hours;

(ii) Providing meals to detainees in the lockup in accordance with Berkley Department of Public Safety Rules and Regulations;

(iii) Providing conditions of detention in accordance with Berkley Department of Public Safety Rules and Regulations;

(iv) Testifying in Court, at depositions, or any required administrative hearing;

(v) Upon request, the provision of equipment and personnel necessary for video arraignment; and

(vi) Providing other Lockup Services as agreed to by the Municipalities.

b. Acceptance and Searches of Detainees. In order for a subject arrested by Pleasant Ridge to be admitted to Berkley lockup, he or she first must be accepted by Berkley. When Pleasant Ridge desires to have a subject detained at Berkley's lockup, Pleasant Ridge officer(s) shall turn over to Berkley officer-in-charge (or his/her designee) all booking intake forms and other information as requested by Berkley officer-in-charge (or his/her designee). Berkley officer-in-charge (or his/her designee) shall base his/her decision to accept or reject the subject on the same criteria as any other Berkley arrest and in accordance with Berkley Department of Public Safety Rules and Regulations. Pleasant Ridge police officer(s) transporting the subject shall conduct a thorough search of the subject in accordance with Berkley Department of Public Safety Rules and Regulations prior to turning the subject over to Berkley. Berkley may conduct its own search of the subject prior to accepting the subject for lockup. If not refused, the subject is accepted. No personal property of the subject, except clothing the subject is wearing and his/her prescription medication(s), if any, shall be left in the custody of Berkley for any reason.

c. Processing of Detainees. Pleasant Ridge officer(s) transporting a subject to Berkley for lockup shall process the subject consistent with Berkley Department of Public Safety Rules and Regulations. When available, Berkley personnel may provide assistance with prisoner processing.

(i) When a Pleasant Ridge prisoner is to be released (i.e. turned over to another agency, transported to county jail, or taken to another facility, etc.), a Pleasant Ridge officer shall respond and take responsibility for all prisoner property not transferred with the prisoner.

(ii) Berkley agrees that should an emergency arise in Pleasant Ridge during prisoner processing, Berkley will take reasonable steps to provide personnel to assist Pleasant Ridge officer(s) with the processing of its detainee(s) so that Pleasant Ridge officer(s) may respond to the Pleasant Ridge emergency.

d. Refusal of Subjects. Berkley reserves the right to refuse admittance to its lockup of any prisoner who is deemed unacceptable for housing in Berkley lockup for any reason in the opinion of the Berkley officer-in-charge (or his/her designee), including but

not limited to refusal of admittance to any subject suffering from mental illness or from a medical condition that threatens the security or the efficient operation of Berkley's lockup.

e. Medical Services. Pleasant Ridge agrees to pay for all costs and fees associated with the provision of medical care, transportation and treatment by Berkley emergency services personnel, any ambulance service, or any medical personnel or entity, to any detainee accepted by Berkley for Lockup Services under this Agreement for the full duration of detention. If, after acceptance of a subject for lockup in Berkley, the detainee requires medical care and/or treatment, Pleasant Ridge shall provide officers to guard the prisoner during the course of the detainee's medical care. To the fullest extent permitted by law, and to the extent of the cost of medical care provided to a detainee, Pleasant Ridge hereby agrees to indemnify and hold harmless Berkley for any and all claims, demands, lawsuits, or causes of action brought by any person, corporation, or government unit against Berkley, its agents, elected or appointed officials, and employees arising from or in connection with the medical care and treatment of detainees housed in Berkley's lockup pursuant to this Agreement.

f. Transportation. Pleasant Ridge shall be responsible for transporting its detainees both to and from Berkley's lockup to court, county jail, or other agencies or facilities as required.

g. Blood Draws for OWI Arrests. Pleasant Ridge prisoners arrested for OWI or similar charges, and requiring a blood draw, shall be subject to Berkley Department of Public Safety Rules and Regulations for this process. Pleasant Ridge agrees to pay for all services related to blood draws for detainees housed in Berkley lockup under this Agreement.

h. Bond. Pleasant Ridge agrees to process bond for all Pleasant Ridge detainees housed in Berkley lockup under this Agreement. Persons wishing to post bond for Pleasant Ridge prisoners shall be directed to contact Pleasant Ridge and make arrangements for Pleasant Ridge officers to process the bond. Proof of bond shall be presented prior to the release of a Pleasant Ridge prisoner.

i. Use of Technology. When practical, and so as not to interfere with the security or the efficient operation of Berkley's lockup, Pleasant Ridge shall be allowed to utilize available technology located at Berkley lockup for video arraignments or other court appearances of its detainees under this Agreement.

j. Administrative Responsibility. Berkley's provision of Lockup Services to Pleasant Ridge shall be administered by Berkley as follows:

(i) Control of Lockup Services. The Lockup Services performed by Berkley shall be under the exclusive jurisdiction and control of Berkley's Director of Public Safety. All Pleasant Ridge personnel transporting subjects for lockup in Berkley shall adhere to Berkley's Department of Public Safety Rules and Regulations concerning lockup.

(ii) Pleasant Ridge Input. If the Pleasant Ridge Police Chief objects to a Rule or Regulation utilized in the provision of Lockup Services to Berkley, the Pleasant Ridge Police Chief or his/her designee shall submit Pleasant Ridge's objection in writing to the Berkley Director of Public Safety. The Berkley Director of Public Safety or his/her designee shall respond to same in writing within 72 hours, providing such facts and opinions which support his/her determination of the issue. In the event that the matter is not resolved to Pleasant Ridge's satisfaction, the Berkley City Manager and the Pleasant Ridge City Manager shall meet to review the matter.

Pleasant Ridge is not responsible for the customs, policies, or practices of Berkley as related to the operation of the jail facility or the provision of Lockup Services. Pleasant Ridge is not responsible for the hiring, supervision, or training of jail personnel. Pleasant Ridge is not responsible for the jail building, its operation, or its design.

(iii) Personnel. The Municipalities agree that no personnel are required to be transferred from Pleasant Ridge to Berkley to provide the Lockup Services called for in this Agreement.

(iv) Lockup Documents. The Municipalities shall exchange copies of all reports, correspondences, and other documents which each community produces regarding the lockup facility as requested. The recipient of these documents shall treat them in the same manner the provider treats them. Documents which are confidential shall be marked as such and shall be treated in accordance with the provider's instructions.

k. Equity and Assets. All equity in assets and equipment of Berkley's lockup facility shall remain the property of Berkley. Payment for services provided pursuant to this Agreement shall not entitle Pleasant Ridge to any interest of any kind in such assets or equipment; provided, however, that any assets or equipment purchased by Pleasant Ridge shall be returned to Pleasant Ridge in the event of termination of this Agreement.

3. Animal Control Services. The Municipalities agree that Berkley shall provide Animal Control Services to Pleasant Ridge as follows:

a. Berkley will provide an Animal Control Officer within the corporate limits of Pleasant Ridge to provide the following services. During times when the Animal Control Officer is not on duty, Pleasant Ridge will be responsible for handling these services.

(i) Enforcement of state laws and local ordinances, where applicable, regarding animals within the corporate limits of Pleasant Ridge, including but not limited to, leash regulations, dogs at large, and licensing laws.

(ii) Issuance of violation tickets where appropriate and appearance in Court when required to prosecute said violations. The Animal Control Officer may follow up with chronic violators if deemed necessary.

- (iii) Impoundment of stray, vicious, or dangerous animals.
- (iv) Retention of impounded animals in accordance with minimum time requirements set forth by state law.
- (v) Providing that impounded animals that are not placed or returned to their owners shall humanely be disposed of in accordance with applicable laws consistent with this Agreement.
- (vi) Providing for the transfer of injured animals to veterinary care when appropriate. When immediate disposal of injured animals is determined to be necessary by the Animal Control Officer, Pleasant Ridge will be responsible for humane disposal of the animals. Pleasant Ridge will also be responsible for the cost of emergency veterinary care of injured animals within its corporate limits.
- (vii) Conducting animal bite investigations of persons bitten by animals within the corporate limits of Pleasant Ridge, including but not limited to:
  - (A) Preparation of a standard Incident Report documenting the reported details of the bite incident;
  - (B) Investigation of the circumstances of the bite incident;
  - (C) Investigation and/or verification of appropriate vaccinations received by the animal prior to the bite incident;
  - (D) Impoundment or quarantine, as appropriate, of the involved animal for such period of time as required by state law;
  - (E) Enforcement of state laws or local ordinances, as may be appropriate, regarding the bite incident; and
  - (F) Humane destruction of the offending animal, as appropriate, in accordance with respective state laws, city ordinances, and/or court orders.
- (viii) Providing for the drop-off of stray animals at the appropriate Animal Shelter, when picked up by Pleasant Ridge officers during hours when the Animal Control Officer is not on duty.
- (ix) Responding and handling wildlife calls when a human is bitten or injured by the animal.
- (x) Providing for a system to ensure that impounded animals released to Pleasant Ridge residents have appropriate vaccinations when required by law and have valid Pleasant Ridge licenses when required by Pleasant Ridge ordinance,



either prior to release from impoundment or within a reasonable period of time thereafter.

(xi) Providing for removal of dead non-domestic animals from primary roads within the corporate limits of Pleasant Ridge having posted speed limits of 30 mph or greater.

(xii) Providing for removal of dead domestic animals, such as dogs and cats, from primary roads and residential streets within the corporate limits of Pleasant Ridge.

b. In connection with the Animal Control Services, Berkley shall have responsibility for the following:

(i) Determination of the number of said employee(s) providing the services.

(ii) Selection and hiring of said employee(s).

(iii) Payment of wages and other compensation to said employee(s).

(iv) Direct managerial supervision of said employee(s).

(v) Determination of the work hours of said employee(s), with the understanding that it is the intent of this Agreement that services are to be provided Monday through Friday during normal business hours to be specifically determined by Berkley, with provisions for after-hour call-ins for emergency purposes.

c. Berkley shall provide and manage an appropriate holding facility for impounded animals.

d. Berkley shall provide an appropriate animal control vehicle to be operated by the said Animal Control Officer(s), and will be responsible for gasoline, maintenance, and insurance of the vehicle.

e. In connection with the providing of Animal Control Services by Berkley, Pleasant Ridge understands and agrees to the following:

(i) The Animal Control Officer(s) will not be assigned exclusively to Pleasant Ridge, but will carry out duties in Pleasant Ridge as necessary to comply with this Agreement.

(ii) Pleasant Ridge shall authorize and empower the Berkley Animal Control Officer(s) to enforce animal regulations within the corporate limits of Pleasant Ridge.

(iii) Pleasant Ridge shall provide police assistance to the Animal Control Officer(s), if requested, when an Animal Control Officer is performing services within the corporate limits of Pleasant Ridge.

(iv) When animals require transfer to the Oakland County Animal Control facility, Pleasant Ridge shall reimburse Berkley for drop-off fees incurred.

f. In connection with the providing of Animal Control Services by Berkley, it is agreed that any revenue shall be distributed as follows:

(i) Revenue generated from the sale of City of Pleasant Ridge dog licenses shall accrue to Pleasant Ridge.

(ii) Revenue generated from the sale of City of Berkley dog licenses shall accrue to Berkley.

(iii) Revenue generated from District Court fines resulting from the enforcement of animal regulations within the corporate limits of Pleasant Ridge shall accrue to Pleasant Ridge.

(iv) Revenue generated from District Court fines resulting from the enforcement of animal regulations within the corporate limits of Berkley shall accrue to Berkley.

4. **Use of Berkley Department of Public Safety Firearms Range.** Berkley agrees to allow Pleasant Ridge Police Department personnel to utilize the firearms range located in the Berkley Department of Public Safety building while this agreement is in effect under the following terms:

a. A qualified Pleasant Ridge firearms instructor/range officer will be present at all times Pleasant Ridge personnel use the range.

b. Pleasant Ridge personnel will provide their own ammunition and targets.

c. At its own expense, Pleasant Ridge will repair any damage caused by Pleasant Ridge personnel while using the range.

5. **Police Dispatch Services.** The Municipalities agree that Berkley shall provide Police Dispatch Services as follows:

a. Police Dispatch Services will include any emergency or non-emergency communications of any kind received by the Berkley Department of Public Safety which requests, requires, or in the sole judgment of the Berkley Public Safety Department, appears to request or require the presence, attention or services of Pleasant Ridge Police Department personnel to address, respond, or attend to any issue, event, or circumstance involving public health or safety, an accident, an injury, the protection of property, or any emergency (including but not limited to medical, fire and/or health).

b. In connection with Berkley's provision of Police Dispatch Services to Pleasant Ridge, the parties agree to the following procedures:

(i) Berkley Department of Public Safety will receive all 911 calls and provide 24-hour a day radio communications, in accordance with Federal Communications Commission (FCC) procedures and requirements, for the City of Pleasant Ridge.

(ii) Berkley Department of Public Safety will transfer all calls received that require a fire/medical response in Pleasant Ridge to the Ferndale Fire Department for their response.

(iii) Berkley Department of Public Safety will comply with all applicable communications standards relating to the Pleasant Ridge Police Department radio and dispatch communications policy.

(iv) Berkley Department of Public Safety shall not incur any costs related to the implementation of the standards set forth in the Pleasant Ridge General Order.

c. Pleasant Ridge acknowledges and agrees that except for the Police dispatch services contracted for herein and the other services set forth in this Agreement, neither the City of Berkley nor the Berkley Department of Public Safety shall be obligated in any other way to provide or assist the City of Pleasant Ridge or Pleasant Ridge Police Department personnel with any other direct or indirect backup or supplemental support or police, fire or emergency-related services or protection of any kind or nature, nor will there be any obligation to send Berkley Department of Public Safety personnel to respond, in any way, to any call for police, fire or emergency services. In all circumstances, Pleasant Ridge shall remain solely and exclusively responsible for all costs and liabilities associated with providing available Pleasant Ridge Police Department personnel to receive and respond to Police dispatch service in a timely and professional manner.

d. Pleasant Ridge acknowledges there may be circumstances when, despite reasonable Berkley Department of Public Safety efforts, the Berkley Public Safety Department's attempt to communicate or provide Police dispatch services for and to Pleasant Ridge Police Department personnel may be unsuccessful. This Agreement does not, and is not intended to, include any warranty, promise, or guarantee of any kind concerning the provision of Police dispatch services by the Berkley Department of Public Safety to Pleasant Ridge Police Department personnel, except that the Berkley Department of Public Safety will make a reasonable effort to provide such Police dispatch services and will do so consistent with existing and future Berkley Department of Public Safety communication and dispatch policies, procedures, orders, and standards, and applicable federal and state requirements.

e. This Agreement does not, nor is it intended to, obligate or require the Berkley Department of Public Safety to change, alter, modify, or develop any different dispatch related procedures, policies, or standards, or to purchase or use any special or

additional equipment, or to prohibit the Berkley Department of Public Safety from implementing any future communication-related changes the Berkley Public Safety Department, in its sole judgment and discretion, believes to be in its best interest.

f. Pleasant Ridge shall be solely and exclusively responsible during the term of this Agreement for (i) providing its personnel with radios and communication equipment that will be properly set, adjusted, and maintained to receive any Police dispatch service from the Berkley Department of Public Safety; (ii) complying with all current and future Berkley Department of Public Safety dispatching procedures, policies, standards, technical specifications, and applicable federal and state communication requirements; (iii) adequately training Pleasant Ridge Police Department personnel; and (iv) promptly and properly notifying the Berkley Department of Public Safety of any on-duty or off-duty status and availability or unavailability of Pleasant Ridge Police Department personnel to receive Police dispatch services.

g. Pleasant Ridge shall be solely and exclusively responsible for all costs, expenses, and liabilities associated with the acquisition, purchase, lease, operation, use, and maintenance of any Pleasant Ridge Police Department radio or other communication equipment. The Berkley Department of Public Safety shall not be obligated to provide Pleasant Ridge Police Department with any radio or communication equipment of any kind.

h. The Berkley Department of Public Safety may, at its sole discretion and expense, inspect any Pleasant Ridge Police Department radio or other communication equipment to ensure that it conforms to Berkley Department of Public Safety dispatching procedures, policies, standards, technical specifications, and federal and state requirements. If the inspection reveals nonconformance, the Berkley Department of Public Safety shall notify Pleasant Ridge Police Department in writing about the specific nonconformities. Pleasant Ridge Police Department shall promptly address and correct the nonconformities at its own expense. If Pleasant Ridge Police Department fails to do so, the Berkley Department of Public Safety may terminate or cancel the Police Dispatch Services set forth in this Agreement.

i. Warrant Entry/Cancellation Services – Pleasant Ridge Officers will be responsible for retrieval of warrant documents from courts and deliver documents to Berkley Public Safety for entry. Warrants will be timestamped upon arrival at Berkley Public Safety. Warrants shall be entered within forty-eight (48) hours of receipt. LEIN entry confirmation shall be attached to the warrant and maintained in the “warrant drawer” for Pleasant Ridge located at the Berkley Public Safety Department. Berkley personnel shall notify Pleasant Ridge personnel of any warrant confirmations. Upon warrant cancellation, the original warrant and all LEIN work shall be placed in the Pleasant Ridge Police designated file or mailbox. Pleasant Ridge personnel shall retrieve documents in the file/mailbox on a weekly basis. The LEIN audit shall be the responsibility of the Pleasant Ridge Police LEIN TAC. The Pleasant Ridge LEIN TAC shall be responsible for retrieval of any documents necessary to perform the Pleasant Ridge LEIN audit. Warrant entries shall be processed in conformance with the Berkley Public Safety warrant entry procedures/policies.

6. **Insurance Coverage.** Pleasant Ridge shall obtain and maintain in force during the term of this Agreement insurance coverage for general liability with limits of liability not less than \$5,000,000 combined single limit for personal injury and property damage for claims arising out of the subject matter of this Agreement. Pleasant Ridge shall also obtain and maintain motor vehicle liability and worker's compensation in amounts it determines to be appropriate, with Berkley being named as an additional insured on all liability policies and entitled to copies of Certificates of Insurance confirming the required insurance during the entire term of this Agreement. Pleasant Ridge shall add Berkley as an additional insured for these liabilities. Berkley shall add Pleasant Ridge as an additional insured under its policy for the services provided under this Agreement.

7. **Liability and Indemnification.** To the fullest extent permitted by law, Pleasant Ridge agrees to hold Berkley harmless from any and all claims, suits, demands, judgments, or causes of action made against Berkley, its elected or appointed officials, employees, agents, or volunteers for the actions of Pleasant Ridge's elected or appointed officials, employees, agents, or volunteers arising from or in connection with the performance of this Agreement. To the fullest extent permitted by law, Berkley agrees to hold Pleasant Ridge harmless from any and all claims, suits, demands, judgments, or causes of action made against Berkley, its elected or appointed officials, employees, agents, or volunteers, for the actions of Berkley's elected or appointed officials, employees, agents, or volunteers arising from or in connection with performance of this Agreement. Except as provided herein, neither Municipality shall have any right under any legal principle to be indemnified by the other Municipality or any of its employees or agents in connection with any claim.

In executing this Agreement, Berkley does not assume liability or responsibility for, or in any way release, Pleasant Ridge from any liability or responsibility to the extent that it arises from the existence or effect of Pleasant Ridge' City Charter, ordinances, policies, rules or regulations. To the extent that any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such Charter provision, ordinance, policy, rule, or regulation is at issue, Pleasant Ridge shall defend the same at its sole expense and, if judgment is entered or damages are awarded against Pleasant Ridge, Pleasant Ridge shall fully satisfy the same including all chargeable costs and reasonable attorney fees. In the event of a claim, loss or liability based upon the alleged concurrent or joint negligence or tortious wrongdoing of the parties, the parties shall bear their respective liability, including costs, in accordance with the laws of the State of Michigan.

8. **Governmental Immunity and Authority Unaffected.** Nothing in this Agreement is intended, nor shall it operate to diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity or character of office including, but not limited to, governmental immunity on behalf of either Municipality or any of its agents.

9. **Term of Agreement.** This Agreement shall be effective for a term commencing on the date of execution of this Agreement by the parties and continuing until June 30, 2023.

a. This Agreement may be terminated at any time for any reason, and with or without cause, by the written agreement of Berkley and Pleasant Ridge, approved by the

concurrent resolutions of Berkley City Council and Pleasant Ridge City Commission. Said agreement shall provide a period of at least 90 days before the termination becomes effective and the services set forth in this Agreement are discontinued.

b. This Agreement may be terminated by Berkley if Pleasant Ridge fails to pay any amount owing under this Agreement, including applicable late charges and interest, within 60 days of when the payment was due. Such termination by Berkley shall be by written notice to Pleasant Ridge that contains a clearly stated effective date of the termination that is at least 30 days after the date of the notice. If all amounts owing, including past due installments, late charges, interest, and any new installments coming due during that time are not paid, the termination shall be effective, relieving Berkley from any obligation to provide any further services under this Agreement. Before Berkley gives notice of termination under this provision, it shall first notify Pleasant Ridge of its failure to timely pay the amount owed and allow a reasonable opportunity for Pleasant Ridge to pay such amount.

c. In addition to a termination under subsections (a) and (b), either Municipality may terminate this Agreement for any reason, and with or without cause, by written notice to the other Municipality. During the Initial Term, one (1) year written notice shall be required before termination. During any subsequent term, six (6) months' written notice shall be required before termination.

10. **No Third Party Beneficiaries.** The sole and exclusive purpose of this Agreement is to set forth the terms by which Berkley will provide certain law enforcement services for Pleasant Ridge. This Agreement is not intended to, and does not create any special or other duty, obligation, promise, benefit or right to services not herein described in favor or for the benefit of any person, entity, or organization that is not a party to this Agreement.

11. **Compensation.** In consideration for the services provided by Berkley under this Agreement, Pleasant Ridge will pay Berkley an annual amount equal to \$6,500 for each full-time equivalent (FTE) reflected in the Michigan Commission on Law Enforcement Standards (MCOLES) Fall Semi-Annual Law Enforcement Distribution Report for Pleasant Ridge Department of Police Department. As of the date of this Agreement, the most recent MCOLES Report allocated six (6) FTEs to the Pleasant Ridge Department of Police Department. Pleasant Ridge will be billed on a quarterly basis, in equal installments. Payment is due within thirty (30) days after invoicing by Berkley.

12. **Independent Contractor.** Berkley shall provide the services set forth in this Agreement to Pleasant Ridge as an independent contractor, with Berkley being responsible for all workers' compensation and other insurance, income tax, social security, and other withholding, and all other compensation or benefits for Berkley employees involved in providing the services. At no time shall any Berkley employee involved in providing services be considered or claimed to be an employee or agent of Pleasant Ridge, and Pleasant Ridge shall not be deemed or allowed to control, supervise, or direct Berkley employees involved in providing the services.

13. **Assignments.** Berkley's obligations under this Agreement may not be assigned except with the approval of Pleasant Ridge.

14. **Notices.** Any notices provided under this Agreement shall be in writing to the Berkley City Manager and Pleasant Ridge City Manager at the addresses listed on Page 1.

15. **Amendments.** Amendments to this Agreement shall be in writing, approved by concurrent resolutions of Berkley City Council and Pleasant Ridge City Commission, and be signed by authorized representatives of the Municipalities.

16. **Severability.** If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force and effect.

17. **Applicable Law.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole, according to its fair meaning, and not construed strictly for or against any Municipality. As used in this Agreement, the singular or plural number, possessive or non-possessive, shall be deemed to include the other whenever the context so suggests or requires.

18. **No Waiver.** Absent an express written waiver, the failure of a Municipality to pursue any right granted under this Agreement shall not be deemed a waiver of that right regarding any existing or subsequent breach or default under this Agreement. No failure or delay on the part of a Municipality in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

19. **Compliance with Laws.** Each Municipality shall comply with all federal, state, and local statutes, ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

20. **Entire Agreement.** This Agreement contains the entire Agreement of the Municipalities with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect to the subject matter of this Agreement.

21. **Filing.** As provided in MCL 124.510, this Agreement and any amendments of it shall be filed with the Oakland County Clerk and Michigan Secretary of State before taking effect.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, and pursuant to the concurrent resolutions adopted by City of Berkley City Council and City of Pleasant Ridge City Commission, approving and authorizing the signing of this Agreement, the undersigned officials have signed this Agreement on the dates indicated next to their signatures.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020

**CITY OF BERKLEY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF PLEASANT RIDGE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



December 21, 2020 City Council Meeting


Moved by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ to authorize Hubbell, Roth & Clark (HRC) for engineering design services related to the 2021 Sidewalk Replacement Program at a cost not to exceed \$20,097 from the Sidewalk Fund, account number 470-938-821-000.

Ayes:

Nays:

Motion:

# Transmittal Memo

To: Matthew Baumgarten, City Manager (via email)  
From: Derrick Schueller, DPW Director   
Cc: Mark Pollock, Finance Director (via email)  
Date: December 10, 2020  
Subject: 2021 Sidewalk Replacement Program-Field Survey & Estimates  
Approval of Engineering Services with Hubbell, Roth and Clark (HRC)

As you know, the maintenance and upkeep of the sidewalk within the public right-of-way is the responsibility of each property owner. In an effort to facilitate sidewalk repairs, the City has periodically undertaken a Sidewalk Assessment Program. The last comprehensive program was in the mid-2000's and this effort was initiated again earlier this year in Section 5 (southwest corner). Field surveys were completed and "immediate" repair areas were identified with notice provided to all property owners impacted. A qualified low-bid contractor was awarded the project in July and the work was completed this fall in Section 5. As a reminder, "immediate" sidewalk repairs are defined as those walkways with 2" or more of vertical displacement.

In an effort to continue the City's desire to address high hazard sidewalks, please find attached an engineering proposal from Hubbell, Roth & Clark (HRC). The proposal covers the initial sidewalk inspection and survey in two sections of the City (Section 2 & 4). Also included in the scope are preparing cost estimates and assembling bid documents. The estimated not-to-exceed cost for this evaluation is \$20,097. Please note funding was previously allocated in the Sidewalk Fund, account number 470-938-821-000 (Engineering).

HRC will also assist the City with several other tasks as we get closer to construction, including property owner outreach and mailings. These work items, along with construction engineering, will be included in a separate proposal to be considered at a later date. Note the tentative plan is to have the 2020 sidewalk contractor also complete the 2021 work via a change order. This will save on administrative costs and secure firm, low-bid pricing. A defined construction schedule for the 2021 work will be determined in a couple months after the field survey and scope is established.

Feel free to contact our office with any questions or concerns.

November 9, 2020

City of Berkley  
3238 Bacon Avenue  
Berkley, MI 48072-1100

Attn: Mr. Matthew Baumgarten, City Manager  
Mr. Derrick Schueller, Director of Public Works

Re: Proposal for Professional Engineering Services  
Phase II – Sidewalk Condition Evaluation

HRC Job No. 20190847.50

Dear Mr. Baumgarten & Mr. Schueller:

In accordance with your request, Hubbell, Roth & Clark, Inc. (HRC) is pleased to present this proposal to continue the **Sidewalk Condition Evaluations** as part of the City’s on-going sidewalk replacement program. As you know, Phase I, which consists of sidewalk replacements identified in the southwest section of the City, was bid earlier this year and was awarded to Luigi & Son Cement Company at the August 10, 2020 Council meeting. Phase I construction is expected to be substantially completed by the end of the year.

Phase II of the Sidewalk Replacement program continues City Council’s desire to address “immediate” sidewalk concerns (2” or greater displacement) City-wide. These efforts include improvements to sidewalks owned privately and by the City (parks, city buildings, etc.). Phase II will continue the practice of replacing “major” sidewalk slabs if they are adjacent to “immediate” slabs.

Phase II will consist of new sidewalk evaluations within two additional sections of the City, the Central and East sections. These sections are collectively bordered by Greenfield and Woodward to the west and east, respectively, and Catalpa and 12 Mile to the south and north, respectively (see attached map). The approximate length of sidewalks in these two (2) sections is 37.8 miles\*.

**NOTE:** As mentioned above the City is focusing on “immediate” slab replacements first, therefore the Phase II Evaluation will only include collecting condition data on sidewalk slabs that display “immediate” (2” or greater) displacements between slabs and adjacent “major” slabs.

Additionally, Phase II will include a re-evaluation of the Southwest section to identify “immediate” sidewalk concerns which may have arisen since the previous 2018 evaluation. One can reasonably expect that sidewalk deterioration has continued since the 2018 evaluation and the City wished to address any *new* “immediate” sidewalk concerns in this section as part of the Phase II replacements.

\*Includes one side each of Catalpa, Greenfield and 12 Mile sidewalks and both sides of Coolidge. Does not include Woodward sidewalk.

**Scope of Services**

1. Perform a walking sidewalk inspection survey of referenced City sections to identify current *immediate* sidewalk concerns. HRC will utilize the previously developed custom inspection form. HRC will utilize a tablet or iPad to record the survey/condition data, including GPS coordinates and site photos.

Delhi Township  
2101 Aurelius Rd.  
Suite 2A  
Holt, MI 48842  
517-694-7760

Detroit  
535 Griswold St.  
Buhl Building, Ste 1650  
Detroit, MI 48226  
313-965-3330

Grand Rapids  
801 Broadway NW  
Suite 215  
Grand Rapids, MI 49504  
616-454-4286

Howell  
105 W. Grand River  
Howell, MI 48843  
517-552-9199

Jackson  
401 S. Mechanic St.  
Suite 8  
Jackson, MI 49201  
517-292-1295

Kalamazoo  
834 King Highway  
Suite 107  
Kalamazoo, MI 49001  
269-665-2005

Lansing  
215 S. Washington SQ  
Suite D  
Lansing, MI 48933  
517-292-1488

- a. Identify any new “immediate” sidewalk concerns in the Southwest Section.
  - b. HRC will specifically note *immediate* sidewalk slabs impacted by a right-of-way tree so the City can have their arborist evaluate its health and determine if removal is necessary before sidewalk replacement occurs.
2. HRC will develop a preliminary cost estimate for the referenced sections based on the bids recently received Phase I bids. The previously created repair/replacement methods will be utilized.
    - a. HRC will prepare a Findings Report for the referenced sections evaluated and distribute .pdf copies to the City.
  3. Schedule and attend a meeting to discuss the Report findings & cost estimate and attendance at two (2) City Council meetings.
  4. Provide bidding documents and assist the City with obtaining competitive bids OR assist with adding these sections to the current contract the City has with Luigi & Son Cement Company via a change order.

**Design Engineering Fees**

Task 1 – Sidewalk Field Inspection/Condition Survey	\$ 9,610.60
Task 2 – Preliminary Cost Estimate & Findings Report	\$ 4,515.30
Task 3 – Project Management and Meetings	\$ 2,311.30
Task 4 – Bidding Assistance	<u>\$ 3,659.80</u>
<b>Total Not-to-Exceed Fee</b>	<b>\$ 20,097.00</b>

Fees will be invoiced monthly and shall be based on our cost times a 2.9 multiplier in accordance with our current agreement with the City.

**Schedule**

We are prepared and staffed to begin the Sidewalk Condition Evaluation for the referenced sections and the accompanying cost estimate as outlined above immediately upon your authorization to proceed. We anticipate that the condition survey would be completed within six (6) weeks of your authorization and the Findings Report would be completed four (4) weeks later.

**Clarifications**

1. For sidewalks adjacent to commercial properties, e.g. along 12 Mile, Catalpa, Coolidge and Greenfield, the property owner will be responsible for the first 10’ feet in front of their building. The additional sidewalk up to the back of curb will be the responsibility of the City.
2. Whether Phase II is competitively bid or added to Luigi & Sons as a change order, it is understood the City plans to complete construction prior to June 30, 2021.
3. Resident Outreach and Construction Engineering services are not included in this proposal. HRC will provide an additional proposal to assist with these services at the request of City staff.
4. Public hearings are not included in HRC’s scope of services.

5. The design and contract inclusion of ADA-compliant sidewalk ramps will not be included in the scope of the project.
6. Sidewalk surveys of the City's remaining two (2) sections will not be conducted at this time nor is the cost included in this Proposal.

**Summary**

The total fee for undertaking the work as described in this proposal will be provided on a time and materials basis with a **not-to-exceed budget of \$ 20,097.00**. A cost breakdown of these costs is included in the attached sheet.

If you have any questions regarding this Proposal, or require any additional information, please do not hesitate to call. If this proposal is deemed acceptable to the City, please sign and return a copy to this office and retain one for your files. Thank you for the opportunity to serve the City on this project.

Very truly yours,

HUBBELL, ROTH & CLARK, INC.



Roland Alix, P.E.  
Vice President



Edward Zmich  
Manager

pc: HRC; File  
City of Berkley; Ms. Erin Schlutow, Community Development Director

Attachment: Location Map, HRC Proposed Budget

Accepted By: CITY OF BERKLEY

Signature: \_\_\_\_\_

Written Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_



PREPARED FOR:  
**CITY OF BERKELEY**  
 MICHIKHO



PREPARED BY:  
**HRC**  
**HUBBELL, ROBIN & CLARK, INC.**  
 250 WILLET DRIVE  
 BERKELEY, CA 94701  
 P.O. BOX 604  
 BERKELEY, CA 94701

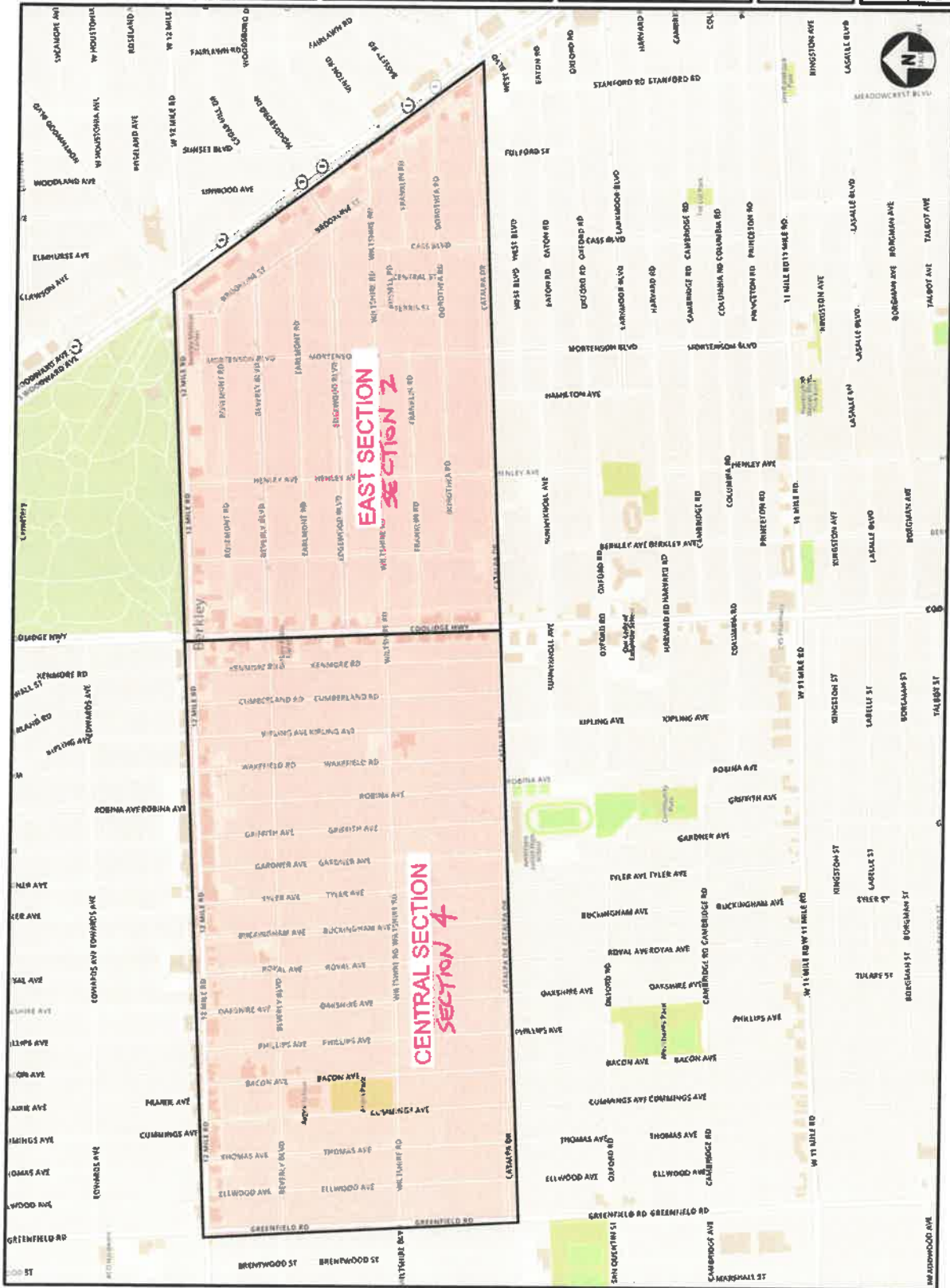
PROJECT NAME:  
**CITY OF BERKELEY  
 SIDEWALK  
 REPLACEMENT  
 PROGRAM  
 PHASE II EVALUATION**

SHEET NAME:  
**CENTRAL &  
 EAST SECTIONS**

HRC JOB NO.  
 201908047.06

FIGURE NO.  
**C-3**

DATE  
 NOVEMBER 2020



DRAWN: [Name], CHECKED: [Name], DATE: 11/19/2020 2:45 PM

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**2020 HRC Fee Breakdown**

JOB NUMBER: 20190847

PROJECT NAME City of Berkeley - Sidewalk Evaluation Phase II

PRINCIPAL R. ALIX

ASSOCIATE E. Zmich

DATE November 9, 2020

HRC STAFF POSITION													
TASK NO.	TASK	Vice President		Project Manager		GIS Specialist		Graduate Engineer I		TOTAL			
		RATE	HRS	RATE	HRS	RATE	HRS	RATE	HRS	RATE	HRS	RATE	HRS
		145.00		127.60		80.45		82.65					
1A	Field Inspection/Condition Survey - Field Work		8	\$1,020.80							88	\$6,612.00	\$7,632.80
1B	Field Inspection/Condition Survey - GIS/Office Work		2	\$255.20		12	\$1,061.40		8	\$661.20	22	\$1,977.80	\$1,977.80
2A	Preliminary Cost Estimates		8	\$1,020.80		4	\$353.80		8	\$661.20	20	\$2,035.80	\$2,035.80
2B	Prepare Report of Project Findings w/ Figures		2	\$290.00		8	\$1,020.80		2	\$176.90	12	\$991.80	\$2,479.50
3	Project Management and Meetings		6	\$870.00		10	\$1,276.00		2	\$165.30	18	\$2,311.30	\$2,311.30
4	Bidding Assistance		1	\$145.00		12	\$1,531.20		24	\$1,983.60	37	\$3,659.80	\$3,659.80
	<b>SUBTOTAL Engineering</b>		9	\$1,305.00	48	\$6,124.80	18	\$1,592.10	134	\$11,075.10	209	\$20,097.00	\$20,097.00

December 21, 2020 City Council Meeting

Moved by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ to approve the Intergovernmental Agreement between the City of Berkley and the Berkley School District for Shared Resources and Services.

Ayes:


Nays:

Motion:



# CITY OF BERKLEY TRANSMITTAL MEMO

To: Matthew Baumgarten, City Manager

From: Derrick Schueller, Public Works Director 

Cc: Mark Pollock, Finance Director

Date: December 14, 2020

Subject: Intergovernmental Agreement between City of Berkley & Berkley School District  
Shared Resources & Services

---

In the interest of fiscal responsibility, the City of Berkley and the Berkley School District desire to continue an agreement for shared resources and services. As you know, this collaboration effort was initially formalized in 2012 and the current agreement will expire in January 2021. Please note a similar arrangement exists between the City of Berkley and the City of Huntington Woods.

Please find attached an updated agreement for your approval and Council consideration. The term has been extended from two (2) years to three (3) years to match other similar agreements.

While the agreement allows for a variety of collaboration opportunities, the primary components have been unleaded fuel and rock salt. The City of Berkley has provided the School District with these commodities via the Public Works facility located at 3238 Bacon Avenue. The Berkley Finance Department in turn invoices the Berkley School District regularly according to current wholesale pricing.

The documents have been reviewed by the City Attorney and also have been shared with the Berkley School District. The appendices have been updated to reflect current wholesale charges and labor/equipment rental rates.

Feel free to contact our department with any questions or concerns.

Attachment  
DLS

J:\School District\Collaboration for Fuel and Salt\2021\Council\Memo Agreement City\_Berkley Schools Collaboration 12-14-20.doc

## INTERGOVERNMENTAL AGREEMENT

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is hereby entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the **CITY OF BERKLEY** (“Berkley”), a Michigan municipal corporation, whose address is 3338 Coolidge Highway, Berkley, Michigan, 48072, and the **BERKLEY SCHOOL DISTRICT** (“School District”), a Michigan general powers school district, whose address is 14700 W. Lincoln, Oak Park, Michigan, 48237 (each a “Party” and collectively, “the Parties”).

### RECITALS

WHEREAS, Berkley and the School District desire to provide for shared services and resources between the Parties in order to carry out their respective fiscal responsibilities and functions in a more cost-effective manner; and

WHEREAS, pursuant to Sections 11a(3) and (4) of the School Code MCL 380.1 *et seq.*, a general powers school district has the authority to exercise a power incidental or appropriate to the performance of any function related to the operation of the school district in the interests of public elementary and secondary education in the school district and to enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district; and

WHEREAS, pursuant to the Urban Cooperation Act of 1967, MCL 124.501 *et seq.*, and the Intergovernmental Contracts between Municipal Corporations Act, 1951 PA 35, MCL 124.1, *et seq.*, each Party to this Agreement may enter into this Agreement in order to establish the terms and conditions upon which they cooperatively perform and carry out services and functions they each may perform separately; and

WHEREAS, in accordance with the above-stated desires and interests, Berkley and the School District desire to enter into this Agreement whereby resources in the form of materials and equipment of their respective departments may be shared.

**NOW THEREFORE**, in consideration of the mutual promises, obligations, representations and assurances in this Agreement, the Parties agree as follows:

#### **1. Providing of Materials**

##### **A. Mutual Providing of Materials**

- a. The Parties agree to make available to each other certain materials of their respective departments.
- b. Requests for such materials shall be documented by and between the Parties’ respective directors and/or their designees.

- c. These materials include, but are not limited to the following consumable supplies: rock salt, unleaded fuel, diesel fuel, garbage bags and paper products.

**B. Subject to Availability**

The providing of materials under this Agreement shall be strictly subject to the availability as determined by the sole and uncontrolled discretion of the providing Party. The responsibility of each Party to provide materials within its own jurisdiction shall remain the first priority.

**C. Material Compensation**

- a. The requesting Party shall pay to the providing Party in an amount consistent with the Appendices A – C attached hereto.
- b. Price per Ton and Price Per Gallon may change on a monthly basis based on the current price paid by the providing Party.
- c. All purchases for supplies, materials and equipment provided pursuant to this Agreement shall be in accordance with all applicable laws, rules and regulations.
- d. The providing Party shall invoice the requesting Party for the providing of such materials on a monthly basis. Invoices shall itemize all charges. Disputes regarding amounts contained in any invoice will be communicated to the non-providing Party, in writing, within five (5) business days of the receipt of the disputed invoice. Payments of disputed amounts will be delayed unless the providing Party is able to resolve the matter to the non-providing Party's satisfaction prior to payment due date. The non-providing Party will not be assessed any late payment penalties, fines or charges for disputed amounts not timely paid due to the providing Party's failure to timely resolve the matter as set forth above.

**2. Providing of Equipment**

**A. Equipment Compensation**

- a. The requesting Party shall pay to the providing Party compensation in the amount of the normal hourly rental rate as established by the Michigan Department of Transportation for each piece of equipment requested and for the number of hours each piece of equipment is allocated to the requesting Party (MDOT Equipment Rental Rates Schedule C, Report 375).
- b. The providing Party shall invoice the requesting Party for the providing of such equipment on a monthly basis. Invoices shall itemize all charges. Disputes regarding amounts contained in any invoice will be communicated to the non-providing Party, in writing, within five (5)

business days of the receipt of the disputed invoice. Payments of disputed amounts will be delayed unless the providing Party is able to resolve the matter to the non-providing Party's satisfaction prior to payment due date. The non-providing Party will not be assessed any late payment penalties, fines or charges for disputed amounts not timely paid due to the providing Party's failure to timely resolve the matter as set forth above.

**B. Maintenance**

Each respective Party shall be responsible for the maintenance of its own equipment; provided, however, that in the event such equipment is damaged while in the exclusive control of the requesting Party, the requesting Party shall be responsible for the full repair and/or replacement costs of the equipment, to the extent not covered by any applicable insurance of the providing Party.

**C. Insurance**

The owner of the equipment listed shall maintain what insurance it feels is necessary relevant to theft, vandalism and if it is a moving equipment, general liability and vehicle liability.

**3. Additional Services**

The Parties agree that they may expand the scope of this Agreement upon the mutual written agreement of both Parties. Any mutually agreed upon expansion of the supplies, material, equipment or services shall be set forth in a written amendment to this Agreement, executed by both Parties, and shall take effect as of the effective date of the written amendment.

**4. Relationship of the Parties**

The relationship between Berkley and the School District shall be that of independent contracting parties. Nothing in this Agreement shall create an employment relationship between Berkley employees utilized by the School District or the School District's the employees utilized by Berkley. Nothing in this Agreement shall be construed to create a joint venture between Berkley and the School District. This Agreement shall not be construed as authority for any Party to act for another Party in any agency or other capacity or to make commitments of any kind for the account of, or on behalf of, another Party. It is expressly agreed that neither Berkley nor the School District are entitled to participate in any plans, arrangements, or distributions pertaining to or in connection with any fringe, pension, bonus, profit sharing, or similar benefits, or any medical, dental, life or disability insurance plans of the other Party.

**5. Workers Compensation, Insurance, and Benefits**

**A. Workers Compensation**

The Parties shall maintain workers' compensation insurance and employer's liability insurance on their respective employees. As between the Parties, the Parties shall be responsible for workers' compensation coverage for their respective employees regardless of whether employees' workers' compensation claims may arise while work is performed within a requesting Party's jurisdiction or the providing Party's own jurisdiction.

**B. Insurance and Benefits**

The Parties shall maintain other insurance and benefits, if any, with regard to their own respective employees.

**6. Liability and Governmental Immunity**

**A. Liability**

1. Each Party shall be responsible for its own acts or omissions. Notwithstanding the foregoing, this Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of each Party and shall not be construed to waive the defense of governmental immunity held by any Party to this Agreement.

- B. There are no third party beneficiaries to this Agreement.

**7. Applicable Law and Dispute Resolution**

**A. Applicable Law**

This Agreement shall be governed by the laws of the State of Michigan.

**B. Dispute Resolution**

Any dispute arising out of this Agreement shall be subject to binding arbitration located in Oakland County, Michigan; provided, however, that prior to arbitration, the parties shall first attempt to resolve any dispute with a meeting between representatives from each Party. Such shall be subject to the following additional terms:

- a. Arbitration must be requested by a Party in writing.
- b. The Parties shall agree upon one (1) neutral arbitrator.

- c. The costs of the arbitrator shall be shared equally between the Parties.
- d. If, upon written request for arbitration, an arbitrator is not selected within thirty (30) days, either Party may petition the Oakland County Circuit Court for appointment of a neutral arbitrator selected by the Court.
- e. The rules of evidence shall apply.

**8. Term and Termination**

A. Term

This Agreement shall continue for a term of three (3) years from the date of the last signature hereto. The Parties may, by subsequent written agreement(s), renew this Agreement for one or more additional three (3) year terms.

B. Termination

This Agreement is terminable by either Party upon providing not less than thirty (30) days' written notice to the other Party.

**9. Miscellaneous**

- A. This Agreement shall be construed as having been drafted by both Parties.
- B. This Agreement contains the entirety of the Parties' understanding as to the subject matter contained herein. Any prior understandings as to the subject matter of this Agreement are merged and integrated into this Agreement.
- C. This Agreement may not be modified except by a mutual, duly-authorized, written agreement.
- D. If any provision of this Agreement is deemed invalid or unenforceable as a matter of law, the remaining portions shall not be affected and shall be enforceable to the fullest extent of the law.
- E. Notices and communications to the School District shall be provided to its Superintendent or his/her designee. All notices and communications to Berkley shall be provided to its City Manager, or his/her designee.
- F. Each Party hereby authorizes its respective Director and/or their designee to request and to provide equipment and/or personnel as set forth in this Agreement and to receive notices hereunder at their respective business addresses.

- G. Both Parties represent that their respective signatories below have been fully authorized by their respective legislative bodies to sign this Agreement and thereby bind their respective cities hereto.

The Berkley School District and the City of Berkley, by the signatures of their respective authorized representatives below, do consent to be bound by the terms of this Agreement, as set forth herein.

**BERKLEY SCHOOL DISTRICT**

**THE CITY OF BERKLEY**

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

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

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

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

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ROCK SALT**

<b>Materials</b>	Type	Tonnage (~1/3 Scoop)**	Low Bid Wholesale Rate (MITN)	Cost
	Bulk Rock Salt	1	\$54.25	\$54.25

<b>Labor</b>	Activity	Hours	Avg. Hourly Total Compensation	Cost
	Load Salt into Truck	0.25	\$39.68	\$9.92

<b>Equipment</b>	Activity	Hours	Hourly Rate*	Cost
	Front End Loader	0.25	\$66.21	\$16.55

<b>Subtotal</b>	<b>\$80.72</b>
<b>3% Administrative Fee (Billing, Oversight, etc.)</b>	<b>\$2.42</b>
<b>Total Cost per Ton of Salt Received (~1 Scoop)</b>	<b>\$83.14</b>

\*Based Upon Current MDOT Equipment Rental Rates Schedule C, Report 375



**UNLEADED FUEL**

<b>Materials</b>				
Type	Gallons	Price per Gallon	Cost	
Unleaded Fuel Plus Misc. Charges**	1	\$1.435	\$1.44	

<b>Labor</b>				
Activity	Percent Share-3 Yr.	Monthly Charge	Cost	
Fuel Island Preventative Maint. & Inspection***	6%	\$427.50	\$25.65	

Subtotal	\$1.44
3% Administrative Fee (Reading, Billing, Oversight, etc.)	\$0.04

<b>Total Cost per Gallon of Fuel Received</b>	<b>\$1.48</b>
<b>Flat Monthly Fuel Island Maintenance Cost</b>	<b>\$25.65</b>

Variable-Based Upon Most Recent Bill or Report Received

\*\*Includes Fed. Exc. Tax, Government Fee, Michigan Underground Steel Tank Fee and Federal Env. Rec. Fee

\*\*\*Metro Pump Service, LLC Currently Provides Monthly Monitoring to Meet Federal and State Requirements Including On-Site Operator Certifications

**DIESEL FUEL**

<b>Materials</b>				
	Type	Gallons	Price per Gallon	Cost
	Diesel Fuel Plus Misc. Charges**	1	\$1.799	\$1.80

<b>Subtotal.</b>	<b>\$1.80</b>
------------------	---------------

<b>3% Administrative Fee (Reading, Billing, Oversight, etc.)</b>	<b>\$0.05</b>
------------------------------------------------------------------	---------------

<b>Total Cost per Gallon of Fuel Received</b>	<b>\$1.85</b>
-----------------------------------------------	---------------

Variable-Based Upon Most Recent Bill or Report Received

\*\*Includes Freight Surch., Fed. Oil Spill Trust, Fed. Lust. Tax, Michigan Underground Steel Tank Fee

**A RESOLUTION**

**of the Council of the City of Berkley, Michigan**  
**adopting a Five-Year Recreation Master Plan for the period of 2021-2025**

**WHEREAS,** the City of Berkley has undertaken a five-year Parks and Recreation Plan which describes the physical features, existing recreation facilities and the desired actions to be taken to improve and maintain recreation facilities during the period between 2021 and 2025; and

**WHEREAS,** a public hearing was held on Monday, December 21, 2020 to provide an opportunity for citizens to express opinions, ask questions and discuss all aspects of the Recreation Plan; and

**WHEREAS,** City residents were given the opportunity to provide input through an online survey, five virtual meetings and a public hearing; and

**WHEREAS,** the plan was made available for public review and comment in a manner required by law; and

**WHEREAS,** the City of Berkley has developed the plan for the benefit of the entire community and to adopt the plan as a document to assist in meeting the recreation needs of the community; and

**WHEREAS,** the Parks and Recreation Advisory Board voted to recommend adoption by the City Council of the said Recreation Plan.

**NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:**

**SECTION 1:** That the City Council does hereby adopt a Five-Year Recreation Plan for the period of 2021-2025 as a guideline for improving recreation for the residents of the City of Berkley.

Introduced and passed at a Regular City Council Meeting on Monday, December 21, 2020.

---

Daniel J. Terbrack, Mayor

Attest:

---

Victoria Mitchell, City Clerk

# Memo

To: Matthew Baumgarten, City Manager  
From: Theresa McArleton, Director of Parks & Recreation  
Date: 12/10/20  
Subject: Resolution for Recreation Master Plan Update

---

As you are aware, the Parks & Recreation Department has been in the process of updating the Parks & Recreation Master Plan. The plan is required to be updated every five years in order to be eligible for state grants. The plan is also used as a tool to inform the department and city of the recreation needs and desires of the community.

This year the process for updating the plan was incredibly different. Given the limitations on in-person meetings, all public input was done virtually. I am happy to report that virtual engagement both through an online survey and five virtual meetings was very productive. Participation and comment in the meetings and through the survey yielded great input and insight into recreation and parks in Berkeley.

Though different this year, I feel confident that the public engagement skillfully guided by Chris Nordstrom from Carlisle/Wortman Associates Inc. was thorough and complete. After the multi-step process of public engagement meetings and receiving public comments, the plan draft was posted for a period of 30 days on the City's website. Copies of the draft were also available for review at the Community Center.

At their December 10, 2020 meeting, the Parks & Recreation Advisory Board approved the draft and recommended it for approval by the City Council. A copy of the Advisory Board's resolution is attached as well as the resolution for City Council. City Council members were given adequate time to review the updated plan.

A public hearing will be held prior to the vote on the resolution at the December 21, 2020 City Council meeting. At that time, public comments will be accepted regarding the plan.

The City appreciates residents who attended the public engagement meetings to have their voices heard and those that shared input throughout the last few months. The updated Recreation Master Plan helps to prioritize ongoing and new projects within the department and receiving feedback from residents is a vital component of this process.

Carlisle/Wortman Associates Inc. and Hubbell, Roth and Clark, Inc. have been exceptionally professional and provided the highest quality work throughout the last few months.

As always, please do not hesitate to contact me should you have any questions regarding this memo or any other issues.

ATTACHMENTS

**CITY OF BERKLEY PARKS AND RECREATION ADVISORY BOARD  
RESOLUTION TO RECOMMEND ADOPTION OF THE  
CITY OF BERKLEY 2021 – 2025 PARKS & RECREATION MASTER PLAN**

**WHEREAS**, The City of Berkley has undertaken the update of its five-year recreation plan which describes the City's physical and social characteristics, existing parks and recreation facilities, and the desired actions to be taken to improve our system of parks and recreation facilities during the period of 2021 through 2025; and

**WHEREAS**, City residents were given the opportunity to provide input through an online survey which was made available from July 14 through August 14, 2020, at five virtual meetings held in July and August, and at a Public Hearing to be held on December 21, 2020; and

**WHEREAS**, the City of Berkley's Parks & Recreation Advisory Board reviewed the 2021 – 2025 Parks & Recreation Master Plan for completeness and accuracy and deemed that the Plan meets the desires and needs of the community; and

**WHEREAS**, the Plan was made available for public review in a manner required by law and all comments from the public have been considered by the Parks & Recreation Advisory Board; and

**WHEREAS**, the plan was developed for the benefit of the entire community;

**NOW, THEREFORE BE IT RESOLVED** that the City of Berkley Parks & Recreation Advisory Board recommends the adoption of the 2021 – 2025 Berkley Parks & Recreation Master Plan by the City Council on December 21, 2020.

Motion by: Greg Patterson

Supported by: Josh Pollard

Votes in favor: Gary Polk, Melissa Hammond, Mike Kerby

Votes opposed:

Abstained:

Absent: Betty Smith, John Nicolai

I hereby attest that the above is a true and complete copy of a resolution duly adopted by the Parks & Recreation Advisory Board at a public meeting held on the 10<sup>th</sup> day of December, 2020.



\_\_\_\_\_  
Mike Kerby, Chair  
Parks & Recreation Advisory Board  
City of Berkley, Michigan

**A RESOLUTION**  
**of the Thirty-eighth Council of the City of Berkley,**  
**Michigan designating the time and place of City Council**  
**Meetings and its Rules and Order of Procedure**

**WHEREAS,** Section 4.6 of the City Charter requires that the Council shall determine its own rules and order of business and shall keep a journal of all of its proceedings in the English language, which shall be signed by the mayor and the clerk and shall be available for inspection to the public at all reasonable times.

**NOW, THEREFORE, THE CITY OF BERKLEY RESOLVES:**

**SECTION 1:** That the Council shall generally conduct its regular meetings on the first and third Monday at 7:00 p.m. in City Hall at 3338 Coolidge Highway, (248-658-3300), **or remotely in accordance with the Michigan Open Meetings Act, MCL 15.261 et seq., as amended by the adoption of Public Act 228 of 2020.**

**SECTION 2:** Except where in conflict with these rules, Federal or State law, the City Charter, or City ordinance, Robert's Rules of Order (current revision), shall govern the conduct of meetings.

**SECTION 3:** Council agendas shall include the following, in the order that best suits the needs of each meeting, and posted accordingly:

Call to Order  
 Approval of Agenda  
 Invocation - (each Council Meeting)  
 Pledge of Allegiance  
~~Citizen Comments~~  
 Public Comment  
 Approval of Minutes  
 Approval of Warrants  
 Order of Business  
 Consent Agenda  
 Regular Agenda  
 Communications  
 Adjourn  
 Council Closed Session (if any)

Consent Agenda in this sense includes any item or resolution which is of a routine or recurring nature. If a Councilmember or member of the public attending the meeting requests to have any item removed from the Consent Agenda, the matter will be moved to the Regular Agenda for discussion or deliberation. All items on the Consent Agenda shall be read by title without debate. One motion shall be given for the Consent Agenda and a roll call vote shall be taken. Resolutions and/or proclamations honoring individual citizens for personal outstanding accomplishments shall also be included in the Consent Agenda. After the passage of the Consent Agenda, the mayor at his/her discretion, may read the entire resolution.

**SECTION 4:** The City Clerk shall cause Minutes to be kept of every Council Meeting, whether open or closed, showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, all roll call votes taken at the meeting, and the purpose for which a Closed Session is held. Minutes of a Closed Session are to be

retained for one year and are not available to the public unless ordered disclosed by a court. In addition, all audio and video recordings of Council Meetings, as well as meetings of the Planning Commission and Board of Appeal, shall be placed in the City's record retention file for not less than one day after the approval of the official minutes.

**SECTION 5:**

The following rules are hereby established not only to affirm the rights of the public to address the meeting and to fully participate in the democratic process, but also to facilitate the orderly and efficient conduct of Council business:

1. At a point on the Council agenda designated for ~~citizen comments~~ public comment, any person may address the meeting for a reasonable period of time about items not on the agenda. The Mayor may set reasonable limits on the length of citizen comments.
2. Any person addressing the meeting must identify the city in which they reside and, if that person wishes a reply to any question, they must leave their full name, address and phone number with the City Clerk before leaving the meeting or via email to [Clerk@Berkleymich.net](mailto:Clerk@Berkleymich.net) if attending an electronic meeting.
3. No person shall make any statements or comments designed to announce or promote their candidacy or the candidacy of another for political office.
4. No person shall make any personal attack against a candidate, the Mayor, or any Councilmember or City employee.
5. Irrespective of Robert's Rules of Order, the Mayor, acting as presiding officer of the Council, shall have the same rights, responsibilities and power of discussion as other Councilmembers.
6. No new items shall be taken up for discussion on the regular agenda after 10:00 p.m.
7. At any point during the meeting, the Mayor may allow citizen comments on any issue on the agenda. The Mayor may set reasonable limits on the length of citizen comments.
8. All Regular and Special Meetings of the Council shall be open to the public, and all persons are permitted to attend any meeting unless a Closed Meeting is held.
9. Upon a two-thirds roll call vote of the members of Council elected and serving, a Closed Session may be held to consider the purchase or lease of real property, to consult with the City's attorney on specific pending litigation, to review applications or appointments to a public office where the candidate requests confidentiality, to consider complaints or charges against a public officer, employee or individual agent when the named person requests a closed hearing, for strategy and negotiations when connected with a collective bargaining process; and for any other permissible purpose under and in accordance with the Michigan Open Meetings Act.
10. The Council shall continue to cablecast its regular meetings to further inform local residents of City government issues, activities, and events.

**SECTION 6:**

Filling of Vacancies for Boards and Commissions

1. Recommendations will be requested from the board or commission where the vacancy exists. Included will be a review of attendance records of those recommended for reappointment.



2. Requests will be made in local news media inviting interested local residents to make application to the manager.
3. All applications for appointment and/or reappointment will be forwarded to Council for its review.
4. If a Councilmember wants further information concerning the candidate, he/she may contact the applicant.
5. At the next regular meeting, or a special meeting called for that purpose, Council shall vote to fill the vacancy or vacancies following the procedures outlined below:
  - (a) All persons identified as candidates by reason of Paragraphs 1, 2 or 3 above shall be considered as nominated.
  - (b) Voice votes shall be cast to fill one vacancy; a candidate receiving at least 4 votes shall be considered for appointment by "yes" or "no" vote.
  - (c) If more than one vacancy is to be filled, voting shall be repeated, following Section 6, paragraph 5(a) through 5(c), until the vacancies are filled.

**SECTION 7:** Filling of Vacancies for City Councilmembers

1. Vacancies in the office of City Councilmember shall be filled pursuant to Sections 3.6, 3.7 and 13.5 of the City Charter through the following procedure:
2. The City Clerk shall publish and post notice of the City Council vacancy and the procedure and deadline for applying. City Council will accept applications from eligible candidates for 5 business days, or such other time as Council may prescribe, in order to complete the appointment process to fill the Council vacancy within the 30 days mandated by the City Charter.
3. If 5 or fewer candidates apply, those candidates will be invited to the next City Council meeting to make a presentation and/or be interviewed by Council, and at its next following meeting, Council shall appoint one of the candidates to fill the Council vacancy.
4. If more than 5 candidates apply, a 3-member Ad Hoc Committee shall be convened comprised of the Mayor Pro Tem, as chairperson, the most junior member of City Council, and the most senior member of City Council. The Committee shall be tasked with holding an open meeting to review and numerically score the candidate applicants on a 1 (lowest) to 3 (highest) scale based on criteria including community/municipal engagement, professional experience, background and diversity, and any other criteria that City Council may establish. The 5 highest scoring candidates shall be specifically invited to attend the next City Council meeting to present themselves, although the scores and applications of all candidates shall be provided to City Council, and all applicants may attend the City Council meeting and have an opportunity to address City Council.
5. Thereafter, each City Councilmember may nominate 1 candidate for appointment. No second to any nomination shall be required, nor is it necessary for a Councilmember to nominate a candidate if the Councilmember's preferred nominee has already been nominated.

6. A roll call vote shall be conducted, and each Councilmember shall vote among the nominees. A nominee who receives the vote of a majority of the Councilmembers currently holding office shall be declared appointed. If no nominee receives the vote of a majority of the Councilmembers currently holding office and there are more than 2 nominees, then the nominee who receives the fewest votes shall be dropped, and another vote shall be taken among the remaining nominees. This process shall continue until a nominee receives the vote of the majority of the Councilmembers currently holding office.

**SECTION 8:** The Daily Tribune shall be the official newspaper for the publication of notices and of proceedings and ordinances of the Council, as may be required by the law or by City Charter.

**SECTION 9:** The City Attorney is designated to act as parliamentarian for the City Council.

**SECTION 10:** Flagstar Bank is designated official depository of City funding pursuant to Section 9.7 of the City Charter.

**SECTION 11:** This resolution shall supersede all existing resolutions, orders, rules and order of procedures insofar as they may be inconsistent herewith.

**SECTION 12:** The City Clerk shall cause a copy of this resolution to be posted in City Hall and in two other different public and conspicuous places within the City.

**SECTION 13:** Code of Ethics for Government Service

This section applies to City Council as well as administrative officials appointed by Council.

Preamble

A code of ethics for government service calls upon public servants to treat their office as a public trust. It often takes extraordinary moral courage to do what is right. The strength and value of a code of ethics are found in their capacity to inspire voluntary commitment to higher moral standards than law or custom. By doing so, public servants inspire and justify confidence and faith in government.

ANY PERSON  
IN GOVERNMENT SERVICE SHOULD:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
2. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be

construed by reasonable persons as influencing the performance of governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
7. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
8. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.
9. Expose corruption wherever discovered.
10. Express themselves – in both spoken and written communications – in a manner becoming of a City of Berkley official or representative and maintain a constructive tone that may not reasonably be construed as demeaning, harassing, accusatory, untruthful, or disrespectful.
11. Uphold these principles, ever conscious that public office is a public trust.

**SECTION 14:** Electronic Meetings

1. Beginning January 1, 2021 through December 31, 2021, City Council meetings may be held, in whole or in part, by electronic means using telephone conferencing or video conferencing technology due to circumstances requiring accommodation of any City Councilmember absent because of military duty, a medical condition, or when a declared statewide or local state of emergency or state of disaster exists and the personal health or safety of members of the public or public body would be at risk if the meeting were held in person. As used in these Rules, the term “medical condition” means an illness, injury, disability, or other health-related condition, including the quarantine or isolation of a City Councilmember to minimize the spread of a contagious disease.
2. An electronic meeting of the City Council will be conducted in a manner that permits two-way communication so that members of the Council can hear and be heard by one another, and so that public participants can hear members of the City Council and be heard by both the Council and other public participants. The City may use technology to facilitate typed public comments submitted by members of the public participating in the electronically-held meeting that shall be read to or shared with members of the City Council and other participants.

As permitted by the Open Meetings Act, a physical place is not required for an electronically-held meeting. Members of the City Council and members of the public participating electronically in a meeting that occurs in a physical place are considered present and in attendance at the meeting for all purposes. For a meeting at which City Councilmembers are physically absent due to military duty or a medical condition and who are being accommodated by remote participation, all other City Councilmembers must be physically present at the meeting to be able to participate.

In addition to any other notice required by the Open Meetings Act, advance notice of an electronically-held meeting shall be posted on a portion of the City’s website that is fully accessible to the public. The public notice must be included on either the home page or a separate webpage dedicated to public notices for non-regularly scheduled or electronically-held public meetings that is accessible through a prominent and conspicuous link on the City’s website home page that clearly describes its purpose for public notification of non-regularly scheduled or

electronically-held public meetings. Any scheduled meeting of the City Council may be held as an electronic meeting as permitted by the Open Meetings Act if a notice consistent with this Rule is posted at least 18 hours before the meeting begins. Any notice of the meeting of the City Council held electronically must clearly contain all of the following:

- a. Why the City Council is meeting electronically;
- b. How members of the public may participate in the meeting electronically (if a telephone number, internet address or both are required to participate, that information must be provided in the notice);
- c. How members of the public may contact members of the City Council to provide input or ask questions on any business that will come before the Council at the meeting; and
- d. How persons with disabilities may participate in the meeting.

If an agenda exists for an electronically held meeting of the City Council, the City shall, on a portion of its website that is fully accessible to the public make the agenda of the meeting available to the public at least 2 hours before the meeting begins. This publication of the meeting agenda does not prohibit subsequent amendment of the agenda at the meeting.

A member of the general public is not required to register or otherwise provide his or her name or other information or otherwise fulfill a condition precedent to attend an electronically-held meeting, other than mechanisms established and required by the City necessary to permit the individual to participate in a public comment period of the meeting.

Members of the general public otherwise participating in an electronically-held meeting of the City Council are excluded from participation in a closed session of the City Council that is held electronically provided that the closed session is convened and held in compliance with the requirements of the Open Meetings Act applicable to closed sessions.

3. The order of business for all meetings of the City Council conducted electronically and held beginning January 1, 2021 through December 31, 2021 for City Council meetings held, in whole or in part, by electronic means using telephone conferencing or video conferencing technology when a declared statewide or local state of emergency or state of disaster exists shall be as follows: Call to Order; Approval of Agenda; Invocation; Pledge of Allegiance; Public Comment – Items On the Agenda; Approval of Minutes; Approval of Warrants; Consent Agenda; Regular Agenda; Public Comment – Items Not On the Agenda; Communications; and Adjournment. The order of business outlined in this paragraph is not applicable when electronic means is used to accommodate the absence of individual City Council members due to military duty or a medical condition.
4. During City Council meetings conducted electronically, members of the public attending the meeting, once recognized by the chair, shall identify themselves for the record and indicate the municipality where they reside. Comments by the public will be limited to three minutes for each speaker unless the time is extended by the chair or by vote of the Council. Comments by the public shall be confined to the Public Comment portions of the meeting.
5. A member of the City Council who anticipates being absent from a meeting due to the circumstances set forth in the Open Meetings Act and these Rules may request accommodation of their absence to permit their remote participation in and voting on Council business by two-way telephonic or video conferencing communication. A City Councilmember who desires to attend a meeting by telephonic or video

conferencing shall inform the City Manager, or the City Manager's designee, at least 24 hours before the meeting to permit any necessary technology to be put in place to accommodate participation of the absent member. City Councilmembers attending a meeting by telephone or video conferencing may fully participate in the meeting, including voting and attendance in any closed session of the City Council. A Councilmember participating by telephonic or video conferencing is not permitted to chair the meeting unless all Council members are participating by telephone or video conferencing.

Any member of the City Council attending a meeting remotely must publicly announce at the outset of the meeting (which shall be included in meeting minutes) that the member is attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must identify the member's physical location by stating the city, village, or township and the state from which the member is attending the meeting remotely.

Introduced and Passed at a Regular City Council Meeting on Monday, December 21, 2020.

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Daniel J. Terbrack, Mayor

Attest:

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Victoria Mitchell, City Clerk

December 21, 2020 City Council Meeting

Moved by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ to authorize Class Action Settlement Agreement to compromise and settle pending litigation, specifically Doot, et al v City of Berkley, et al; Hanover Insurance Group v City of Berkley; and Jacob v City of Berkley, Oakland County Circuit Court Case Nos. 2017-157459-NZ, 2017-160247-NZ, and 2019-178474-NZ, respectively, and further authorizing the City's Attorneys to sign on behalf of the City any necessary documents and undertake appropriate actions to finalize the settlement.

Ayes:

Nays:

Motion:

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TINA POLK, RICHARD NEWTON, and all  
others similarly situated,

Plaintiffs,

v.

CITY OF OAK PARK, COUNTY OF OAKLAND,  
GEORGE W. KUHN DRAINAGE DISTRICT,  
and OAKLAND COUNTY WATER RESOURCES  
COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2015-147795-NZ

CAROL CHADWELL, JUSTIN DUFF, and all  
others similarly situated,

Plaintiffs,

v.

CITY OF MADISON HEIGHTS, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2015-147794-NZ

KEVIN HELME,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF CLAWSON, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2016-152918-NZ

**CLASS ACTION SETTLEMENT AGREEMENT**

[CAPTION CONTINUED ON NEXT PAGE]

JILL KOTSIS, KEVIN GALLATIN,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF ROYAL OAK, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2016-152906-NZ

DEANNA DOOT and ROBYN DOHNKE,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKLEY, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157459-NZ

TIMOTHY JONES and LUANN JONES,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF FERNDALE, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157469-NZ



ERIC BARNWELL, KRISTEN BARNWELL,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF TROY, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157537-NZ

RON LAWLER, CINDY LAWLER,  
MICHAEL HUERTA, and all others  
similarly situated,

Plaintiffs,

v.

CITY OF HAZEL PARK, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157534-NZ

LINDA FINKELBERG AND HARVEY FINKELBERG,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF HUNTINGTON WOODS, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157533-NZ

LINDA PHILLIPS, VICTORIA CWYCYSHYN,  
and all others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2017-157620-NZ

CITY OF PLEASANT RIDGE, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

\_\_\_\_\_ /

SHEILA JACOB  
and all others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2019-178474-NZ

CITY OF BERKLEY,

Defendant.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made as of the \_\_\_th day of \_\_\_\_\_, 2020, between the County of Oakland, George W. Kuhn Drainage District, Oakland County Water Resources Commissioner Jim Nash, City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, City of Troy and the Class Representatives, The Hanover Insurance Group, Inc., and the Settlement Class. Under this Agreement, Plaintiffs agree to provide releases to Defendants under the terms and conditions set forth herein, Defendants agree to provide releases to one another under the terms and conditions set forth herein, and the Parties further agree to the relief specified herein under the terms and conditions set forth herein.

## I. DEFINITIONS AND RECITALS

### A. Definitions.

1. “**2014 Actions**” shall mean the putative class action lawsuits seeking Economic Damages entitled (1) *Polk, et al. v City of Oak Park, et al.*, Oakland County Circuit Court Case No. 2015-147795-NZ, (2) *Chadwell, et al. v City of Madison Heights, et al.*, Oakland County Circuit Court Case No. 2015-147794-NZ, (3) *Helme v. City of Clawson, et al.*, Oakland County Circuit Court Case No. 2016-152918-NZ, (4) *Kotsis, et al. v City of Royal Oak, et al.*, Oakland County Circuit Court Case No. 2016-152906-NZ, (5) *Doot, et al. v City of Berkley, et al.*, Oakland County Circuit Court Case No. 2017-157459-NZ, (6) *Jones, et al. v City of Ferndale, et al.*, Oakland County Circuit Court Case No. 2017-157469-NZ, (7) *Barnwell, et al. v City of Troy, et al.*, Oakland County Circuit Court Case No. 2017-157537-NZ, (8) *Lawler, et al. v City of Hazel Park, et al.*, Oakland County Circuit Court Case No. 2017-157534-NZ, (9) *Finkelberg, et al. v City of Huntington Woods, et al.*, Oakland County Circuit Court Case No. 2017-157533-NZ, and (10) *Phillips, et al. v City of Pleasant Ridge, et al.*, Oakland County Circuit Court Case No. 2017-157620-NZ.

2. “**2017 Action**” shall mean the putative class action lawsuit seeking Economic Damages entitled *Jacob, et al. v. City of Berkley*, Oakland County Circuit Court Case No. 2019-178474-NZ.

3. “**2014 Claims**” shall mean any and all past, present or future claims, liabilities, demands, suits, causes of action, and obligations of whatever nature, character or kind, known or unknown, anticipated or unanticipated, fixed or contingent, accrued, compensatory or punitive, which have been asserted, may have been asserted, or may be asserted by or on behalf of any Person, including,

without limitation, claims, cross claims, counterclaims, third party claims, rights, requests, demands, lawsuits, administrative proceedings, notices, counts, judgments, executions, attachments, debts, actions, arbitrations, damages, liabilities, costs, expenses, compensation, loss of services, or any other cause of action or order of any kind, legal or equitable, whether sounding in tort, contract, equity, nuisance, trespass, negligence, strict liability, contribution, indemnity, or any other statutory, regulatory, administrative cause of action, or any other cause of action of any sort, nature or kind arising out of, in connection with, and/or relating in any way to the facts, causes of action, damage claims and forms of relief alleged in the 2014 Actions, or alleged to be attributable in any way to the 2014 Actions.

4. “**2017 Claims**” shall mean any and all past, present or future claims, liabilities, demands, suits, causes of action, and obligations of whatever nature, character or kind, known or unknown, anticipated or unanticipated, fixed or contingent, accrued, compensatory or punitive, which have been asserted, may have been asserted, or may be asserted by or on behalf of any Person, including, without limitation, claims, cross claims, counterclaims, third party claims, rights, requests, demands, lawsuits, administrative proceedings, notices, counts, judgments, executions, attachments, debts, actions, arbitrations, damages, liabilities, costs, expenses, compensation, loss of services, or any other cause of action or order of any kind, legal or equitable, whether sounding in tort, contract, equity, nuisance, trespass, negligence, strict liability, contribution, indemnity, or any other statutory, regulatory, administrative cause of action, or any other cause of action of any sort, nature or kind arising out of, in connection with, and/or relating in any way to the facts, causes of action, damage claims and forms of relief alleged in the 2017 Action, or alleged to be attributable in any way to the 2017 Action.

5. “**Agreement**” and/or “**Settlement Agreement**” shall mean this Settlement Agreement.
6. “**Calculation Protocol**” shall mean the methodology for calculating a Class Member’s approved claim amount under the terms and conditions of this Agreement, including the methodology set forth in **Sections II.E.8.a) to II.E.8.d)**.
7. “**City Defendant(s)**” shall mean City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, and City of Troy individually and collectively, along with anyone who was, is, or could be claimed to be working on any of their behalf, including their officers, predecessors, successors, directors, agents, employees, attorneys and insurers.
8. “**Claimed Address**” shall mean the address of the Real Property where the claimed Sewage Disposal System Event that is the subject of the claimed Written Notice of Claim occurred (for Subclass A and Subclass B Class Members on or about August 11, 2014 and for Subclass C and Subclass D Class Members on or about August 28, 2017).
9. “**Claim Form(s)**” shall mean Claim Form–A, Claim Form-B, Claim Form-C, and Claim Form-D.
10. “**Claim Form-A**” shall mean the document contained in Exhibit 8. Claim Form-A shall only be completed by Subclass A Class Members to seek compensation under the Settlement for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 11, 2014 Sewage Disposal System Event claim at their Claimed Address.

11. “**Claim Form-B**” shall mean the document contained in Exhibit 9. Claim Form-B shall only be completed by Subclass B Class Members to seek compensation under the Settlement for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 11, 2014 Sewage Disposal System Event claim at their Claimed Address.

12. “**Claim Form-C**” shall mean the document contained in Exhibit 10. Claim Form-C shall only be completed by Subclass C Class Members to seek compensation under the Settlement for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 28, 2017 Sewage Disposal System Event claim at their Claimed Address.

13. “**Claim Form-D**” shall mean the document contained in Exhibit 11. Claim Form-D shall only be completed by Subclass D Class Members to seek compensation under the Settlement for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 28, 2017 Sewage Disposal System Event claim at their Claimed Address.

14. “**Class**” and/or “**Settlement Class**” and/or “**Class Member**” and/or “**Plaintiffs**” shall mean, for settlement purposes only and for no other purpose, any Person including, but not limited to, any Person listed in Exhibit 1, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases (defined below) or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley.

15. “**Class Counsel**” shall mean the law firm of Liddle & Dubin, P.C.
16. “**Class Member Claimant**” shall mean a Class Member who has fully complied with all requirements for the filing of the appropriate Claim Form as set forth in the Settlement Agreement.
17. “**Class Representatives**” or “**Settlement Class Representatives**” shall mean Tina Polk, Richard Newton, Carol Chadwell, Justin Duff, Kevin Helme, Jill Kotsis, Kevin Gallatin, Deanna Doot, Robyn Dohnke, Timothy Jones, Luann Jones, Eric Barnwell, Kristen Barnwell, Ron Lawler, Cindy Lawler, Michael Huerta, Linda Finkelberg, Harvey Finkelberg, Linda Phillips, Victoria Cwycyshyn and Sheila Jacob.
18. “**County Defendants**” shall mean County of Oakland, George W. Kuhn Drainage District, and Oakland County Water Resources Commissioner Jim Nash individually and collectively, along with anyone who was, is, or could be claimed to be working on any of their behalf, including their officers, predecessors, successors, directors, agents, employees, attorneys, and insurers.
19. “**Court**” shall mean the Oakland County Circuit Court, State of Michigan.
20. “**Defendants**” shall mean County of Oakland, George W. Kuhn Drainage District, Oakland County Water Resources Commissioner Jim Nash, City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, and City of Troy individually and collectively, along with anyone who was, is, or could be claimed to be working on any of their behalf, including their officers, predecessors, successors, directors, agents, employees, attorneys

and insurers.

21. “**Defendants’ Counsel**” shall mean the law firms of Dickinson Wright PLLC, Troy City Attorney’s Office, Rosati, Schulz, Joppich & Amtsbuechler, P.C., Plunkett Cooney, PC, Hafeli Staran & Christ PC, Goetz Nushaj, PLLC, Cummings, McClorey, Davis & Acho PLC and Garan Lucow Miller, P.C.

22. “**Economic Damages**” shall include, but are not limited to, Real Property Damage, Personal Property Damage and Out of Pocket Expense. Economic Damages do not include noneconomic damages as defined by MCL 691.1416(f).

23. “**Email Notice**” shall have the meaning ascribed to it in **Section II.B.1.b)** and shall be without material alteration from Exhibit 13.

24. “**Fair Market Value**” shall mean for Subclass A and Subclass B the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction for an item of Personal Property in the age and condition that it existed as of August 10, 2014.

For Subclass C and Subclass D, “Fair Market Value” shall mean the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction for an item of Personal Property in the age and condition that it existed as of August 27, 2017.

For all Class Members, Fair Market Value shall not be calculated by any other methodology, including but not limited to, the actual purchase price for the Personal Property, the cost to replace



the Personal Property or the lost value of the Personal Property.

25. “**Final Approval Order**” shall mean the order granting final approval to the Settlement and concluding the 2014 Actions and 2017 Action.

26. “**Financial Reimbursement**” shall mean for Subclass A and Subclass B the payment received by or paid on behalf of the Subclass Class Member from or by a third-party (such as an insurance company or the Federal Emergency Management Agency) as compensation for Personal Property Damage, Real Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.

For Subclass C and Subclass D, “Financial Reimbursement” shall mean the payment received by or paid on behalf of the Subclass Class Member from or by a third-party (such as an insurance company or the Federal Emergency Management Agency) as compensation for the Personal Property Damage, Real Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address.

27. “**Household**” shall mean all the persons who occupy a Housing Unit.

28. “**Housing Unit**” shall mean a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall. The occupants may be a single-family, one person living alone, two or more families

living together, or any other group of related or unrelated persons who share living arrangements.

29. “**Improvement Measures**” shall mean the actions to be undertaken by City Defendants as set forth in **Section II.E.1.c)** of this Agreement.

30. “**Itemized Out of Pocket Expense List**” shall mean the individualized listing of Out of Pocket Expense that provides a brief description of each Out of Pocket Expense and the costs for the expenditure.

31. “**Itemized Personal Property List**” shall mean the individualized listing of Personal Property that was destroyed and provides a brief description for each item of Personal Property that was destroyed and its estimated Fair Market Value.

32. “**Itemized Real Property List**” shall mean the following: a) If a Class Member has obtained a professional estimate for repairing the Real Property Damage, then the Class Member must include the name of the professional estimator, the date of estimate and the total monetary value listed in the professional estimate; and b) If the Class Member performed the repairs to the Real Property Damage, then the Class Member must list all materials purchased to perform the repairs, the purchase cost of the materials, and the actual amount the Class Member paid to 3<sup>rd</sup> parties to make the repairs.

33. “**Long Form Notice**” shall have the meaning ascribed to it in Section **II.B.1.a)** and shall be without material alteration from Exhibit 12.

34. “**Mediator**” shall be Sherman Abdo.

35. “**Net Settlement Fund**” shall mean the value of the Settlement Fund after the deduction of the amount awarded to Class Counsel for attorneys’ fees, costs, and expenses, after deduction of the amount awarded to the Class Representatives as Incentive Awards, and after deduction of the amount of the Opt Out Deposit and the amount of the Rejected Claim Deposit to the Sewage System Disbursement Fund as described in **Section II.G.3.**

36. “**Notice**” refers to the forms of notice, Long Form Notice, Email Notice, and Publication Notice, to be approved by the Court and to be disseminated in conformity with the Notice Plan.

37. “**Notice Plan**” shall mean the plan for the dissemination of notice of the Settlement Agreement’s terms and conditions and of certification of the Settlement Class, to be distributed upon Court order, and to be presented to the Court for its approval.

38. “**Out of Pocket Expense**” shall mean for Subclass A and Subclass B the actual cost expended in repairing, reconstructing, cleaning, and/or sanitizing the Real Property and/or Personal Property that was damaged as a result of the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. For a Subclass A Class Member and a Subclass B Class Member whose claim is based upon the right of subrogation, “Out of Pocket Expense” shall mean the amount paid to its insured for Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.

For Subclass C and Subclass D, “Out of Pocket Expense” shall mean the actual cost expended in repairing, reconstructing, cleaning, and/or sanitizing the Real Property and/or Personal Property that was damaged as a result of the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. For a Subclass C Class Member and a Subclass D Class Member whose claim is based upon the right of subrogation, “Out of Pocket Expense” shall mean the amount paid to its insured for Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address.

For all Class Members, Out of Pocket Expense does not include: 1) any claim for noneconomic damages as defined by MCL 691.1416(f); and 2) any payments by the Class Member or the Class Member’s insured associated with overland flooding of stormwater onto Real Property.

39. “**Parties**” shall mean the Plaintiffs and Defendants as defined in the Agreement.

40. “**Person**” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

41. “**Personal Property**” shall mean all property that is not Real Property and can be moved from one location to another. “Personal Property” does not include vehicles.

42. **“Personal Property Damage”** shall mean for Subclass A and Subclass B the Personal Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.

For Subclass C and Subclass D, **“Personal Property Damage”** shall mean Personal Property that was physically destroyed by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address.

For all Class Members, Personal Property Damage does not include any Personal Property that was damaged or destroyed by overland flooding of stormwater onto Real Property. For all Class Members, the monetary value of the Personal Property Damage shall be calculated based upon the Fair Market Value of the item.

43. **“Publication Notice”** shall have the meaning ascribed to it in **Section II.B.1.c)** and shall be without material alteration from Exhibit 14.

44. **“Real Property”** shall mean all buildings, structures and improvements, and other permanent fixtures, including, but not limited to, walls and wall coverings, floors and floor coverings affixed thereto.

45. **“Real Property Damage”** shall mean for Subclass A and Subclass B the Real Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. The monetary value of the Real Property Damage shall be strictly limited to the lesser of the estimated and/or actual cost to repair the Real Property destroyed

and to return the Real Property to its condition that existed immediately prior to the claimed Sewage Disposal System Event occurring on or about August 11, 2014.

For Subclass C and Subclass D Class Members, “Real Property Damage” shall mean the Real Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. The monetary value of the Real Property Damage shall be strictly limited to the lesser of the estimated and/or actual cost to repair the Real Property destroyed and to return the Real Property to its condition that existed immediately prior to the claimed Sewage Disposal System Event occurring on or about August 28, 2017.

For all Class Members, Real Property Damage does not include any Real Property that was damaged by overland flooding of stormwater onto Real Property. For all Class Members, the monetary value of the Real Property Damage shall not include any other measure of Real Property loss or damage including, but not limited to, lost rental value, diminished market value, loss of use or enjoyment or business interruption.

46. “**Releases**” shall mean the releases set forth in **Section II.H.** of this Agreement.

47. “**Settlement Fund**” shall mean the Eleven Million Five Hundred Thousand Dollars (\$11,500,000) that the Defendants agree to pay pursuant to the terms and conditions of this Settlement Agreement.

48. “**Sewage Disposal System Event**” shall mean the overflow or backup of a sewage disposal system, as defined by MCL 691.1416(j), onto Real Property. A “Sewage Disposal System Event”

does not include the overland flooding of stormwater onto Real Property.

49. “**Subclass A**” and/or “**Subclass A Class Member**” shall mean, for settlement purposes only and for no other purpose, those Class Members listed on Exhibit 2 who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

50. “**Subclass B**” and/or “**Subclass B Class Member**” shall mean, for settlement purposes only and for no other purpose, any Class Members including, but not limited to, any Class Members listed on Exhibit 3, or otherwise disclosed during the course of the 2014 Actions or the Hanover Cases (defined below), who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

51. “**Subclass C**” and/or “**Subclass C Class Member**” shall mean, for settlement purposes only and for no other purpose, those Class Members listed on Exhibit 4 who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel

prior to June 1, 2020.

52. “**Subclass D**” and/or “**Subclass D Class Member**” shall mean, for settlement purposes only and for no other purpose, any Class Members including, but not limited to, any Class Members listed on Exhibit 5, or otherwise disclosed during the course of the 2017 Action, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

53. “**Total Amount Claimed**” shall be determined by adding together the approved claim amounts calculated from the Claim Forms received by Class Counsel in the following manner:

A. For Subclass A: 1) the first \$10,000 of the approved claim amounts that were determined from Claim Form-A multiplied by 1.00; 2) that portion of the approved claim amounts determined from Claim Form-A that are between \$10,000.01 and \$20,000.00 multiplied by 0.75; 3) that portion of the approved claim amounts determined from Claim Form-A that are between \$20,000.01 and \$30,000.00 multiplied by 0.50; 4) that portion of the approved claim amounts determined from Claim Form-A that are between \$30,000.01 and \$100,000 multiplied by 0.25; and 5) that portion of the approved claim amounts determined from Claim Form-A that are in excess of \$100,000 multiplied by 0.10;

B. For Subclass B: 1) the first \$10,000 of the approved claim amounts that were



determined from Claim Form-B multiplied by 1.00; 2) that portion of the approved claim amounts determined from Claim Form-B that are between \$10,000.01 and \$20,000.00 multiplied by 0.75; 3) that portion of the approved claim amounts determined from Claim Form-B that are between \$20,000.01 and \$30,000.00 multiplied by 0.50; 4) that portion of the approved claim amounts determined from Claim Form-B that are between \$30,000.01 and \$100,000 multiplied by 0.25; and 5) that portion of the approved claim amounts determined from Claim Form-B that are in excess of \$100,000 multiplied by 0.10;

C. For Subclass C: 1) the first \$10,000 of the approved claim amounts that were determined from Claim Form-C multiplied by 1.00; 2) that portion of the approved claim amounts determined from Claim Form-C that are between \$10,000.01 and \$20,000.00 multiplied by 0.75; 3) that portion of the approved claim amounts determined from Claim Form-C that are between \$20,000.01 and \$30,000.00 multiplied by 0.50; 4) that portion of the approved claim amounts determined from Claim Form-C that are between \$30,000.01 and \$100,000 multiplied by 0.25; and 5) that portion of the approved claim amounts determined from Claim Form-C that are in excess of \$100,000 multiplied by 0.10;

D. For Subclass D: 1) the first \$10,000 of the approved claim amounts that were determined from Claim Form-D multiplied by 1.00; 2) that portion of the approved claim amounts determined from Claim Form-D that are between \$10,000.01 and \$20,000.00 multiplied by 0.75; 3) that portion of the approved claim amounts determined from Claim Form-D that are between \$20,000.01 and \$30,000.00

multiplied by 0.50; and 4) that portion of the approved claim amounts determined from Claim Form-D that are between \$30,000.01 and \$100,000 multiplied by 0.25; and 5) that portion of the approved claim amounts determined from Claim Form-D that are in excess of \$100,000 multiplied by 0.10;

This calculation shall not occur until any and all objections to Class Counsel's determination of the Class Members' approved claim amounts have been resolved.

54. **“Total Settlement Amount”** shall mean Thirteen Million Dollars (\$13,000,000) that is computed by adding the Eleven Million Five Hundred Thousand Dollars (\$11,500,000) to be paid under the terms and conditions of this Agreement by Defendants and the One Million Five Hundred Thousand Dollars (\$1,500,000) in Improvement Measures to be conducted under the terms and conditions of this Agreement by City Defendants.

55. **“Written Notice of Claim”** shall mean a written document that was filed pursuant to MCL 691.1419 seeking Economic Damages for a Sewage Disposal System Event.

**B. Recitals.**

1. In the 2014 Actions, Plaintiffs seek Economic Damages arising from the Defendants' alleged design, construction, operation and/or maintenance of sewer systems which allegedly caused the claimed Sewage Disposal System Event occurring on or about August 11, 2014.

2. In the 2017 Action, Plaintiffs seek Economic Damages arising from the City of Berkley's

alleged design, construction, operation and/or maintenance of a sewer system which allegedly caused the claimed Sewage Disposal System Event occurring on or about August 28, 2017.

3. Sewer systems subject to the 2014 Actions and 2017 Action connect directly and/or indirectly with one another. Defendants deny Plaintiffs' allegations and have asserted numerous defenses to Plaintiffs' claims. Defendants do not admit liability to any Plaintiffs or any Class Member or admit liability between the Defendants. Further, Defendants deny any wrongful conduct toward Plaintiffs, any Class Member, or one another.

4. Plaintiffs and Defendants agree that this Agreement and the settlement reflected herein is a compromise and settlement of disputed claims, and that neither the Settlement, this Agreement, the Releases, nor any consideration therefore, nor any actions taken by the Parties to carry out the terms of this Agreement, are intended to be nor may they be deemed or construed to be, an admission or concession of liability or of the validity of any 2014 Claims, 2017 Claims, or of any point of law or fact (including but not limited to the propriety of class certification) on the part of any of the Parties, and this Agreement shall not be deemed or construed to be an admission or evidence for any purpose. For example, the Agreement shall not be deemed or construed as an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendants. By way of further example, Defendants are releasing any claims against one another, if any, for the expense of litigating the 2014 Actions, the expense of litigating the 2017 Action, the expense of settling the 2014 Actions under the terms and conditions of this Agreement, and the expense of settling the 2017 Action under the terms and conditions of this Agreement, as to any Releases being provided by any Class Member to the Defendants under the terms and conditions of this Agreement, including as to indemnification, contribution, or

any other basis provided for under law including Public Act 222.

5. The Parties and their attorneys have investigated the facts and issues raised by the 2014 Actions and 2017 Action and have sufficient information to determine and evaluate the propriety of entering into this Settlement Agreement.

6. Arm's-length settlement negotiations took place between the Parties.

7. Class Counsel, in light of their knowledge of this case and their experience in the trial and settlement of other individual and class actions, consider the Settlement to be fair, reasonable, and adequate, and in the best interests of all members of the Class.

8. Defendants have concluded, despite their belief that they are not liable for the 2014 Claims and the 2017 Claims, that Defendants will enter into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this protracted litigation, and the distraction and diversion of the Defendants' personnel and resources.

9. This Settlement Agreement, which embodies all the terms and conditions of the Settlement between Defendants and the Class, and between the Defendants, is subject to the preliminary and final approval of the Court.

## **II. SETTLEMENT TERMS AND CONDITIONS**

It is agreed by the undersigned, on behalf of the Defendants, Plaintiffs and the Settlement Class, that the 2014 Actions and 2017 Action be settled and compromised as to and between each other, subject to the approval of the Court, on the following terms and conditions:

The Settlement Class is defined as:

Any Person including, but not limited to, any Person listed in Exhibit 1, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases (defined below) or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley.

**A. Settlement Process.**

1. The Parties agree to recommend the approval of this Settlement Agreement by the Court. The Parties further agree to undertake in good faith their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other necessary or appropriate efforts, by order of the Court or otherwise, to carry out the terms and conditions of this Settlement Agreement. The Parties also agree that they will neither take nor instigate any activity contrary to or inconsistent with their commitment to seek prompt approval and implementation of the Settlement.

2. Class Counsel shall file a motion for preliminary approval of the Settlement Agreement with the Court, seeking entry of an Order of Preliminary Approval in the form of the order attached as Exhibit 6. Class Counsel shall also file a motion for approval of the Notice and the Notice Plan. Class Counsel shall also file a motion for the setting of deadlines for objections and exclusion requests and the scheduling of a final fairness hearing at which hearing the Court will decide whether to grant final judgment approval to the Settlement and whether to enter the final judgment. After Notice is approved and the Notice Plan is implemented, Class Counsel shall file a motion for award of attorneys' fees and reimbursement of costs and expenses and the motion for entry of final judgment as contemplated by the Agreement. Supporting papers to be filed in furtherance of this Settlement shall be drafted by Class Counsel in conformity with the provisions of this Agreement, in consultation with and approval of Defendants' Counsel, and subject to Court approval. The Parties and their counsel shall in good faith support the prompt adoption of this Settlement Agreement and the supporting papers filed by the Class Counsel in association therewith, and shall undertake any and all efforts that in good faith are necessary and appropriate to ensure the Settlement Agreement's preliminary approval, the implementation of the Notice Plan, and final approval of the Settlement.

**B. Notice Plan.**

1. Pursuant to MCR 3.501, Class Counsel shall provide Notice of this Settlement to the Class no later than 14 days after the date upon which the Court enters the Order of Preliminary Approval in the form of the order attached as Exhibit 6. Class Counsel shall cause the appropriate Notice of Proposed Class Settlement to be provided to all members of the Settlement Class as follows:

a) Long Form Notice along with Claim Form-A shall be sent by first-class mail, postage prepaid to each Subclass A Class Member whose mailing addresses are listed in Exhibit 2.

Long Form Notice along with Claim Form-B shall be sent by first-class mail, postage prepaid to each Subclass B Class Member whose mailing addresses are listed in Exhibit 3.

Long Form Notice shall also be sent by first-class mail, postage prepaid to each Subclass C Class Member whose mailing addresses are listed in Exhibit 4 along with Claim Form-C and either Claim Form-A or Claim Form-B if the Class Member is also a member of Subclass A or Subclass B.

Long Form Notice shall also be sent by first-class mail, postage prepaid to each Subclass D Class Member whose mailing addresses are listed in Exhibit 5 along with Claim Form-D and either Claim Form-A or Claim Form-B if the Class Member is also a member of Subclass A or Subclass B.

b) Email Notice shall be sent by email to all Class Members who have previously submitted a valid email address to Class Counsel providing general information about the Settlement and advising the Class Members of the existence of the settlement website (L&D to input site) where Class Members can access and view the Long Form Notice and obtain a copy of Claim Form-B and Claim Form-D. Email Notice shall be sent on the same date or before the mailing of the Long Form Notice.

- c) Publication Notice shall be published once in The Oakland Press, a newspaper of general circulation in Oakland County, Michigan. Publication Notice shall be published on the same date or before the mailing of the Long Form Notice.
2. Long Form Notice along with copies of the Settlement Agreement, Claim Form-B and Claim Form-D shall be posted on the website [www.LDClassAction.com](http://www.LDClassAction.com) within 7 days from when the Court grants preliminary approval of the Settlement Agreement and the Notice Plan, or such other period of time to which the Parties agree in writing and the Court approves.
3. Any Class Member shall have the right to object to the terms and conditions of the Settlement, or to “opt out” of the Class as set forth herein and exclude themselves from this Settlement Agreement. It is intended by the Parties that the objection and exclusion request deadline be 60 days from the date the Order of Preliminary Approval in the form of the order attached as Exhibit 6 is entered by the Court and that the final fairness hearing be scheduled within 30 days thereafter.
4. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to Class Counsel at the address provided in the Notice. This request for exclusion must be postmarked no later than 60 days from the date the Order of Preliminary Approval in the form of the order attached as Exhibit 6 is entered by the Court, or such other time as the Court may direct. The request to be excluded must be in writing and signed by the Class Member and must contain the following: the Class Member’s full name, address and telephone number and the Claimed Address; and must specifically contain a stated request for exclusion from the prospective Settlement Class and Settlement. They must also provide proof of identification by including a



copy of any government-issued photo identification or an equivalent method of identification. Any Class Member's request for exclusion that does not meet these requirements is deemed invalid and ineffective and the Class Member will be considered included within the Settlement Class for purposes of the Settlement. Upon their receipt of any request for exclusion, the Class Counsel shall provide a copy of all such requests for exclusion to the Defendants' Counsel in a prompt and contemporaneous manner.

5. Any Class Member who chooses to be excluded from the Settlement as noted in **Section II.B.** shall cease to be a Class Member upon the Court's approval of the Settlement. Any Class Member who chooses to be excluded from the Settlement pursuant to **Section II.B.** of the Settlement Agreement shall be dismissed without prejudice from the 2014 Actions and/or 2017 Action, as applicable, and without costs or attorney's fees to any party.

6. Any Class Member who does not file a timely written request for exclusion, or who files an invalid and ineffective request for exclusion shall be deemed bound by all subsequent proceedings, orders and judgments in the 2014 Actions and 2017 Action, and any, every and all pending and/or subsequently initiated claims, actions and litigations or proceedings against Defendants shall be dismissed and/or barred.

7. Any Class Member who chooses not to be excluded from the Settlement may register an objection to the Settlement Agreement and/or to the Class Counsel's motion for an award of attorney's fees and costs. Any Class Member desiring to object must file a notice of objection with the Court and serve a copy on Class Counsel and Defendants' Counsel no later than 60 days from the date the Order of Preliminary Approval in the form of the order attached as Exhibit 6 is

entered by the Court. Objections must be in writing and signed by the Class Member and must contain the following: the Class Member's full name, address, and telephone number and the Claimed Address; and, must identify with reasonable particularity the basis for the objection and attach all documentation they intend to present to the Court in support of its, his, or her position. The objection must be in the form of a declaration or be in the form of an affidavit duly signed under penalty of perjury before a notary public. If an objection is submitted by someone purporting to represent a Class Member, the objection must have attached sufficient documentation of the person's identity and legal authority to represent the Class Member or the objection is deemed invalid and ineffective. Objections that do not meet the requirements set forth above are deemed invalid and ineffective. Class Counsel and Defendants' counsel reserve the right to challenge the validity and grounds of any objection.

8. Any Class Member who does not file a timely notice of objection or whose objection is deemed invalid and/or ineffective in accordance with Section **II.B.7** waives and forfeits any and all rights they may have to object to the Agreement, and shall be bound by all the terms and conditions of the Agreement and by all proceedings, orders and judgments in the 2014 Actions and 2017 Action and shall be forever barred from making any objection to this Agreement. Any Class Member who objects to this Agreement shall remain a Class Member and is deemed to have voluntarily waived their rights to pursue an independent remedy against Defendants and, if this Agreement is approved, shall be forever bound by the Releases and the Court's Final Approval Order. To the extent any Class Member objects to this Agreement, and such objection is overruled in whole or in part, such Settlement Class Member shall be forever bound by the Releases and the Court's Final Approval Order.

**C. Final Approval Order.**

If the Court approves this Settlement Agreement following the final fairness hearing, then Class Counsel shall seek entry of a Final Approval Order in the form of the order attached as Exhibit 7 from the Court. The Final Approval Order will:

1. determine that the Defendants and all Class Members have submitted to the jurisdiction of the Court for purposes of the Settlement, that the Court has personal jurisdiction over the Parties and all Class Members and that the Court has subject matter jurisdiction to approve the Settlement Agreement;
2. find that the Notice Plan (i) constitutes reasonable and the best practicable notice under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the 2014 Actions and 2017 Action, the terms of the Settlement, the right to object to or exclude themselves from the Settlement, and to appear at the final fairness hearing; (iii) constitutes due, adequate, and sufficient Notice to all Persons entitled to receive Notice; and (iv) meets the requirements of due process, and any other applicable rules;
3. approve with finality this Settlement Agreement and its terms and conditions with a determination that the Settlement is a fair, reasonable, and adequate settlement as to the Class, and directing the consummation of the Settlement pursuant to the terms of the Settlement Agreement;
4. direct entry of judgment;

5. reserve exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration, implementation, and interpretation of the Agreement, as well as the authority to amend the Final Approval Order as necessary;

6. determine that there is no just reason for delay and direct that the judgment shall be final and appealable;

7. incorporate the Releases (i) provided by any Class Member to the Defendants for the 2014 Claims, (ii) provided by any Class Member to the Defendants for the 2017 Claims, (iii) provided by the Defendants to one another for the expense of litigating the 2014 Actions, the expense of litigating the 2017 Action, the expense of settling the 2014 Actions under the terms and conditions of this Agreement, and the expense of settling the 2017 Action under the terms and conditions of this Agreement, as to any Releases being provided by any Class Member to the Defendants under the terms and conditions of this Agreement, including as to indemnification, contribution, or any other basis provided for under law including Public Act 222;

8. find that Class Members are bound by the Final Approval Order; and

9. vacate the Court's Opinion and Order dated November 20, 2018 entered as to the 2014 Actions

**D. Finality.**

1. In the event that either the Court refuses to approve this Settlement Agreement or any material part thereof; or approves the Agreement with a material change; or fails to enter a Final Approval Order or, if upon appeal, the Court's approval of this Settlement Agreement, or the Final Approval Order is set aside, in either whole or material part, then this Settlement Agreement in its entirety shall become null and void, unless the Parties promptly agree in writing to proceed with the Settlement according to the altered or modified terms.

**E. Administration of Relief.**

1. In consideration for the Releases provided in **Section II.H.** of this Settlement Agreement and for other good and valuable consideration, the Defendants agree as follows:

- a) County Defendants, through the George W. Kuhn Drainage District, agree to cause Eight Million Five Hundred Thousand Dollars to be paid by check or wire to Class Counsel within 60 days after the Final Approval Order in the form of the order attached as Exhibit 7 is entered by the Court for Class Counsel to deposit into the Settlement Fund;
- b) City Defendants agree to cause a total of Three Million Dollars to be paid by check or wire to Class Counsel within 60 days after the Final Approval Order in the form of the order attached as Exhibit 7 is entered by the Court for Class Counsel to deposit into the Settlement Fund as follows: (1) City of Berkley - \$385,308.00, (2) City of Clawson - \$187,667.00, (3) City of Ferndale - \$214,726.00, (4) City of Hazel Park - \$122,946.00, (5) City of Huntington Woods - \$250,000.00, (6) City of Madison Heights - \$336,887.00, (7) City of Oak Park - \$641,024.00, (8) City of Pleasant Ridge - \$19,616.00, (9) City of Royal

Oak - \$807,493.00, and (10) City of Troy – \$34,333.00;

c) City Defendants agree to cause a total value of One Million Five Hundred Thousand Dollars in Improvement Measures to be conducted over the next four years as follows: (1) City of Berkley - \$196,070.00, (2) City of Clawson - \$50,000.00, (3) City of Ferndale - \$109,221.00, (4) City of Hazel Park - \$62,292.00, (5) City of Huntington Woods – \$148,751.00, (6) City of Madison Heights – \$171,124.00, (7) City of Oak Park - \$325,256.00, (8) City of Pleasant Ridge - \$10,094.00, (9) City of Royal Oak - \$409,844.00, and (10) City of Troy – \$17,348.00. The Improvement Measures will include funds allocated for Improvements, Operation, Maintenance, Repair or Replacement of sewer infrastructure including televising and/or cleaning of sewer systems. Upon compliance, each City Defendant shall serve Class Counsel with an Affidavit of Completion.

2. The Settlement Fund shall be deposited to an interest-bearing account opened by Class Counsel at PNC Bank, Buhl Building Branch, Detroit, Michigan, 48226, entitled “SDSE Class Settlement Account.”

3. Class Counsel shall also open an interest-bearing account at PNC Bank, Buhl Building Branch, Detroit, Michigan, 48226, entitled “Sewage System Disbursement Account” in which money shall be deposited from the Settlement Fund and disbursed as set forth in **Section II.G. below.**

4. Class Counsel shall be responsible for making payments to each Class Member Claimant from the SDSE Class Settlement Account in accord with terms and conditions of this

Agreement, including based upon the claim procedure described in **Section II.F.** below. Each such payment will be made by check and must be cashed within 180 days after issuance. A check issued under this Paragraph shall be deemed expired and invalid under the terms and conditions of this Agreement 180 days after issuance, and Class Counsel must take all necessary steps required to have each check voided that is not cashed within 180 days after issuance (e.g. cause a stop payment order to be placed on any such check). Subject to terms and conditions related to the Sewage System Disbursement Account, any interest accrued on the SDSE Class Settlement Account, subject to the terms and conditions of this Agreement, shall be distributed by Class Counsel to each Class Member Claimant according to the same formula used to distribute the principal of the Settlement Fund.

5. Class Counsel shall be responsible for making payments to each respective sewage system from the Sewage System Disbursement Account. The payments will be allocated based upon the Sewage System Disbursement Fund procedure described in **Section II.G.** below. Any interest accrued on the Sewage System Disbursement Account shall be distributed by Class Counsel to each sewage system according to the same formula used to distribute the principal of the Sewage System Disbursement Account.

**F. Claims Procedure.**

1. A Class Member must cause the appropriate Claim Form with any required supporting documentation to be mailed to Class Counsel at the address provided in the Claim Form and the mailing must be postmarked no later than 90 days from the date the Order of Preliminary Approval in the form of the order attached as Exhibit 6 is entered by the Court.

2. If a Subclass A Class Member submits Claim Form-A, they must include the following with their submission:

a) A completed Claim Form-A.

b) Proof of Identification. Each Subclass A Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address. If a Claim Form-A is filed on behalf of a corporation or entity who is a Subclass A Class Member, then documentation must be filed to establish the authority to file the Claim Form-A on behalf of the Subclass A Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity. If a person is filing a Claim Form-A on behalf of a Subclass A Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-A on behalf of the Subclass A Class Member.

c) Proof of Personal Property Damage. If the Subclass A Class Member does not supplement their Personal Property Damage values that were listed in their Claim Form-A, then the Subclass A Class Member does not need to submit any further proof of Personal Property Damage. If a Subclass A Class Member supplements their Personal Property Damage values that were listed in their Claim Form-A, then they must include an Itemized Personal Property List of all supplemental Personal Property Damage with their Claim Form-A. The Subclass A Class Member must also include information supporting their supplemental Itemized Personal Property



List in the form of receipts, invoices, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List.

d) Proof of Out of Pocket Expense. If the Subclass A Class Member does not supplement their Out of Pocket Expense values that were listed in their Claim Form-A, then the Subclass A Class Member does not need to submit any further proof of Out of Pocket Expense. If a Subclass A Class Member supplements their Out of Pocket Expense values that were listed in their Claim Form-A, then they must include an Itemized Out of Pocket Expense List of all supplemental Out of Pocket Expense with their Claim Form-A. The Subclass A Class Member must also include information supporting their supplemental Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence. The included information must provide reasonable evidence of their Out Of Pocket Expense for each item on their Itemized Out of Pocket Expense List.

e) Proof of Real Property Damage. If the Subclass A Class Member does not supplement their Real Property Damage values that were listed in their Claim Form-A, then the Subclass A Class Member does not need to submit any further proof of Real Property Damage. If a Subclass A Class Member supplements their Real Property Damage values that were listed in their Claim Form-A, then they must include an Itemized Real Property List of all supplemental Real Property Damage with their Claim Form-A. The Subclass A Class Member must also include information supporting their supplemental Itemized Real Property Damage List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Real Property Damage for each item on

their Itemized Real Property List.

f) **Financial Reimbursement.** If a Subclass A Class Member has received Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address which is not already listed on their Claim Form-A, then they must attach documentation detailing the type of reimbursement and the amount received. If documents itemizing the above-referenced information are unavailable following a good faith effort to produce the same, then a Subclass A Class Member must make a good faith effort to obtain the documents from the source of the Financial Reimbursement. If the Subclass A Class Member is still unable to obtain the documents following these efforts, then they must submit a declaration, under penalty of perjury, that contains the above information.

3. If a Subclass B Class Member submits a Claim Form-B, then they must include the following with their submission:

a) A completed Claim Form-B.

b) **Proof of Identification.** Each Subclass B Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address. If a Claim Form-B is filed on behalf of a corporation or entity who is a Subclass B Class Member, then documentation must be filed to establish the authority to file the Claim Form-B on behalf of the Subclass B Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity. If a

person is filing a Claim Form-B on behalf of a Subclass B Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-B on behalf of the Subclass B Class Member.

c) Financial Reimbursement. If a Subclass B Class Member has received Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address, then they must attach documentation detailing the type of reimbursement and the amount received. If documents itemizing the above-referenced information are unavailable following a good faith effort to produce the same, then a Subclass B Class Member must make a good faith effort to obtain the documents from the source of the Financial Reimbursement. If the Subclass B Class Member is still unable to obtain the documents following these efforts, then they must submit a declaration, under penalty of perjury, that contains the above information.

d) Proof of Personal Property Damage. A Subclass B Class Member must include an Itemized Personal Property List with their Claim Form-B. If a Subclass B Class Member is claiming Personal Property Damage greater than \$4,000, then the Subclass B Class Member must also include information supporting their Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List.

e) Proof of Out of Pocket Expense. A Subclass B Class Member must include an Itemized Out of Pocket Expense List with their Claim Form-B. If a Subclass B Class Member is claiming Out of Pocket Expense greater than \$3,000, then the Subclass B Class Member must include information supporting their Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence. The included information must provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List.

f) Proof of Real Property Damage. A Subclass B Class Member must include an Itemized Real Property List with their Claim Form-B. If a Subclass B Class Member is claiming Real Property Damage greater than \$4,000, then the Subclass B Member must also include information supporting their Itemized Real Property List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List.

4. If a Subclass C Class Member submits Claim Form-C, they must include the following with their submission:

a) A completed Claim Form-C.

b) Proof of Identification. Each Subclass C Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address. If a Claim Form-C is filed on behalf of a corporation or entity who

is a Subclass C Class Member, then documentation must be filed to establish the authority to file the Claim Form-C on behalf of the Subclass C Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity. If person is filing a Claim Form-C on behalf of a Subclass C Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-C on behalf of the Subclass C Class Member.

c) Proof of Personal Property Damage. If the Subclass C Class Member does not supplement their Personal Property Damage values that were listed in their Claim Form-C, then the Subclass C Class Member does not need to submit any further proof of Personal Property Damage. If a Subclass C Class Member supplements their Personal Property Damage values that were listed in their Claim Form-C, then they must include an Itemized Personal Property List of all supplemental Personal Property Damage with their Claim Form-C. The Subclass C Class Member must also include information supporting their supplemental Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List.

d) Proof of Out of Pocket Expenses. If the Subclass C Class Member does not supplement their Out of Pocket Expense values that were listed in their Claim Form-C, then the Subclass C Class Member does not need to submit any further proof of Out of Pocket Expense. If a Subclass C Class Member supplements their Out of Pocket Expense values that were listed in their Claim Form-C, then they must include an Itemized Out of Pocket Expense List of all

supplemental Out of Pocket Expense with their Claim Form-C. The Subclass C Class Member must also include information supporting their supplemental Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence. The included information must provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List.

e) Proof of Real Property Damages. If the Subclass C Class Member does not supplement their Real Property Damage values that were listed in their Claim Form-C, then the Subclass C Class Member does not need to submit any further proof of Real Property Damage. If a Subclass C Class Member supplements their Real Property Damage values that were listed in their Claim Form-C, then they must include an Itemized Real Property List of all supplemental Real Property Damage with their Claim Form-C. The Subclass C Class Member must also include information supporting their supplemental Itemized Real Property List in the form of receipts, invoices, estimates, photographs, or video or other similar types of evidence. The included information must provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List.

f) Financial Reimbursement. If a Subclass C Class Member has received Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address which is not already listed on their Claim Form-C, then they must attach documentation detailing the type of reimbursement and the amount received. If documents itemizing the above-referenced information are unavailable following a good faith effort to produce the same, then a Subclass C Class Member must make a good faith effort to

obtain the documents from the source of the Financial Reimbursement. If the Subclass C Class Member is still unable to obtain the documents following these efforts, then they must submit a declaration, under penalty of perjury, that contains the above information.

5. If a Subclass D Class Member submits a Claim Form-D, then they must include the following with their submission:

- a) A completed Claim Form-D.
- b) Proof of Identification. Each Subclass D Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address. If a Claim Form-D is filed on behalf of a corporation or entity who is a Subclass D Class Member, then documentation must be filed to establish the authority to file the Claim Form-D on behalf of the Subclass D Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity. If a person is filing a Claim Form-D on behalf of a Subclass D Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-D on behalf of the Subclass D Class Member.
- c) Financial Reimbursement. If a Subclass D Class Member has received Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address, then they must attach documentation detailing the type of

reimbursement and the amount received. If documents itemizing the above-referenced information are unavailable following a good faith effort to produce the same, then a Subclass D Class Member must make a good faith effort to obtain the documents from the source of the Financial Reimbursement. If the Subclass D Class Member is still unable to obtain the documents following these efforts, then they must submit a declaration, under penalty of perjury, that contains the above information.

d) Proof of Personal Property Damage. A Subclass D Class Member must include an Itemized Personal Property List with their Claim Form-D. If a Subclass D Class Member is claiming Personal Property Damage greater than \$4,000, then the Subclass D Class Member must also include information supporting their Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List.

e) Proof of Out of Pocket Expenses. A Subclass D Class Member must include an Itemized Out of Pocket Expense List with their Claim Form-D. If a Subclass D Class Member is claiming Out of Pocket Expense greater than \$3,000, then the Subclass D Class Member must include information supporting their Itemized Out of Pocket Expense in the form of receipts, invoices, or other similar types of evidence. The included information must provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List.

f) Proof of Real Property Damage. A Subclass D Class Member must include an



Itemized Real Property List with their Claim Form-D. If a Subclass D Class Member is claiming Real Property Damage greater than \$4,000, then the Subclass D Class Member must also include information supporting their Itemized Real Property List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence. The included information must provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property Damage List.

6. Class Counsel shall be responsible for:

- a) reviewing all Claim Forms;
- b) determining in accordance with the terms and conditions of the Settlement Agreement the extent, if any, to which each Claim Form shall be allowed;
- c) determining whether a Claim Form by a Class Member is complete and timely;
- d) providing any Class Member who has submitted a timely Claim Form that is not deemed to be in accordance with the other terms and conditions of the Settlement Agreement written notice to cure such deficiency within 21 days from receipt of the Claim Form. The notification of the deficiency will be sent to the Class Member within 21 business days from the receipt of the Claim Form by Class Counsel;
- e) calculating the approved claim amount for each Class Member;

f) providing written notification of the approved claim amount in the form attached as Exhibit 15 to each Class Member that submitted a timely and otherwise non-deficient Claim Form within 21 business days from the receipt of the Claim Form by Class Counsel; and

g) providing to each Class Member as part of the Exhibit 15 form attached the document entitled “Your Rights and Process for Objection to the Determination of your Approved Claim Amount.”

7. Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions shall be rejected. Where a good faith basis exists, Class Counsel may reject a Claim Form for, among other reasons, the following:

- a) The Class Member failed to provide adequate support of their claim;
- b) The Class Member seeks damages that are not covered by the terms and conditions of the Settlement Agreement;
- c) Failure to fully complete and/or sign the Claim Form;
- d) Illegible Claim Form;
- e) More than one Claim Form is submitted by persons who reside in the same Household;
- f) The Claim Form is fraudulent;

- g) The Claim Form is duplicative of another Claim Form;
- h) The person submitting the Claim Form is not a Class Member;
- i) The person submitting the Claim Form is requesting that funds be paid to a person or entity that is not the Class Member for whom the Claim Form is submitted;
- j) Failure to submit a Claim Form timely; and/or
- k) The Claim Form otherwise does not meet the requirements of this Agreement.

8. Class Counsel shall determine the approved claim amount for a Class Member who has submitted a Claim Form based upon the information contained in the Claim Form and the proof of damage documentation included with their Claim Form submission. The approved claim amount shall be calculated for a Claim Form by adding the Real Property Damage, Personal Property Damage, and Out of Pocket Expense that have been determined allowable under the terms and conditions of this Agreement by Class Counsel and then subtracting any Financial Reimbursement received by the Class Member subject to the following Calculation Protocol:

- a) Subclass A
  - 1) Supplemental Personal Property Damage: If a Subclass A Class Member supplements their Personal Property Damage values in their Claim Form-A, then they must include an Itemized Personal Property List of all

supplemental Personal Property Damage with their Claim Form-A and must also provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List. The portion of the Subclass A Class Member's supplemental Personal Property Damage that is not on their Itemized Personal Property List and/or does not provide reasonable evidence of their Personal Property Damage shall not be considered in the calculation of the Subclass A Class Member's approved claim amount.

- 2) Supplemental Out of Pocket Expense: If a Subclass A Class Member supplements their Out of Pocket Expense values in their Claim Form-A, then they must include an Itemized Out of Pocket Expense List of all supplemental Out of Pocket Expense with their Claim Form-A and must also provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List. The portion of the Subclass A Class Member's supplemental Out of Pocket Expense that is not on their Itemized Out of Pocket Expense List and/or does not provide reasonable evidence of their Out of Pocket Expense shall not be considered in the calculation of the Subclass A Class Member's approved claim amount.
- 3) Supplemental Real Property Damage: If a Subclass A Class Member supplements their Real Property Damage values in their Claim Form-A, then they must include an Itemized Real Property Damage List of all supplemental Real Property Damage with their Claim Form-A and must

also provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List. The portion of the Subclass A Class Member's supplemental Real Property Damage that is not on their Itemized Real Property List and/or does not provide reasonable evidence of their Real Property Damage shall not be considered in the calculation of the Subclass A Class Member's approved claim amount.

b) Subclass B

1) Personal Property Damage:

a. If a Subclass B Class Member claims Personal Property Damage with their Claim Form-B and fails to include an Itemized Personal Property List, then the Class Member's Personal Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass B Class Member's Personal Property Damage value or \$1,000 in the calculation of the Subclass B Class Member's approved claim amount.

b. Where only part of the Personal Property Damage claimed by a Subclass B Class Member with their Claim Form-B are on their Itemized Personal Property List, then:

i. If the total amount of the Itemized Personal Property List is less than or equal to \$1,000, then the entire Class Member's Personal Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass B Class Member's Personal Property Damage value or \$1,500 in the calculation of

the Subclass B Class Member's approved claim amount.

- ii. If the total amount of the Itemized Personal Property List is greater than \$1,000 but less than or equal to \$3,500, then the calculation of the Subclass B Class Member's Personal Property Damage approved claim amount shall be made by adding the following amounts: a) the Itemized Personal Property List; and b) the Class Member's Personal Property Damage values that are not on their Itemized Personal Property List limited to the lesser amount of either the Subclass B Class Member's Personal Property Damage values that are not on their Itemized Personal Property List or \$500.
- iii. If the total amount of the Itemized Personal Property List is greater than \$3,500 but less than or equal to \$4,000, then the entire Class Member's Personal Property Damage value shall be limited to no more than the total amount of the Itemized Personal Property List in the calculation of the Subclass B Class Member's approved claim amount. The portion of the Class Member's Personal Property Damage values that are not on their Itemized Personal Property List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.
- iv. If the total amount of the Itemized Personal Property List is greater than \$4,000 and the Class Member has provided

reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List, then the calculation of the Subclass B Class Member's Personal Property Damage value in their approved claim amount shall be limited to their Itemized Personal Property List. The portion of the Class Member's Personal Property Damage value that is not on their Itemized Personal Property List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.

- c. If the total amount of the Itemized Personal Property List is greater than \$4,000 and the Class Member fails to provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List, then the calculation of the Subclass B Class Member's Personal Property Damage value in their approved claim amount shall be limited to the greater of either \$4,000 or the value of items on their Itemized Personal Property List that are supported by reasonable evidence. If any portion of the Class Member's Personal Property Damage is not on their Itemized Personal Property List, then the Personal Property Damage values that are not on their Itemized Personal Property List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.

2) Out of Pocket Expense:

- a. If a Subclass B Class Member claims Out of Pocket Expense with their

Claim Form-B and fails to include an Itemized Out of Pocket Expense List, then the Class Member's Out of Pocket Expense value shall be limited to the lesser amount of either the total amount of the Subclass B Class Member's Out of Pocket Expense value or \$1,000 in the calculation of the Subclass B Class Member's approved claim amount.

b. Where only part of the Out of Pocket Expense claimed by a Subclass B Class Member with their Claim Form-B are on their Itemized Out of Pocket Expense List, then:

i. If the total amount of the Itemized Out of Pocket Expense List is less than or equal to \$1,000, then the entire Class Member's Out of Pocket Expense value shall be limited to the lesser amount of either the total amount of the Subclass B Class Member's Out of Pocket Expense value or \$1,500 in the calculation of the Subclass B Class Member's approved claim amount.

ii. If the total amount of the Itemized Out of Pocket Expense List is greater than \$1,000 but less than or equal to \$2,500, then the calculation of the Subclass B Class Member's Out of Pocket Expense approved claim amount shall be made by adding the following amounts: a) the Itemized Out of Pocket Expense List; and b) the Class Member's Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List limited to the lesser amount of either the Subclass B Class Member's Out



of Pocket Expense values that are not on their Itemized Out of Pocket Expense List or \$500.

- iii. If the total amount of the Itemized Out of Pocket Expense List is greater than \$2,500 or equal to \$3,000, then the entire Class Member's Out of Pocket Expense value shall be limited to no more than the total amount of the Itemized Out Of Pocket Expense List in the calculation of the Subclass B Class Member's approved claim amount. The portion of the Class Member's Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.
- iv. If the total amount of the Itemized Out of Pocket Expense List is greater than \$3,000 and the Class Member has provided reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List, then the calculation of the Subclass B Class Member's Out of Pocket Expense value in their approved claim amount shall be limited to their Itemized Out of Pocket Expense List. The portion of the Class Member's Out of Pocket Expense value that is not on their Itemized Out of Pocket Expense List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.

c. If the total amount of the Itemized Out of Pocket Expense List is greater than \$3,000 and the Class Member fails to provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List, then the calculation of the Subclass B Class Member's Out of Pocket Expense value in their approved claim amount shall be limited to the greater of either \$3,000 or the value of items on their Itemized Out of Pocket Expense List that are supported by reasonable evidence. If any portion of the Class Member's Out of Pocket Expense is not on their Itemized Out of Pocket Expense List, then the Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.

3) Real Property Damage:

a. If a Subclass B Class Member claims Real Property Damage with their Claim Form-B and fails to include an Itemized Real Property List, then the Class Member's Real Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass B Class Member's Real Property Damage value or \$1,000 in the calculation of the Subclass B Class Member's approved claim amount.

b. Where only part of the Real Property Damage claimed by a Subclass B Class Member with their Claim Form-B are on their Itemized Real Property List, then:

i. If the total amount of the Itemized Real Property List is less than

or equal to \$1,000, then the entire Class Member's Real Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass B Class Member's Real Property Damage value or \$1,500 in the calculation of the Subclass B Class Member's approved claim amount.

- ii. If the total amount of the Itemized Real Property List is greater than \$1,000 but less than or equal to \$3,500, then the calculation of the Subclass B Class Member's Real Property Damage approved claim amount shall be made by adding the following amounts: a) the Itemized Real Property List; and b) the Class Member's Real Property Damage values that are not on their Itemized Real Property List limited to the lesser amount of either the Subclass B Class Member's Real Property Damage values that are not on their Itemized Real Property List or \$500.
- iii. If the total amount of Itemized Real Property List is greater than \$3,500 or equal to \$4,000, then the entire Class Member's Real Property Damage value shall be limited to no more than the total amount of the Itemized Real Property List in the calculation of the Subclass B Class Member's approved claim amount. The portion of the Class Member's Real Property Damage values that are not on their Itemized Real Property List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.

- iv. If the total amount of the Itemized Real Property List is greater than \$4,000 and the Class Member has provided reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List, then the calculation of the Subclass B Class Member's Real Property Damage value in their approved claim amount shall be limited to their Itemized Real Property List. The portion of the Class Member's Real Property Damage value that is not on their Itemized Real Property List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.
  
- c. If the total amount of the Itemized Real Property List is greater than \$4,000 and the Class Member fails to provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List, then the calculation of the Subclass B Class Member's Real Property Damage value in their approved claim amount shall be limited to the greater of either \$4,000 or the value of items on their Itemized Real Property List that are supported by reasonable evidence. If any portion of the Class Member's Real Property Damage is not on their Itemized Real Property List, then the Real Property Damage values that are not on their Itemized Real Property List shall not be considered in the calculation of the Subclass B Class Member's approved claim amount.

c) Subclass C

- 1) Supplemental Personal Property Damage: If a Subclass C Class Member supplements their Personal Property Damage values in their Claim Form-C, then they must include an Itemized Personal Property List of all supplemental Personal Property Damage with their Claim Form-C and must also provide reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List. The portion of the Subclass C Class Member's supplemental Personal Property Damages that is not on their Itemized Personal Property List and/or does not provide reasonable evidence of their Personal Property Damage shall not be considered in the calculation of the Subclass C Class Member's approved claim amount.
- 2) Supplemental Out of Pocket Expense: If a Subclass C Class Member supplements their Out of Pocket Expense values in their Claim Form-C, then they must include an Itemized Out of Pocket Expense List of all supplemental Out of Pocket Expense with their Claim Form-C and must also provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List. The portion of the Subclass C Class Member's supplemental Out of Pocket Expense that is not on their Itemized Out of Pocket Expense List and/or does not provide reasonable evidence of their Out of Pocket Expense shall not be considered in the calculation of the Subclass C Class Member's approved claim amount.
- 3) Supplemental Real Property Damage: If a Subclass C Class Member

supplements their Real Property Damage values in their Claim Form-C, then they must include an Itemized Real Property Damage List of all supplemental Real Property Damage with their Claim Form-C and must also provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List. The portion of the Subclass C Class Member's supplemental Real Property Damage that is not on their Itemized Real Property List and/or does not provide reasonable evidence of their Real Property Damage shall not be considered in the calculation of the Subclass C Class Member's approved claim amount.

d) Subclass D

1) Personal Property Damage:

- a. If a Subclass D Class Member claims Personal Property Damage with their Claim Form-D and fails to include an Itemized Personal Property List, then the Class Member's Personal Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass D Class Member's Personal Property Damage value or \$1,000 in the calculation of the Subclass D Class Member's approved claim amount.
- b. Where only part of the Personal Property Damage claimed by a Subclass D Class Member with their Claim Form-D are on their Itemized Personal Property List, then:
  - i. If the total amount of the Itemized Personal Property List is less

than or equal to \$1,000, then the entire Class Member's Personal Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass D Class Member's Personal Property Damage values or \$1,500 in the calculation of the Subclass D Class Member's approved claim amount.

- ii. If the total amount of the Itemized Personal Property is greater than \$1,000 but less than or equal to \$3,500, then the calculation of the Subclass D Class Member's Personal Property Damage approved claim amount shall be made by adding the following amounts: a) the Itemized Personal Property List; and b) the Class Member's Personal Property Damage values that are not on their Itemized Personal Property List limited to the lesser amount of either the Subclass D Class Member's Personal Property Damage values that are not on their Itemized Personal Property List or \$500.
- iii. If the total amount of the Itemized Personal Property List is greater than \$3,500 but less than or equal to \$4,000, then the entire Class Member's Personal Property Damage value shall be limited to no more than the total amount of the Itemized Personal Property List in the calculation of the Subclass D Class Member's approved claim amount. The portion of the Class Member's Personal Property Damage values that are not on their Itemized Personal Property List shall not be considered in the

calculation of the Subclass D Class Member's approved claim amount.

- iv. If the total amount of the Itemized Personal Property List is greater than \$4,000 and the Class Member has provided reasonable evidence of their Personal Property Damage for each item on their Itemized Personal Property List, then the calculation of the Subclass D Class Member's Personal Property Damage value in their approved claim amount shall be limited to their Itemized Personal Property List. The portion of the Class Member's Personal Property Damage value that is not on their Itemized Personal Property List shall not be considered in the calculation of the Subclass D Class Member's approved claim amount.
  
- c. If the total amount of the Itemized Personal Property List is greater than \$4,000 and the Class Member fails to provide reasonable evidence of their Itemized Personal Property List, then the calculation of the Subclass D Class Member's Personal Property Damage value in their approved claim amount shall be limited to the greater of either \$4,000 or the value of items on their Itemized Personal Property List that are supported by reasonable evidence. If any portion of the Class Member's Personal Property Damage is not on their Itemized Personal Property List, then the Personal Property Damage values that are not on their Itemized Personal Property List shall not be considered in the



calculation of the Subclass D Class Member's approved claim amount.

2) Out of Pocket Expense:

- a. If a Subclass D Class Member claims Out of Pocket Expense with their Claim Form-D and fails to include an Itemized Out of Pocket Expense List, then the Class Member's Out of Pocket Expense value shall be limited to the lesser amount of either the total amount of the Subclass D Class Member's Out of Pocket Expense value or \$1,000 in the calculation of the Subclass D Class Member's approved claim amount.
- b. Where only part of the Out of Pocket Expense claimed by a Subclass D Class Member with their Claim Form-D are on their Itemized Out of Pocket Expense List, then:
  - i. If the total amount of the Itemized Out of Pocket Expense List is less than or equal to \$1,000, then the entire Class Member's Out of Pocket Expense value shall be limited to the lesser amount of either the total amount of the Subclass D Class Member's Out of Pocket Expense value or \$1,500 in the calculation of the Subclass D Class Member's approved claim amount.
  - ii. If the total amount of the Itemized Out of Pocket Expense List is greater than \$1,000 but less than or equal to \$2,500, then the calculation of the Subclass D Class Member's Out of Pocket Expense approved claim amount shall be made by adding the following amounts: a) the Itemized Out of Pocket Expense List;

and b) the Class Member's Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List limited to the lesser amount of either the Subclass D Class Member's Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List or \$500.

- iii. If the total amount of the Itemized Out of Pocket Expense List is greater than \$2,500 or equal to \$3,000, then the entire Class Member's Out of Pocket Expense value shall be limited to no more than the total amount of the Itemized Out of Pocket Expense List in the calculation of the Subclass D Class Member's approved claim amount. The portion of the Class Member's Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List shall not be considered in the calculation of the Subclass D Class Member's approved claim amount.
- iv. If the total amount of the Itemized Out of Pocket Expense List is greater than \$3,000 and the Class Member has provided reasonable evidence of their Out of Pocket Expense for establishing each item on their Itemized Out of Pocket Expenses List, then the calculation of the Subclass D Class Member's Out of Pocket Expense value in their approved claim amount shall be limited to their Itemized Out of Pocket Expense List. The portion of the Class Member's Out of Pocket Expense value that

is not on their Itemized Out of Pocket Expense List shall not be considered in the calculation of the Subclass D Class Member's approved claim amount.

- c. If the total amount of the Itemized Out of Pocket Expense is greater than \$3,000 and the Class Member fails to provide reasonable evidence of their Out of Pocket Expense for each item on their Itemized Out of Pocket Expense List, then the calculation of the Subclass D Class Member's Out of Pocket Expense value in their approved claim amount shall be limited to the greater of either \$3,000 or the value of items on their Itemized Out of Pocket Expense List that are supported by reasonable evidence. If any portion of the Class Member's Out of Pocket Expense is not on their Itemized Out of Pocket Expense List, then the Out of Pocket Expense values that are not on their Itemized Out of Pocket Expense List shall not be considered in the calculation of the Subclass D Class Member's approved claim amount.

3) Real Property Damage:

- a. If a Subclass D Class Member claims Real Property Damage with their Claim Form-D and fails to include an Itemized Real Property List, then the Class Member's Real Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass D Class Member's Real Property Damage value or \$1,000 in the calculation of the Subclass D Class Member's approved claim amount.
- b. Where only part of the Real Property Damage claimed by a Subclass D

Class Member with their Claim Form-D are on their Itemized Real Property List, then:

- i. If the total amount of the Itemized Real Property List is less than or equal to \$1,000, then the entire Class Member's Real Property Damage value shall be limited to the lesser amount of either the total amount of the Subclass D Class Member's Real Property Damage value or \$1,500 in the calculation of the Subclass D Class Member's approved claim amount.
- ii. If the total amount of the Itemized Real Property List is greater than \$1,000 but less than or equal to \$3,500, then the calculation of the Subclass D Class Member's Real Property Damage approved claim amount shall be made by adding the following amounts: a) the Itemized Real Property List; and b) the Class Member's Real Property Damage values that are not on their Itemized Real Property List limited to the lesser amount of either the Subclass D Class Member's Real Property Damage values that are not on their Itemized Real Property List or \$500.
- iii. If the total amount of Itemized Real Property List is greater than \$3,500 or equal to \$4,000, then the entire Class Member's Real Property Damage value shall be limited to no more than the total amount of the Itemized Real Property List in the calculation of the Subclass D Class Member's approved claim amount. The portion of the Class Member's Real Property Damage values

that are not on their Itemized Real Property List shall not be considered in the calculation of the Subclass D Class Member's approved claim amount.

iv. If the total amount of the Itemized Real Property List is greater than \$4,000 and the Class Member has provided reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List, then the calculation of the Subclass D Class Member's Real Property Damage value in their approved claim amount shall be limited to their Itemized Real Property List. The portion of the Class Member's Real Property Damage value that is not on their Itemized Real Property List shall not be considered in the calculation of the Subclass D Class Member's approved claim amount.

c. If the total amount of the Itemized Real Property List is greater than \$4,000 and the Class Member fails to provide reasonable evidence of their Real Property Damage for each item on their Itemized Real Property List, then the calculation of the Subclass D Class Member's Real Property Damage value in their approved claim amount shall be limited to the greater of either \$4,000 or the value of items on their Itemized Real Property List that are supported by reasonable evidence. If any portion of the Class Member's Real Property Damage is not on their Itemized Real Property List, then the Real Property Damage values that are not on their Itemized Real Property List shall not be considered

in the calculation of the Subclass D Class Member's approved claim amount.

9. Any Class Member that elects to file a Claim Form who later disagrees with the approved claim amount as to their claim shall have 7 days from notice of the approved claim amount to file with Class Counsel an objection as to the approved claim amount. The objection in this paragraph is strictly limited to Class Counsel's calculation of the Class Member's Personal Property Damage, Real Property Damage, Out of Pocket Expense, and Financial Reimbursement. Any attempt to object pursuant to the procedures outlined in this paragraph to any other issue, including but not limited to the existence and application of the Calculation Protocol, will be rejected and not subject to judicial review. The objection must be in writing, must be signed and dated and must set forth all reasons why the Class Member is objecting to the approved claim amount. The failure to file such an objection within 7 days of notice of the approved claim amount waives any objections the Class Member may have to his or her approved claim amount. Class Counsel shall consult with an objecting Class Member in an effort to resolve the Class Member's disagreement with the approved claim amount for their claim. If after 14 days of receipt of any objection to the approved claimed amount, Class Counsel is unable to resolve a Class Member's disagreement with the approved claim amount for their claim, then Class Member's objection to the approved claim amount for their claim shall be forwarded to a Mediator for non-binding facilitation on day 14 following the receipt of the objection. Written notification of forwarding the Class Member's objection of the approved claim amount to the Mediator will also be sent to the Class Member. The Mediator shall have 7 days to consult with Class Counsel and contact the objecting Class Member to discuss their positions and attempt to reach a resolution (the "Mediation Process"). At the conclusion of the Mediation Process, the Mediator will issue a written Mediator's

Recommendation to the Class Member. The Mediator's Recommendation will outline the Mediator's determination of the Class Member's approved claim amount. The Class Member will have 7 days to either accept or reject in writing the Mediator's Recommendation. If the Class Member accepts the Mediator's Recommendation, the Mediator's Recommendation will then be used by Class Counsel for determining the Class Member's share of the Settlement Fund. If the Class Member does not issue a written acceptance or rejection of the Mediator's Recommendation within 7 days, then the Mediator's Recommendation must be used by Class Counsel for the determination of the Class Member's approved claim amount and the Class Member waives any objections the Class Member may have to their approved claim amount. If the Class Member rejects the Mediator's Recommendation, then Class Counsel will file a motion with the Court seeking a judicial determination of the approved claim amount at issue within 7 days of receipt of the Class Member's rejection. Copies of the motion will also be served on the Class Member. The Class Member will have 7 days to file any documentation with the Court in response to Class Counsel's motion. The Court will hold a hearing on Class Counsel's motion within 14 days of filing the motion or on a date that is mutually convenient with the Class Member, Class Counsel and the Court. The Class Member may attend the hearing. Any evidence that the Class Member intends to submit at the hearing must be included in the Class Member's response to Class Counsel's motion. Any witnesses that the Class Member intends to call at the hearing must be identified in the Class Member's response to Class Counsel's motion. The Court will issue its ruling on the calculation of the Class Member's Real Property Damage, Personal Property Damage, Out of Pocket Expense, and/or Financial Reimbursement and determine the Class Member's approved claim amount within 7 days of the hearing ("Judicial Determination") subject to the terms and conditions of this Agreement. Class Counsel will then utilize the Judicial

Determination of the approved claim amount to calculate the Class Member's share of the Settlement Fund. Class Counsel shall bear the financial responsibility for any and all costs associated with selection, appointment, and work performed by the Mediator. The Class Member may retain counsel at their own expense to assist the Class Member in objecting.

10. Any Class Member who submits a timely and valid Claim Form, who meets the requisite documentation requirements described in **Section II.F.**, shall receive a share of the Settlement Fund based on the terms and conditions of this Agreement. A Class Member's pro-rata share of the Settlement Fund for purposes of issuing checks to each Class Member Claimant shall be calculated by multiplying the amount attributable to each Class Member Claimant in the Total Amount Claimed by the quotient of the Net Settlement Fund divided by the Total Amount Claimed.

11. Any Class Member who, in accordance with the terms and conditions of this Agreement, is not excluded from the Class, is bound by all of the terms and conditions of this Settlement Agreement, including the terms of the Final Approval Order to be entered in the 2014 Actions and 2017 Action, and the Releases set forth in **Section II.H.**

12. Defendants' Counsel shall have the right to inspect the Claim Forms and supporting information received by the Class Counsel at any time upon reasonable notice.

**G. Attorney's Fees, Costs, and Expenses; Class Representative Incentive Awards; Sewage System Disbursement Fund.**

1. Class Counsel shall file a motion with the Court for approval of award of attorneys' fees and reimbursement of costs and expenses after the Court's Order of Preliminary Approval in



the form of the order attached as Exhibit 6, to be paid out of the Settlement Fund. The award of attorneys' fees and costs and expenses shall be contingent on approval of the Settlement by the Court. Application by Class Counsel for an award of attorneys' fees shall not be in excess of 1/3 of the Total Settlement Amount less costs and expenses. Defendants shall not oppose the motion for approval of award of attorneys' fees, costs and expenses provided it is made in conformity with this paragraph.

2. Class Counsel shall also apply to the Court for an award of a class representative incentive award ("Incentive Awards") in the amount of Five Hundred Dollars (\$500) payable to each of the Class Representatives. The Incentive Awards shall not reduce the amount of their approved claim amount to which any of the Class Representatives may be entitled under this Agreement.

3. Class Counsel shall deposit \$500 from the Settlement Fund to the Sewage System Disbursement Fund, which is entitled the "Sewage System Disbursement Account" as set forth above, for each Class Member opt-out under the terms and conditions of this Agreement ("Opt Out Deposit"). The Sewage System Disbursement Fund will be distributed pro-rata to the Defendants for the operation, maintenance, and administration of their respective sewage systems based on the Sewage System Disbursement Protocol set forth below in Section II.G.4 ("Sewage System Disbursements"). The Sewage System Disbursements must be used by the governmental agencies receiving funds for the operation, maintenance, and administration of their respective sewage systems subject to no such funds being used to fund the Improvement Measures required under this Agreement. Within 15 days from the opt out deadline, Class Counsel shall provide written correspondence to Defendants' Counsel setting forth the amount which will be subject to the Opt Out Deposit and the claims related thereto. Class Counsel must cause the Opt Out Deposit

to be made from the Settlement Fund to the Sewage System Disbursement Fund within 67 days after the Final Approval Order in the form of the order attached as Exhibit 7 is entered by the Court. Class Counsel shall deposit \$100 from the Settlement Fund to the Sewage System Disbursement Fund for each Claim Form which is rejected under the terms and conditions of this Agreement unless the Claim Form is rejected based on the Claim Form at issue being duplicative of a claim made in another Claim Form which was approved, in whole or in part, or based on the Claim Form at issue not seeking compensation to a Class Member under this Agreement (“Rejected Claim Deposit”). Within 30 days from the final determination by Class Counsel as to which Claim Forms are rejected, Class Counsel shall provide written correspondence to Defendants’ Counsel setting forth the amount which will be subject to the Rejected Claim Deposit and the claims related thereto. Class Counsel must cause the Rejected Claim Deposit to be made from the Settlement Fund to the Sewage System Disbursement Fund within 67 days after the Final Approval Order in the form of the order attached as Exhibit 7 is entered by the Court. Within 15 days after all Uncashed Checks to each Class Member Claimant have been voided under the terms and conditions of this Agreement (see **Section II.E.4.**), Class Counsel must cause the balance of the Settlement Fund, including any interest accrued, to be deposited into the Sewage System Disbursement Fund and Class Counsel shall provide written correspondence to Defendants’ Counsel setting forth the amount subject to the deposit and the Uncashed Checks related thereto (“Voided Checks Correspondence”).

4. A governmental agency’s pro-rata share of the Sewage System Disbursement Fund shall be calculated by multiplying the following allocated percentages by the total Sewage System Disbursement Account balance at the time of disbursement: (1) George W. Kuhn Drainage District – 73.9%; (2) City of Berkley – 3.4%; (3) City of Clawson – 1.6%; (4) City of Ferndale – 1.9%; (5)

City of Hazel Park – 1%; (6) City of Huntington Woods – 2.2%; (7) City of Madison Heights – 2.9%; (8) City of Oak Park – 5.6%; (9) City of Pleasant Ridge – .2%; (10) City of Royal Oak – 7%; and (11) City of Troy – .3%. Class Counsel shall cause the first installment of Sewage System Disbursements to be paid to each governmental agency set forth above based on their pro-rata share by check made payable to the appropriate governmental agency and delivered to the appropriate Defendants’ Counsel within 15 days after any attorneys’ fees, costs, and expenses award is disbursed to Class Counsel. Class Counsel shall cause the second installment of Sewage System Disbursements to be paid to each governmental agency set forth above based on their pro-rata share by check made payable to the appropriate governmental agency and delivered to the appropriate Defendants’ Counsel within 15 days after any attorneys’ fees, costs, and expenses award is disbursed to Class Counsel. Class Counsel shall cause the third and final installment of Sewage System Disbursements to be paid to each governmental agency set forth above based on their pro-rata share by check made payable to the appropriate governmental agency and delivered to the appropriate Defendants’ Counsel within 15 days from Class Counsel’s Voided Checks Correspondence described in Section II.G.3.

5. Payments under the terms and conditions of this Agreement will only be made if the Court finally approves the Settlement and after appeals, if any, are resolved.

6. Consistent with the above, this Settlement Agreement does not result in the existence of Residual Funds as defined by MCR 3.501(D)(6) rather the Settlement Fund, including any interest, will be disbursed to Class Counsel for attorneys’ fees, costs, and expenses, disbursed to the Class Representatives as Incentive Awards, disbursed to Class Members consistent with the terms and conditions of this Agreement, or be deposited in the Sewage System Disbursement Fund consistent

with the terms and conditions of this Agreement and ultimately be the subject of Sewage System Disbursements to be used by the governmental agencies receiving funds for the operation, maintenance, and administration of their respective sewage systems subject to no such funds being used to fund the Improvement Measures required under this Agreement.

#### **H. Releases.**

Plaintiffs and each member of the Class (including their past, present or future agents, legal representatives, trustees, parents, estates, heirs, executors and administrators) agree that they release and forever discharge and covenant not to sue Defendants, including Defendants' officers, employees, directors, attorneys, affiliates, predecessors, successors, assigns and insurers, from all 2014 Claims and 2017 Claims. The Class Representatives, and each Class Member who does not opt out of this Settlement, and Class Counsel represent that the 2014 Actions, the 2017 Action, and the Hanover Cases (defined below) do not allege claims for sickness, disease or physical injury and further that, as of the date of this Agreement, they have not been diagnosed with, are not aware of, and do not have any symptoms that they suspect could be associated with any sickness, disease or physical injury which they are asserting were caused by the action or inaction of the Defendants. Defendants release and forever discharge and covenant not to sue one another, including Defendants' officers, employees, directors, attorneys, affiliates, predecessors, successors, assigns and insurers, from any claims against one another, if any, for the expense of litigating the 2014 Actions, the expense of litigating the 2017 Action, the expense of settling the 2014 Actions under the terms and conditions of this Agreement, and the expense of settling the 2017 Action under the terms and conditions of this Agreement, as to any Releases being provided by any Class Member to the Defendants under the terms and conditions of this Agreement, including

as to indemnification, contribution, or any other basis provided for under law including Public Act 222.

The Parties further recognize that the Settlement Class includes claims subject to the following lawsuits: (1) *The Hanover Insurance Group, Inc. v. City of Clawson*, Oakland County Circuit Court Case 2017-160243-NZ; (2) *The Hanover Insurance Group, Inc. v. City of Royal Oak*, Oakland County Circuit Court Case 2017-160244-NZ; (3) *The Hanover Insurance Group, Inc. v. City of Huntington Woods*, Oakland County Circuit Court Case 2017-160246-NZ; (4) *The Hanover Insurance Group, Inc. v. City of Berkley*, Oakland County Circuit Court Case 2017-160247-NZ; (5) *The Hanover Insurance Group, Inc. v. City of Madison Heights*, Oakland County Circuit Court Case 2017-160250-NZ; (6) *The Hanover Insurance Group, Inc. v. City of Ferndale*, Oakland County Circuit Court Case 2017-160255-NZ; and (7) *The Hanover Insurance Group, Inc. v. City of Oak Park*, Oakland County Circuit Court Case 2017-160256-NZ (collectively, “Hanover Cases”). The Settlement Agreement’s terms and conditions take into account that the County Defendants were dismissed with prejudice from the Hanover Cases, that only certain City Defendants are named defendants in the Hanover Cases, that the sewer systems subject to the 2014 Actions and Hanover Cases connect directly and/or indirectly with one another, and the scope of the Releases. Class Counsel, who is also co-counsel for *The Hanover Insurance Group, Inc.* in the Hanover Cases, must dismiss with prejudice the Hanover Cases because the claims subject to the Hanover Cases are released under the terms and conditions of this Agreement as further explained in Section II.I.13.

**I. Additional Terms.**

1. In the event that the Settlement does not become final in accordance with the terms and conditions of this Agreement, then this Settlement Agreement shall be of no force or effect and, in any event, the Parties agree that this Settlement Agreement, including its exhibits, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendants or Plaintiffs, or of the truth of any of the claims or allegations contained in the Complaints or any other pleading or motion papers, including the propriety of class certification, and evidence thereof shall not be discoverable or used directly, or indirectly, in any way.

2. This Settlement Agreement, including its exhibits, constitutes the entire, understanding of the Parties with respect to this subject matter. This Settlement Agreement is not subject to any condition not provided for herein, and supersedes all prior negotiations, written or verbal, between the Parties. At any time prior to the Court's final approval, this Settlement Agreement may be amended or modified only by a written agreement executed by all the Parties.

3. This Settlement Agreement shall not be construed for, or against, any Party based on drafting involvement, nor shall any ambiguity of any language be resolved for or against any Party by virtue of the identity of the preparer of that language.

4. This Settlement Agreement shall be governed by and construed in accordance with the laws of the state of Michigan.

5. Plaintiffs warrant and represent that no part of the SDSE Class Settlement Account is for

wages and/or benefits, or income under Section 104 under the Internal Revenue Code.

6. Plaintiffs represent and warrant that no part of the SDSE Class Settlement Account is being used to pay any past, present or future claim for bodily injury that could potentially trigger any obligations as required by 42 USC 1395y(b) and the rules and regulations promulgated there under (including without limitation 42 CFR 411 *et seq.*) (“Medicare Secondary Payer statutes”).

7. Plaintiffs and Class Members should consult their tax advisors regarding any tax consequences of the Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Class Member’s tax obligations, and the determination thereof, are the sole responsibility of that Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each Class Member. Defendants, Defendants’ Counsel, and Class Counsel shall have no liability or responsibility whatsoever for any such tax consequences resulting from payments to Class Members under this Settlement.

8. The Parties agree that there are no third-party beneficiaries of this Settlement Agreement, except as to those third parties defined as “Defendants” or released herein.

9. Class Counsel shall treat all documents, communications, and other information and materials received in connection with the administration of the Settlement Agreement as confidential and shall not disclose any such documents, communications or other information to any person or entity except as provided for in the Settlement Agreement or by Court order.

10. Each counsel and any other person executing this Agreement warrant and represent that they have the full authority to do so.

11. This Agreement may be executed in any number of counterparts and by facsimile transmission or similar means with the same effect as if all had affixed their original signatures to the same instrument.

12. In the event any City Defendant does not perform its obligations under the Improvement Measures terms and conditions of this Agreement, including as set forth in **Section II.E.1.c)** of this Agreement, any such breach or violation related to the Improvement Measures by any City Defendant shall not operate as, or be construed to be, a breach or violation of this Agreement by any of the other Defendants.

13. This Agreement is entered into based on the following representations by The Hanover Insurance Group, Inc.: (1) The Hanover Insurance Group, Inc. will not opt-out as to any claim associated with it under this Agreement (see, e.g. Exhibit 1 listing claims associated with Hanover Insurance Company); (2) The Hanover Insurance Group, Inc. will dismiss with prejudice the Hanover Cases (defined above); (3) The Hanover Insurance Group, Inc. will not challenge the terms and conditions of this Agreement and agrees to be bound by the terms and conditions of this Agreement, including the Releases.

**THE UNDERSIGNED ARE OF LEGAL AGE AND UNDER NO DISABILITY. THE UNDERSIGNED ARE AUTHORIZED TO ENTER INTO THE FOREGOING AGREEMENT, FULLY UNDERSTAND IT AND SIGN IT FREELY AND VOLUNTARILY AS THEIR FULL AND COMPLETE AGREEMENT.**



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The Hanover Insurance Group, Inc.

Class Representatives

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Duly Authorized Class Representative  
Tina Polk

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Duly Authorized Class Representative  
Richard Newton

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Duly Authorized Class Representative  
Carol Chadwell

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Duly Authorized Class Representative  
Justin Duff

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Duly Authorized Class Representative  
Kevin Helme

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Duly Authorized Class Representative  
Jill Kotsis

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Duly Authorized Class Representative  
Kevin Gallatin

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Duly Authorized Class Representative  
Deanna Doot

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Duly Authorized Class Representative  
Robyn Dohnke

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Duly Authorized Class Representative  
Timothy Jones

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Duly Authorized Class Representative  
Luann Jones

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Duly Authorized Class Representative  
Eric Barnwell

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Duly Authorized Class Representative  
Kristen Barnwell

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Duly Authorized Class Representative  
Ron Lawler

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Duly Authorized Class Representative  
Cindy Lawler

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Duly Authorized Class Representative

Michael Huerta

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Duly Authorized Class Representative  
Linda Finkelberg

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Duly Authorized Class Representative  
Harvey Finkelberg

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Duly Authorized Class Representative  
Linda Phillips

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Duly Authorized Class Representative  
Victoria Cwycyshyn

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Duly Authorized Class Representative  
Sheila Jacob

APPROVED AS TO FORM

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David R. Dubin, Attorney for Plaintiffs

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Defendant County of Oakland

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Defendant George W. Kuhn Drainage District

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Defendant Oakland County Water Resources  
Commissioner Jim Nash

APPROVED AS TO FORM

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Peter H. Webster and Scott A. Petz, Attorneys for Defendants  
County of Oakland, George W. Kuhn Drainage  
District, and Oakland County Water Resources  
Commissioner Jim Nash

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Defendant City of Oak Park

APPROVED AS TO FORM

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John J. Gillooly, Attorney for Defendant  
City of Oak Park

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Defendant City of Madison Heights

APPROVED AS TO FORM

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Margaret T. Debler, Attorney for Defendant  
City of Madison Heights

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Defendant City of Clawson

APPROVED AS TO FORM

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Renis Nushaj, Attorney for Defendant  
City of Clawson

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Defendant City of Royal Oak

APPROVED AS TO FORM

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Timothy Ferrand, Attorney for Defendant  
City of Royal Oak



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Defendant City of Berkley

APPROVED AS TO FORM

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Laurel F. McGiffert and John Staran, Attorneys for Defendant  
City of Berkley

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Defendant City of Ferndale

APPROVED AS TO FORM

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Timothy Ferrand, Attorney for Defendant  
City of Ferndale

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Defendant City of Troy

APPROVED AS TO FORM

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Lori Grigg Bluhm, Attorney for Defendant  
City of Troy

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Defendant City of Huntington Woods

APPROVED AS TO FORM

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Margaret T. Debler, Attorney for Defendant  
City of Huntington Woods

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Defendant City of Pleasant Ridge

APPROVED AS TO FORM

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Timothy Ferrand, Attorney for Defendant  
Pleasant Ridge

<b>Exhibit No</b>	<b>Description</b>
1	List of Class Members
2	List of Subclass A Class Members
3	List of Subclass B Class Members
4	List of Subclass C Class Members
5	List of Subclass D Class Members
6	Preliminary Approval Order
7	Final Approval Order
8	Claim Form A
9	Claim Form B
10	Claim Form C
11	Claim Form D
12	Long Form Notice
13	Email Notice
14	Publication Notice
15	Notification of Approved Claim Amount

4840-5822-2036 v1 [12840-387]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TINA POLK, RICHARD NEWTON, and all  
others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2015-147795-NZ

CITY OF OAK PARK, COUNTY OF OAKLAND,  
GEORGE W. KUHN DRAINAGE DISTRICT,  
and OAKLAND COUNTY WATER RESOURCES  
COMMISSIONER JIM NASH,

Defendants.

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CAROL CHADWELL, JUSTIN DUFF, and all  
others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2015-147794-NZ

CITY OF MADISON HEIGHTS, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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KEVIN HELME,  
and all others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2016-152918-NZ

CITY OF CLAWSON, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,  
APPROVING PROCEDURE AND FORM OF NOTICE AND  
SCHEDULING FINAL FAIRNESS HEARING  
[CAPTION CONTINUED ON NEXT PAGES]**

JILL KOTSIS, KEVIN GALLATIN,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF ROYAL OAK, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2016-152906-NZ

DEANNA DOOT and ROBYN DOHNKE,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKLEY, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157459-NZ

TIMOTHY JONES and LUANN JONES,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF FERNDALE, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157469-NZ



ERIC BARNWELL, KRISTEN BARNWELL,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF TROY, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157537-NZ

RON LAWLER, CINDY LAWLER,  
MICHAEL HUERTA, and all others  
similarly situated,

Plaintiffs,

v.

CITY OF HAZEL PARK, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157534-NZ

LINDA FINKELBERG AND HARVEY FINKELBERG,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF HUNTINGTON WOODS, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157533-NZ

LINDA PHILLIPS, VICTORIA CWYCYSHYN,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF PLEASANT RIDGE, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157620-NZ

SHEILA JACOB  
and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKLEY,

Defendant.

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Honorable Phyllis C. McMillen

Case No. 2019-178474-NZ

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,  
APPROVING PROCEDURE AND FORM OF NOTICE AND  
SCHEDULING FINAL FAIRNESS HEARING**

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

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PRESENT: \_\_\_\_\_  
Circuit Court Judge

This matter having come before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Motion”), as set forth in the Settlement Agreement, due and adequate notice having been given, and the Court having fully considered the briefs and being duly advised in the premises and good cause appearing therefore, the Court hereby grants the Motion as set forth in this Order Preliminarily Approving Class Action Settlement, Approving Procedure and Form of Notice and Scheduling Final Fairness Hearing (“Order”). Terms and phrases in this Order shall have the same meaning as in the Settlement Agreement.

IT IS HEREBY ORDERED:

1. The following cases are consolidated for settlement purposes: (1) *Polk, et al. v City of Oak Park, et al.*, Oakland County Circuit Court Case No. 2015-147795-NZ, (2) *Chadwell, et al. v City of Madison Heights, et al.*, Oakland County Circuit Court Case No. 2015-147794-NZ, (3) *Helme v. City of Clawson, et al.*, Oakland County Circuit Court Case No. 2016-152918-NZ, (4) *Kotsis, et al. v City of Royal Oak, et al.*, Oakland County Circuit Court Case No. 2016-152906-NZ, (5) *Doot, et al. v City of Berkley, et al.*, Oakland County Circuit Court Case No. 2017-157459-NZ, (6) *Jones, et al. v City of Ferndale, et al.*, Oakland County Circuit Court Case No. 2017-157469-NZ, (7) *Barnwell, et al. v City of Troy, et al.*, Oakland County Circuit Court Case No. 2017-157537-NZ, (8) *Lawler, et al. v City of Hazel Park, et al.*, Oakland County Circuit Court

Case No. 2017-157534-NZ, (9) *Finkelberg, et al. v City of Huntington Woods, et al.*, Oakland County Circuit Court Case No. 2017-157533-NZ, (10) *Phillips, et al. v City of Pleasant Ridge, et al.*, Oakland County Circuit Court Case No. 2017-157620-NZ (collectively, “2014 Actions”), and (11) *Jacob, et al. v. City of Berkley*, Oakland County Circuit Court Case No. 2019-178474-NZ (“2017 Action”) (hereinafter, 2014 Actions and 2017 Action are referred to as “the Actions”).

2. The Court has jurisdiction over the parties to, and the subject matter of, the Actions.

3. The Court has reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in the Actions. The Court finds that: (a) the Settlement Agreement is within the range of possible final approval as fair, reasonable, and adequate; (b) the Settlement Agreement is the result of arms-length negotiations between experienced attorneys familiar with the legal and factual issues of the Actions; (c) all Class Members appear to have been treated fairly under the Settlement Agreement; and (d) the Settlement Agreement is sufficient to warrant Notice thereof to the Class and the final fairness hearing described below. Accordingly, the Motion is granted.

4. For purposes of settlement only, the Court conditionally certifies the Class pursuant to MCR 3.501. In accord with the Settlement Agreement, the conditionally certified class is defined as any Person including, but not limited to, any Person listed in Exhibit 1, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases, or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28,

2017 was served on the City of Berkley.. The Court finds that the Class is so numerous that joinder of all Class Members is impracticable.

5. In accord with the Settlement Agreement, the Court sets forth the following subclasses for settlement purposes only and for no other purpose:

- a. “Subclass A” consists of those Class Members listed on Exhibit 2 to the Settlement Agreement who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.
- b. “Subclass B” consists of any Class Members including, but not limited to, any Class Members listed on Exhibit 3 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions or the Hanover Cases, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.
- c. “Subclass C” consists of those Class Members listed on Exhibit 4 to the Settlement Agreement who claim that a Written Notice of Claim regarding the

claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

- d. “Subclass D” consists of any Class Members including, but not limited to, any Class Members listed on Exhibit 5 to the Settlement Agreement, or otherwise disclosed during the course of the 2017 Action, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

6. For settlement purposes only, the Court finds that there are questions of law or fact that are common to the Class that predominate over questions affecting only individual Class Members in that the claims in the Actions all relate to alleged design, construction, operation, and/or maintenance of sewer systems which allegedly caused the claimed Sewage Disposal System Event occurring on or about August 11, 2014, and the claimed Sewage Disposal System Event occurring on or about August 28, 2017. Moreover, the Parties have agreed to, among other things, a claims procedure that allows for a monetary distribution to Class Members who submit a timely and valid claim as more fully described in the Settlement Agreement. Thus, all members of the Settlement Class have a shared interest in this matter, and in the approval of this Settlement.

7. For settlement purposes only, the Court finds that the claims of Tina Polk, Richard Newton, Carol Chadwell, Justin Duff, Kevin Helme, Jill Kotsis, Kevin Gallatin, Deanna Doot, Robyn Dohnke, Timothy Jones, Luann Jones, Eric Barnwell, Kristen Barnwell, Ron Lawler, Cindy Lawler, Michael Huerta, Linda Finkelberg, Harvey Finkelberg, Linda Phillips, Victoria Cwycyshyn and Sheila Jacob are typical of the claims of the Class Members and that they will fairly and adequately assert and protect the interests of the Class.

8. For settlement purposes only, the Court finds that Class Counsel are adequate to serve as Class Counsel.

9. For settlement purposes only, certification of the Class is superior to other available methods of adjudication in promoting the convenient administration of justice.

10. Accordingly, Tina Polk, Richard Newton, Carol Chadwell, Justin Duff, Kevin Helme, Jill Kotsis, Kevin Gallatin, Deanna Doot, Robyn Dohnke, Timothy Jones, Luann Jones, Eric Barnwell, Kristen Barnwell, Ron Lawler, Cindy Lawler, Michael Huerta, Linda Finkelberg, Harvey Finkelberg, Linda Phillips, Victoria Cwycyshyn and Sheila Jacob are hereby appointed as Class Representatives; and their counsel of record, David R. Dubin, Liddle & Dubin, P.C. is appointed as counsel for the Class.

11. The Court finds that Class Counsel shall cause to be submitted to Class Members via First Class Mail, the Long Form Notice, in the form attached as Exhibit 12 to the Settlement Agreement without material alteration, and Class Counsel shall cause to be submitted the Email Notice to Class Members who have previously submitted a valid email address to Class Counsel,

in the form attached as Exhibit 13 to the Settlement Agreement without material alteration. Class Counsel shall also cause the Long Form Notice along with copies of the Settlement Agreement, Claim Form-B and Claim Form-D to be posted on the website [www.LDClassAction.com](http://www.LDClassAction.com). The Court also finds that Class Counsel shall cause the Publication Notice, in the form attached as Exhibit 14 to the Settlement Agreement without alteration, to be submitted for publication in The Oakland Press. The Court finds that the Notice Plan constitutes reasonable and the best practicable notice under the circumstances to members of the Settlement Class, and complies fully with the provisions set forth in MCR 3.501, all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law. The Court also finds that the Notice Plan is, reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Actions, the terms of the Settlement, their rights under the Settlement, including, but not limited to, the right to object to the Settlement, opt out of the Settlement, and/or receive a share of the Settlement Fund, and the procedure for doing so; and the date and location of the Final fairness hearing. Accordingly, the Notice and Notice Plan set forth in the Settlement Agreement are approved.

12. Consistent with the Settlement Agreement including its Exhibit 7, no later than 10 days before the final fairness hearing, Class Counsel shall file with the Court one or more affidavits stating that, in accordance with the terms of this Order, Notice was distributed consistent with the terms and conditions of the Settlement Agreement including, but not limited to, the timing requirements applicable to Notice under the Settlement Agreement.



13. Any Class Member who wishes to be excluded from the Class must mail a written request for exclusion to Class Counsel at the address provided in the Notice. This request for exclusion must be postmarked no later than 60 days from the entry of this Order. The request to be excluded must be in writing and signed by the Class Member, and must contain the following: the Class Member's full name, address and telephone number and the Claimed Address; and must specifically contain a stated request for exclusion from the prospective Settlement Class and Settlement. They must also provide proof of identification by including a copy of any government-issued photo identification or an equivalent method of identification. Any Class Member's request for exclusion that does not meet these requirements is deemed invalid and ineffective and the Class Member will be considered included within the Settlement Class for purposes of the Settlement. Upon their receipt of any request for exclusion, the Class Counsel shall provide a copy of all such requests for exclusion to Defendants' Counsel in a prompt and contemporaneous manner. Any Class Member who chooses to be excluded from the Settlement as set forth in **Section II.B.** of the Settlement Agreement shall cease to be a Class Member upon the Court's approval of the Settlement. Any Class Member who chooses to be excluded from the Settlement shall be dismissed without prejudice from the Actions, as applicable, and without costs or attorney's fees to any party.

14. Any Class Member who chooses not to be excluded from the Settlement may register an objection to the Settlement Agreement and/or to the Class Counsel's motion for an award of attorney's fees, costs and expenses. Any Class Members desiring to object must file a notice of objection with the Court and serve a copy on Class Counsel and Defendants' Counsel no later than 60 days from the entry of this Order. Objections must be in writing and signed by the

Class Member and must contain the following: the Class Member's full name, address and telephone number and the Claimed Address; and, must identify with reasonable particularity the basis for the objection and attach all documentation they intend to present to the Court in support of its, his, or her position. The objection must be in the form of a declaration or be in the form of an affidavit duly signed under penalty of perjury before a notary public. If an objection is submitted by someone purporting to represent a Class Member, the objection must have attached sufficient documentation of the person's identity and legal authority to represent the Class Member or the objection is deemed invalid and ineffective. Objections that do not meet the requirements set forth above are deemed invalid and ineffective.

15. To be eligible to participate in the distribution of the Settlement Fund, a Class Member must submit a timely and valid Claim Form to Class Counsel as more fully described in the Settlement Agreement. The Claim Form must be postmarked no later than 90 days from the entry of this Order.

16. Papers in support of final approval of the Agreement and fee award, along with the response to any objections shall be filed with the Court on or before [REDACTED].

17. A final fairness hearing is set for this matter on [REDACTED].

18. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor

changes to the form or content of the Notice, and other exhibits that the Parties jointly agree are reasonable or necessary.

19. This Court expressly reserves the right to adjourn the final fairness hearing from time to time without further notice and to approve the Settlement Agreement at or after the final fairness hearing.

20. This is not a final order and does not close the Actions.

SO ORDERED:

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Honorable Phyllis C. McMillen  
Oakland County Circuit Court Judge

Dated: \_\_\_\_\_, 2020

4837-7399-2404 v1 [12840-387]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TINA POLK, RICHARD NEWTON, and all  
others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2015-147795-NZ

CITY OF OAK PARK, COUNTY OF OAKLAND,  
GEORGE W. KUHN DRAINAGE DISTRICT,  
and OAKLAND COUNTY WATER RESOURCES  
COMMISSIONER JIM NASH,

Defendants.

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CAROL CHADWELL, JUSTIN DUFF, and all  
others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2015-147794-NZ

CITY OF MADISON HEIGHTS, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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KEVIN HELME,  
and all others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2016-152918-NZ

CITY OF CLAWSON, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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**ORDER APPROVING SETTLEMENT AGREEMENT, AWARDING  
ATTORNEYS' FEES TO PLAINTIFFS' CLASS COUNSEL,  
AND ENTERING FINAL CONSENT JUDGMENT**

[CAPTION CONTINUED ON NEXT PAGES]

JILL KOTSIS, KEVIN GALLATIN,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF ROYAL OAK, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2016-152906-NZ

DEANNA DOOT and ROBYN DOHNKE,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKLEY, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157459-NZ

TIMOTHY JONES and LUANN JONES,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF FERNDALE, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157469-NZ

ERIC BARNWELL, KRISTEN BARNWELL,

and all others similarly situated,

Plaintiffs,

v.

CITY OF TROY, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157537-NZ

RON LAWLER, CINDY LAWLER,  
MICHAEL HUERTA, and all others  
similarly situated,

Plaintiffs,

v.

CITY OF HAZEL PARK, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157534-NZ

LINDA FINKELBERG AND HARVEY FINKELBERG,  
and all others similarly situated,

Plaintiffs,

v.

CITY OF HUNTINGTON WOODS, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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Honorable Phyllis C. McMillen

Case No. 2017-157533-NZ

LINDA PHILLIPS, VICTORIA CWYCYSHYN,  
and all others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2017-157620-NZ

CITY OF PLEASANT RIDGE, COUNTY OF  
OAKLAND, GEORGE W. KUHN DRAINAGE  
DISTRICT, and OAKLAND COUNTY WATER  
RESOURCES COMMISSIONER JIM NASH,

Defendants.

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SHEILA JACOB  
and all others similarly situated,

Plaintiffs,

v.

Honorable Phyllis C. McMillen

Case No. 2019-178474-NZ

CITY OF BERKLEY,

Defendant.

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**ORDER APPROVING SETTLEMENT AGREEMENT, AWARDING  
ATTORNEYS' FEES TO CLASS COUNSEL,  
AND ENTERING FINAL JUDGMENT**

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

PRESENT: \_\_\_\_\_  
Circuit Court Judge

This matter having come before the Court on Plaintiffs' Motion for Final Approval of the Class Action Settlement Agreement ("Motion"), as set forth in the Settlement Agreement, due and adequate notice having been given, and the Court having fully considered the briefs and being duly advised in the premises and good cause appearing therefore, the Court hereby grants the Motion as set forth in this Order Approving Settlement Agreement, Awarding Attorneys' Fees to Class Counsel, and entering Final Consent Judgment ("Order"). Terms and phrases in this Order shall

have the same meaning as in the Settlement Agreement.

IT IS HEREBY ORDERED:

1. The following cases were consolidated for settlement purposes : (1) *Polk, et al. v City of Oak Park, et al.*, Oakland County Circuit Court Case No. 2015-147795-NZ, (2) *Chadwell, et al. v City of Madison Heights, et al.*, Oakland County Circuit Court Case No. 2015-147794-NZ, (3) *Helme v. City of Clawson, et al.*, Oakland County Circuit Court Case No. 2016-152918-NZ, (4) *Kotsis, et al. v City of Royal Oak, et al.*, Oakland County Circuit Court Case No. 2016-152906-NZ, (5) *Doot, et al. v City of Berkley, et al.*, Oakland County Circuit Court Case No. 2017-157459-NZ, (6) *Jones, et al. v City of Ferndale, et al.*, Oakland County Circuit Court Case No. 2017-157469-NZ, (7) *Barnwell, et al. v City of Troy, et al.*, Oakland County Circuit Court Case No. 2017-157537-NZ, (8) *Lawler, et al. v City of Hazel Park, et al.*, Oakland County Circuit Court Case No. 2017-157534-NZ, (9) *Finkelberg, et al. v City of Huntington Woods, et al.*, Oakland County Circuit Court Case No. 2017-157533-NZ, (10) *Phillips, et al. v City of Pleasant Ridge, et al.*, Oakland County Circuit Court Case No. 2017-157620-NZ (collectively, “2014 Actions”), and (11) *Jacob, et al. v. City of Berkley*, Oakland County Circuit Court Case No. 2019-178474-NZ (“2017 Action”) (hereinafter, 2014 Actions and 2017 Action are referred to as “the Actions”).

2. Appointed counsel for the class is David R. Dubin, Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207.

4. “Class” shall mean, for settlement purposes only and for no other purpose, any



Person listed in Exhibit 1 to the Settlement Agreement, attached as **Exhibit A**.

5. No Class Member has sought to be excluded from the Settlement, and no objections to the Settlement have been filed with the Court by any Class Member.

6. Subject to the Court's approval pursuant to Michigan law, Class Counsel and Defendants' Counsel have reached an agreement to settle and resolve the Actions pursuant to the terms and conditions of the Settlement Agreement. The Court has jurisdiction over the parties to, and the subject matter of, the Actions.

7. The Settlement Agreement requires Eleven Million Five Hundred Thousand Dollars (\$11,500,000) to be paid under the terms and conditions of the Settlement Agreement by Defendants. The Settlement Agreement also requires One Million Five Hundred Thousand Dollars (\$1,500,000) in Improvement Measures to be conducted under the terms and conditions of the Settlement Agreement by City Defendants. The Settlement Agreement also requires Class Counsel to make deposits from the Settlement Fund to the Sewage System Disbursement Fund. The Settlement Fund shall be distributed as follows:

- A. Class Counsel shall receive reimbursement for their reasonable attorneys' fees, costs, and expenses for their efforts in the protection and the advancement of the interests of the Class. Class Counsel shall receive 1/3 of the Total Settlement Amount following the subtraction of litigation costs and expenses as reasonable attorneys' fees as determined by the Court at the hearing in this matter held on \_\_\_\_\_. Class Counsel's request for litigation costs and expenses in the amount of \$\_\_\_\_\_ is approved.
- B. As further detailed in the Settlement Agreement, to be eligible to participate in the distribution of the Settlement Fund, a Class Member must submit a timely and valid Claim Form to Class Counsel as more fully described in the Settlement Agreement. The Claim Form with any

required supporting documentation must have been postmarked no later than 90 days from the entry of the Order Preliminarily Approving Class Action Settlement, Approving Procedure and Form of Notice and Scheduling Final Fairness Hearing (“Preliminary Approval Order”). After the amount of all claims has been established, Class Counsel shall pay all such claims in accordance with the terms and conditions of the Settlement Agreement .

- C. Each Class Representative shall receive \$500 as Incentive Awards for their services on behalf of the Class.
- D. As further detailed in the Settlement Agreement, Class Counsel shall cause the deposits from the Settlement Fund to the Sewage System Disbursement Fund to occur.

8. The Sewage System Disbursement Fund shall be distributed to the Defendants by Class Counsel for the operation, maintenance, and administration of their respective sewage systems based on the Sewage System Disbursement Protocol pursuant to the terms and conditions set forth in the Settlement Agreement and no such funds shall be used to fund the Improvement Measures required under the Settlement Agreement.

9. Consistent with the above, this Settlement Agreement does not result in the existence of Residual Funds as defined by MCR 3.501(D)(6) rather the Settlement Fund, including any interest, will be disbursed to Class Counsel for attorneys’ fees, costs, and expenses, disbursed to the Class Representatives as Incentive Awards, disbursed to Class Members consistent with the terms and conditions of the Settlement Agreement, or be deposited in the Sewage System Disbursement Fund consistent with the terms and conditions of the Settlement Agreement and ultimately be the subject of Sewage System Disbursements to be used by the governmental agencies receiving funds for the operation, maintenance, and administration of their respective sewage systems subject to no such funds being used to fund the Improvement Measures required under the Settlement Agreement.



13. The Court finds that the Notice Plan afforded adequate protections to the Class and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the responses of the Class. The Court further finds that the Notice was reasonable and the best practicable notice under the circumstances, and satisfied all of the requirements of MCR 3.501, all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law. The Court finds that Notice of the Settlement was given to the Class in accord with the Preliminary Approval Order.

14. The Court has reviewed the steps and procedures taken pursuant to and in compliance with the Preliminary Approval Order, has conducted the final fairness hearing, and has given due consideration to all submissions filed or presented on Class Counsel's Motion, including submissions received during the course of the final fairness hearing.

15. The Court finds that the Settlement, upon the terms and conditions set forth in the parties' Settlement Agreement, attached as Exhibit A to the Motion, is fair, adequate, and reasonable. The Court accordingly grants final approval of the Settlement in accordance with the terms and conditions, without modification, of the Settlement Agreement, which is incorporated herein, and orders that the Settlement be consummated according to its terms and conditions and as prescribed therein.

16. The Court approves and orders the payment of reasonable attorneys' fees to Class Counsel in the amount of 1/3 of the Total Settlement Amount less costs and expenses, as provided by the terms and conditions of the Settlement Agreement. The Actions have been actively litigated for years. The Settlement was a result of arms-length settlement negotiations. Class Counsel has

at all times pursued the best interests of the Class, and the Settlement secures benefits for the Class. The proposed distribution to Class Counsel is fair and reasonable in light of all of the factors, including the time and labor required; the novelty, difficulty, and complexity of the issues; the skill required to perform the legal services properly; the fees customarily awarded for similar services; the fact that the fee was contingent; the amount in controversy; and the results obtained on behalf of the Class.

17. The Releases in the Settlement Agreement are incorporated herein, including without limitation, the following: (1) Plaintiffs and each member of the Class (including their past, present or future agents, legal representatives, trustees, parents, estates, heirs, executors and administrators) agree that they release and forever discharge and covenant not to sue Defendants, including Defendants' officers, employees, directors, attorneys, affiliates, predecessors, successors, assigns and insurers, from all 2014 Claims and 2017 Claims; (2) The Class Representative, and each Class Member who does not opt out of this Settlement, represent that the 2014 Actions, the 2017 Action, and the Hanover Cases do not allege claims for sickness, disease or physical injury and further that, as of the date of this Agreement, they have not been diagnosed with, are not aware of, and do not have any symptoms that they suspect could be associated with any sickness, disease or physical injury which they are asserting were caused by the action or inaction of the Defendants; and (3) Defendants release and forever discharge and covenant not to sue one another, including Defendants' officers, employees, directors, attorneys, affiliates, predecessors, successors, assigns and insurers, from any claims against one another, if any, for the expense of litigating the 2014 Actions, the expense of litigating the 2017 Action, the expense of settling the 2014 Actions under the terms and conditions of the Settlement Agreement, and the expense of settling the 2017 Action under the terms and conditions of the Settlement Agreement,

as to any Releases being provided by any Class Member to the Defendants under the terms and conditions of the Settlement Agreement, including as to indemnification, contribution, or any other basis provided for under law including Public Act 222.

18. Plaintiffs, Defendants, Class Counsel, and Defendants' Counsel are released from any liability in connection with the administration of the Settlement, the distribution of settlement proceeds and the procedures therefore, except for any proven willful misconduct.

19. The Court hereby vacates the Court's Opinion and Order dated November 20, 2018 entered as to the 2014 Actions.

20. This Order constitutes a final and complete adjudication of the Actions, and is fully binding on Plaintiffs, Defendants, and the Class. Without affecting the finality of this Order, the Court retains exclusive jurisdiction to determine such matters as may arise under the Settlement or this Order or during the administration of the Settlement which is now finally accepted and approved by the Court, including the interpretation and implementation of the Settlement Agreement and the authority to amend this Order as necessary.

21. There is no just reason for delay, the Court directs entry of judgment by this Order, and this judgment is final and appealable.

22. This is a final order, resolves the Actions, and closes the Actions.

SO ORDERED.

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Honorable Phyllis C. McMillen  
Oakland County Circuit Court Judge

Dated: \_\_\_\_\_, 2020

4822-8724-2708 v1 [12840-387]

**CLAIM FORM – A**  
**SEWAGE DISPOSAL SYSTEM EVENT OCCURRING ON OR ABOUT**  
**AUGUST 11, 2014**  
**GENERAL INSTRUCTIONS**

1. **THIS CLAIM FORM-A MUST BE POSTMARKED BY [REDACTED] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL REQUIREMENTS OF THE SETTLEMENT AGREEMENT.**

2. You must complete and return this Claim Form-A along with the required supporting documentation to:

**Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207.**

3. This Claim Form-A is directed to Subclass A Class Members that are listed in Exhibit 2 to the Settlement Agreement.

4. This Claim Form-A is only intended for Subclass A Class Members to seek compensation from the Settlement Fund for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 11, 2014 Sewage Disposal System Event claim at their Claimed Address.

5. It is important that you completely read the Long Form Notice that accompanied Claim Form-A. The Long Form Notice contains the definitions of many of the defined terms used in this Claim Form-A. By signing and submitting this Claim Form-A, you will be certifying that you have read the Long Form Notice, including the terms of the Releases described therein and provided for herein.

**You must submit Claim Form-A to be eligible to obtain payment in the Settlement for your August 11, 2014 Sewage Disposal System Event claim.**

**If you do not submit Claim Form-A, you will not get paid.**

Information you provided was used to calculate your itemized values for your claim arising from the claimed Sewage Disposal System Event occurring on or about August 11, 2014.

If you intend to claim additional damages, you must follow the instructions outlined in Claim Form-A. Even if you **do not** intend to claim additional damages, you still need to complete and return the Claim Form-A no later than [REDACTED].

6. You may only seek compensation if you are a member of the Class and if you complete and return this form as specified below. If you fail to file a timely, and otherwise non-deficient Claim Form-A, your Claim Form may be rejected and you may be precluded from receiving any distribution from the Settlement Fund.

7. Submission of this Claim Form-A does not guarantee that you will share in the Settlement Fund. The distribution of the Settlement Fund is governed by the Settlement Agreement, if approved by the Court, or such other plan of allocation as the Court approves.

8. You are required to submit genuine and sufficient documentation in response to the requests contained in this Claim Form-A. Please keep a copy of all documents that you send to Class Counsel. Any documents you submit with your Claim Form-A cannot be returned.

9. Type or print legibly in black ink.

10. The following definitions related to the Settlement Agreement are relevant to completing Claim Form-A:

- a. **"Fair Market Value"** shall mean the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction for an item of Personal Property in the age and condition that it existed as of August 10, 2014. Fair Market Value *shall not* be calculated by any other methodology, including but not limited to, the actual purchase price for the Personal Property, the cost to replace the Personal Property or the lost value of the Personal Property.



- b. **"Financial Reimbursement"** shall mean the payment received by or paid on behalf of the Subclass A Class Member from or by a third-party (such as an insurance company or the Federal Emergency Management Agency) as compensation for Personal Property Damage, Real Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.
- c. **"Out of Pocket Expense"** shall mean the actual cost expended in repairing, reconstructing, cleaning, and/or sanitizing the Real Property and/or Personal Property damaged as a result of the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. For a Subclass A Class Member whose claim is based upon the right of subrogation, "Out of Pocket Expense" shall mean the amount paid to its insured for Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. Out of Pocket Expense *does not* include: 1) any claim for noneconomic damages as defined by MCL 691.1416(f); and 2) any payments by the Class Member or the Class Member's insured associated with overland flooding of stormwater onto Real Property.
- d. **"Personal Property"** shall mean all property that is not real property and can be moved from one location to another. *"Personal Property" does not include vehicles.*
- e. **"Personal Property Damage"** shall mean the Personal Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. Personal Property Damage *does not* include any Personal Property that was damaged or destroyed by overland flooding of stormwater onto Real Property. The monetary value of the Personal Property Damage shall be calculated based upon the Fair Market Value of the item.
- f. **"Real Property"** shall mean all buildings, structures, and improvements, and other permanent fixtures, including, but not limited to, walls and wall coverings, floors and floor coverings affixed thereto.
- g. **"Real Property Damage"** shall mean the Real Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. The monetary value of the Real Property Damage shall be strictly limited to the lesser of the estimated and/or actual cost to repair the Real Property destroyed and to return the Real Property to its condition that existed immediately prior to the claimed Sewage Disposal System Event occurring on or about August 11, 2014. Real Property Damage does not include any Real Property that was damaged by overland flooding of stormwater onto Real Property. The monetary value of the Real Property Damage shall not include any other measure of Real Property loss or damage, including, but not limited to, the lost rental value, diminished market value, loss of use or enjoyment or business interruption.
- h. **"Sewage Disposal System Event"** shall mean the overflow or backup of a sewage disposal system, as defined by MCL 691.1416(j), onto Real Property. *A "Sewage Disposal System Event" does not include the overland flooding of stormwater onto Real Property.*

## Claimant Identity

Claimant Name(s): **[insert information]**

Mailing Address: **[insert information]**

Claimed Address: **[insert information]**

Email Address: **[insert information]**

Phone Number: **[insert information]**

**If any of the above information is incorrect or has changed, please provide the changes here:**

\_\_\_\_\_  
Your Full Name (please print)

\_\_\_\_\_  
Your Spouse's Full Name (please print)

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
City, State Zip

(\_\_\_\_\_) \_\_\_\_\_  
Daytime telephone number

\_\_\_\_\_  
Claimed Address

**Please state the reason for the changes/corrections:**

## Proof of Identification Documentation

**For each claimant, you must attach a copy of one of the following to your Claim Form-A:**

- \* A Subclass A Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address.
- \* If a Claim Form-A is filed on behalf of a corporation or entity who is a Subclass A Class Member, then documentation must be filed to establish the authority to file the Claim Form-A on behalf of the Subclass A Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity.
- \* If a person is filing a Claim Form-A on behalf of a Subclass A Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-A on behalf of the Subclass A Class Member.

**Damage and Financial Reimbursement for the Claimed Sewage Disposal System Event  
Occurring On or About August 11, 2014**

1. Based upon the documentation you provided Class Counsel, it was determined that you claimed the following for the claimed Sewage Disposal System Event occurring on or about August 11, 2014:

<b>Personal Property Damage</b>	<b>#[insert]</b>
<b>Real Property Damage</b>	<b>#[insert]</b>
<b>Out of Pocket Expense</b>	<b>#[insert]</b>
<b>Financial Reimbursement</b>	<b>#[insert]</b>
<b>Total Approved Claim Amount</b>	<b>#[insert]</b>

2. Did you sustain any damages from the claimed Sewage Disposal System Event occurring on or about August 11, 2014 that were not included in the above valuation that you want to add to this Claim Form-A?  
 Yes    No

If your answer is no, then you can skip to the inquiry related to Financial Reimbursement.

If your answer is yes, then provide the following for each category of damage that you are providing supplemental information on:

**If you are supplementing your Personal Property Damage:**

- a. You must include an Itemized Personal Property List of all supplemental Personal Property Damage on a separate sheet of paper and return it with your Claim Form-A. The list must include for each supplemental Personal Property item a brief description of it and its estimated Fair Market Value.
- b. You *must also* include reasonable evidence of your Personal Property Damage for each item on your Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence.

**If you are supplementing your Out of Pocket Expense:**

- a. You must include an Itemized Out of Pocket Expense List of all supplemental Out of Pocket Expense on a separate sheet of paper and return it with your Claim Form-A. The list must include a brief description of each supplemental Out of Pocket Expense and costs for the expenditure.
- b. You *must also* include reasonable evidence of your Out of Pocket Expense on your Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence.

**If you are supplementing your Real Property Damage:**

- a. You must include an Itemized Real Property List of all supplemental Real Property Damage on a separate sheet of paper and return it with your Claim Form-A.
- c. You *must also* include reasonable evidence of your Real Property Damage on your Itemized Real Property Damage List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence.

3. Did you receive Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring

on or about August 11, 2014 at the Claimed Address that were not included in the above valuation that you want to add to this Claim Form-A?  Yes  No

If your answer is no, then you can skip to the Claimant Certification.

If your answer is yes, then provide the following then provide the following for each category of Financial Reimbursement that you are providing supplemental information on:

**If you received Financial Reimbursement:**

- a. If you received Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense which is not already listed on this Claim Form, you *must* include documentation detailing the type of reimbursement and the amount received.
- b. If documents itemizing any supplemental information relating to Financial Reimbursement received are unavailable following a good faith effort to produce the same, you must make a good faith effort to obtain the documents from the source of the Financial Reimbursement.
- c. If you are unable to obtain the documents following these efforts, you must submit a declaration, under penalty of perjury, that contains the information set forth in a. above.

### Claimant Certification

By submitting this Claim Form, I declare under penalty of perjury that I am a member of the Settlement Class and that the following statements are true:

I read the Long Form Notice accompanying this Claim Form.

I sustained damage due to the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address (listed above).


All information provided in this Claim Form and its attachments is true and correct.

\_\_\_\_\_ Date: \_\_\_\_\_

Your signature

\_\_\_\_\_ Date: \_\_\_\_\_

Your Spouse's signature

Your fully completed Claim Form must be postmarked no later than   
to Class Counsel at the following address:

**David R. Dubin  
Liddle & Dubin, P.C.  
975 E. Jefferson Ave.  
Detroit MI 48207-3101**

**CLAIM FORM - B**  
**SEWAGE DISPOSAL SYSTEM EVENT OCCURRING ON OR ABOUT**  
**AUGUST 11, 2014**

**GENERAL INSTRUCTIONS**

1. **THIS CLAIM FORM-B MUST BE POSTMARKED BY [REDACTED] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL REQUIREMENTS OF THE SETTLEMENT AGREEMENT.**

2. You must complete and return this Claim Form-B along with the required supporting documentation to:

**Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207.**

3. This Claim Form-B is directed to Subclass B Class Members, including, but not limited to, any Class Members that are listed in Exhibit 3 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions or the Hanover Cases, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

4. This Claim Form-B is only intended for Subclass B Class Members to seek compensation from the Settlement Fund for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 11, 2014 Sewage Disposal System Event claim at the Claimed Address.

5. It is important that you completely read the Long Form Notice that accompanied Claim Form-B. The Long Form Notice contains the definitions of many of the defined terms used in this Claim Form-B. By signing and submitting this Claim Form-B, you will be certifying that you have read the Long Form Notice, including the terms of the Releases described therein and provided for herein.

**You must submit Claim Form-B to be eligible to obtain payment in the Settlement for your  
August 11, 2014 Sewage Disposal System Event claim.**

**If you do not submit Claim Form-B, you will not get paid.**

6. IF YOU ARE NOT A CLASS MEMBER OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, FILED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A CLASS MEMBER. THUS, IF YOU FILE A VALID REQUEST FOR EXCLUSION IN A TIMELY MANNER, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

7. You may only seek compensation if you are a member of the Class and if you complete and return this form as specified below. If you fail to file a timely, and otherwise non-deficient Claim Form-B, your Claim Form may be rejected and you may be precluded from receiving any distribution from the Settlement Fund.

8. Submission of this Claim Form-B does not guarantee that you will share in the Settlement Fund. The distribution of the Settlement Fund is governed by the Settlement Agreement, if approved by the Court, or such other plan of allocation as the Court approves.

9. You are required to submit genuine and sufficient documentation in response to the requests contained in this Claim Form-B. Please keep a copy of all documents that you send to Class Counsel. Any documents you submit with your Claim Form-B cannot be returned.

10. Type or print legibly in black ink.

11. The following definitions related to the Settlement Agreement are relevant to completing Claim Form-B:

- a. **"Fair Market Value"** shall mean the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction for an item of Personal Property in the age and condition that it existed as of August 10, 2014. Fair Market Value *shall not* be calculated by any other methodology, including but not limited to, the actual purchase price for the Personal Property, the cost to replace the Personal Property or the lost value of the Personal Property.
- b. **"Financial Reimbursement"** shall mean the payment received by or paid on behalf of the Subclass B Class Member from or by a third-party (such as an insurance company or the Federal Emergency Management Agency) as compensation for Personal Property Damage, Real Property Damage and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.
- c. **"Out of Pocket Expense"** shall mean the actual cost expended in repairing, reconstructing, cleaning and/or sanitizing the Real Property and/or Personal Property damaged as a result of the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. For a Subclass B Class Member whose claim is based upon the right of subrogation, "Out of Pocket Expense" shall mean the amount paid to its insured for Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. Out of Pocket Expenses *does not* include: 1) any claim for noneconomic damages as defined by MCL 691.1416(f); and 2) any payments by the Class Member associated with overland flooding of stormwater onto Real Property.
- d. **"Personal Property"** shall mean all property that is not real property and can be moved from one location to another. *"Personal Property" does not include vehicles.*
- e. **"Personal Property Damage"** shall mean the Personal Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. Personal Property Damage *does not* include any Personal Property that was damaged or destroyed by overland flooding of stormwater onto Real Property. The monetary value of the Personal Property Damage shall be calculated based upon the Fair Market Value of the item.
- f. **"Real Property"** shall mean all buildings, structures and improvements, and other permanent fixtures, including, but not limited, walls and wall coverings, floors and floor coverings affixed thereto.
- g. **"Real Property Damage"** shall mean the Real Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address. The monetary value of the Real Property Damage shall be strictly limited to the lesser of the estimated and/or actual cost to repair the Real Property destroyed and to return the Real Property to its condition that existed immediately prior to the claimed Sewage Disposal System Event occurring on or about August 11, 2014. Real Property Damage does not include any Real Property that was damaged by overland flooding of stormwater onto Real Property. The monetary value of the Real Property Damage shall not include any other measure of Real Property loss or damage, including but not limited to, the lost rental value, diminished market value, loss of use or enjoyment or business interruption.
- h. **"Sewage Disposal System Event"** shall mean the overflow or backup of a sewage disposal system, as defined by MCL 691.1416(j), onto Real Property. *A "Sewage Disposal System Event" does not include the overland flooding of stormwater onto Real Property.*

## Claimant Identity

\_\_\_\_\_  
Your Full Name (please print)

\_\_\_\_\_  
Your Spouse's Full Name (please print)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
City, State Zip

( ) \_\_\_\_\_  
Daytime telephone number

## Claimed Address

1. Is your mailing address the same address that allegedly sustained the claimed Sewage Disposal System Event occurring on or about August 11, 2014?  Yes  No
2. If no, please provide the address of the property that allegedly sustained the claimed Sewage Disposal System Event occurring on or about August 11, 2014:

## Proof of Identification Documentation

**For each claimant, you must attach a copy of one of the following to your Claim Form-B:**

- \* A Subclass B Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address.
- \* If a Claim Form-B is filed on behalf of a corporation or entity who is a Subclass B Class Member, then documentation must be filed to establish the authority to file the Claim Form-B on behalf of the Subclass B Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity.
- \* If person is filing a Claim Form-B on behalf of a Subclass B Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-B on behalf of the Subclass B Class Member.

## Personal Property Damage

1. Did you sustain any Personal Property Damage due to the claimed Sewage Disposal System Event occurring on or about August 11, 2014?  Yes  No
2. If yes, then:
  - a. You must include an Itemized Personal Property List of all Personal Property Damage in Appendix A and return it with your Claim Form-B.
  - b. If you are claiming Personal Property Damage of *\$4,000 or less*, you *do not* need to provide supporting documentation.
  - c. If you are claiming Personal Property Damage *greater than \$4,000*, you *must* include reasonable evidence of your Personal Property Damage for each item on your Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence.



### Out of Pocket Expense

1. Did you sustain any Out of Pocket Expenses due to the claimed Sewage Disposal System Event occurring on or about August 11, 2014?  Yes  No
2. If yes, then:
  - a. You must include an Itemized Out of Pocket Expense List of all Out of Pocket Expense in Appendix B and return it with your Claim Form-B.
  - b. If you are claiming Out of Pocket Expense of \$3,000 or less, then you *do not* need to provide supporting documentation.
  - c. If you are claiming Out of Pocket Expense *greater than \$3,000*, you *must* also include reasonable evidence of your Out of Pocket Expense for each item on your Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence.

### Real Property Damage

1. Did you sustain any Real Property Damage due to the claimed Sewage Disposal System Event occurring on or about August 11, 2014?  Yes  No
2. If yes, then:
  - a. You must include an Itemized Real Property Damage List of all Real Property Damage in Appendix C and return it with your Claim Form-B.
  - b. If you are claiming Real Property Damage of \$4,000 or less, then you *do not* need to provide supporting documentation
  - c. If you are claiming Real Property Damage *greater than \$4,000*, you *must* include reasonable evidence of your Real Property Damage for each item on your Itemized Real Property Damage List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence.

### Financial Reimbursement

1. Did you receive Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address?  Yes  No
  - a. What type of damage was covered? (check all that apply)
    - Personal Property Damage
    - Real Property Damage
    - Out of Pocket Expense
    - Other (describe): \_\_\_\_\_
  - b. State the amount of Financial Reimbursement received by type of damage covered:
    - Personal Property Damage: \$ \_\_\_\_\_
    - Real Property Damage: \$ \_\_\_\_\_
    - Out of Pocket Expense: \$ \_\_\_\_\_
    - Other: \$ \_\_\_\_\_

2. Did you receive grant money from FEMA for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address?  Yes  No

a. State the amount of money received from FEMA, if not covered in response to 1.a. above:  
\$ \_\_\_\_\_

**You must include information detailing the type and amount of Financial Reimbursement received.**

3. If documents itemizing any information relating to Financial Reimbursement received are unavailable following a good faith effort to produce the same, you must make a good faith effort to obtain the documents from the source of the Financial Reimbursement.
4. If you are unable to obtain the documents following these efforts, you must submit a declaration, under penalty of perjury, that contains the information set forth above.

**Claimant Certification**

By submitting this Claim Form, I declare under penalty of perjury that I am a member of the Settlement Class and that the following statements are true:

I read the Long Form Notice accompanying this Claim Form.

I sustained damage due to the claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address (listed above).

All information provided in this Claim Form and its attachments is true and correct.

\_\_\_\_\_  
Your signature Date: \_\_\_\_\_

\_\_\_\_\_  
Your Spouse's signature Date: \_\_\_\_\_

Your fully completed Claim Form must be postmarked no later than    
to Class Counsel at the following address:

**David R. Dubin  
Liddle & Dubin, P.C.  
975 E. Jefferson Ave.  
Detroit MI 48207-3101**





**APPENDIX C  
ITEMIZED REAL PROPERTY LIST**

1. Did you obtain a professional estimate for repairing any of your Real Property Damage?  Yes  No

**If Yes, please provide the following information for each such item of Real Property Damage:**

Name of Contractor	Brief Description of Real Property Damage	Date of Estimate	Amount of Estimate

2. If you performed the repairs to any of your Real Property Damage, please list all materials purchased, the purchase cost of the materials, and the actual amount you paid to 3<sup>rd</sup> parties to make the repairs for each such item of Real Property Damage.

Brief Description of Real Property Damage	Description of real property materials purchased for repair and labor conducted by 3 <sup>rd</sup> parties to make the repairs	Amount of Materials and Payment to 3 <sup>rd</sup> Parties
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
	<b>Grand Total of Real Property Damage</b>	\$

**If you are claiming Real Property Damage *greater than \$4,000*, you *must* include reasonable evidence of your Real Property Damage for each item on your Itemized Real Property List in the form of receipts, invoices, estimates, photographs, video or other similar types of documentation.**



**CLAIM FORM – C**  
**SEWAGE DISPOSAL SYSTEM EVENT OCCURRING ON OR ABOUT**  
**AUGUST 28, 2017**  
**GENERAL INSTRUCTIONS**

1. **THIS CLAIM FORM-C MUST BE POSTMARKED BY [REDACTED] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL REQUIREMENTS OF THE SETTLEMENT AGREEMENT.**

2. You must complete and return this Claim Form-C along with the required supporting documentation to:

**Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207.**

3. This Claim Form-C is directed to Subclass C Class Members that are listed in Exhibit 4 to the Settlement Agreement.

4. This Claim Form-C is only intended for Subclass C Class Members to seek compensation from the Settlement Fund for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 28, 2017 Sewage Disposal System Event claim at their Claimed Address.

5. It is important that you completely read the Long Form Notice that accompanied Claim Form-C. The Long Form Notice contains the definitions of many of the defined terms used in this Claim Form-C. By signing and submitting this Claim Form-C, you will be certifying that you have read the Long Form Notice, including the terms of the Releases described therein and provided for herein.

**You must submit Claim Form-C to be eligible to obtain payment in the Settlement for your August 28, 2017 Sewage Disposal System Event claim.**

**If you do not submit Claim Form-C, you will not get paid.**

The information you provided was used to calculate your itemized values for your claim arising from the claimed Sewage Disposal System Event occurring on or about August 28, 2017.

If you intend to claim additional damages, you must follow the instructions outlined in Claim Form-C. Even if you **do not** intend to claim additional damages, you still need to complete and return the Claim Form-C no later than [REDACTED].

6. You may only seek compensation if you are a member of the Class and if you complete and return this form as specified below. If you fail to file a timely, and otherwise non-deficient Claim Form-C, your Claim Form may be rejected and you may be precluded from receiving any distribution from the Settlement Fund.

7. Submission of this Claim Form-C does not guarantee that you will share in the Settlement Fund. The distribution of the Settlement Fund is governed by the Settlement Agreement, if approved by the Court, or such other plan of allocation as the Court approves.

8. You are required to submit genuine and sufficient documentation in response to the requests contained in this Claim Form-C. Please keep a copy of all documents that you send to Class Counsel. Any documents you submit with your Claim Form-C cannot be returned.

9. Type or print legibly in black ink.

10. The following definitions related to the Settlement Agreement are relevant to completing Claim Form-C:

- a. **"Fair Market Value"** shall mean the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction for an item of Personal Property in the age and condition that it existed as of August 27, 2017. Fair Market Value *shall not* be calculated by any other methodology, including but not limited to, the actual purchase price for the Personal Property, the cost to replace the Personal Property or the lost value of the Personal Property.

- b. **"Financial Reimbursement"** shall mean the payment received by or paid on behalf of the Subclass C Class Member from or by a third-party (such as an insurance company or the Federal Emergency Management Agency) as compensation for Personal Property Damage, Real Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address.
- c. **"Out of Pocket Expense"** shall mean the actual cost expended in repairing, reconstructing, cleaning and/or sanitizing the Real Property and/or Personal Property damaged as a result of the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. For a Subclass C Class Member whose claim is based upon the right of subrogation, "Out of Pocket Expense" shall mean the amount paid to its insured for Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. Out of Pocket Expenses *does not* include: 1) any claim for noneconomic damages as defined by MCL 691.1416(f); and 2) any payments by the Class Member associated with overland flooding of stormwater onto Real Property.
- d. **"Personal Property"** shall mean all property that is not real property and can be moved from one location to another. *"Personal Property" does not include vehicles.*
- e. **"Personal Property Damage"** shall mean the Personal Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. Personal Property Damage *does not* include any Personal Property that was damaged or destroyed by overland flooding of stormwater onto Real Property. The monetary value of the Personal Property Damage shall be calculated based upon the Fair Market Value of the item.
- f. **"Real Property"** shall mean all buildings, structures and improvements, and other permanent fixtures, including, but not limited to, walls and wall coverings, floors and floor coverings affixed thereto.
- g. **"Real Property Damage"** shall mean the Real Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. The monetary value of the Real Property Damage shall be strictly limited to the lesser of the estimated and/or actual cost to repair the Real Property destroyed and to return the Real Property to its condition that existed immediately prior to the claimed Sewage Disposal System Event occurring on or about August 28, 2017. Real Property Damage does not include any Real Property that was damaged by overland flooding of stormwater onto Real Property. The monetary value of the Real Property Damage shall not include any other measure of Real Property loss or damage, including but not limited to, the lost rental value, diminished market value, loss of use or enjoyment or business interruption.
- h. **"Sewage Disposal System Event"** shall mean the overflow or backup of a sewage disposal system, as defined by MCL 691.1416(j), onto Real Property. *A "Sewage Disposal System Event" does not include the overland flooding of stormwater onto Real Property.*



## Claimant Identity

Claimant Name(s): [insert information]

Mailing Address: [insert information]

Claimed Address: [insert information]

Email Address: [insert information]

Phone Number: [insert information]

**If any of the above information is incorrect or has changed, please provide the changes here:**

\_\_\_\_\_  
Your Full Name (please print)

\_\_\_\_\_  
Your Spouse's Full Name (please print)

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
City, State Zip

(\_\_\_\_\_) \_\_\_\_\_  
Daytime telephone number

\_\_\_\_\_  
Claimed Address

**Please state the reason for the changes/corrections:**

## Proof of Identification Documentation

**For each claimant, you must attach a copy of one of the following to your Claim Form-C:**

- \* A Subclass C Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address.
- \* If a Claim Form-C is filed on behalf of a corporation or entity who is a Class Member, then documentation must be filed to establish the authority to file the Claim Form-C on behalf of the Subclass C Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity.
- \* If person is filing a Claim Form-C on behalf of a Subclass C Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-C on behalf of the Subclass C Class Member.

**Damages and Financial Reimbursement for the Claimed Sewage Disposal System Event  
Occurring On or About August 28, 2017**

1. Based upon the documentation you provided Class Counsel, it was determined that you claimed the following for the claimed Sewage Disposal System Event occurring on or about August 28, 2017:

<b>Personal Property Damage</b>	<b>#[insert]</b>
<b>Real Property Damage</b>	<b>#[insert]</b>
<b>Out of Pocket Expense</b>	<b>#[insert]</b>
<b>Financial Reimbursement</b>	<b>#[insert]</b>
<b>Total Approved Claim Amount</b>	<b>#[insert]</b>

2. Did you sustain any damages from the claimed Sewage Disposal System Event occurring on or about August 28, 2017 that were not included in the above valuation that you want to add to this Claim Form-C?  
 Yes    No

If your answer is no, then you can skip to the inquiry related to Financial Reimbursement.

If your answer is yes, then provide the following for each category of damage that you are providing supplemental information on:

**If you are supplementing your Personal Property Damage:**

- a. You must include an itemized Personal Property Damage List of all supplemental Personal Property Damage on a separate sheet of paper and return it with your Claim Form-C. The list must include for each supplemental Personal Property item a brief description of it and its Fair Market Value.
- b. You *must also* include reasonable evidence of your Personal Property Damage for each item on your Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence.

**If you are supplementing your Out of Pocket Expense:**

- a. You must include an Itemized Out of Pocket Expense List of all supplemental Out of Pocket Expense on a separate sheet of paper and return it with your Claim Form-C. The list must include a brief description of each supplemental Out of Pocket Expense and costs for the expenditure.
- b. You *must also* include reasonable evidence of your Out of Pocket Expense on your Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence.

**If you are supplementing your Real Property Damage:**

- a. You must include an Itemized Real Property List of all supplemental Real Property Damage on a separate sheet of paper and return it with your Claim Form-C.
- c. You *must also* include reasonable evidence of your Real Property Damage on your Itemized Real Property Damage List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence.

3. Did you receive Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address that were not included in the above valuation that you want to add to this Claim Form-C?  Yes  No

If your answer is no, then you can skip to the Claimant Certification.

If your answer is yes, then provide the following then provide the following for each category of Financial Reimbursement that you are providing supplemental information on:

**If you received Financial Reimbursement:**

- a. If you received Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense which is not already listed on this Claim Form, you *must* include documentation detailing the type of reimbursement and the amount received.
- b. If documents itemizing any supplemental information relating to Financial Reimbursement received are unavailable following a good faith effort to produce the same, you must make a good faith effort to obtain the documents from the source of the Financial Reimbursement.
- c. If you are unable to obtain the documents following these efforts, you must submit a declaration, under penalty of perjury, that contains the information set forth in a. above.

## Claimant Certification

By submitting this Claim Form, I declare under penalty of perjury that I am a member of the Settlement Class and that the following statements are true:

I read the Long Form Notice accompanying this Claim Form.

I sustained damage due to the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address (listed above).


All information provided in this Claim Form and its attachments is true and correct.

\_\_\_\_\_ Date: \_\_\_\_\_

Your signature

\_\_\_\_\_ Date: \_\_\_\_\_

Your Spouse's signature

Your fully completed Claim Form must be postmarked no later than   
to Class Counsel at the following address:

**David R. Dubin  
Liddle & Dubin, P.C.  
975 E. Jefferson Ave.  
Detroit MI 48207-3101**

**CLAIM FORM - D**  
**SEWAGE DISPOSAL SYSTEM EVENT OCCURRING ON OR ABOUT**  
**AUGUST 28, 2017**

**GENERAL INSTRUCTIONS**

1. **THIS CLAIM FORM-D MUST BE POSTMARKED BY [REDACTED] AND MUST BE FULLY COMPLETED, BE SIGNED UNDER OATH, AND MEET ALL REQUIREMENTS OF THE SETTLEMENT AGREEMENT.**

2. You must complete and return this Claim Form-D along with the required supporting documentation to:

**Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207.**

3. This Claim Form-D is directed to Subclass D Class Members, including, but not limited to, any Class Members that are listed in Exhibit 5 to the Settlement Agreement, or otherwise disclosed during the course of the 2017 Action, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

4. This Claim Form-D is only intended for Subclass D Class Members to seek compensation from the Settlement Fund for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their August 28, 2017 Sewage Disposal System Event claim at their Claimed Address.

5. It is important that you completely read the Long Form Notice that accompanied Claim Form-D. The Long Form Notice contains the definitions of many of the defined terms used in this Claim Form-D. By signing and submitting this Claim Form-D, you will be certifying that you have read the Long Form Notice, including the terms of the Releases described therein and provided for herein.

**You must submit Claim Form-D to be eligible to obtain payment in the Settlement for your August 28, 2017 Sewage Disposal System Event claim.**

**If you do not submit Claim Form-D, you will not get paid.**

6. IF YOU ARE NOT A CLASS MEMBER OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, FILED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A CLASS MEMBER. THUS, IF YOU FILE A VALID REQUEST FOR EXCLUSION IN A TIMELY MANNER, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

7. You may only seek compensation if you are a member of the Class and if you complete and return this form as specified below. If you fail to file a timely, and otherwise non-deficient Claim Form-D, your Claim Form may be rejected and you may be precluded from receiving any distribution from the Settlement Fund.

8. Submission of this Claim Form-D does not guarantee that you will share in the Settlement Fund. The distribution of the Settlement Fund is governed by the Settlement Agreement, if approved by the Court, or such other plan of allocation as the Court approves.

9. You are required to submit genuine and sufficient documentation in response to the requests contained in this Claim Form-D. Please keep a copy of all documents that you send to Class Counsel. Any documents you submit with your Claim Form-D cannot be returned.

10. Type or print legibly in black ink.

11. The following definitions related to the Settlement Agreement are relevant to completing Claim Form-D:

- a. **"Fair Market Value"** shall mean the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction for an item of Personal Property in the age and condition that it existed as of August 27, 2017. Fair Market Value *shall not* be calculated by any other methodology, including but not limited to, the actual purchase price for the Personal Property, the cost to replace the Personal Property or the lost value of the Personal Property.
- b. **"Financial Reimbursement"** shall mean the payment received by or paid on behalf of the Subclass D Class Member from or by a third-party (such as an insurance company or the Federal Emergency Management Agency) as compensation for the Personal Property Damage, Real Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address.
- c. **"Out of Pocket Expense"** shall mean the actual cost expended in repairing, reconstructing, cleaning and/or sanitizing the Real Property and/or Personal Property damaged as a result of the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. For a Subclass D Class Member whose claim is based upon the right of subrogation, "Out of Pocket Expense" shall mean the amount paid to its insured for Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. Out of Pocket Expenses *does not* include: 1) any claim for noneconomic damages as defined by MCL 691.1416(f); and 2) any payments by the Class Member associated with overland flooding of stormwater onto Real Property.
- d. **"Personal Property"** shall mean all property that is not real property and can be moved from one location to another. *"Personal Property" does not include vehicles.*
- e. **"Personal Property Damage"** shall mean the Personal Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at Claimed Address. Personal Property Damage *does not* include any Personal Property that was damaged or destroyed by overland flooding of stormwater onto Real Property. The monetary value of the Personal Property Damage shall be calculated based upon the Fair Market Value of the item.
- f. **"Real Property"** shall mean all buildings, structures and improvements, and other permanent fixtures, including, but not limited to, walls and wall coverings, floors and floor coverings affixed thereto.
- g. **"Real Property Damage"** shall mean the Real Property that was destroyed by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address. The monetary value of the Real Property Damage shall be strictly limited to the lesser of the estimated and/or actual cost to repair the Real Property destroyed and to return the Real Property to its condition that existed immediately prior to the Sewage Disposal System Event occurring on or about August 28, 2017. Real Property Damage does not include any Real Property that was damaged by overland flooding of stormwater onto Real Property. The monetary value of the Real Property Damage shall not include any other measure of Real Property loss or damage, including but not limited to, the lost rental value, diminished market value, loss of use or enjoyment or business interruption.
- h. **"Sewage Disposal System Event"** shall mean the overflow or backup of a sewage disposal system, as defined by MCL 691.1416(j), onto Real Property. *A "Sewage Disposal System Event" does not include the overland flooding of stormwater onto Real Property.*

## Claimant Identity

\_\_\_\_\_  
Your Full Name (please print)

\_\_\_\_\_  
Your Spouse's Full Name (please print)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
City, State Zip

(       )  
\_\_\_\_\_  
Daytime telephone number

## Claimed Address

1. Is your mailing address the same address that allegedly sustained the claimed Sewage Disposal System Event occurring on or about August 28, 2017?  Yes  No
2. If No, please provide the address of the property that allegedly sustained the claimed Sewage Disposal System Event occurring on or about August 28, 2017:

## Proof of Identification Documentation

**For each claimant, you must attach a copy of one of the following to your Claim Form-D:**

- \* A Subclass D Class Member must attach a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address.
- \* If a Claim Form-D is filed on behalf of a corporation or entity who is a Subclass D Class Member, then documentation must be filed to establish the authority to file the Claim Form-D on behalf of the Subclass D Class Member along with the signor's government issued photo identification or equivalent method of identification to establish their identity.
- \* If person is filing a Claim Form-D on behalf of a Subclass D Class Member, then that person must include a copy of any government-issued photo identification or an equivalent method of identification to establish their identity and current address and documentation supporting their authority to file a Claim Form-D on behalf of the Subclass D Class Member.

## Personal Property Damage

1. Did you sustain any Personal Property Damage due to the claimed Sewage Disposal System Event occurring on or about August 28, 2017?  Yes  No
2. If yes, then:
  - a. You must include an Itemized Personal Property List of all supplemental Personal Property Damage in Appendix A and return it with your Claim Form-D.
  - b. If you are claiming Personal Property Damages of *\$4,000 or less*, you *do not* need to provide supporting documentation
  - c. If you are claiming Personal Property Damage *greater than \$4,000*, you *must* include reasonable evidence of your Personal Property Damage for each item on your Itemized Personal Property List in the form of receipts, invoices, photographs, video or other similar types of evidence.

### Out of Pocket Expense

1. Did you sustain any Out of Pocket Expense due to the claimed Sewage Disposal System Event occurring on or about August 28, 2017?  Yes  No
2. If yes, then:
  - a. You must include an Itemized Out of Pocket Expense List of all supplemental Out of Pocket Expense in Appendix B and return it with your Claim Form-D.
  - b. If you are claiming Out of Pocket Expense of \$3,000 or less, then you *do not* need to provide supporting documentation.
  - c. If you are claiming Out of Pocket Expense *greater than \$3,000*, you *must* also include reasonable evidence of your Out of Pocket Expense for each item on your Itemized Out of Pocket Expense List in the form of receipts, invoices, or other similar types of evidence.

### Real Property Damage

1. Did you sustain any Real Property Damage due to the claimed Sewage Disposal System Event occurring on or about August 28, 2017?  Yes  No
2. If yes, then:
  - a. You must include an Itemized Real Property Damage List of all supplemental Real Property Damage in Appendix C and return it with your Claim Form-D.
  - b. If you are claiming Real Property Damage of \$4,000 or less, then you *do not* need to provide supporting documentation
  - c. If you are claiming Real Property Damage *greater than \$4,000*, you *must* include reasonable evidence of your Real Property Damage for each item on your Itemized Real Property Damage List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence.

### Financial Reimbursement

1. Did you receive Financial Reimbursement for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address?  Yes  No
  - a. What type of damage was covered? (check all that apply)
    - Personal Property Damage
    - Real Property Damage
    - Out of Pocket Expense
    - Other (describe): \_\_\_\_\_
  - b. State the amount of Financial Reimbursement received by type of damage covered:
    - Personal Property Damage: \$ \_\_\_\_\_
    - Real Property Damage: \$ \_\_\_\_\_
    - Out of Pocket Expense: \$ \_\_\_\_\_
    - Other: \$ \_\_\_\_\_



2. Did you receive grant money from FEMA as a result for any Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense allegedly caused by the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address?  Yes  No

a. State the amount of grant money received from FEMA, if not covered in response to 1.a. above:  
\$ \_\_\_\_\_

**You must include information detailing the type and amount of Financial Reimbursement received.**

3. If documents itemizing any information relating to Financial Reimbursement received are unavailable following a good faith effort to produce the same, you must make a good faith effort to obtain the documents from the source of the Financial Reimbursement.

4. If you are unable to obtain the documents following these efforts, you must submit a declaration, under penalty of perjury, that contains the information set forth above.

**Claimant Certification**

By submitting this Claim Form, I declare under penalty of perjury that I am a member of the Settlement Class and that the following statements are true:

I read the Long Form Notice accompanying this Claim Form.

I sustained damage due to the claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address (listed above).

All information provided in this Claim Form and its attachments is true and correct.

\_\_\_\_\_ Date: \_\_\_\_\_

Your signature

\_\_\_\_\_ Date: \_\_\_\_\_

Your Spouse's signature

Your fully completed Claim Form must be postmarked no later than    
to Class Counsel at the following address:

**David R. Dubin  
Liddle & Dubin, P.C.  
975 E. Jefferson Ave.  
Detroit MI 48207-3101**





**APPENDIX C  
ITEMIZED REAL PROPERTY LIST**

1. Did you obtain a professional estimate for repairing any of your Real Property Damage?  Yes  No

**If Yes, please provide the following information for each such item of Real Property Damage:**

Name of Contractor	Brief Description of Real Property Damage	Date of Estimate	Amount of Estimate

2. If you performed the repairs to any of your Real Property Damage, please list all materials purchased, the purchase cost of the materials, and the actual amount you paid to 3<sup>rd</sup> parties to make the repairs for each such item of Real Property Damage.

Brief Description of Real Property Damage	Description of real property materials purchased for repair and labor conducted by 3 <sup>rd</sup> parties to make the repairs	Amount of Materials and Payment to 3 <sup>rd</sup> Parties
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
	<b>Grand Total of Real Property Damage</b>	\$

**If you are claiming Real Property Damage greater than \$4,000, you must include reasonable evidence of your Real Property Damage for each item on your Itemized Real Property List in the form of receipts, invoices, estimates, photographs, video or other similar types of evidence.**



IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT**

**If you are listed in Exhibit 1 to the Settlement Agreement, you may be a Class Member.  
Please read this Notice carefully, as it affects your legal rights.**

*Oakland County Circuit Court in the State of Michigan authorized this notice.  
This is not a solicitation from a lawyer.*

- A Settlement has been reached to resolve putative class action lawsuits arising from the claimed Sewage Disposal System Event occurring on or about August 11, 2014 concerning areas in the Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, and Troy, Michigan and the claimed Sewage Disposal System Event occurring on or about August 28, 2017 concerning areas in the City of Berkley, Michigan. The Settlement also includes certain properties that may be located in Royal Oak Township, Michigan.
- The Settlement Agreement requires \$11,500,000 to be paid under the terms and conditions of the Settlement Agreement by Defendants. The Settlement Agreement also requires \$1,500,000 in Improvement Measures to be conducted under the terms and conditions of the Settlement Agreement by City Defendants. The Settlement also requires Class Counsel to make deposits from the Settlement Fund to the Sewage Disposal Disbursement Fund under the terms and conditions of the Settlement Agreement.
- The parties have agreed to settle the lawsuits, and this Notice explains the Settlement Agreement, your rights, the potential available benefits, and how to get them. As a Class Member, you have various options that you may exercise before the Court decides whether to approve the Settlement.
- The Court in charge of these cases still has to decide whether to approve the Settlement. Payments will only be made if the Court finally approves the Settlement and after appeals, if any, are resolved.
- Your legal rights are affected whether you act or don't act. Please read this Notice carefully.

<b>Your Legal Rights and Options in this Settlement</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to get benefits. You must file an appropriate Claim Form no later than <span style="background-color: yellow;">_____</span> .
<b>EXCLUDE YOURSELF</b>	<p>If you exclude yourself, you will <b>no longer</b> be a Class Member. This means you will not be eligible for the benefits or relief in the Settlement. It also means that Class Counsel will not be representing you and there are statutes of limitations that may bar your individual claim(s). To exclude yourself, you must follow the procedures outlined in paragraph 11 below. You must request exclusion no later than <span style="background-color: yellow;">_____</span>.</p> <p>Any Class Member who chooses to be excluded from the Settlement shall have their claims in the lawsuits dismissed without prejudice and without costs or attorney's fees to any party.</p>
<b>OBJECT</b>	<p>Write to the Court about why you do not like the Settlement. You must follow the procedures outlined in paragraph 12 below. You must also file your written objections no later than <span style="background-color: yellow;">_____</span>.</p> <p>This is the deadline to file an objection to the Settlement. This is <b>not</b> the deadline to file an objection to your approved claim amount determination under the Settlement. That process is described below in paragraph 7.</p>
<b>DO NOTHING</b>	You receive no benefits. You also give up your right to sue the County of Oakland, George W. Kuhn Drainage District, Oakland County Water Resources Commissioner Jim Nash, City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, and City of Troy about the legal claims asserted in the lawsuits which are the subject of this Settlement.

- 1. WHAT IS THIS NOTICE ABOUT:** This Notice is to inform you of the proposed Settlement of putative class action lawsuits against the County of Oakland, George W. Kuhn Drainage District, Oakland County Water Resources Commissioner Jim Nash, City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, and City of Troy pending in Oakland County Circuit Court, Michigan.

This Notice is given by Order of the Honorable Phyllis C. McMillen, Oakland County Circuit Court Judge. It summarizes your rights as set forth in the Settlement Agreement.

The Court directed this Notice to be sent to you because it is claimed you have previously filed a Written Notice of Claim, pursuant to MCL 691.1419, with one of the Defendants regarding a claimed Sewage Disposal System Event occurring on or about August 11, 2014 concerning areas in the Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, and Troy, Michigan, or the claimed Sewage Disposal System Event occurring on or about August 28, 2017 concerning areas in the City of Berkley, Michigan. The Settlement also includes certain properties that may be located in Royal Oak Township, Michigan. If you are listed on Exhibit 1 to the Settlement Agreement, or were otherwise disclosed during the course of the 2014 Actions, the Hanover Cases, or the 2017 Action, you may be a Class Member. If you are a Class Member, the Settlement will affect your rights. You have choices to make before the Court decides whether or not to approve the Settlement.

- 2. WHAT ARE THE LAWSUITS ABOUT:** The 2014 Actions ((1) *Polk, et al. v City of Oak Park, et al.*, Oakland County Circuit Court Case No. 2015-147795-NZ, (2) *Chadwell, et al. v City of Madison Heights, et al.*, Oakland County Circuit Court Case No. 2015-147794-NZ, (3) *Helme v. City of Clawson, et al.*, Oakland County Circuit Court Case No. 2016-152918-NZ, (4) *Kotsis, et al. v City of Royal Oak, et al.*, Oakland County Circuit Court Case No. 2016-152906-NZ, (5) *Doot, et al. v City of Berkley, et al.*, Oakland County Circuit Court Case No. 2017-157459-NZ, (6) *Jones, et al. v City of Ferndale, et al.*, Oakland County Circuit Court Case No. 2017-157469-NZ, (7) *Barnwell, et al. v City of Troy, et al.*, Oakland County Circuit Court Case No. 2017-157537-NZ, (8) *Lawler, et al. v City of Hazel Park, et al.*, Oakland County Circuit Court Case No. 2017-157534-NZ, (9) *Finkelberg, et al. v City of Huntington Woods, et al.*, Oakland County Circuit Court Case No. 2017-157533-NZ, and (10) *Phillips, et al. v City of Pleasant Ridge, et al.*, Oakland County Circuit Court Case No. 2017-157620-NZ) were filed regarding a claimed Sewage Disposal System Event occurring on or about August 11, 2014 concerning areas in the Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, and Troy, Michigan. The 2017 Action (*Jacob, et al. v. City of Berkley*, Oakland County Circuit Court Case No. 2019-178474-NZ) was filed regarding a claimed Sewage Disposal System Event occurring on or about August 28, 2017 concerning areas in the City of Berkley, Michigan.

In the 2014 Actions, Plaintiffs seek Economic Damages arising from the Defendants' design, construction, operation and/or maintenance of sewer systems which allegedly caused the claimed Sewage Disposal System Event occurring on or about August 11, 2014. In the 2017 Action, Plaintiffs seek Economic Damages arising from the City of Berkley's design, construction, operation and/or maintenance of a sewer system which allegedly caused the claimed Sewage Disposal System Event occurring on or about August 28, 2017. Sewer systems subject to the 2014 Actions and 2017 Action connect directly and/or indirectly with one another.

The Defendants have denied and continue to deny all charges of wrongdoing or liability arising out of the allegations and claims asserted in the 2014 Actions and the 2017 Action, including towards Plaintiffs or any Class Member.

- 3. WHY ARE THE CLASS ACTIONS BEING SETTLED:** The Court did not decide in favor of Plaintiffs or the Defendants. Instead, both sides agreed to enter into a Settlement Agreement. The Settlement does not mean that any law was broken or that the Defendants did anything wrong. The Defendants deny all legal claims in the 2014 Actions and the 2017 Action. The Representative Plaintiffs and Class Counsel believe the Settlement is in the best interest of all members of the Settlement Class.
- 4. HOW DO I KNOW IF I'M PART OF THE SETTLEMENT:** The Court has decided that the Settlement Class includes any Person, including but not limited to, any Person listed in Exhibit 1 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases, or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley.

Class Members that are listed on Exhibit 2 to the Settlement Agreement are members of **Subclass A**. Subclass A are Class Members listed on Exhibit 2 who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

Any Class Members, including, but not limited to, any Class Members that are listed on Exhibit 3 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions or the Hanover Cases, are members of **Subclass B**. Subclass B are Class Members, including, but not limited to, any Class Members listed on Exhibit 3, or otherwise disclosed during the course of the 2014 Actions or the Hanover Cases, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

Class Members that are listed on Exhibit 4 to the Settlement Agreement are members of **Subclass C**. Subclass C are Class Members listed on Exhibit 4 who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

Any Class Members, including, but not limited to, any Class Members that are listed on Exhibit 5 to the Settlement Agreement, or otherwise disclosed during the course of the 2017 Action, are members of **Subclass D**. Subclass D are Class Members, including, but not limited to, any Class Members listed on Exhibit 5, or otherwise disclosed during the course of the 2017 Action, who claim that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley and who had not provided itemized values of their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense to Class Counsel prior to June 1, 2020.

If you are not sure whether you are a member of the Settlement Class or a Subclass, or have any other questions about the Settlement, please call 800-536-0045. You can also send your questions to Class Counsel by email (info@ldclassaction.com) or by mail at: Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207.

5. **SUMMARY OF THE SETTLEMENT:** If the Settlement Agreement is approved by the Court at or after the final fairness hearing described in Section 13 of this Notice, \$11,500,000 shall be paid under the terms and conditions of the Settlement Agreement by Defendants, and \$1,500,000 in Improvement Measures shall be conducted under the terms and conditions of the Settlement Agreement by City Defendants. The Settlement Agreement also requires Class Counsel to make deposits from the Settlement Fund to the Sewage Disposal Disbursement Fund under the terms and conditions of the Settlement Agreement.
6. **HOW DO I OBTAIN A PAYMENT:** To seek compensation from the Settlement Fund, you must do the following:
  - A. **Complete, sign, notarize and date the appropriate Claim Form(s)** (enclosed with these materials). Keep a copy of the completed Claim Form(s); and
  - B. **Mail the appropriate Claim Form(s) and your required supporting documentation no later than** [REDACTED] **to** the following address: Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207. The supporting documentation that must be contained with your Claim Form(s) can be found on the Claim Form(s).

You can also receive Claim Form-A, Claim Form-B, Claim Form-C and Claim Form-D by calling 800-536-0045 or sending an email to info@LDClassAction.com. Claim Form-B and Claim Form-D can also be downloaded at [REDACTED].

Each Subclass A Class Member must file with Class Counsel a Claim Form-A to seek compensation for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.



Each Subclass B Class Member must file with Class Counsel a Claim Form-B to seek compensation for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their claimed Sewage Disposal System Event occurring on or about August 11, 2014 at the Claimed Address.

Each Subclass C Class Member must file with Class Counsel a Claim Form-C to seek compensation for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address

Each Subclass D Class Member must file with Class Counsel a Claim Form-D to seek compensation for their Real Property Damage, Personal Property Damage, and/or Out of Pocket Expense arising from their claimed Sewage Disposal System Event occurring on or about August 28, 2017 at the Claimed Address

The appropriate Claim Form(s) has/have been enclosed with this Notice. If you are not sure that you received the correct Claim Form(s), then you must contact Class Counsel immediately to obtain the correct Claim Form(s).

If you fail to cause the appropriate Claim Form(s) and any required supporting documentation to be mailed to Class Counsel by the required deadline, you will not get paid. Causing a Claim Form to be mailed late or without required supporting documentation is the same as doing nothing.

- 7. HOW ARE PAYMENTS CALCULATED:** The amount of compensation paid to a Class Member will be dependent, in part, on the total amount claimed. Accordingly, the amount a Class Member will receive will not be known until after all Claim Forms have been submitted and assessed under the terms and conditions of the Settlement Agreement.

Class Counsel shall determine the approved claim amount for a Class Member who has submitted a appropriate Claim Form(s) based upon the information contained in the Claim Form(s) and the proof of damage documentation included with their Claim Form(s) submission. The approved claim amount shall be calculated under the terms and conditions of the Settlement Agreement.

Any Class Member who submits a timely and valid Claim Form, who meets the requisite documentation requirements described in the Settlement Agreement, shall receive a share of the Settlement Fund under the terms and conditions of the Settlement Agreement.

A Class Member's pro-rata share of the Settlement Fund for purposes of issuing checks to each Class Member Claimant shall be calculated by multiplying the amount attributable to each Class Member Claimant in the Total Amount Claimed by the quotient of the Net Settlement Fund divided by the Total Amount Claimed. The Net Settlement Fund is the value of the Settlement Fund after the deduction of the amount awarded to Class Counsel for attorneys' fees, costs, and expenses, after deduction of the amount awarded to the Class Representatives as Incentive Awards, and after deduction of the amount of the Opt Out Deposit and the amount of the Rejected Claim Deposit to the Sewage System Disbursement Fund under the terms and conditions of the Settlement Agreement.

- 8. HOW LONG WILL IT TAKE TO GET RELIEF UNDER THE SETTLEMENT:** On [REDACTED], the Court will hold a hearing to decide whether or not to approve the Settlement. The relief provided for by the Settlement may not be implemented until appeals are finished and the Court's order approving the Settlement is upheld.

- 9. WHO ARE THE LAWYERS FOR THE CLASS AND HOW WILL THEY BE PAID:** The Court has appointed the following attorneys to represent you and the other Class Members: Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207 (collectively referred to as "Class Counsel"). You may also contact Class Counsel at (800) 536-0045 or info@ldclassaction.com.

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you may hire one at your own cost.

Class Counsel has prosecuted this case on a contingency basis. At the final fairness hearing, Class Counsel will be seeking the approval of the Settlement Agreement and requesting the Court for an award of attorneys' fees, costs, and expenses. Class Counsel will request the Court for an award of attorneys' fees of up to 1/3 of the Total Settlement Amount less costs and expenses. The Total Settlement Amount shall mean Thirteen Million Dollars (\$13,000,000) that is computed by adding the Eleven Million Five Hundred Thousand Dollars (\$11,500,000) to be paid under the terms and conditions of the Settlement

Agreement by Defendants, and the One Million Five Hundred Thousand Dollars (\$1,500,000) in Improvement Measures to be conducted under the terms and conditions of the Settlement Agreement by City Defendants. Any award for Class Counsel attorneys' fees, costs, and expenses, will be paid from the Settlement Fund.

**10. WHAT AM I GIVING UP TO STAY IN THE CLASS:** If the settlement becomes final, Class Members who submit an appropriate Claim Form or do nothing at all will be releasing the Defendants, including Defendants' officers, employees, directors, attorneys, affiliates, predecessors, successors, assigns and insurers from all 2014 Claims and 2017 Claims defined in the Settlement Agreement. This means you will no longer be able to sue the Defendants regarding the 2014 Claims and 2017 Claims described in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you.

**11. HOW DO I REQUEST EXCLUSION FROM THIS SETTLEMENT:** If you are a Class Member and if the Settlement Agreement is approved by the Court, then you will be bound by the terms of the Settlement Agreement unless you file a request to be excluded.

To exclude yourself from the proposed Settlement, you must mail a written request for exclusion to Class Counsel at: Liddle & Dubin, P.C., 975 E. Jefferson Ave., Detroit, MI 48207. This request for exclusion must be postmarked no later than [REDACTED].

The request to be excluded must be in writing and signed by the Class Member and must contain the following: the Class Member's full name, address and telephone number and the Claimed Address; and must specifically contain a stated request for exclusion from the prospective Settlement Class and Settlement. They must also provide proof of identification by including a copy of any government-issued photo identification or an equivalent method of identification. Any Class Member's request for exclusion that does not meet these requirements is deemed invalid and ineffective and the Class Member will be considered included in the Settlement Class for purposes of the Settlement.

Any Class Member who chooses to be excluded from the Settlement shall cease to be a Class Member upon the Court's approval of the Settlement Agreement. Any Class Member who chooses to be excluded from the Settlement shall be dismissed without prejudice and without costs or attorney's fees to any party.

**12. HOW DO I TELL THE COURT THAT I LIKE OR DISLIKE THE SETTLEMENT:** If you are a member of the Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or that you object to the Settlement or Class Counsel's requests for attorneys' fees, costs, and expenses and class representative Incentive Awards, if you do not like a part of the Settlement. The Court will consider all comments from Class Members.

Class Members desiring to object must file a notice of objection with the Court no later than [REDACTED]. You also must send a copy of the objection to Class Counsel and Defendants' counsel at:

Class Counsel	Defendants' Counsel
Liddle & Dubin, P.C. c/o David R. Dubin 975 E. Jefferson Ave. Detroit, MI 48207	Dickinson Wright PLLC c/o Peter Webster & Scott Petz 2600 W Big Beaver Rd Suite 300 Troy, MI 48084 <i>Counsel for the County Defendants</i>
	Goetz Nushaj, PLLC c/o Renis Nushaj 1985 W Big Beaver Rd, Ste 320 Troy, MI 48084 <i>Counsel for the City of Clawson</i>
	Troy City Attorney's Office c/o Lori Grigg Bluhm & Nicole MacMillan 500 W. Big Beaver Road Troy, MI 48084

	<i>Counsel for the City of Troy</i>
	Rosati, Schulz, Joppich & Amtsbuechler, P.C. c/o Margaret Debler & Stephanie Simon Morita 27555 Executive Drive, Suite 250 Farmington Hills, MI 48331 <i>Counsel for the City of Madison Heights</i>
	Rosati, Schulz, Joppich & Amtsbuechler, P.C. c/o Margaret Debler 27555 Executive Drive, Suite 250 Farmington Hills, MI 48331 <i>Counsel for the City of Huntington Woods</i>
	Plunkett Cooney, PC c/o Laurel McGiffert 150 W. Jefferson, Suite 800 Detroit, MI 48226  HAFELI STARAN & CHRIST, P.C. c/o John Staran 2055 Orchard Lake Road Sylvan Lake, MI 48320 <i>Co-Counsel for the City of Berkley</i>
	Cummings, McClorey, Davis & Acho PLC c/o Timothy Ferrand 19176 Hall Road, Suite 220 Clinton Township, MI 48038 <i>Counsel for City of City of Ferndale, City of Hazel Park, City of Royal Oak, and City of Pleasant Ridge</i>
	Garan Lucow Miller, P.C. c/o John Gillooly 1155 Brewery Park Boulevard, Suite 200 Detroit, MI 48207 <i>Counsel for the City of Oak Park</i>

Objections must be in writing and signed by the Class Member and must contain the following: the Class Member's full name, address, and telephone number; and, must identify with reasonable particularity the basis for the objection and attach all documentation they intend to present to the Court in support of its, his, or her position. The objection must be in the form of a declaration or be in the form of an affidavit duly signed under penalty of perjury before a notary public. If an objection is submitted by someone purporting to represent a Class Member, the objection must have attached sufficient documentation of the person's identity and legal authority to represent the Class Member or the objection is deemed invalid and ineffective.

Objections that do not meet the requirements set forth above are deemed invalid and ineffective. Class Counsel and Defendants' Counsel reserve the right to challenge the validity and grounds of any objection.

If you do not submit a written objection to the Settlement or the application of Class Counsel for Incentive Awards or

attorneys' fees, costs, and expenses in accordance with the deadline and procedure set forth above, you will waive your right to be heard at the final fairness hearing and to appeal from any order or judgment of the Court concerning the lawsuits.

Please note that this is the deadline to file an objection to the Settlement. This is **not** the deadline to file an objection to your approved claim amount determination under the Settlement. That process is described above in paragraph 7.

- 13. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT:** The Court will hold a final fairness hearing on [REDACTED], at [REDACTED] at the Oakland County Circuit Court, 1200 N Telegraph Rd, Pontiac, MI 48341, Courtroom 3C, Third Floor or as otherwise directed by the Court.

At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel or whether to approve Incentive Awards. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long it will take for the Court to make its decision.

You do not have to attend the hearing. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense provided you have not excluded yourself from the Settlement. If you send an objection, you do not have to come to Court to talk about it. As long as you timely send your written objection, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

- 14. WHAT HAPPENS IF I DO NOTHING AT ALL:** If you do nothing at all, and are a member of the Class, you will be bound by the Settlement if the Court approves it.

- 15. ARE MORE DETAILS ABOUT THE SETTLEMENT AND MY RIGHTS UNDER THE SETTLEMENT AVAILABLE:** This Notice is a summary and does not describe all details of the Settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [www.lidclassaction.com](http://www.lidclassaction.com) by choosing Select Case Keyword "August 2014 Settlement" from the right-hand menu. You may also contact Class Counsel at (800) 536-0045 or [info@lidclassaction.com](mailto:info@lidclassaction.com) for more details of the lawsuit.

Copies of all pleadings and papers filed in the lawsuit are also available for inspection and copying during regular business hours at the Office of the Clerk of the Court, Oakland County Circuit Court, Michigan.

**PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THIS NOTICE.**

Dated: [REDACTED]

Honorable Phyllis C. McMillen

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*A court authorized this notice. This is not a solicitation from a lawyer.*

*Tina Polk, et al. v. City of Oak Park, et al., Oakland County Circuit Court Case No. 2015-147795-NZ  
Chadwell, et al. v City of Madison Heights, et al., Oakland County Circuit Court Case No. 2015-147794-NZ  
Helme v. City of Clawson, et al., Oakland County Circuit Court Case No. 2016-152918-NZ  
Kotsis, et al. v City of Royal Oak, et al., Oakland County Circuit Court Case No. 2016-152906-NZ  
Doot, et al. v City of Berkley, et al., Oakland County Circuit Court Case No. 2017-157459-NZ  
Jones, et al. v City of Ferndale, et al., Oakland County Circuit Court Case No. 2017-157469-NZ  
Barnwell, et al. v City of Troy, et al., Oakland County Circuit Court Case No. 2017-157537-NZ  
Lawler, et al. v City of Hazel Park, et al., Oakland County Circuit Court Case No. 2017-157534-NZ  
Finkelberg, et al. v City of Huntington Woods, et al., Oakland County Circuit Court Case No. 2017-157533-  
NZ  
Phillips, et al. v City of Pleasant Ridge, et al., Oakland County Circuit Court Case No. 2017-157620-NZ  
Jacob, et al. v. City of Berkley, Oakland County Circuit Court Case No. 2019-178474-NZ*

**If you are listed in Exhibit 1 to the Settlement Agreement, you may be a Class Member.**

**Please read this Notice carefully, as it affects your legal rights.**

You can also visit or call  
[www.LDClassAction.com/](http://www.LDClassAction.com/)  
975 E. Jefferson Ave., Detroit, MI 48207  
Call Toll-Free: 1-800-536-0045

Putative class action lawsuits that are currently pending in the Oakland County Circuit Court involve claims against the County of Oakland, George W. Kuhn Drainage District, Oakland County Water Resources Commissioner Jim Nash, City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, and City of Troy. Plaintiffs seek Economic Damages arising from the claimed Sewage Disposal System Event occurring on or about August 11, 2014 concerning areas in the Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, and Troy, Michigan, and the claimed Sewage Disposal System Event occurring on or about August 28, 2017 concerning areas in the City of Berkley, Michigan. The Settlement also includes certain properties that may be located in Royal Oak Township, Michigan. A Settlement Agreement with Defendants in these lawsuits has been submitted to the Court.

The Settlement Agreement requires \$11,500,000 to be paid under the terms and conditions of the Settlement Agreement by Defendants. The Settlement Agreement also requires \$1,500,000 in Improvement Measures to be conducted under the terms and conditions of the Settlement Agreement by City Defendants. The Settlement Agreement also requires Class Counsel to make deposits from the Settlement Fund to the Sewage Disposal Disbursement Fund under the terms and conditions of the Settlement Agreement.

***Information on your Legal Rights and Options under the Settlement Agreement***

<b>Who is a Class Member?</b>	A Class Member shall mean, for settlement purposes only and for no other purpose, any Person, including, but not limited to, any Person listed in Exhibit 1 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases, or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley.
<b>What was the basis for the lawsuits?</b>	The claimed Sewage Disposal System Event occurring on or about August 11, 2014 concerning areas in the Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, and Troy, Michigan, and the claimed Sewage Disposal System Event occurring on or about August 28, 2017 concerning areas in the City of Berkley, Michigan.
<b>What benefits does the Settlement Agreement provide?</b>	The Settlement Agreement requires \$11,500,000 to be paid under the terms and conditions of the Settlement Agreement by Defendants. The Settlement Agreement also requires \$1,500,000 in Improvement Measures to be conducted under the terms and conditions of the Settlement Agreement by City Defendants. The Settlement Agreement also requires Class Counsel to make deposits from the Settlement Fund to the Sewage Disposal Disbursement Fund under the terms and conditions of the Settlement Agreement.
<b>How can I obtain compensation from the Settlement?</b>	You must timely file an appropriate Claim Form with Class Counsel. This is the only way to get a cash payment. The deadline for filing an appropriate Claim Form is <span style="background-color: yellow;">[REDACTED]</span> .
<b>How do I obtain a Claim Form?</b>	Claim Forms can be obtained by calling 800-536-0045 or sending an email to info@LDClassAction.com.  Claim Form-B and Claim Form-D can also be downloaded at <span style="background-color: yellow;">[REDACTED]</span> .
<b>Can I be excluded from the lawsuits?</b>	Yes. To opt-out of the Settlement Agreement, you must follow the procedures outlined in the Long Form Notice available on the website above on or before <span style="background-color: yellow;">[REDACTED]</span> . If you do not exclude yourself, you will be bound by the Settlement Agreement.
<b>Can I object to the Settlement Agreement?</b>	Yes. To file objections, you must follow the procedures outlined in the Long Form Notice available on the website below on or before <span style="background-color: yellow;">[REDACTED]</span> . If you do not follow those procedures, your objections will be invalid and ineffective.
<b>What if do nothing?</b>	You will be bound by the terms and conditions of the Settlement Agreement, including being deemed to have released the Defendants from any and all 2014 Claims and 2017 Claims as defined in the Settlement Agreement.
<b>Scheduled Hearing</b>	The Oakland County Circuit Court located at 1200 N Telegraph Rd, Pontiac, MI 48341, Courtroom 3C, Third Floor, will conduct a hearing on whether to approve the Settlement and, if

	so, will determine what attorneys' fees, costs, and expenses should be awarded to Class Counsel and whether Incentive Awards should be awarded to the Plaintiffs/Class Representatives. The Court will hold a final fairness hearing on [REDACTED] at [REDACTED] at Courtroom 3C, Third Floor or as otherwise directed by the Court.
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This is only a PARTIAL summary of the Settlement with County of Oakland, George W. Kuhn Drainage District, Oakland County Water Resources Commissioner Jim Nash, City of Berkley, City of Clawson, City of Ferndale, City of Hazel Park, City of Huntington Woods, City of Madison Heights, City of Oak Park, City of Pleasant Ridge, City of Royal Oak, and City of Troy. Before deciding what action you will take, if any, it is important that you immediately review the Long Form Notice on the internet at: [www.LDClassAction.com/\[REDACTED\]](http://www.LDClassAction.com/[REDACTED])

The Long Form Notice more fully explains the Settlement Agreement and the deadlines and procedures for you to object to the Settlement or exclude yourself from the Settlement if you desire to do so. To have a copy of the Long Form Notice mailed to you, you can call Class Counsel toll free at 1-800-536-0045.

**Exhibit 14**

**Notice of Proposed Class Action Settlement for Publication in The Oakland Press, a newspaper of general circulation in Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, Troy, and Royal Oak Township, Michigan.**



**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- Tina Polk, et al. v. City of Oak Park, et al., Oakland County Circuit Court Case No. 2015-147795-NZ*
- Chadwell, et al. v City of Madison Heights, et al., Oakland County Circuit Court Case No. 2015-147794-NZ*
- Helme v. City of Clawson, et al., Oakland County Circuit Court Case No. 2016-152918-NZ*
- Kotsis, et al. v City of Royal Oak, et al., Oakland County Circuit Court Case No. 2016-152906-NZ*
- Doot, et al. v City of Berkley, et al., Oakland County Circuit Court Case No. 2017-157459-NZ*
- Jones, et al. v City of Ferndale, et al., Oakland County Circuit Court Case No. 2017-157469-NZ*
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- Lawler, et al. v City of Hazel Park, et al., Oakland County Circuit Court Case No. 2017-157534-NZ*
- Finkelberg, et al. v City of Huntington Woods, et al., Oakland County Circuit Court Case No. 2017-157533-NZ*
- Phillips, et al. v City of Pleasant Ridge, et al., Oakland County Circuit Court Case No. 2017-157620-NZ*
- Jacob, et al. v. City of Berkley, Oakland County Circuit Court Case No. 2019-178474-NZ*

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Please read this Notice carefully, as it affects your legal rights.**

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975 E. Jefferson Ave., Detroit, MI 48207  
Call Toll-Free: 1-800-536-0045

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***Information on your Legal Rights and Options under the Settlement Agreement***

<b>Who is a Class Member?</b>	A Class Member shall mean, for settlement purposes only and for no other purpose, any Person including, but not limited to, any Person listed in Exhibit 1 to the Settlement Agreement, or otherwise disclosed during the course of the 2014 Actions, the Hanover Cases, or the 2017 Action, who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 11, 2014 was served on the County Defendants and/or served on the City Defendant within which the Claimed Address is located or who claims that a Written Notice of Claim regarding the claimed Sewage Disposal System Event occurring on or about August 28, 2017 was served on the City of Berkley.
<b>What was the basis for the lawsuit?</b>	The claimed Sewage Disposal System Event occurring on or about August 11, 2014 concerning areas in the Cities of Berkley, Clawson, Ferndale, Hazel Park, Huntington Woods, Madison Heights, Oak Park, Pleasant Ridge, Royal Oak, and Troy, Michigan, and the claimed Sewage Disposal System Event occurring on or about August 28, 2017 concerning areas in the City of

	Berkley, Michigan.
<b>What benefits does the Settlement Agreement provide?</b>	The Settlement Agreement requires \$11,500,000 to be paid under the terms and conditions of the Settlement Agreement. The Settlement Agreement also requires \$1,500,000 in Improvement Measures to be conducted under the terms and conditions of the Settlement Agreement by City Defendants. The Settlement Agreement also requires Class Counsel to make deposits from the Settlement Fund to the Sewage Disposal Disbursement Fund under the terms and conditions of the Settlement Agreement.
<b>How can I obtain compensation from the Settlement?</b>	You must timely file a Claim Form with Class Counsel. This is the only way to get a cash payment. The deadline for filing a Claim Form is [REDACTED].
<b>How do I obtain a Claim Form?</b>	Claim Forms can be obtained by calling 800-536-0045 or sending an email to info@LDClassAction.com.  Claim Form-B and Claim Form-D can also be downloaded at [REDACTED].
<b>Can I be excluded from the lawsuits?</b>	Yes. To opt-out of the Settlement Agreement, you must follow the procedures outlined in the Long Form Notice available on the website below on or before [REDACTED]. If you do not exclude yourself, you will be bound by the Settlement Agreement.
<b>Can I object to the Settlement Agreement?</b>	Yes. To file objections, you must follow the procedures outlined in the Long Form Notice available on the website above on or before [REDACTED]. If you do not follow those procedures, your objections will be invalid and ineffective.
<b>What if do nothing?</b>	You will be bound by the terms and conditions of the Settlement Agreement, including being deemed to have released the Defendants from any and all 2014 Claims and 2017 Claims as defined in the Settlement Agreement.
<b>Scheduled Hearing</b>	The Oakland County Circuit Court located at 1200 N Telegraph Rd, Pontiac, MI 48341, Courtroom 3C, Third Floor, will conduct a hearing on whether to approve the Settlement and, if so, will determine what attorneys' fees, costs, and expenses should be awarded to Class Counsel and whether Incentive Awards should be awarded to the Class Representatives. The Court will hold a final fairness hearing on [REDACTED] at [REDACTED] at Courtroom 3C, Third Floor or as otherwise directed by the Court.

The Long Form Notice more fully explains the Settlement and the deadlines and procedures for you to object to the Settlement or exclude yourself from the Settlement if you desire to do so. To have a copy of the Long Form Notice mailed to you, you can call Class Counsel toll free at 1-800-536-0045.

# YOU WILL NOT RECEIVE THIS AMOUNT

Please read this letter carefully.

[date]

Dear [name]:

This letter is to inform you that we have finished reviewing your Claim Form. Before we can determine how much you will receive from the Settlement, we are required to confirm the amounts that were claimed in your Claim Form-[A/B/C/D]. The amounts that you claimed are listed below:

Financial Reimbursement	\$
Personal Property Damage	\$
Out of Pocket Expense	\$
Real Property Damage	\$
<b>Your Approved Claim Amount</b>	<b>\$</b>

Your Approved Claim Amount was calculated pursuant to the terms and conditions of the Settlement Agreement.

**This is NOT the amount that you will receive. All claims will be paid based on the formula outlined in the Settlement Agreement.** In other words, you will only receive a portion (a percentage) of the Approved Claim Amount listed above. **Your settlement payment will be less than your Approved Claim Amount.**

<b>Your Legal Rights and Options</b>	
<b>If you believe the Approved Claim Amount listed is accurate:</b>	<p><b>You do not need to do anything.</b></p> <p>These amounts will be used to determine your share of the Settlement Fund. We will not be able to determine how much you will receive until after all Claim Forms have been submitted and assessed under the terms and conditions of the Settlement Agreement.</p>
<b>If you believe that the Approved Claim Amount is NOT accurate:</b>	<p><b>You have the right to file an objection.</b></p> <p>If you wish to object, you must check the box marked "I object to the calculation of my Approved Claim Amount" that is on the back of this letter, sign where indicated, set forth your reason for objection and return this letter to the above address.</p> <p><b>To be considered, the objection must be postmarked, or received by this office by [7 days of this letter].</b></p>

If you have any questions or concerns regarding this matter, please do not hesitate to contact my office.

Respectfully,  
**LIDDLE & DUBIN, P.C.**  
David R. Dubin

I object to the calculation of my Approved Claim Amount.

Name (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please set forth all reasons why you object to your Approved Claim Amount:

## **Your Rights and Process for Objecting to the Determination of your Approved Claim Amount**

You have a right to hire at your own expense counsel to represent you in your objection to the approved claim amount.

If you believe that the Approved Claim Amount above does not accurately reflect all of your itemized losses, you have the right to file an objection.

**The objection is strictly limited to Class Counsel's calculation of your Personal Property Damage, Real Property Damage, Out of Pocket Expense, and Financial Reimbursement. Any attempt to object to any other issue, including but not limited to the existence and application of the Calculation Protocol, will be rejected and not subject to judicial review.**

If you wish to object, you must check the box marked "I object to the calculation of my Approved Claim Amount" that is on the back of the letter sent to you, sign where indicated, set forth your reason for objection and return this letter to the above address. **To be considered, the objection must be postmarked, or received by this office by [7 days of this letter].**

Within 14 days of receipt of your objection, Class Counsel will contact you in order to resolve your disagreement with the determination of your approved claim amount.

If after 14 days of receipt of any objection to the approved claimed amount, Class Counsel is unable to resolve a Class Member's disagreement with the approved claim amount for their claim, then Class Member's objection to the approved claim amount for their claim shall be forwarded to a Mediator (Sherman Abdo) for non-binding facilitation on day 14 following the receipt of the objection. You will be notified in writing that your objection has been forwarded to the Mediator.

The Mediator shall have 7 days to consult with Class Counsel and contact the objecting Class Member to discuss their positions and attempt to reach a resolution (the "Mediation Process"). At the conclusion of the Mediation Process, the Mediator will issue a written Mediator's Recommendation to the Class Member. The Mediator's Recommendation will outline the Mediator's determination of the Class Member's approved claim amount.

The Class Member will have 7 days to either accept or reject in writing the Mediator's Recommendation.

If the Class Member does not issue a written acceptance or rejection of the Mediator's Recommendation within 7 days, the Mediator's Recommendation must be used by Class Counsel for the determination of the Class Member's approved claim amount and the Class Member waives any objections the Class Member may have to their approved claim amount.

If the Class Member accepts the Mediator's Recommendation, the Mediator's Recommendation will then be used by Class Counsel for determining the Class Member's share of the Settlement Fund.

If the Class Member rejects the Mediator's Recommendation, then Class Counsel will file a motion with the Court seeking a judicial determination of the approved claim amount at issue within 7 days of receipt of the Class Member's rejection. Copies of the motion will also be served on the Class Member. The Class Member will have 7 days to file any documentation with the Court in response to Class Counsel's motion.

The Court will hold a hearing on Class Counsel's motion within 14 days of filing the motion or on a date that is mutually convenient with the Class Member, Class Counsel and the Court. The Class Member may attend the hearing. Any evidence that the Class Member intends to submit at the hearing must be included in the Class Member's response to Class Counsel's motion. Any witnesses that the Class Member intends to call at the hearing must be identified in the Class Member's response to Class Counsel's motion.

The Court will issue its ruling on the calculation of the Class Member's Real Property Damage, Personal Property Damage, Out of Pocket Expense, and/or Financial Reimbursement and determine the Class Member's approved claim amount within 7 days of the hearing ("Judicial Determination"), subject to the terms and conditions of the Settlement Agreement. Class Counsel will then utilize the Judicial Determination of the approved claim amount to calculate the Class Member's share of the Settlement pursuant to the terms and conditions contained in the Settlement Agreement.