

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

GARY MASON, individually and as  
representative of a class of  
similarly-situated persons and entities,

Case No. 2016-152441-CZ  
Hon. Nanci Grant

Plaintiff,

v.

CHARTER TOWNSHIP OF WATERFORD,  
a municipal corporation,

Defendant.

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

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Gary L. Dovre (P27864)  
Johnson, Rosati, Schultz & Joppich, P.C.  
27555 Executive Drive, Suite 250  
Farmington Hills, MI 48331  
(248) 489-4100

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**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement”) is made this 22 day of May, 2017, by and between the following (all of which are hereinafter collectively referred to as the “Parties”): Plaintiff Gary Mason (“Named Plaintiff”), individually, and on behalf of a class of similarly situated persons and entities (as more specifically defined in Paragraph 2 below, the “Class”), acting by and through his counsel, Kickham Hanley PLLC (“Class Counsel”), and Defendant Charter Township of Waterford (the “Township”).

WHEREAS, the above captioned lawsuit (the “Lawsuit”) commenced by Plaintiff and pending in Oakland County Circuit Court challenges two cost components included in the

Township's water and sewer rates, specifically (1) administration expense charges by the Township to the Water and Sewer Fund, and the Township's practices of not paying for services provided by the Water and Sewer Fund to the General Fund and not allocating a share of the refunds received from the Michigan Municipal Risk Management Association (the "MMRMA") to the Water and Sewer Fund in proportion to the amounts paid by the Water and Sewer Fund (the "General Fund Support Charge") and (2) the cost of public fire protection provided by the Township's water supply system (the "Public Fire Protection Charge") (collectively the "Charges"), imposed by the Township on users of its water and sanitary sewage disposal services. Plaintiff alleges that the inclusion of such Charges in the Township's water and sewer rates ("Rates") are motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the Township's actual costs of providing water and sewer services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and (2) the Township is liable for a refund of the Charges under a theory of assumpsit.

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

WHEREAS, on January 25, 2017, the Court heard Plaintiff's motion for class certification, which motion remains pending;

WHEREAS, on April 12, 2017, the Court heard Defendant's Motion for Partial Summary Disposition, which motion remains pending;

WHEREAS, the Township denies that the Charges are improper; denies that it has intentionally or negligently committed any unlawful, wrongful or tortious acts or omissions, violated

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

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

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

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

**IMPLEMENTATION OF AGREEMENT**

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

**CLASS CERTIFICATION**

2. The Parties agree to certification of a class consisting of all persons or entities who/which paid the Township for water and sewer service between April 11, 2010, and May 31,

2017 (the "Class"). This Agreement is intended to settle all of the claims of the members of the Class ("Class Members").

### SETTLEMENT FUND

3. The Township will create a Settlement Fund (the "Settlement Fund") in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000) in order to resolve the claims of the Class. At least 14 days before the final settlement approval hearing described in Paragraphs 23 and 25, the Township shall deposit the Settlement Fund into the IOLTA Trust Account of Class Counsel, Kickham Hanley PLLC. The Settlement Fund shall be administered by Kickham Hanley PLLC (the "Claims-Escrow Administrator") with the assistance of the Garden City Group ("GCG"). The expenses the Claims-Escrow Administrator incurs to GCG shall be recoverable by the Claims-Escrow Administrator as a cost of the litigation under Paragraphs 30-33 of this Agreement (subject to Court approval) and payable out of the Settlement Fund. The Claims-Escrow Administrator may from time to time apply to the Court for instructions or orders concerning the administration of the Settlement Fund and may apply to the Internal Revenue Service for such rulings with respect thereto as it may consider appropriate. Disbursements from the Settlement Fund by the Claims-Escrow Administrator shall be expressly conditioned upon an order of the Court permitting such disbursements.

4. Except as set forth in Paragraphs 27 through 30 of this Agreement, the Class and Class Counsel shall not claim any attorneys' fees or costs.

5. Subject to Paragraph 31, distribution of the Settlement Fund shall occur no later than seven (7) days after the completion of the last of all of the following (the "Settlement Date"):

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

- b. entry of an order adjudicating Class Counsel's motion for an award of attorneys' fees and costs;
- c. entry of a final judgment of dismissal of the Lawsuit with prejudice with respect to the claims of the Named Plaintiff and all Class Members, except those putative Class Members who have requested to be excluded from the Class pursuant to MCR 3.501(D);
- d. the Township's deposit of the Settlement Fund described in Paragraph 3 above;
- e. the Court's entry of the Distribution Order described in Paragraph 11 below; and
- f. the expiration of the 21-day time for appeal of all of the aforementioned orders and judgments and final resolution of any and all appeals of such orders and judgments, but only if any Class Member files a timely objection to any of the aforementioned orders and judgments.

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

7. In the event this Settlement fails to be consummated pursuant to this Agreement or fails to secure final approval by the Court for any reason or is terminated pursuant to Paragraph 31, the Settlement Fund shall immediately be returned to the Township.

#### **DISTRIBUTION OF SETTLEMENT FUND**

8. The "Net Settlement Fund" to be distributed to the Class is the Settlement Fund less the combined total of: (a) attorneys' fees and any incentive award to the Class representative awarded pursuant to Paragraphs 27-30; and (b) Class Counsel and Claims-Escrow Administrator expenses reimbursed pursuant to Paragraphs 27-30.

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

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

a. Within 14 days after the Court's entry of an order preliminarily approving this Settlement, the Township shall provide the Claims-Escrow Administrator with billing and payment records in electronic form that, at a minimum, provide for the Class Period (April 11, 2010 through May 31, 2017) the service address, account number, and billing and payment history for each water and sewer account, with the Township allowed an additional 14 days if needed to provide the complete billing and payment history. The Claims-Escrow Administrator will provide notice to the Class Members at the service addresses through first-class mail. The Claims-Escrow Administrator is authorized to utilize the services of GCG in disseminating notices to the Class. Such forms of notice will not be required to be exclusive and the Claims-Escrow Administrator will be allowed to use any appropriate means to give notice to Class Members of the Settlement and the opportunity to obtain a refund. Class Counsel will also provide newspaper publication notice to the Class as provided in Paragraph 24.

b. To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members will be required to submit sworn claims (the "Claims") which identify their names, current addresses, and the service address and periods of time in which they paid the Charges in order to participate in the Settlement. Class Members who submit Claims

will hereafter be referred to as the “Claiming Class Members.” The Claiming Class Members will be required to submit those claims no later than 30 days prior to the hearing on the final approval of this settlement, as described in Paragraph 25 (the “Claims Period”). The Claiming Class Members also will be required to provide a unique identifying number printed on the Class notice, as an additional verification of their identity. The foregoing is a general outline. GCG will assist in implementing a process designed to minimize fraud and maximize dissemination of the refunds to the appropriate parties. In the event that two or more parties claim to have paid or incurred Charges for the same water and/or sewer account, after notifying the Township of the competing claims and considering any Township information, documents, and recommendation provided in response to the notice, the Claims-Escrow Administrator shall have the absolute discretion to determine which party or parties are entitled to participate in the settlement, and the Township shall cooperate by providing information in its possession concerning the disputed property.

c. The Claims-Escrow Administrator shall calculate each Class Member’s pro rata share of the Net Settlement Fund (the “Pro Rata Share”). Only those Class Members who paid for water and/or sewer service during the Class Period and submit a timely Claim are entitled to distribution by a cash Payment of a Pro Rata Share of the Net Settlement Fund. The Pro Rata Shares of the Net Settlement Fund for Class Members that do not submit a timely claim will be distributed by the Claims-Escrow Administrator returning those funds to the Township to be used to fund and provide a Credit on each water and/or sewer service account for which there was no Claiming Class Member in the amount of those Class Members’ Pro Rata Shares. The Claims-Escrow Administrator or GCG shall calculate the amount of the credits to be applied to the accounts of the non-claiming Class Members. Any credits will attach to the account associated with the

Charges and will remain until Charges accrued after the Settlement Date exceed the amount of the Credit.

The Claims-Escrow Administrator is authorized to utilize the services of GCG to calculate the Pro Rata Shares distributable to the Claiming Class Members. The size of each Claiming Class Member's Pro Rata Share shall be determined by (1) calculating the total amount paid for water and sewer service (excluding interest and penalty payments) by the Class Member during the Class Period and then (2) dividing that number by the total amount of water and sewer billings the Township collected during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund. The size of each non-Claiming Class Member's Pro Rata Share shall be determined by account and service address by (1) calculating the total amount paid for water and sewer service (excluding interest and penalty amounts) by all non-claiming Class Members associated with each account and service address during the Class Period, (regardless of how many different non-claiming Class Members paid for water and sewer service with respect to that account and service address during the applicable class period) and then (2) dividing that number by the total amount of water and sewer billings the Township collected during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund. With respect to accounts and service addresses for which there are both Claiming Class Members and non-claiming Class Members, the Pro Rata Shares shall be calculated as stated above after determining how much of the total amount was paid by each type of Class Member.

11. No later than 21 days prior to the hearing on the final approval of this settlement (as described in Paragraph 28), the Claims-Escrow Administrator shall submit to the Court a report setting forth the proposed disposition of the Net Settlement Fund including, without limitation, a list of Claiming Class Members and the percentage of the Net Settlement Fund to be paid to each



such Claiming Class Member and the amount to be returned to the Township to provide the credits on accounts for Non-Claiming Class Members described in Paragraph 10 (the “Distribution Report”). Upon filing of the Distribution Report, the Claims-Escrow Administrator shall serve copies of the Distribution Report on Counsel for the Township.

a. The Township shall have 14 days to object to the Distribution Report. All objections shall be resolved by the Court at or before the final approval hearing.

b. Class Counsel and Counsel for the Township, within seven (7) days after the resolution of any objections to the Distribution Report, or within seven (7) days after the deadline for submission of objections if no objections are submitted, whichever is later, shall submit to the Court a stipulated Distribution Order authorizing distribution from the Settlement Fund to the Class Members entitled to a distribution of the Net Settlement Fund (“Stipulated Distribution Order”) in accordance with the Distribution Report, subject to the Court’s final approval of this Settlement.

c. The Parties acknowledge that, because Class Members may have moved or ceased doing business since April 11, 2010, complete and current address information may not be available for all Class Members. The Township, Named Plaintiff, counsel for any Parties, the Claims-Escrow Administrator and GCG shall not have any liability for or to any member of the Class with respect to determinations of the amount of any distribution of the Settlement Fund to any Class Member or determinations concerning the names or addresses of the Class Members.

12. At a time consistent with Paragraph 5, following the entry of the Stipulated Distribution Order, the Claims-Escrow Administrator shall distribute from the Net Settlement Fund the Pro Rata Share of each Claiming Class Member. The Claims-Escrow Administrator is authorized to send checks reflecting Payments due to Claiming Class Members to the address provided by each

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

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

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

**PROSPECTIVE RELIEF**

15. Subject to its right to adjust the Rates as a result of changes in expenses or revenues from the amounts upon which the 2017 Water and Sewer Fund budget was based, and obligation to provide Credits as provided in Paragraph 10, the Township shall utilize its current methodology for setting Rates charged by the Township through December 31, 2017 (the "FY 2017 Period").

Beginning January 1, 2018, and ending December 31, 2024 (the “Prospective Relief Period”), the Rates may include as a component, the reasonable value of services provided by General Fund departments to the Township’s water and sewer function (the “Administrative Fee”), provided the Township complies with the methodology of cost allocation utilized by Maximus in its October 2016 Report to the Township, takes into account the reasonable value of services provided by the Township’s Water and Sewer Fund to the General Fund, and credits the Water and Sewer Fund its share of any MMRMA refunds received by the Township in proportion to the amount of the Township’s payments to MMRMA paid or funded by the Water and Sewer Fund during the year in which an MMRMA refund is received.

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

17. The Township may not levy a tax or other assessment against property owners or water or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the Township increase its Rates to finance, in whole or in part, the Settlement Fund. Regardless of the source of the funds the Township uses to establish the Settlement Fund, the Township shall not include as a recoverable cost in the setting of the Rates any amounts that it has contributed to the Settlement Fund.

18. The Class Members shall release the Township as provided in Paragraph 26 below. In addition to the release set forth in Paragraph 26 below, if the Township complies with the prospective relief described above for the duration of the FY 2017 Period and the Prospective Relief

Period, the Class Members who do not timely request exclusion from the Class shall be deemed to have released and waived any and all claims that could be brought which (a) arise during the FY 2017 Period challenging the inclusion of the Administrative Fee and the Public Fire Protection Charge in the Rates for the FY 2017 Period (the "FY 2017 Period Claims") and (b) arise during the Prospective Relief Period challenging the inclusion of the Administrative Fee and the Public Fire Protection Charge in the Township's Rates during the Prospective Relief Period (the "Prospective Relief Period Claims").

19. The Lawsuit will be dismissed with prejudice, subject only to the Court's continuing jurisdiction to enforce the terms of the settlement agreement.

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

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

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

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

22. Any findings of fact of the Claims-Escrow Administrator and/or GCG shall be made solely for the purposes of the allocation and distribution of the Pro Rata Shares, and, in accordance with Paragraph 35, shall not be admissible for any purpose in any judicial proceeding, except as required to determine whether the claim of any Class Member should be allowed in whole or in part.

#### **NOTICE AND APPROVAL OF SETTLEMENT**

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

a. scheduling of a Settlement approval hearing to be held as soon as practicable after the entry of such Order but in no event later than 120 days thereafter to determine the fairness, reasonableness, and adequacy of this Agreement and the Settlement; whether the Agreement and Settlement should be approved by the Court; and whether to award the attorneys' fees and expenses requested by Class Counsel;

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

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

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

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

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

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

vi. the right of members of the Class to opt out of the Class, the procedures for doing so, and the deadlines for doing so, including the deadline with respect to filing

and/or serving written notification of a decision to opt out of the Class (such deadline must be at least fourteen (14) days prior to the hearing);

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

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

24. Notice to Class Members of the proposed settlement shall be the responsibility of Class Counsel pursuant to orders of the Court. Class Counsel shall be entitled to be reimbursed for the cost of such notice from the Settlement Fund, and Class Counsel shall make application for costs of notice to the Court at least seven (7) days before the Settlement approval hearing with the Court approving any costs at the time of the Settlement approval hearing. Such notice shall be substantially in the form attached hereto as Exhibit "B," and mailed by Class Counsel (or GCG) to the Class Members at the service addresses provided by the Township within 21 days of entry of the Order Regarding Preliminary Approval of this Agreement. Class Counsel will also provide publication notice to the Class, which shall be substantially in the form attached hereto as Exhibit "C" and shall be published in the Oakland Press on two occasions, and the Detroit News on one occasion, prior to June 30, 2017.

25. After the notice described in Paragraphs 23 and 24 has been mailed and published, the Court shall, consistent with Paragraph 23, conduct a hearing at which it rules on any objections to this Agreement and a joint motion for entry of a Final Order approving of this Settlement and Agreement. If the Court approves this Agreement pursuant to Michigan Court Rule 3.501(E), a final judgment, substantially in the form of Exhibit "D," shall be entered by the Court: (a) finding that the notice provided to Class Members is the best notice practicable under the circumstances and

satisfies the due process requirements of the United States and Michigan Constitutions; (b) approving the Settlement set forth in this Agreement as fair, reasonable, and adequate; (c) dismissing with prejudice and without costs to any Party any and all claims of the Class Members against the Township, excluding only those persons who in timely fashion requested exclusion from the Class; (d) awarding Class Counsel attorneys' fees, costs and expenses; (e) reserving jurisdiction over all matters relating to the administration of this Agreement, including allocation and distribution of the Settlement Fund; and (f) retaining jurisdiction to protect and effectuate this judgment.

#### **RELEASE AND COVENANT NOT TO SUE**

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

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the Township, and each of its successors and assigns, present and former agents, elected and appointed officials, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through the date of this Final Order and Judgment concerning (a) the Township's calculation or assessment of Rates or Charges; (b) the components of costs included in the Rates; and (c) the Township's Water and Sewer Fund balance. This release is intended to include all claims that were asserted or could have been asserted in the



Lawsuit concerning the Township's Rates and/or Charges. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the Township on account of any action or cause of action released hereby; (b) none of the claims released under this Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances. The foregoing shall not affect the claims of any Class Member whose individual water and sewer bills were calculated in error on the basis of facts or circumstances unique to such class member and not based on the claims that were or could have been asserted by the Class in the Lawsuit.

#### **ATTORNEYS' FEES AND EXPENSES**

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

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

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

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

#### **TERMINATION**

31. If this Agreement and Settlement is disapproved, in part or in whole, by the Court, or any appellate court; if dismissal of the Lawsuit with prejudice against the Township cannot be accomplished; if the Court does not enter an Order of Preliminary Approval substantially in the form attached as Exhibit "A" within twenty-eight (28) days after its submission to the Court; if a final judgment on the terms set forth in Paragraph 25 is not entered within 120 days after the entry of the Order substantially in the form attached as Exhibit "D"; if the Settlement Date defined in Paragraph 5 does not occur prior to November 30, 2017; if the Court (or any appellate court) alters the terms of this Settlement in any material way not acceptable to the Township or to Class Counsel; or if this Agreement and Settlement otherwise is not fully consummated and effected:

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

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

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

d. Counsel for the Parties shall inform the Court that the pending Motion for Class certification and Motion for Partial Summary Disposition are ripe for disposition by the Court.

32. The Township and Class Counsel may, in their sole and exclusive discretion, elect to waive any or all of the terms, conditions or requirements stated in Paragraph 31. Such waiver must be memorialized in a writing signed by the Township and/or its Counsel and Class Counsel and delivered via certified mail to Class Counsel, or it will have no force or effect.

33. The Township may, in its sole and exclusive discretion, elect to extend any or all of the deadlines stated in Paragraph 31. Such extension must be memorialized in a writing signed by the Township and/or its Counsel and delivered via certified mail to Class Counsel, or it will have no force or effect.

34. In the event the Settlement is terminated in accordance with Paragraph 31, any discussions, offers, negotiations, or information exchanged in association with this Settlement shall not be discoverable or offered into evidence or used in the Lawsuit or any other action or proceeding for any purpose. In such event, all Parties to the Lawsuit shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

**USE OF THIS AGREEMENT**

35. Except to the extent required to enforce Paragraphs 15 through 17 and 19, this Agreement, the Class Period, the Settlement provided for herein (whether or not consummated), and any proceedings taken pursuant to this Agreement shall not be:

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

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

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

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

**WARRANTIES**

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

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

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

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

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

**BINDING EFFECT AND ENFORCEMENT**

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

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

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

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

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

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

#### **MODIFICATION AND EXECUTION**

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

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

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

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

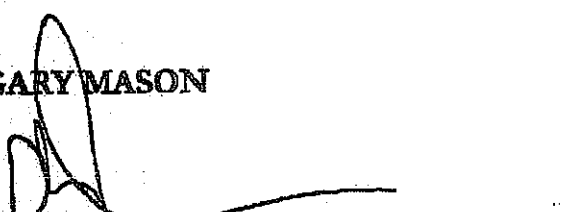
**KICKHAM HANLEY PLLC**

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

By:   
Gregory D. Hanley (P51204)

Attorneys for Plaintiffs  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500

Dated: 5/22/17

**GARY MASON**  


Dated: 5/23/17

CHARTER TOWNSHIP OF WATERFORD

By: *Ray Wall*

Its: *SUPERVISOR*

Dated: *MAY 24, 2017*

By: *Sue M.*

Its: Township Clerk

Dated: *MAY 24, 2017*

By: *[Signature]*

Gary L. Doyre (P27864)  
Attorney for Defendant  
Johnson, Rosati, Schultz & Joppich, P.C.  
27555 Executive Drive, Suite 250  
Farmington Hills, MI 48331  
(248) 489-4100

Dated: *May 24, 2017*