

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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	:	
In re	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	X	

**MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL
RULE OF BANKRUPTCY PROCEDURE 7056 SUBMITTED IN FURTHER
SUPPORT OF ITS OBJECTION TO MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT'S CLAIM NO. 3683**

The City of Detroit (the "City"), as the debtor in the above-captioned case, hereby moves the Court for the entry of an order dismissing, disallowing and expunging Macomb Interceptor Drain Drainage District's ("MIDDD") Claim No. 3683 in its entirety pursuant to Federal Rule of Bankruptcy Procedure 7056 and Federal Rule of Civil Procedure 56. Summary judgment may be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Gen. Motors. Co. v. Heraud (In re Heraud)*, 410 B.R. 569, 578 (Bankr. E.D. Mich. 2009) (citations, alterations, and internal quotation marks omitted). As demonstrated by the attachments to this Motion, MIDDD has failed to establish a genuine issue of material fact and the City is entitled to judgment as a matter of law. Pursuant to Local Rule 9014-1(g), on October 8, 2014 Counsel for the City contacted Counsel for MIDDD seeking concurrence in the relief sought which was not provided, thereby necessitating this Motion.

WHEREFORE, for all of the foregoing reasons, the City respectfully requests that the Court dismiss, disallow and expunge MIDDD's Claim No. 3683.

Dated: October 8, 2014

Respectfully submitted,

By: /s/ Stephen S. LaPlante
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**IN THE UNITED STATES BANKRUPTCY COURT
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In re	:	Chapter 9
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CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
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**ORDER GRANTING THE CITY’S MOTION FOR SUMMARY
JUDGMENT AND DISALLOWING AND EXPUNGING MACOMB
COUNTY DRAIN DRAINAGE DISTRICT’S CLAIM NO. 3683**

This matter coming before the Court on the Motion For Summary Judgment Pursuant To Federal Rule Of Bankruptcy Procedure 7056 Submitted In Further Support Of Its Objection To Macomb Interceptor Drain Drainage District’s Claim No. 3683,¹ filed by the City of Detroit, Michigan (the “City”); and the Court being fully advised in the premises;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Macomb Interceptor Drain Drainage District’s Claim No. 3683 is disallowed and expunged in its entirety.

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. The City, the City's claims and noticing agent and the Clerk of this Court are authorized to take any and all actions that are necessary or appropriate to give effect to this Order.

EXHIBIT 2

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

----- X
In re : Chapter 9
: :
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
: :
Debtor. : Hon. Steven W. Rhodes
X

**NOTICE OF OPPORTUNITY TO RESPOND TO MOTION FOR SUMMARY
JUDGMENT PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 7056
SUBMITTED IN FURTHER SUPPORT OF ITS OBJECTION TO MACOMB
INTERCEPTOR DRAIN DRAINAGE DISTRICT'S CLAIM NO. 3683**

The City of Detroit, Michigan has filed papers with the Court, asking the Court to grant summary judgment in this matter, as described in the foregoing Motion For Summary Judgment Pursuant To Federal Rule Of Bankruptcy Procedure 7056 Submitted In Further Support Of Its Objection To Macomb Interceptor Drain Drainage District's Claim No. 3683 ("Motion").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to enter an order granting summary judgment in this matter, or if you want the court to consider your views on the Motion, within fourteen (14) days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

United States Bankruptcy Court
211 West Fort Street
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

Jerome R. Watson
Miller, Canfield, Paddock & Stone, PLC
150 W. Jefferson, Suite 2500
Detroit, MI 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

¹ Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated: October 8, 2014

Respectfully submitted,

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ATTORNEYS FOR THE CITY OF DETROIT

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In re	:	Chapter 9
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CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
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Debtor.	:	Hon. Steven W. Rhodes
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**DEBTOR'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7056 SUBMITTED IN FURTHER SUPPORT OF ITS
OBJECTION TO MACOMB INTERCEPTOR DRAIN DRAINAGE
DISTRICT'S CLAIM NO. 3683**

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INTRODUCTION

The Macomb Interceptor Drain Drainage District (“MIDDD”) asserted Claim No. 3683 against the City of Detroit (the “City” or “Debtor”) in an amount not less than \$26 million. Its claim lacks support from the facts or the law and is, at best, speculative. As its sole support for its proof of claims and damages, it attached a complaint against the City of Detroit filed in Macomb County Circuit Court a few weeks before the City filed for bankruptcy (the “MIDDD Complaint”). (Dkt. 4954-2.) MIDDD alleges damages arising out of the sale of Romeo Arm Interceptor from the City to MIDDD, contending that the City was aware of fraud and misrepresentation by former Mayor Kwame Kilpatrick, Victor Mercado, Bobby Ferguson, and others relating to the repair costs of the 2004 15 Mile Road Macomb Interceptor Collapse (“Project” or “Project costs”). The Complaint contains four counts: (I) Fraud, Fraud in the Inducement, and Silent Fraud; (II) Innocent Misrepresentation; (III) Breach of Contract; and (IV) Quantum Meruit/Unjust Enrichment. (*Id.*)

All of the counts fail as a matter of law. First, MIDDD’s claims have been expressly released and waived twice by unambiguous contracts. Second, MIDDD’s Claims are barred by *res judicata* and collateral estoppel to the extent that MIDDD is contending that it can recover damages for tort claims conveyed to it by the City through the Acquisition Agreement. Judge Cleland has already ruled

against MIDDD on this issue. Third, MIDDD's contract claims fail as a matter of law because MIDDD cannot establish a breach of any provision of the Acquisition Agreement (as defined below). The provisions upon which MIDDD relies were expressly fulfilled, do not involve duties owed by the City to MIDDD or involve situations where MIDDD has failed to provide any evidence that they were violated. Fourth, all of MIDDD's fraud claims fail as a matter of law because: (a) the MIDDD Complaint fails to state claims for fraud with particularity as required by Federal Rule of Civil Procedure 9(b); (b) MIDDD admits that its claim is based upon a breach of contract, and it is well settled law that a tort such as fraud cannot be based upon a breach of contract; (c) MIDDD cannot prove the prima facie elements of a fraud claim; (d) MIDDD's tort claims are statutorily barred by governmental immunity, MCL 691.1407. Fifth, MIDDD's quasi-contract claim fails because MIDDD admits that a contract – the Acquisition Agreement - exists.

Given the foregoing, MIDDD's claim cannot survive summary judgment, and Claim No. 3683 should be dismissed, disallowed and expunged.

STATEMENT OF LEGAL PROCEEDINGS

The following timeline of legal proceedings is set forth so that MIDDD's claims may be analyzed within the context of the legal history from which they arise:

- **The Kwame Kilpatrick Indictment Criminal Trial:** On December 15, 2010, the United States filed a First Superseding Criminal Indictment against

former Detroit Mayor Kwame Kilpatrick; Bobby W. Ferguson; Bernard Kilpatrick; Victor M. Mercado, the former head of the City of Detroit Water and Sewerage Department (“DWSD”); and several other persons, in *United States of America v. Kilpatrick, et al.*, Case No. 10-20403. (Ex. 6-1.) After a lengthy jury trial in federal court, a jury returned a verdict of guilty against K. Kilpatrick, Ferguson and B. Kilpatrick, on various charges. (Ex. 6-2.)

- **MIDDD Federal Lawsuit:** On July 18, 2011, MIDDD filed a lawsuit in the United States District Court for the Eastern District of Michigan against Kwame Kilpatrick, Bobby Ferguson, Victor Mercado, and various other DWSD contractors and sub-contractors alleging claims for civil RICO, antitrust violations, breach of contract, fraud, and other tort claims relating to Contract No. CS-1368. *Macomb Interceptor Drain Drainage District v. Kilpatrick et. al.*, Case No. 2:11-cv-13101 (“MIDDD Federal Case”). (Ex. 6-3.) After numerous of the contractor/vendor defendants in that case moved to dismiss MIDDD’s tort claims against them on the basis that MIDDD did not have standing to assert them, the City, through DWSD, moved to intervene as a plaintiff, asserting that the tort claims belonged to the City. (Ex.6-4; Ex. 6-5.) On May 7, 2012, Judge Cleland issued an Opinion and Order granting the City leave to intervene, but only as to the tort claims related to CS-1368. (Ex. 6-6; Ex. 6-7.)¹ The issue as to which party owned the tort and federal statutory claims asserted by MIDDD was argued by the various parties in a July 25, 2012 hearing before Judge Cleland. (Ex. 4.) On September 17, 2012, Judge Cleland issued a 30-page Opinion and Order (the “Cleland Opinion”) ruling that under the plain language of the September 2, 2010 Acquisition Agreement between the City of Detroit, MIDDD, and Macomb County (“Acquisition Agreement”), the City had exclusive standing to pursue the tort and federal statutory claims

¹ In its Intervening Complaint, the City asserted that Kwame Kilpatrick, Bobby Ferguson, Victor Mercado, and others agreed, taking advantage of their positions for their own benefit, to conceal – and were successful in fraudulently concealing – their unlawful activities from disclosure to the DWSD Board and officials; the City and City Council; and the federal judiciary, including the long-tenured federal judge who presided over the City of Detroit Environmental Case. (*Id.*) The City further asserted that its first notice of the Kilpatrick criminal conspiracy was the filing by the federal government of the First Superseding Criminal Indictment on December 15, 2010. (*Id.* at ¶117.)

(Ex. 8.)²

- **MIDDD’s State Court Lawsuit:** A few weeks prior to the City’s Chapter 9 bankruptcy filing, MIDDD filed a complaint against the City in Macomb County Circuit Court (the “MIDDD Complaint”). (MIDDD Complaint, Dkt. 4954-2.) The MIDDD Complaint contained four counts: (I) Fraud, Fraud in the Inducement, and Silent Fraud; (II) Innocent Misrepresentation; (III) Breach of Contract; and (IV) Quantum Meruit/Unjust Enrichment. (*Id.*) Attached to the MIDDD Complaint as exhibits were the Acquisition Agreement, Amendment No. 2 to Contract No. CS-1368, the Acquisition Agreement Bill of Sale, the Affidavit of R. Craig Hupp, and the jury verdicts from the criminal trial of Kwame Kilpatrick and Bobby Ferguson. (*Id.*) The relief requested in the MIDDD Complaint included a request for reformation and/or rescission of the Acquisition Agreement, and an award of damages in an amount in excess of \$26 million. (*Id.*) Prior to the City filing a responsive pleading, the matter was stayed by this Court.
- **MIDDD’s Claim in Bankruptcy:** On or around May 5, 2014, MIDDD filed Proof of Claim No. 3683. As “proof” of its claims and damages in the amount of \$26,000,000 it attached the MIDDD Complaint (Dkt. 4954-2). The City filed an Objection to MIDDD’s Proof of Claim (Dkt. 4954) and an answer and affirmative defenses to the MIDDD Complaint (Dkt. 7554).³

² Although MIDDD argued that it was assigned all tort and federal statutory claims pursuant to Section 2.4 of the Acquisition Agreement, Judge Cleland disagreed, finding that the tort claims belonged to the City and ruling that various pieces of extrinsic evidence brought by MIDDD were self-serving and barred by the parol evidence rule. (*Id.* at 10-15.)

³ On June 25, 2014, after a hearing regarding MIDDD’s Rule 3018 motion, the Court issued a minute entry permitting limited discovery and briefing before the Court’s July 17, 2014 hearing on MIDDD’s Rule 3018 motion. Since June 25, 2014, MIDDD and the City have exchanged written discovery requests and documents. MIDDD took depositions of the following witnesses: Ramesh Shukla, Darryl Latimer, Bart Foster, Marc Jacobs, and Robert Walter. The City took depositions of the following witnesses: Lyle Winn, Anthony Marrocco, William Misterovich and R. Craig Hupp. (Exhibit 6-9, Marrocco Tr.; Exhibit 6-10, Winn Tr.; Exhibit 6-11, Shukla Tr.) In support of the present Brief, the City incorporates herein and attaches the Affidavits or Declarations of Mark Foster, Robert Walter, Darryl Latimer and Mark Jacobs. (Exhibit 5-1, Foster Aff.; Exhibit 5-2, Walter

Continued on next page.

STATEMENT OF FACTS

A. Chronology of Key Events

MIDDD's claims must be examined within the time frame in which the claims arose. To assist in this examination, the following chronology is set forth:

- The Romeo Arm Interceptor that is the subject of this dispute is part of the Macomb Interceptor System and runs along Garfield Road from Clinton River to 15 Mile Road, in Sterling Heights, Michigan, and provides sewerage service to Macomb County residents. (Ex. 6-12.) During the period of time that DWSD owned and operated the Interceptor, sewer rates for Macomb County and the Clinton Oakland District were designed to recover the "cash basis" revenue requirements associated with it so that debt service and operating costs associated with those facilities were "passed through" to the users. (Ex. 5-1, Foster Aff., ¶5.)

- August 22, 2004: 15 Mile Road Macomb Interceptor Collapse (Dkt. 6015-18; Dkt. 6015-17, Jacobs Decl., ¶4; Dkt. 6015-16, Latimer Affid., ¶4.) (Ex. 6-12; Ex. 5-4, Jacobs Decl., ¶4; Ex. 5-3, Latimer Aff., ¶4, Ex. 5-2, Walter Aff., ¶4.) It was quickly determined that the sinkhole was caused by damage to the Romeo Arm, located beneath 15 Mile Road. (Ex. 6-12.) Within hours, the sinkhole expanded to a depth of 30 feet and extended a distance of approximately 245 feet in east-west direction along 15 Mile Road, requiring immediate and emergency repairs. (*Id.*) (Ex. 5-4, Jacobs Decl., ¶4; Ex. 5-3, Latimer Aff., ¶4.) DWSD quickly stabilized the sinkhole and began repair. (Ex. 6-12; Ex. 5-4, Jacobs Decl., ¶4; Ex. 5-3, Latimer Aff., ¶4.) Inland Waters Pollution Control, Inc. ("Inland"), a City contractor, provided an initial estimate of \$35 million and was selected as general contractor. (MIDDD Complaint, ¶34.)

Continued from previous page.

Aff.; Exhibit 5-3, Latimer Aff.; Exhibit 5-4, Jacobs Decl.) MIDDD and the City both filed a brief in support and in opposition to MIDDD's Rule 3018 motion for temporary allowance (Dkt. 6015 (City's Brief) and Dkt. 6016/6061 (MIDDD's Brief). The parties also filed reply briefs (Dkt. 6093 (City's Reply) and Dkt. 6098 (MIDDD Reply).

- September 28, 2004: Kwame Kilpatrick issued Special Administrator Order Number 2004-5, authorizing Victor Mercado to enter into an emergency amendment (Amendment 2) to CS-1368 increasing the contract by \$35 million and increasing the total amount of the contract to \$95 Million (“CS-1368-2”). (Ex. 5-3, Latimer Aff., ¶13).
- June 16, 2005: Again, pursuant to a Special Administrator Order issued by Kwame Kilpatrick, Amendment No. 3 was added to CS-1368-3, which increased the amount of CS-1368 by another \$23 million, increasing the total amount of the contract up to \$118 million. (Ex. 5-3, Latimer Aff., ¶13) The two amendments (Nos. 2 and 3) in the amounts of \$35 million and \$23 million, respectively, set the cost of the 15 Mile Road Repair Project at \$58 million (hereinafter referred to as “the Project”). (MIDDD Complaint, ¶34; Ex. 5-3, Latimer Aff., ¶14).⁴
- August 23, 2004 – March 14, 2005: 15 Mile Road Macomb Interceptor repairs are completed (Dkt. 4954-2, ¶34.) (MIDDD Complaint, ¶34.) The repairs for the Project soon became a hotly contested issue between Macomb County, Oakland County, and the City.
- 2005-2006: City allocates 100% of Project costs to Macomb County sewer rates (Exhibit 6-13, Foster Tr. at 26-27.).
- March 10, 2006: Macomb County files a Petition for an injunction in Case No. 77-71100⁵ challenging DWSD’s allocation of Project costs to sewer

⁴ The original CS 1368 awarded to Inland Waters covered a variety of projects, and the original contract plus amendments - 1, 4 and 5 - were “as needed” contracts pertaining to only sewer lining tasks and were priced on a unit pricing system. (Exhibit 5-3, Latimer Aff., ¶13.) These amendments did not cover the Project. (Exhibit 5-3, Latimer Aff., ¶13.) Amendments 2 and 3 to CS 1368 covered the cost of the Project and were “cost plus fees” contracts that were submitted because of the change in type of work and the emergency nature of the same. The unit pricing model simply did not apply to these amendments. (Exhibit 5-3, Latimer Aff., ¶14.)

⁵ In 1977, Judge John Feikens presided over this landmark case, *United States v. City of Detroit, et al.*, Case No. 77-71100, which required lengthy federal oversight over DWSD.

rates (Case No. 77-71100, Dkt. 1900.) (Ex. 6-1.) (Ex. 6-15, Hupp Tr. at 17-18.) As a result, the parties began to negotiate terms whereby MIDDD would purchase the Macomb Interceptor from DWSD. (Ex. 6-16, Jacobs Tr. at 12.) (Ex. 5-1, Foster Aff., ¶6.)

- Late summer/early fall 2006: A purported tentative agreement is reached between Mercado and Marrocco as to cost of 15 Mile Road repairs (Ex. 6-15, Hupp Tr. at 30-32.).
- January 16, 2007: Settlement Conference in Case No. 77-71100 held, minute entry indicates that “[t]he parties agreed on a number and the general terms of a release of liability on the interceptor repair numbers.” (Ex. 6-17, Docket Sheet.).
- March 23, 2007: Judge Feikens issues Opinion and Order Denying Macomb’s request for an injunction regarding DWSD’s allocation of repair costs to sewer rates, ruling that Macomb was responsible for the Project costs, scuttling the purported tentative agreement reached between the parties (Ex. 6-15, Hupp Tr. at 30-32.) (Ex. 6-18, Misterovich Tr. at 15.) *See United States of America v. City of Detroit*, 483 F. Supp. 2d. 565, 568-570 (E.D. Mich. 2007).
- Spring 2008: Court Facilitator Timothy O’Brien initiates settlement discussions between the parties (Ex. 6-18, Misterovich Tr. at 15.).
- June 2008: Victor Mercado resigns as Director of DWSD (Ex. 6-15, Hupp Tr. at 14-15.).
- June 2008 to May 2009: Arms-length settlement discussions continue primarily between Craig Hupp (Macomb’s attorney), William Misterovich (MIDDD Chief Deputy and formerly Macomb in house counsel), Mark Jacobs (DWSD’s attorney), and Robert Walter (then City of Detroit Counsel assigned to DWSD) (Ex. 6-18, Misterovich Tr. at 12-13, 23-24; Ex. 5-4, Jacobs Decl., ¶10; Ex. 6-19 Walter Tr. at 84-95, 101.).
- May 12, 2009: Global Settlement Agreement Signed by the City, DWSD, Macomb County, Oakland County, and Wayne County releasing all outstanding disputes at the time, including disputes “related to the allocation of repair costs related to the August 4, 2004 collapse on the Romeo Arm of

the Macomb Interceptors at 15 Mile and Hayes . . . [and] [a]ll Disputes and claims between the Parties related to the costs for repairs and renovation of the interceptor sewers listed in Ex. 1 of Ex. D of this Agreement...” (Dkt. 6015-20.) (the “Global Settlement Agreement”). (Ex. 6-20; Ex. 6-9, Marrocco Tr., pp. 16-17.) The Global Settlement Agreement was filed with the court on May 18, 2009. (Ex. 6-20.) The Global Settlement Agreement provided as follows:

The Parties, in complete satisfaction of the 2004 Collapse Claims, Macomb’s claims with regard to the 2006 repairs to the Macomb Interceptors, and the Interceptor Interest Rate claims, agree to principal and interest rate adjustments on charges by DWSD to Macomb in the aggregate amount of \$17,050,000. These adjustments shall be implemented as described in the Implementation Outline attached to this Agreement as Ex. B.

(Ex. 6-20, §B.) The Global Settlement Agreement further provided as follows:

As described in the Letter of Intent attached hereto as Ex. D, the City intends to transfer ownership of the Interceptors from DWSD to the Interceptor Transferees. The closing contemplated by Ex. D shall fully resolve all claims in the Action regarding the Interceptors, including but not limited to those regarding the condition and or need for repair of the Interceptors, as well as such other matters as may be stated in Ex. D.

(*Id.*, pp. 3-4) Exhibit C to the Global Settlement Agreement indicated that Macomb County’s pending Motion for Reconsideration at that time, which challenged the cost of the repairs for the Project, was resolved. (*Id.*) The Global Settlement resulted in the creation of MIDDD and the Oakland Macomb Interceptor Drain Drainage District (“OMIDDD”) with the express intent of finalizing the sale of certain DWSD assets to each entity respectively. (Ex. 5-4, Jacobs Decl., ¶¶5-9; Ex. 5-2, Walter Aff., ¶¶5-9.) DWSD, OMIDDD and MIDDD then negotiated two deals transferring the appropriate assets to each new entity. (Ex. 5-1, Foster Aff., ¶7.)

- September 2, 2010: Acquisition Agreement signed, along with September 2, 2010 Settlement Agreement, between MIDDD and DWSD in which the parties “waive[ed] and release[d] any claims with regard to . . . the cost of all

projects and contracts shown on Schedule 3.8 to the [Acquisition Agreement] and the calculation of all credits, charges and adjustments set forth in that Schedule.” (Exs. 6-21, 6-22, 6-23.)

B. The Acquisition Agreement

Further detail regarding the Acquisition Agreement is necessary. After years of negotiation and approval by DWSD and Detroit City Council, the City conveyed to MIDDD “the Macomb System” for a purchase price that was ultimately calculated as of June 30, 2010, as \$89,996,704. (Ex. 6-21, Schedule 3.8; Ex. 5-3, Latimer Aff. ¶8; Ex. 5-1, Foster Aff. ¶¶4, 5, 7, 13.) **At the time the Acquisition Agreement was executed, neither former Mayor Kilpatrick nor former DWSD Director Mercado was employed with the City.** (Ex. 6-24.)

The underlying premise of the Acquisition Agreement was that MIDDD would purchase the Macomb-only portions of the sewer system by paying the outstanding pro-rated principal as of the Closing Date on any bonded debt for which a portion of the debt service is allocated to certain facilities (“System Debt”), less various amounts negotiated by the parties. (Ex. 5-3, Latimer Aff. ¶9; Ex. 5-4, Jacobs Decl. ¶9; Ex. 5-4, Jacobs Decl. ¶9; Ex. 5-1, Foster Aff. ¶7.)

The agreement called for creating Schedule 3.8, which outlined a purchase price based on the concept of making the City whole for its investment in the system, including recovery of all outstanding debt remaining on the system. The agreement called for: (a) determining the book value (original cost) of all MIDDD

facilities including cost of additional projects and repairs since the system's construction ("Original Investment"); (b) determining the total value of principal payments that had been included in determining rates charged to applicable MIDDD customers through FY 2009-2010; and (c) deducting (b) from (a) to determine the "System Debt" envisioned by the agreement. (Ex. 5-1, Foster Aff., ¶8.)

The Acquisition Agreement was negotiated and finalized after the resignation of Victor Mercado. It is an adaptation of a previous agreement that was negotiated by the parties over a significant amount of time. (Jacobs Decl. ¶10; Walter Aff., ¶10.) The primary changes to the Acquisition Agreement were in Schedule 3.8. (Ex. 5-4, Jacobs Decl. ¶10; Ex. 5-2, Walter Aff., ¶10.) Schedule 3.8 was also negotiated over a lengthy period of time through arms-length negotiations. (Ex. 5-4, Jacobs Decl. ¶10; Ex. 5-2, Walter Aff., ¶10.) At the time of the tentative agreement between Director Mercado and Commissioner Marrocco (that was scuttled by the Feikens' decision), DWSD estimated that the Macomb System Debt would be over \$116 million by the time the sale would conclude. (Ex. 5-4, Jacobs Decl. ¶11; Ex. 5-1, Foster Aff. ¶7; Ex. 5-2, Walter Aff., ¶11.)

The assets transferred to MIDDD had initially cost Detroit \$231,847,508. (Ex. 5-1, Foster Aff., ¶¶9, 17). Macomb was given a credit of \$112,355,536 for principal payments for 2009 and \$3,291,159 for principal payments made in 2010.

(Ex. 5-1, Foster Aff., ¶¶10, 17). Therefore, the outstanding System Debt was \$116,200,813. (*Id.*, Foster Aff., ¶¶11, 17).

Macomb did not pay \$116,200,813 for the assets. The Original Investment related to CS 1368-2 and CS-1368-3 was, for example, \$60,829,019. (*Id.*, Foster Aff., ¶12.) As part of the negotiations, DWSD agreed to subtract \$7,367,167 for “internal costs” and \$1,786,947 for interest expense and related adjustments. (*Id.*, Foster Aff., ¶18.) The “Adjusted System Debt” was \$107,046,704. (*Id.*, Foster Aff. ¶18.) Finally, Macomb insisted on additional deductions of \$17,050,000 as part of the negotiations in the Global Settlement. (*Id.*, Foster Aff., ¶19.) Thus, the final Purchase Price of \$89,996,704 was significantly less than the \$231,000,000 cost paid by DWSD for the assets, or the \$116,000,000 outstanding System Debt. (*Id.*, Foster Aff. ¶19; Ex. 504, Jacobs Decl. ¶11; Ex. 5-1, Foster Aff. ¶13.) Of note, is that only \$54,000,000 of costs related to CS-1368-2 and CS-1368-3 (of the nearly \$61 million investment) were part of Schedule 3.8 to the Acquisition Agreement. (Ex. 6-21, referred to as “2004 Repairs.”)

At no time prior to the signing of the Macomb Acquisition Agreement were any representations made that the costs associated with the Project or any other item in Schedule 3.8 were “fair and reasonable.” (Ex. 5-4, Jacobs Decl. ¶12; Ex. 5-3, Latimer Aff. ¶10; Ex. 5-2, Walter Aff. ¶ 12; Ex. 5-1, Foster Aff. ¶¶15-16). MIDD never claimed that the costs were fraudulent prior to the Acquisition

Agreement nor ever questioned its cost or asked for a reduction beyond normal negotiations (Ex. 5-3, Latimer Aff., ¶10) and the City was unaware of excessive charges for 2004-2005 Project costs until the December 2010 indictment. (*Id.*, Latimer Aff., ¶14). The first time DWSD's counsel heard that MIDDD was suggesting that any portion of the Project Costs reflected in Schedule 3.8 of the Acquisition Agreement was inaccurate, fraudulent, excessive, or even questioned, was immediately prior MIDDD filing its complaint in the MIDDD Federal Case, despite's MIDDD's ability to undertake due diligence prior to the Global Settlement and Acquisition Agreements. (Ex. 5-4, Jacobs Decl., ¶12, 14; Ex. 5-2, Walter Aff., ¶13).⁶

The Acquisition Agreement also contained and incorporated a September 2, 2010 Settlement Agreement through which the City, Macomb County, and MIDDD waived and released any claims regarding “The cost of all projects and contracts shown on Schedule 3.8 to the MID Agreement and the calculation of all credits, charges and adjustments set forth in that Schedule.” (Ex. 6-22.) The purpose of this Settlement Agreement was to resolve and release all claims

⁶ Given the number of concessions granted to MIDDD to the tune of tens of millions of dollars, it is not a fact that the Macomb Acquisition Agreement would have been ratified for a lesser amount even assuming there were overcharges, as it is impossible to know what would have happened if MIDDD challenged the validity of Project costs. (Ex. 5-3, Latimer Aff. ¶15; Ex. 5-2, Walter Aff. ¶16; Ex. 5-1, Foster Aff., ¶20.) The fact of the matter is that MIDDD received and the City transferred exactly what the parties agreed to.

between the parties that related in any way whatsoever to the Macomb Interceptor, any items in the Acquisition Agreement, and/or any disputes between DWSD, Macomb County or MIDDD. (Ex. 5-3, Latimer Aff., ¶11; Ex. 5-2, Walter Aff., ¶15.) The Acquisition Agreement contained a merger and integration clause (Ex. 6-21, §12.5) and a Bill of Sale. (Ex. 6-23, Bill of Sale.)⁷

ARGUMENT

I. Applicable Legal Standard

An objection to a claim initiates a contested matter. *Pu v. Grubin (In re Food Mgmt. Group, LLC)*, 484 B.R. 574, 582 (S.D.N.Y. 2012). Federal Rule of Bankruptcy Procedure 9014(c), which governs contested matters, makes Federal Rule of Civil Procedure 56 applicable to such matters through Federal Rule of Bankruptcy Procedure 7056. Fed. R. Bankr. P. 7056, 9014(c). Under Rule 56, “[s]ummary judgment is proper where there exists no genuine issue of material fact

⁷ The United States Attorney’s Office and Federal Bureau of Investigations interviewed City employees prior to the First Superseding Indictment. Some of these employees were also subpoenaed by a Grand Jury. At no time until the date on which the First Superseding Indictment in the *Kilpatrick* case became public was the City aware that there were any claims that were reasonably expected to become the subject of litigation affecting the Macomb System or the transactions contemplated by the Acquisition Agreement. (Exhibit 5-3, Latimer Aff., ¶¶16-18; Exhibit 5-4, Jacobs Dec., ¶17; Exhibit 5-2, Walter Aff., ¶¶17-18). There is no evidence that any of these interviews or testimony led anyone at DWSD or the City to believe that there were excessive or fraudulent charges related to CS-1368-2 or CS-1368-3. (Exhibit 5-3, Latimer Aff., ¶¶16-17; Exhibit 5-2, Walter Aff., ¶¶17-18.) The thrust of the investigation related to the City Local Economic Development Department (LED). (Exhibit 5-3, Latimer Aff., ¶16.)

and the moving party is entitled to judgment as a matter of law.” *First Nat’l Bank & Trust Co. v. Brant (In re Calumet Farm, Inc.)*, 398 F.3d 555, 558 (6th Cir. 2005). “The central issue is ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)).

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment may be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material and precludes grant of summary judgment if proof of that fact would have the effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect the application of appropriate principles of law to the rights and obligations of the parties. The court must view the evidence in a light most favorable to the nonmovant as well as draw all reasonable inferences in the nonmovant’s favor.

Gen. Motors. Co. v. Heraud (In re Heraud), 410 B.R. 569, 578 (Bankr. E.D. Mich. 2009) (citations, alterations, and internal quotation marks omitted). Federal Rule of Procedure 56(e) allows a Court to grant summary judgment if it is appropriate. Fed. R. Civ. P. 56(e). Thus, “[r]ule 56(e) places responsibility on the party against whom summary judgment is sought to demonstrate that summary judgment is improper, either by showing the existence of a material question of fact or that the underlying substantive law does not permit such a decision.” *Heraud*, 410 B.R. at 578 (quoting *Jones v. Asgrow Seed Co.*, 749 F.Supp. 832, 834 (N.D. Ohio 1990)).

II. MIDD's Claim Is Barred Due To Release And Waiver

A. MIDD's Claim is Barred by the September 2, 2010 Settlement Agreement

MIDD's alleges that the City misrepresented the value of costs for the Project. (MIDD Complaint, ¶¶30-41, 83-91, 93-97, 99-108, 110-115.) The MIDD Claim fails because MIDD specifically released all claims related to “[t]he cost of all projects and contracts shown on Schedule 3.8 to the MID Agreement and the calculation of all credits, charges and adjustments set forth in that Schedule.” (Ex. 6-22.) Schedule 3.8 to the Acquisition Agreement includes costs incurred for the 15 Mile Road Project under Contract No. CS-1368. (*Id.*)

Michigan law favors settlements. *Vertex Dev. LLC v. Fifth Third Bank*, No. 308822, 2013 WL 85904, at *2 (Mich. App. Jan. 8, 2013). A presumption should follow that when parties settle they intend to put to an end to their disagreements, and if they wish to preserve disputes for the future, they will do so explicitly. The September 2, 2010 Settlement Agreement states that it applies to “[t]he **cost of all projects and contracts** shown on Schedule 3.8 to the MID Agreement and the **calculation of all credits, charges and adjustments** set forth in that Schedule...” (Ex. 6-22; 6-21, emphasis added.) “[T]here is no broader classification than the word all.” *Skotak v. Vic Tanny Int’l, Inc.*, 203 Mich. App. 616, 619 (1994). MIDD's purported claim for overcharges is barred covered by the broad language of the release.

B. MIDDD's Claim is Barred By the Global Settlement Agreement

The Global Settlement Agreement was intended to “resolve all currently outstanding disputes pending under *U.S. v. City of Detroit, et al.* (Case No. 77-71100) . . . before the U.S. District Court for the Eastern District of Michigan . . . including, but not limited to:

(ii) All Disputes related to the allocation of repair costs related to the August 4, 2004 collapse on the Romeo Arm of the Macomb Interceptors at 15 Mile and Hayes (the “2004 Collapse Claims”);

(iii) All Disputes related to the interest rate charged to Macomb related to debt service associated with the cost of repairs of the 2004 Collapse, with subsequent repairs to the Macomb Interceptors and with the construction of the Garfield Interceptor (the “Interceptor Interest Rate Claims”); [and]

(iv) All Disputes and claims between the Parties related to costs for repairs and renovation of the interceptor sewers listed in Exhibit 1 of Exhibit D of this Agreement, including any disputes and claims between the Parties relating to the associated pump stations, meters, appurtenant facilities, related easements, as built plans and records of construction and operation, and all property otherwise described in Exhibit D (collectively, the “Interceptors”).”

(Ex. 6-20, ¶1.A.(ii)-(iv).) Further, it states that “in complete satisfaction of the 2004 Collapse Claims; Interceptor Interest Rate Claims and repairs to the Interceptor,” the parties agree to principal and interest rate adjustments on charges by DWSD to Macomb in the aggregate amount of \$17,050,000. (*Id.*, ¶2b) Moreover, it confirms that a closing of the future Acquisition Agreement “shall fully resolve all claims in the Action regarding the Interceptors” (*Id.*, ¶ 3.)

Anthony Marrocco, William Misterovich, and MIDDD's attorney, Craig

Hupp, admit that the Global Settlement Agreement waived all of the claims related to the Project and its costs. (Ex. 6-15, Hupp Tr. at 50; Ex. 6-18, Misterovich Tr. at 18, 23-24, 30-32; Ex. 6-9, Marrocco Tr. at 16-17, 22 (“it settled everything”). Hupp, MIDDD’s attorney, also testified that the Global Settlement Agreement and the 2010 Settlement and Release Agreement released any claims related to the costs of the repairs of the Project. (Ex. 6-15, Hupp Tr. at 18, 23, 24, 54.) MIDDD’s claims are barred.

III. MIDDD’s Claim Is Barred by *Res Judicata* and Collateral Estoppel

A. MIDDD’s Claim Is Barred by *Res Judicata*

“[R]es judicata bars the same parties from relitigating issues that either were actually litigated or that could have been raised in an earlier action.” *Marks v. Bank of America*, No. 13-12060, 2014 WL 700478, at *3 (E.D. Mich. Feb. 24, 2014). *Res judicata* extinguishes “all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” *G. Res., Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 215 (6th Cir. 1996). To the extent that MIDDD is contending that it can recover damages for tort claims conveyed to it by the City through the Acquisition Agreement, the Cleland Opinion bars the MIDDD Claim. Pertinent to the identity of the causes of action, Judge Cleland stated:

The claims arise from Defendants’ involvement in the 2004-2005 repair of a collapsed sewer interceptor at 15 Mile Road in Sterling

Heights, Michigan, (hereafter, the “15 Mile Interceptor Repair Project” or “Project”). Macomb Interceptor avers that Defendant Kwame Kilpatrick, then the Mayor of the City of Detroit, along with various City of Detroit officials conspired with the principal contractor overseeing the 15 Mile Interceptor Repair Project, Defendant Inland Waters Pollution Control, Inc., and numerous subcontractors to “overcharge the Detroit Water and Sewerage Department . . . for time, labor and materials to stabilize and repair a sewer collapse at 15 Mile Road.” Macomb Interceptor further alleges that the misconduct was part of a widespread corruption scheme during Defendant Kwame Kilpatrick’s tenure as Mayor of Detroit.

Macomb Interceptor argues that the following two alleged injuries maintain its federal claims: (1) paying an inflated price for the Macomb System as a result of 15 Mile Interceptor Repair Project’s cost overruns caused by Concurring Defendants’ actions and (2) paying higher system usage charges during the time between the 15 Mile Interceptor Repair Project and the execution of the Acquisition Agreement.

(Ex. 6-8, at 2, 16.)

It is clear that the same transactions and the same damages were at issue in the MIDDD Federal Case where it asserted standing by virtue of an alleged assignment of rights under the Acquisition Agreement – the very same contract MIDDD now relies on to support its breach of contract claim against the City. (*See* Ex. 6-8, at 6-16; MIDDD Complaint, ¶¶ 98-108.)

The identities of the parties are the same as well. While the City was an intervening plaintiff in the MIDDD case, undoubtedly, the City was adverse to MIDDD in that case. The City argued that MIDDD lacked legal standing to assert tort and federal statutory claims pertaining to the Macomb Interceptor System and

argued in support of the contractor defendants' motion for summary judgment, in opposition to MIDDD's claim – making the parties adverse. (Ex. 6-8, at 3-4.) What matters for *res judicata* purposes is whether the City and MIDDD were adverse, even if they are co-parties. *Edelman v. McMullin Orchards*, 32 B.R. 783, 785 (Bankr. W.D. Mich. 1983). The Cleland Opinion was a final resolution of the issue of MIDDD's right and standing to bring tort and federal statutory claims relating to the alleged overcharges. MIDDD's claims could have and should have been raised in the MIDDD Case. MIDDD did not do so.

B. MIDDD's Claim Is Barred By Issue Preclusion

Collateral estoppel – *i.e.*, issue preclusion – also bars MIDDD from relitigating any issue that another court has actually and necessarily determined against MIDDD when issuing a final decision. *Central Transp., Inc. v. Four Phase Sys.*, 936 F.2d 256, 260 (6th Cir. 1991). “[S]ummary judgment is recognized as a final judgment for the purpose of issue preclusion.” *National Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 910 (6th Cir. 2001). The same is true under Michigan law. *Roskam Baking Co. v. Lanham Mach. Co.*, 288 F.3d 895, 905 (6th Cir. 2002) (“[I]t is clear Michigan law permits preclusion of issues decided by a judge as part of a summary disposition.”). Judge Cleland's ruling that the City owned all tort claims relating to the 15 Mile Road Sewer Project based on the unambiguous contractual language in the Acquisition Agreement (Ex. 6-8 at 10-

15.) precludes MIDDD from protesting any of the findings of the Cleland Opinion in a different forum.

IV. MIDDD's Breach of Contract Claim Fails as a Matter of Law

A. MIDDD's Complaint Does Not Establish a Breach of Any Provision of the Acquisition Agreement

In Count III of the MIDDD Complaint, MIDDD asserts a general claim for breach of the Acquisition Agreement. It is difficult to argue against MIDDD's vague and scattered claims without reviewing each of the relevant complaint paragraphs in turn to demonstrate how the City did not breach the Acquisition Agreement.

- First, MIDDD alleges that the City breached Section 2.4 of the Acquisition Agreement, which states that “Detroit shall assign to the [MIDDD] all of its rights under all contracts, warranties and guarantees that apply to services or goods related to the Macomb System.” (MIDDD Complaint, ¶100(a).) MIDDD makes a similar allegation regarding Section 2.9(b)(8) of the Acquisition Agreement, which states that the City is to provide “[a]n assignment of all rights under any contracts, warranties or guarantees that apply to services or goods related to the facilities comprising the Macomb System...” (Complaint, ¶100(d).) MIDDD fails to allege any actions by the City in breach of Sections 2.4 or 2.9(b)(8) of the Acquisition Agreement so this claim is moot. It is presumed, however, that MIDDD will claim these provisions of the Acquisition Agreement were breached (1) when the City did not transfer tort and federal statutory claims to MIDDD in connection with the Acquisition Agreement; or (2) when the City intervened in the MIDDD Federal Case to assert its rights to the tort and federal statutory claims. As to the first point, the affidavit of R. Craig Hupp, relied upon by MIDDD, indicates that the City's right to assert tort and federal statutory claims was not considered or discussed during negotiations of the Acquisition Agreement. (Dkt. 4954-2, Pg. ID 88, Affidavit of R. Craig Hupp, ¶13.) As to the second point, Judge Cleland ruled that the incorporation of the Acquisition Agreement expressly limits the assignment of “all of its rights.” As such, the City did not breach the

Acquisition Agreement by intervening in the MIDD Federal Claim to assert its rights. (Ex. 6-8, at 11.)

- Second, MIDD alleges that the City breached Section 2.6(b) of the Acquisition Agreement, which states that “Detroit shall in no way retain, the obligation to pay, discharge, perform or defend, as applicable and when due, any and all of the Assumed Liabilities.” (Complaint, ¶100(b).) “Assumed Liabilities” is specifically defined as “any and all Liabilities excluding: (i) the retained Liabilities, and (ii) Claims by and among any or all of Detroit, the District, Macomb County or Oakland County and the [MIDD].” (Ex. 6-21, §1.3.) There is nothing in this paragraph that sets forth any duty owed by the City – only MIDD can breach this provision because it defines the liabilities that MIDD assumed.
- Third, MIDD alleges that the City breached Section 2.9(b)(4) of the Acquisition Agreement, which states that the City must deliver to MIDD “[a]n executed assignment of all of the Macomb System that is intangible personal property in form and substance satisfactory to [MIDD] and its counsel and executed by Detroit.” (MIDD Complaint, ¶100(c).) A Bill of Sale was executed, which identified and transferred certain intangible personal property. (Ex. 6-23, attachment B.) MIDD signed off on the deal.
- Fourth, MIDD alleges that the City breached Paragraph 2.9(b)(9) of the Acquisition Agreement requiring the City to provide a certificate as to the accuracy of its representations and warranties in the Acquisition Agreement and as to its compliance with covenants and obligations to be complied with at or before closing. (MIDD Complaint, ¶¶100(e)-(f).) MIDD fails to allege that the certificate was not provided, and does not state what provision, if any, of the certificate was breached by the City.
- Fifth, MIDD alleges that the City breached Section 3.3 of the Acquisition Agreement (MIDD Complaint, ¶100(h).) but fails to allege any facts suggesting a violation of the Charter, ordinances, or any other applicable law in the “execution, delivery and performance by Detroit” of the Acquisition Agreement. This provision is a promise that the execution, delivery, and performance of the Acquisition Agreement does not conflict with any law, and MIDD has not alleged that the Acquisition Agreement violated the law.
- Sixth, MIDD alleges that the City breached Section 3.7 of the Acquisition

Agreement. (MIDDD Complaint, ¶100(g).) MIDDD has failed to allege or identify an “action, suit or proceeding threatened against or effecting Detroit” pending at the time the Acquisition Agreement was signed, in which there was “a reasonable possibility of an adverse decision which could have a material adverse effect upon the ability of Detroit to perform its obligations under the Agreement or which . . . questions the validity of the Agreement.” At best, the only action, suit, or proceeding which MIDDD may claim was not disclosed by Detroit was the Kilpatrick criminal case, the first notice of which came with the filing of the First Superseding Criminal Indictment on December 15, 2010. Regardless, that matter did not have a materially adverse effect upon the ability of the City to perform its obligations under the Acquisition Agreement, nor did it question the validity of it.

- Seventh, MIDDD alleges that the City breached Section 3.8, which “sets forth all System Debt...” (MIDDD Complaint, ¶100(h).) It is undisputed that Schedule 3.8 of the Acquisition Agreement sets forth the agreed upon “System Debt.” That MIDDD now disagrees with the amount of the System Debt, although it did not do so at the time Schedule 3.8 was agreed upon by the parties, does not afford a basis for a breach of that provision. Schedule 3.8 merely lays out what the parties agreed the system debt was as of June 30, 2013 – there is no way to “breach” it.
- Eighth, MIDDD alleges that the City breached Section 5.3, which states that “Detroit shall promptly inform the Macomb County and [MIDDD] in writing of any Claims of which Detroit is or becomes aware of that are or might reasonably be expected to become the subject of litigation affecting the Macomb System or the transactions contemplated by this Agreement.” (MIDDD Complaint, ¶100(i).) (emphasis added). The plain language of Section 1.6 makes clear that a “Claim” that must be disclosed by the City is only an investigation or litigation to which Detroit, Macomb County, or MIDDD “may become legally and/or contractually obligated to defend against . . . which are related in any way to the Macomb System.” (Ex. 6-21, §1.6.) The Kilpatrick criminal case does not constitute a “Claim” because it did not involve any matter in which Detroit, Macomb County, or MIDDD could become legally or contractually obligated to defend against. It was a criminal matter brought by the United States. In addition, the City did not receive notice of the Kilpatrick criminal case until the filing of the First Superseding Indictment on December 15, 2010.

- Ninth, MIDDD alleges the City breached Section 5.4, which provides that the City shall inform MIDDD if it “becomes aware that any representation or warranty made by Detroit in [the Acquisition Agreement] has ceased to be accurate or if Detroit becomes aware of the occurrence of any breach of any covenant or other agreement required by [the Acquisition Agreement].” (MIDDD Complaint, ¶100(j).) To the extent the filing of the First Superseding Indictment in the Kilpatrick criminal case forms the basis for MIDDD’s claim for breach of Section 5.4, no breach occurred on September 2, 2010, as the filing of the First Superseding Indictment became public knowledge on the date of its filing. Further, MIDDD has not identified the alleged representation or breach upon which it relies.
- Finally, MIDDD alleges that the City breached Section 8.1 of the Acquisition Agreement, which states that the City’s representations and warranties in the Acquisition Agreement were “true and correct.” (MIDDD Complaint, ¶100(k).) Again, MIDDD has not identified a single representation or warranty made in the Acquisition Agreement that was untrue.

Given the foregoing, MIDDD’s contract claim should be dismissed outright.

B. MIDDD Cannot Rely on Parol Evidence to Prove Its Breach of Contract Claim

It is expected that MIDDD will rely upon parol evidence (*i.e.* evidence from outside the four corners of the Acquisition Agreement and the Global Settlement Agreement) to form the basis of its breach of contract claim – despite the fact that the Acquisition Agreement and Global Settlement Agreement both contain a merger and integration clause. (Dkt. 6061 at 28-30.). In reality, MIDDD’s claim is nothing but a thinly veiled attempt to have the Court re-write and enforce an entirely different contract using parol evidence.

MIDDD has not identified any ambiguous portion of the Acquisition

Agreement that would require the use of parol evidence to aid in its interpretation. The plain language of each of the provisions outlined by MIDDD demonstrates that they were not breached. MIDDD readily admits that, in general, parol evidence is not permitted to alter or vary the terms of a contract. *Salzman v. Maldaver*, 315 Mich. 403, 413 (1946).⁸ MIDDD further admits that it is seeking to introduce parol evidence regarding purported representations made by Mercado to MIDDD. (Dkt. 6061 at 28.) Specifically, MIDDD’s entire argument is based on its allegation that while the Acquisition Agreement contains a detailed calculation of the purchase price for the Macomb Interceptor System based on a calculation of “System Debt,” that the real agreement was that MIDDD would pay a “fair” and “reasonable” amount for the 15 Mile Road repairs. This would constitute a different agreement.

Parol evidence of contract negotiations, or of prior or contemporaneous

⁸ Parol evidence is not admissible to prove the terms of an unambiguous contract. “Parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous.” *Schmude Oil Co. v. Omar Operating Co.*, 184 Mich. App. 574, 580 (1990). Behind “nearly every written instrument lies a parol agreement, merged therein.” *Lee State Bank v. McElheny*, 227 Mich. 322, 327 (1924). “The practical justification for the rule lies in the stability that it gives to written contracts; for otherwise either party might avoid his obligation by testifying that a contemporaneous oral agreement released him from the duties that he had simultaneously assumed in writing.” 4 Williston, Contracts, § 631. Only when a contract is ambiguous may the court consider extrinsic evidence. *See Klapp v. United Ins. Group Agency, Inc.*, 468 Mich. 459, 469 (2003).

agreements that contradict or vary the written contract, are not admissible to vary the terms of a contract. *UAW–GM Human Resource Ctr. v. KSL Recreation Corp.*, 228 Mich. App. 486, 492 (1998). Merger clauses, such as those MIDD admits it agreed to, prevent one party to a contract from introducing parol evidence to prove an agreement other than the one actually signed. *Kamalnath v. Mercy Memorial Hosp. Corp.*, 194 Mich.App. 543, 554-555 (1992) (“The reasoning behind [the parol evidence rule] is clear: a party may not complain that they relied on oral promises regarding additional or contrary contract terms when there is written proof, signed by both parties, to the contrary.”) MIDD cannot use any prior alleged representations made by Mercado to vary the terms of the Acquisition Agreement and Global Settlement Agreement.

The Acquisition Agreement’s integration clause states that the agreement “constitutes the sole understanding of the parties hereto with respect to the matters provided for herein and supersedes any previous agreements and understandings between the Parties with respect to the subject matter hereof.” (Ex. 6-21, §12.5.) The merger and integration clauses from these agreements nullify “all prior and contemporaneous agreements, understandings, representations and warranties” made by a party. *Hamade v. Sunoco, Inc. (R&M)*, 271 Mich. App. 145, 171 (2006). Because any pre-contractual statements were “collateral agreements or understandings between two parties that [were] not expressed in a written

contract,” they are “eviscerated by [the] merger clause[.]” *Barclae v. Zarb*, 300 Mich. App. 455, 481 (2013).⁹

In its brief in support of its Rule 3018(a) Motion, MIDDD sought to avoid the parol evidence rule, relying on *Barclae v. Zarb*, 300 Mich. App. 455 (2013) and *Abbo v. Wireless Toyz Franchise, LLC*, No. 304185, 2014 WL 1978185 (Mich. App. May 13, 2014), claiming that the purported representations of Mercado are not being used to vary the terms of the contract, but instead, are representations of fact which support its fraud claim. (Dkt. 6061 at p. 29) MIDDD’s argument fails for three reasons:

- First, MIDDD cannot rely on extraneous statements because the purported representations are covered by the express terms of the Global Settlement Agreement. In *Barclae*, the Court of Appeals held that a merger clause undermines this kind of reliance on extraneous statements, when they relate to matters covered by the contract. *Barclae*, 300 Mich. App. at 481. “The reasoning behind this is clear, one should not be heard to complain that they relied on oral promises regarding additional or contrary terms when there is written proof signed by both parties, to the contrary.” *Star Ins. Co. v. United Commercial Ins. Agency, Inc.*, 392 F. Supp. 2d 927, 930 (E.D. Mich. 2005). Here, MIDDD admits that the Global Settlement Agreement contains a

⁹ MIDDD’s various fraud allegations do not change the fact that the integration clause is binding, and that MIDDD cannot rely on any statement made outside of the four corners of the Acquisition Agreement. In *UAW-GM Human Resource Center v. KSL Recreation Corp.*, the court held that “the only fraud that could vitiate the contract is fraud that would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause.” *Id.* Here, as in *UAW-GM*, MIDDD made no allegations of fraud that would invalidate the contract or the merger clause itself. The written agreement is detailed and complete on its face, (*see* 3 Corbin, Contracts, § 57), and its words are unambiguous. The integration clause is not void.

provision resolving “[a]ll Disputes and claims between the Parties related to costs for repairs and renovation of the interceptor sewers...” (Ex. 6-20.) The alleged representations are covered by the Global Settlement Agreement.

- Second, MIDD D cannot prevail because MIDD D’s reliance on the purported representations by Mercado was not reasonable. The alleged statements of Mercado were made years before the Acquisition Agreement was signed and Mercado was not involved in the negotiations of the Acquisition Agreement as he left DWSD over two years before it was executed. Any reliance on Mercado’s alleged statement about the reasonableness of the repair costs was unreasonable because the Global Settlement Agreement expressly resolved any repair cost claims and the two Macomb attorneys negotiating the agreement should have known that any repair cost disputes could not be raised later.
- Third, the merger and integration clause contained in the Global Settlement Agreement expressly covers all pre-contractual representations. MIDD D’s reliance on *Abbo v. Wireless Toyz Franchise, LLC*, No. 304185, 2014 WL 1978185 (Mich. App. May 13, 2014) is completely misplaced. In *Abbo*, the court noted that the merger clause at issue did not make reference to prior “representations” or “inducements,” and enforced the plain language of the contract. *Id.* at *6. Here, the Global Settlement Agreement merger clause states that:

This Agreement, and the Exhibits, contains the entire agreement between the Parties with regard to the matters addressed in this Agreement. No Party has made any representations except those expressly set forth in this Agreement, and no rights or remedies are, or shall be, acquired by any Party by implication or otherwise unless expressly set forth in this Agreement.

(6-20, §9(B).) The Global Settlement Agreement resolved “(ii) [a]ll Disputes related to the allocation of repair costs related to the August 15, 2004 collapse on the Romeo Arm of the Macomb Interceptors at 15 Mile and Hayes . . . [and] (iv) [a]ll Disputes and claims between the Parties related to costs for repairs and renovation of the interceptor sewers listed in Exhibit 1 of Exhibit D of this Agreement...” (*Id.*, §1.) Thus, unlike *Abbo*, the merger clause at issue expressly disclaimed all representations except those set forth in the Global Settlement Agreement, and the Global Settlement Agreement expressly dealt with any claims pertaining to the costs for the repairs.

For all these reasons, MIDDD cannot rely on parol evidence to support its claim.

V. MIDDD's Fraud Claims Fail as a Matter of Law

A. MIDDD Has Failed to Plead Fraud with Particularity as Required by Federal Rule of Civil Procedure 9(b)

The MIDDD Complaint asserts two fraud claims: fraud/fraud in the inducement/silent fraud (Count I) and innocent misrepresentation (Count II). The Federal Rules of Civil Procedure provide heightened pleading requirements for claims of fraud. Fed. R. Civ. P. 9(b). To meet the heightened standards of Rule 9(b), a plaintiff must “(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.” *Frank v. Dana Corp.*, 547 F.3d 564, 569-70 (6th Cir. 2008). “A plaintiff, at a minimum, must allege the time, place, and content of the alleged misrepresentation on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud.” *U.S. ex rel. Bledsoe v. Comm. Health Sys., Inc.*, 501 F.3d 493, 504 (6th Cir. 2007); *Coffey v. Foamex L.P.*, 2 F.3d 157, 161-62 (6th Cir. 1993) (allegations must support an inference that they were knowingly made).

The MIDDD Complaint does not allege any specific misrepresentations by the City; and thus does not satisfy the “minimum” requirement in fraud cases that it “allege the time, place, and content of the alleged misrepresentation on which [it]

relied.” *Bledsoe*, 501 F.3d at 504. At best, MIDDD alleges that the City (without specifying who, what or when), made (1) misrepresentations with respect to whether “all” of Detroit’s tangible and intangible rights, including the right to assert “any and all” claims regarding the Project were being acquired by Plaintiff, (2) that its public officials abided by all state, federal and local laws a regulations, and (3) that no claims existed regarding the Macomb system. (MIDDD Complaint, ¶¶83, 84, 94, 95.) MIDDD’s threadbare, non-specific allegations are plainly insufficient to meet the particularity requirements of Rule 9(b).

B. Alternatively, even if MIDDD Had Sufficiently Stated a Claim for Fraud, MIDDD’s Fraud Claims Fail as a Matter of Law

i. A Tort Claim Cannot Be Based on a Breach of Contract

In Count I and II of the MIDDD Complaint, MIDDD pleads fraud, innocent misrepresentation and silent fraud. These are tort claims under Michigan law – and common sense dictates that “it is no tort to breach [or not perform] a contract.” *Battista v. Lebanon Trotting Assoc.*, 538 F.2d 111, 117 (6th Cir. 1976); *Fultz v. Union-Commerce Assocs.*, 470 Mich. 460, 466 (2004). Misrepresentations relating to the performance of a contract do not give rise to an independent cause of action in tort. *Huron Tool & Engineering Co. v. Precision Consulting Servs., Inc.*, 209 Mich. App 365, 373 (1995). As such, a party may bring a tort claim (such as fraud) against another party with whom it has a contract **only** when it alleges the “violation of a legal duty *separate and distinct* from the contractual obligation and

when the fraud is extraneous to the contract that causes a harm distinct from the harm caused by a breach of the contract. *Fultz*, 470 Mich. at 466; *Rinaldo's Constr. Corp. v. Michigan Bell Telephone Co.*, 454 Mich. 65, 83 (1997) (“the threshold inquiry is whether the plaintiff alleges violation of a legal duty separate and distinct from the contractual obligation”). No cognizable cause of action in tort exists when the plaintiff fails to allege violation of an independent duty. *Appleway Equipment Leasing, Inc. v. River City Equipment Sales, Inc.*, No. 307784, 2012 WL 6177067, at *2 (Mich.App. 2012).

Here, MIDDD’s “fraud” claims are plainly based on an alleged breach of the Acquisition Agreement – they are not extraneous to, nor independent of it. MIDDD’s fraud claims are merely restatements of their claims for breach of contract: the subject matter of the allegedly fraudulent statements outlined in the complaint relate to alleged breaches of Sections 3.7, 3.8, 5.3, 5.4, and 8.1 of the Acquisition Agreement. (MIDDD Complaint, ¶¶83, 84, 94, 95; Exhibit 20, §3.7, 3.8, 5.3, 5.4, 8.1.) MIDDD even acknowledges that the subject of its fraud claims are covered by the Acquisition Agreement: it re-pleads all of its fraud claims as breaches of the Acquisition Agreement. (MIDDD Complaint, ¶¶100-101.) MIDDD’s counsel admits that while MIDDD alleges a variety of fraud claims – ultimately “the claim here is pled for revision, reformation, in addition to damages, and for that reason **it would be a contract claim as opposed to the traditional**

tort [fraud] claim that is barred by governmental immunity” (Ex. 6-25, July 17, 2014 Hearing Transcript, p. 28) (emphasis added).

ii. MIDDD Cannot Prove A Prima Facie Claim of Fraud, Fraudulent Inducement, or Innocent Misrepresentation

1. MIDDD’s Fraud Claims Fail

A plaintiff alleging fraud must prove that: “(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage.” *M&D, Inc. v. W.B. McConkey*, 231 Mich. App. 22, 27 (Mich. App. 1998). MIDDD cannot prove these elements.

First, MIDDD cannot establish the necessary element of reliance for any fraud claims that are based upon pre-agreement statements because they expressly and affirmatively stated in the Acquisition Agreement that the *only* representations that were made by the City were those in the Acquisition Agreement and that there are no others. (Ex. 6-21, Article III.) MIDDD confirmed that the Acquisition Agreement represented the entire understanding of the parties, and that Article III of the Agreement represented the only representations made by Detroit. That acknowledgment precludes MIDDD from establishing that it, in fact, relied upon

any pre-contractual understandings as to the value of the property purchased by MIDD. See *Federated Capital Servs. v. Dextours, Inc.*, No. 228208, 2002 WL 868273, *1 (Mich. App. 2002).

Second, even if MIDD could establish that it, in fact, relied upon the allegedly fraudulent pre-Agreement statements, it could not establish that such reliance was reasonable under Michigan law. Indeed, the language in the Agreement “directly and explicitly makes reliance on [alleged pre-Agreement] statements unreasonable.” *Whitesell Corp. v. Whirlpool Corp.*, No. 1:05-CV-679, 2009 WL 3270265, at *4 (W.D. Mich. 2009); see also *Federated Capital*, 2002 WL 868273 at *1. The Acquisition Agreement is fully enforceable against MIDD—and thus precludes a finding of reasonable reliance—because MIDD is a “sophisticated” entity which enlisted sophisticated counsel in drafting the Agreement. See *Whitesell*, 2009 WL 3270265 at *4 (listing criteria for enforceability of no-reliance clauses).

Despite these obvious facts, MIDD, claiming that the City made fraudulent misrepresentations regarding the Acquisition Agreement related to the purchase price of the Acquisition Agreement, relies on: (1) the testimony and affidavits of MIDD witnesses regarding representations made to it during negotiations and/or prior to closing the Acquisition Agreement; (2) testimony of City witnesses that purport to demonstrate the “actual knowledge” of City witnesses when the

Acquisition Agreement was signed; (3) the alleged fact that top ranking officials were at the head of the criminal enterprise affecting the Project and pled guilty and that other individuals were interviewed by the United States Attorney and/or the FBI; and (4) the fact that the City should have provided information pursuant to the “due diligence reports.” These factors are irrelevant as a matter of law for the following reasons:

- First, the MIDD D witnesses admit that the City never made any representations regarding the reasonableness of any amounts included in the Acquisition Agreement and Anthony Marrocco’s testimony and affidavit are contradictory. There were five people principally involved in negotiating the Acquisition Agreement: Misterovich and Hupp for MIDD D, and Jacobs, Walter and Foster for the City. (*see*, Ex. 6-16, Jacobs Tr., p. 12-13; Ex. 6-18, Misterovich Tr., pp. 12-13, 23-24.). Marrocco was not involved. (Ex. 6-9, Marrocco Tr. at 23-24, 29, 32-33.). Misterovich and Hupp admitted that there were never any representations regarding the reasonableness or propriety of the Project costs. (Ex. 6-15, Hupp Tr. at 34, 49; Ex. 6-18, Misterovich Tr. at 20-21, 24-25).¹⁰ As such, the five individuals actually negotiating the Acquisition Agreement all testified that there were no such representations made. (*Id.*; *see also* Ex. 5-4, Jacobs Decl. ¶12; Ex. 5-3, Latimer Aff. ¶10; Ex. 5-4, Walter Aff. ¶ 12; Ex. 5-1, Foster Aff. ¶¶15-16)).¹¹ Furthermore, MIDD D witnesses admit that Director Victor Mercado left DWSD in June 2008 and was not even present for the finalization of the Global Settlement Agreement or the Acquisition Agreement, including the Project costs included in Schedule 3.8. (Ex. 6-15, Hupp Tr. at 14-15). Anthony Marrocco testified that the only person who ever made

¹⁰ MIDD D repeatedly refers to the Project as “emergency” in quotation marks, suggesting that the Project was not an emergency that threatened the health and safety of the public. This was refuted by several witnesses. (Ex. 6-19, Walter Tr. at 44, 46; Ex. 6-10, Winn Tr. at 12, 57; Ex. 6-11, Shukla Tr. at 25.)

¹¹ Hupp also testified that there were a lot of compromises on a lot of different issues to arrive at an agreeable number – this was only one. (Ex. 6-15, Hupp Tr. at 47).

representations regarding the reasonableness of the Project costs was Victor Mercado. (Ex. 6-9, Marrocco Tr at 49.) Thus, the crux of MIDD's claim is its reliance upon statements allegedly made by a *former* employee of the City who was not part of the negotiation team and who allegedly made the statements years before the date of the Acquisition Agreement.¹² Even if Mercado had made such a representation, which the City denies, MIDD's argument that it relied on the City's alleged representations is further belied by the fact that Macomb County (and specifically, Anthony Marrocco) had a representative who was at the 15 Mile Road repair site daily, and was "keeping an eye" on the project and making "sure it was moving along." (Ex. 6-9, Marrocco Tr. at 72-73). As such, MIDD's reliance is not reasonable. Beyond these facts, the testimony and affidavits of Marrocco and Misterovich contradict themselves and one another as demonstrated clearly in Dkt. 6093 (City's Reply Brief).

- Second, MIDD's claims as to the knowledge of City witnesses grossly mischaracterize the record.¹³ There is no evidence that the investigation by the federal government, including City employee interviews and Grand Jury testimony, led anyone at DWSD or the City to believe that there were excessive or fraudulent charges related to CS-1368-2 or CS-1368-3. (Ex. 5-3, Latimer Aff., ¶¶16-17; Ex. 5-2, Walter Aff., ¶¶17-18.) The thrust of the investigation seemed to be on the City Local Economic Development Department (LED), not DWSD. (Ex. 5-3, Latimer Aff., ¶16.)¹⁴ Robert Walter also testified that the

¹² Furthermore, to the extent the City relies on Section 1.10 of the Acquisition Agreement, which defines "Detroit's Knowledge" to include the knowledge of the DWSD "Director", Victor Mercado had left the City over two years prior to the signing of the Acquisition Agreement.

¹³ In some cases, MIDD purports to state what Corporation Counsel Mr. Ed Keelean knew or should have known without any record citation; there is no record because MIDD elected not to depose him after the City produced him pursuant their request.

Further, to the extent that MIDD argues that these individuals constituted those who defined "Detroit's Knowledge" in Section 1.10 of the Acquisition Agreement, MIDD conflates its breach of contract claim with its fraud claim. Dkt. 6015, Section V.B.i, pp. 38-40.

¹⁴ In their affidavits, City Witnesses testified as follows:

- At no time prior to the signing of the Macomb Acquisition Agreement were any
- Continued on next page.*

only item ever discussed with him was the City's contracting procedures. (Ex. 5-2, Walter Aff., ¶17). In support of their Rule 3018 Motion (Dkt. 6061), MIDDD severely mischaracterizes the deposition testimony of Darryl Latimer, Mark Jacobs and Bob Walter as outlined in Dkt. 6093 (City's Reply Brief).

- Third, the Mercado guilty plea and Kilpatrick's conviction do not establish that the City defrauded MIDDD. These were high ranking officials who used their power to conceal their criminal activities. Even if the City knew about portions of the alleged criminal conspiracy prior to the First Superseding Indictment and conclusion of the Acquisition Agreement, there is no evidence that such knowledge translated into knowledge that there were overcharges or fraud related to CS-1368 or the Project. (Ex. 5-3, Latimer Aff., ¶¶16-18; Ex. 5-4, Jacobs Decl., ¶17; Ex. 5-2, Walter Aff., ¶¶17-18). Contrary to the gross misrepresentations of City witness testimony by MIDDD, none of the City's witnesses testified that they were aware that there were excessive or fraudulent charges related to CS 1368-2 or CS 1368-3 prior to release of the First Superseding Indictment. In fact, MIDDD admits that "**the criminal enterprise was only uncovered by the federal government using the vast resources and powers available to it during several years of investigation.**" (Dkt. 6016, p. 27) (emphasis added).
- Fourth, as to MIDDD's use of Jacobs Deposition Exhibit 11, the so called Interceptor Due Diligence Information List, Jacobs testified that he had not seen the document before and it appears to be something generated by Mr. Hupp. It could have been provided to Detroit directly, however. (Ex. 6-16, Jacobs Tr. at 15-16). In any event, this document is inadmissible hearsay.

MIDDD's claim that the City made false representations or that they know

Continued from previous page.

representations ever made that the costs associated with the Project or any other item in Schedule 3.8 were fair and reasonable. (Ex. 5-4, Jacobs Dec. ¶12; Ex. 5-3, Latimer Aff. ¶10; Ex. 5-2, Walter Aff. ¶ 12; Ex. 5-1, Foster Aff. ¶¶15-16).

- MIDDD never claimed that the costs were fraudulently excessive prior to the Acquisition Agreement, nor ever questioned its cost or asked for a reduction beyond normal negotiations (Ex. 5-3, Latimer Aff., ¶10) and the City was unaware of excessive charges for 2004-2005 Project costs. (*Id.*, Latimer Aff., ¶14).

or should have known of their falsity fails. The integration clause of the Acquisition Agreement (Ex. 6-21, § 12.5) renders unreasonable any claimed reliance by MIDDD on pre-Agreement statement. Indeed, “[r]eliance on pre-contractual representations is unreasonable as a matter of law when the contract contains an integration clause.” *Northern Warehousing, Inc. v. State of Michigan*, 475 Mich. 859, 859 (2006); *Hamade* 271 Mich. App. at 171.¹⁵

The only exception to the rule is when a party alleges fraud that “would invalidate the merger clause itself, i.e., fraud relating to the merger clause or fraud that invalidates the entire contract including the merger clause.” *UAW-GM Human Res. Ctr. v. KSL Rec. Corp.*, 228 Mich. App. 486, 503 (1998). MIDDD does not allege that the City engaged in misconduct with respect to the merger clause itself, nor has it alleged fraud that would invalidate the entire contract. Instead of seeking to void the Acquisition Agreement, MIDDD expressly *affirmed* the Acquisition Agreement and seeks damages for alleged breaches of it. (MIDDD Complaint.) The integration clause renders MIDDD’s alleged reliance unreasonable.

Finally, MIDDD has failed to plead and prove a material misstatement by the City prior to the Acquisition Agreement, or that the City knew it was making a

¹⁵ *Northern Warehousing* and *Hamade* superseded a line of cases, including the Court’s decision in *Diamond Computer Systems, Inc. v. SBC Communications, Inc.*, 424 F. Supp. 2d 970 (E.D. Mich. 2006), holding that Michigan did not have a per se rule rendering reliance unreasonable in the face of an integration clause.

false statement at the time it made any representation to MIDD – with the intention that MIDD rely on the misstatement.

2. MIDD’s Silent Fraud Claim Fails

MIDD’S claim of silent fraud also fails. A claim of silent fraud exists only where a defendant is under a legal duty to disclose. *Hord v. Env’tl. Research Inst.*, 463 Mich. 399, 412 (2000). Such a duty may arise when a defendant receives a specific inquiry and where the defendant responds by providing incomplete or untruthful information. *Id.* MIDD has not alleged or proven specific facts to show that the City had any legal duty to make additional disclosures to MIDD.

3. MIDD’s Fraudulent Inducement Claim Fails

Generally, “actionable fraud must be predicated on a statement relating to a past or existing fact.” *Samuel D Begola Services, Inc v. Wild Bros*, 210 Mich.App 636, 639 (1995). “Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon.” *Id.* Fraud in the inducement renders the contract on which it was based voidable “at the option of the defrauded party.” *Id.* at 640. Generally, future promises are contractual and do not constitute fraud unless the promises were made in bad faith without the present intention to perform. *Greenville Mfg., LLC v. NextEnergy Center*, No. 304229, 2012 WL 3101826 at *2.

Here, MIDD is not seeking to void this contract, but instead seeks to enforce it. MIDD also fails to allege a misstatement relating to future conduct. Commissioner Marrocco admits that MIDD's claim is solely based upon actions or disclosures that the City allegedly made or should have made *prior to* the Acquisition Agreement, not after – as is required for a fraudulent inducement claim. (Ex. 6-9, Marrocco Tr., at 68, 81.)

4. MIDD's Innocent Misrepresentation Claim Fails

A claim of innocent misrepresentation is shown if a party detrimentally relies upon a false representation in such a manner that the injury suffered by that party inures to the benefit of the party who made the representation. *United States Fidelity & Guaranty Co. v. Black*, 412 Mich. 99, 118 (1981). The innocent misrepresentation rule represents a species of fraudulent misrepresentation but has, as its distinguishing characteristics, the elimination of the need to prove a *fraudulent purpose* or an intent on the part of the defendant that the misrepresentation be acted upon by the plaintiff, and has, as added elements, the necessity that it be shown that an unintendedly false representation was made in connection with the making of a contract and that the injury suffered as a consequence of the misrepresentation inures to the benefit of the party making the misrepresentation. *United States Fidelity & Guarant. Co.*, 412 Mich. at 118. In light of the Acquisition Agreement integration clause and the fact that MIDD

cannot establish that the City made any misrepresentation on which MIDD D relied, MIDD D’s innocent misrepresentation claim has no merit.

iii. MIDD D’s Fraud Claims Are Barred by Governmental Immunity

MIDD D’s fraud claims are also barred by governmental immunity. In Michigan, “a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” Mich. Comp. L. § 691.1407(1). The City is a “[g]overnmental agency,” *see* Mich. Comp. L. § 691.1401(a),(d),(e), and “[g]overnmental functions” include the activity related to asset-sales here.

A “governmental function” includes any “activity that is expressly or impliedly mandated or authorized by ... statute ... or other law.” MCL § 691.1401(b). There is no question that the City, through DWSD, was legally authorized to sell the property and assets sold to MIDD D. Allegations of fraud do not take government conduct outside the statutory immunity. *Local Emergency Fin. Assistance Loan Bd. v. Blackwell*, 299 Mich. App. 727, 736, 832 N.W.2d 401, 405 (2013).¹⁶ Instead, the Michigan governmental immunity statute bars claims – like MIDD D’s – that fraud induced the plaintiff to enter a contract. *Id.* at 735

¹⁶ “In assessing whether an activity is a governmental function, the focus is on the general activity, not the specific conduct giving rise to the tort claim.” *Williams v. Wayne Cnty.*, No. 09-14328, 2011 WL 479959 (E.D. Mich. Feb. 4, 2011) (citing *Herman v. Detroit*, 261 Mich. App. 141, 680 N.W.2d 71, 75 (Mich. App. 2004)).

(plaintiff claimed that fraud about city's finances and actual affairs caused him to agree to serve as emergency financial manager). The statute also bars claims for silent fraud, innocent misrepresentation and all fraud claims in general. See *Northern Warehousing Inc. v. Michigan Dep't of Educ. (On Remand)*, No. 260598, 2006 WL 2419189, at *4 (Mich. App. Aug. 22, 2006); *Williams v. Wayne Cnty.*, No. 09-14328, 2011 WL 479959, at *7 (E.D. Mich. Feb. 4, 2011); *Thomas v. Detroit*, No. 06-10453, 2007 WL 674593, at *6 (E.D. Mich. Feb. 28, 2007); *Zaremba Equip., Inc. v. Harco Nat'l Ins. Co.*, 280 Mich. App. 16, 40 (2008). MIDD's counsel also admits that governmental immunity would defeat a fraud claim, but that is irrelevant because MIDD's claim is a **“contract claim as opposed to the traditional tort [fraud] claim that is barred by governmental immunity”** (Ex. 6-25, July 17, 2014 Hearing Transcript, p. 28) (emphasis added).

VI. MIDD's Underlying Quasi-Contractual Claim Fails as a Matter of Law

MIDD's claim for quantum meruit/unjust enrichment (Count IV) also fails as a matter of law. “A quasi-contractual theory of recovery is inapplicable when the parties are bound by an express contract.” *Cloverdale Equip. Company v. Simon Aerials, Inc.*, 869 F.2d 934, 939 (6th Cir. 1989). “If the parties admit that a contract exists, but dispute its terms or effect, an action will not also lie for quantum meruit or implied contract...” *Advanced Plastics Corp. v. White Consol. Indus., Inc.*, 828 F. Supp. 484, 491 (E.D. Mich. 1993). Here, the parties do not

dispute the existence of a contract – the Acquisition Agreement – but instead disagree on its scope, terms, and effect. Therefore, MIDDD’s quasi-contractual claims are meritless.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, the City respectfully requests that the Court dismiss, disallow and expunge MIDDD’s Claim No. 3683.

Dated: October 8, 2014

Respectfully submitted,

By: /s/ Stephen S. LaPlante
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ATTORNEYS FOR THE CITY OF DETROIT

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EXHIBIT 4

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

----- X
In re : Chapter 9
: :
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
: :
Debtor. : Hon. Steven W. Rhodes
X

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 8, 2014, he filed the foregoing ***MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 7056 SUBMITTED IN FURTHER SUPPORT OF ITS OBJECTION TO MACOMB INTERCEPTOR DRAIN DRAINAGE DISTRICT'S CLAIM NO. 3683*** using the court's CM/ECF System which will provide notice of the filing to all registered participants in this matter.

By: /s/ Stephen S. LaPlante
Stephen S. LaPlante
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 963-6420
Facsimile: (313) 496-7500

October 8, 2014

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

-----X	:	
In re	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	:	
-----X	:	

AFFIDAVIT OF BART FOSTER

STATE OF Kansas)
) SS.
COUNTY OF Johnson)

I, Bart Foster, being first duly sworn, depose and state as follows:

1. I am an adult and otherwise competent to testify to the facts stated below. If called as a witness, I can testify to the following facts from my own personal knowledge. I make this Affidavit based upon my own personal knowledge and my review of records kept in the ordinary course of business.

2. I offer financial and engineering management consulting services to a broad customer base, specializing in services for municipal utility clients in the United States. My principal experience includes: evaluating critical business issues impacting municipalities that provide utility services and advising principals in charge; managing financial planning, cost of service, and rate design studies for water and wastewater utilities; preparation of Consulting Engineer's and/or Feasibility Consultant Reports in conjunction with issuance of municipal revenue bonds; development of other feasibility reports; design of financial management information systems; consulting assistance regarding contractual and other relationships amongst municipalities, and expert witness services in utility litigation matters.

3. I have served as a business advisor and financial and rate expert for extensive financial planning and management consulting assistance for the Detroit Water & Sewerage Department ("DWSD") since 1986.

4. Throughout the last several years, I conducted accounting analysis associated with the transfer of the Oakland-Macomb Interceptor and related facilities ("OMI") to the Oakland Macomb Interceptor Drain Drainage District ("OMID") and to the Macomb Interceptor Drain

Drainage District (“MIDDD”) from DWSD (collectively referred to as “Parties”), which was finalized during fiscal year 2010-2011.

5. At the request of Oakland and Macomb Counties, DWSD constructed the OMI and placed it in service in the late 1960s. Prior to transfer of OMI facilities to the OMID, it was the only Sewage Disposal System asset located outside of the City of Detroit that was owned and operated by DWSD. During the period of time that DWSD owned and operated OMI, sewer rates for Macomb County and the Clinton Oakland District were designed to recover the “cash basis” revenue requirements associated with the OMI. As such, debt service and operating costs associated with these facilities were “passed through” to customers who now make up the OMID.

6. After the 2004 break to the OMI system and resulting repairs (“2004 Repairs”), the parties determined that the best approach to resolve avoid future disputes between the Parties was to transfer ownership of the OMI to OMIDDD and MIDDD.

7. The parties then negotiated two deals that called for a purchase price based on the premise of “making DWSD whole” for any investments that it made in the OMI for which it had not passed through the revenue requirements associated with the principal payments on related bonds to the users in the respective localities. I was involved in negotiating the deals and determining the purchase price on behalf of DWSD. Further, I consulted with Victor Mercado, the DWSD Director, while he was negotiating the agreement specific to MIDDD with Macomb’s Public Works Commissioner Mr. Anthony Marracco.

8. The final agreement called for a purchase price based on making Detroit whole for its investment in the system, including recovery of all outstanding debt remaining on the system. In essence, the deal called for (a) determining the book value (original cost) of all OMI

facilities including cost of additional projects and repairs since the system's construction ("Original Investment"); (b) determining the total value of principal payments that had been included in determining rates charged to applicable OMID customers through FY 2009-2010; and (c) deducting (b) from (a) to determine the "System Debt" envisioned by the agreement.

9. The Original Investment that DWSD paid for the OMI was \$231.85 million.

10. The principal credited through FY 2009-2010 which it had passed through the revenue requirements associated with the principal payments on related bonds to Macomb users was \$115.65 million.

11. The outstanding debt on the original investment was, thus, \$116.20 million.

12. The original investment that DWSD paid included \$60,829,019 paid on CS-1368-2 and 3 for the 2004 Repairs.

13. After a series of negotiations the "System Debt" amount was adjusted, resulting in a purchase price of \$89,996,704 ("Purchase Price").

14. To determine the Purchase Price, I used accounting record of DWSD that represented financial payments made, without any evaluation or representation of the reasonableness of the costs.

15. This was a negotiated acquisition and settlement of a number of issues between the Parties. At no time throughout any of the negotiations with OMIDDD or MIDDD were any representations made regarding the reasonableness of any portion of the Original Investment, including but not limited to amounts paid pursuant to CS-1368 for 2004 Repairs.

16. I was with Victor Mercado for many hours throughout the years of negotiations on this project, and Mr. Mercado never indicated, said or implied to anyone in my presence that the cost of the interceptor repairs was "fair" or "reasonable". No other person made any such

representations on behalf of DWSD in my presence, and I never heard through any statement or comment of any person that there had been any such representations.


17. The assets transferred to MIDDD had initially cost Detroit \$231,847,508. Macomb was given credit of \$112,355,536 for principal payments for 2009 and \$3,291,159 for principal payments made in 2010. At that time, therefore, the outstanding System Debt was \$116,200,813.

18. However, Macomb did not pay \$116,200,813 for the assets. As part of the negotiations, DWSD agreed to subtract \$7,367,167 for "internal costs" and \$1,786,947 for interest expense and related adjustments. Thus the "Adjusted System Debt" was \$107,046,704.

19. Finally, Macomb insisted on additional deductions of \$17,050,000 as part of the negotiations in the Global Settlement. Thus, the final Purchase Price of \$89,996,704 was significantly less than \$231M cost paid by DWSD for the asset, or the \$116M outstanding System Debt.

20. Even assuming there are excessive charges in the Macomb System Debt, which I do not concede, I do not believe that the Macomb Acquisition Agreement would have necessarily been ratified for a lesser amount. As part of the negotiation process, there were a variety of concessions and discounts given to MIDDD to expedite and close on the agreement. I do not know if those concessions would have been granted if MIDDD was also challenging the validity and/or amount of 2004-2005 Repairs.

Further Affiant sayeth not.


Bart Foster

STATE OF Kansas)

COUNTY OF Johnson) SS

On 7/14, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Bart Foster, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed it.

Subscribed and sworn to before me
this 14 day of July, 2014.

Jennifer Rowe
Notary Public
Johnson County, KS.
Acting in Johnson County, KS.

My Commission Expires: 12/19/15

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

-----X
In re : Chapter 9
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
Debtor. : Hon. Steven W. Rhodes
-----X

AFFIDAVIT OF ROBERT WALTER

STATE OF _____)
) SS.
COUNTY OF _____)

I, Robert Walter, being first duly sworn, depose and state as follows:

1. I am an adult and otherwise competent to testify to the facts stated below. If called as a witness, I can testify to the following facts from my own personal knowledge. I make this Affidavit based upon my own personal knowledge and my review of records kept in the ordinary course of business.

2. I was deposed on Friday July 11, 2014 in relation to this matter and my affidavit is consistent with my testimony.

3. I am an attorney who represented the Detroit Water and Sewerage Department (“DWSD”) as part of my duties in the Detroit Legal Department from 1982 until my retirement in 2012. I was involved in the negotiation and completion of the May 19, 2009 Settlement Agreement (“Global Settlement Agreement”) (attached as Exhibit A), negotiation and completion of the sale of certain DWSD assets to the Oakland Macomb Interceptor Drain Drainage District (“OMIDDD”) (attached as Exhibit B) (“OMIDDD Acquisition Agreement”), and negotiation and September 2, 2010 completion of the sale of certain DWSD assets to the Macomb Interceptor Drain Drainage District (“MIDDD”) (attached as Exhibit C) (“MIDDD Acquisition Agreement”).

4. There was a major collapse of the Macomb Interceptor System (“Macomb Interceptor”) on 15 Mile at or around Hayes in August of 2004, creating a massive sinkhole and necessitating immediate and emergency repairs due to the risk to the public safety and well-being (“2004-2005 Sinkhole Repairs”). These repairs began immediately and were completed in 2005.

5. The Macomb Interceptor and related appurtenances were one of the few sewer assets owned by the City of Detroit that were outside of the City's border. The Macomb Interceptor was a central trunk line which brought sewer flow from Macomb County into the DWSD system via the Oakland-Macomb Interceptor which carried flow from Oakland County. Both Oakland and Macomb counties had a variety of disputes with DWSD and vice versa, ultimately culminating in the Global Settlement Agreement resolving many disputes for financial consideration. The Global Settlement Agreement was intended to settle all outstanding disputes between DWSD and Oakland and Macomb Counties and to codify an agreement to create the OMIDDD and MIDDD with the express intent of finalizing the sale of certain DWSD assets to each entity respectively.

6. The underlying premise of the OMIDDD Acquisition Agreement was that OMIDDD would Oakland-only portions of the system and portions of the systems serving both Oakland and Macomb counties by paying the outstanding pro-rated principal as of the Closing Date on any bonded debt for which a portion of the debt service is allocated to certain facilities("Oakland System Debt"), less various amounts negotiated by the parties.

7. My understanding is that the OMIDDD Acquisition Agreement was initially drafted by counsel for OMIDDD and Macomb County, Craig Hupp, a Bodman attorney. The team negotiating on behalf of OMIDDD included representatives from Macomb County, chiefly Mr. William Misterovich and Mr. Hupp. Many of the provisions in the OMIDDD Acquisition Agreement were proposed by OMIDDD through Mr. Hupp and negotiated by all the parties over a significant period of time through arms-length discussions. The value of the Oakland System Debt and negotiated concessions to it was similarly negotiated by all parties over a significant period of time through arms-length discussions.

8. After execution of the OMIDDD Acquisition Agreement, the same parties (including Mr. Misterovich, but not including Oakland County representatives) began negotiating transfer of Macomb-only assets to the MIDDD through the MIDDD Acquisition Agreement.

9. Similar to the OMIDDD Acquisition Agreement, the underlying premise of the MIDDD Acquisition Agreement was that MIDDD would purchase Macomb-only portions of the system by paying the outstanding pro-rated principal as of the Closing Date on any bonded debt for which a portion of the debt service is allocated to certain facilities (“Macomb System Debt”), less various amounts negotiated by the parties. This agreement was first informally reached between Director of DWSD Victor Mercado and Macomb County Public Works Commissioner Anthony Marrocco around 2006.

10. The MIDDD Acquisition Agreement used, as a baseline, the OMIDDD Acquisition Agreement, which had already been thoroughly negotiated by the same parties through lengthy arms-length negotiations. The primary changes to the MIDDD Acquisition Agreement were in Schedule 3.8, which outlined Macomb System Debt, less various amounts negotiated by the parties that are outlined therein. Schedule 3.8 was also negotiated over a lengthy period of time through arms-length negotiations.

11. The Macomb System Debt, at the time of the agreement between Director Mercado and Commissioner Marrocco, was projected by DWSD to be over \$116 million at the time of the sale. The final Macomb System Debt amount in Schedule 3.8 of the Macomb Acquisition Agreement – after extensive negotiation and review by MIDDD – was less than \$90 million.

12. To my knowledge, I was present at or copied on all communications between DWSD and MIDDD regarding the amount of Macomb System Debt. At no point during the negotiations or during the closing of the Macomb Acquisition Agreement on September 2, 2010, did anyone from MIDDD ever, in any respect, indicate or suggest that any portion of the 2004-2005 Sinkhole Repair Costs reflected in Schedule 3.8 (referred to on that schedule as “2004 Repairs”) of the MIDDD Acquisition Agreement was inaccurate, fraudulent, excessive, or question it in any way whatsoever. Prior to the MIDDD Federal District Court litigation in front of Judge Cleland, it was never otherwise brought to my attention that MIDDD made such a claim either.

13. MIDDD had the ability, over the many years of negotiations of the OMIDDD Acquisition Agreement and MIDDD Acquisition Agreement, to undertake any due diligence necessary to satisfy itself regarding the underlying transaction.

14. As far as I knew then (and know now) the Macomb System Debt, including the charges for the 2004-2005 Sinkhole Repair, was a legitimate and not excessive amount that was arrived at after extensive negotiation and concession by both DWSD and MIDDD.

15. On September 2, 2010, MIDDD and DWSD also signed the Settlement and Release Agreement attached as Exhibit D to this affidavit, which agreement was part of the closing documents associated with the Macomb Acquisition Agreement. This Settlement and Release Agreement was intended to resolve and release all claims known and unknown between the parties that related in any way whatsoever to the Macomb Interceptor, any items in the Macomb Acquisition Agreement, or any disputes between DWSD, Macomb County or MIDDD.

16. Even assuming there are excessive charges in the Macomb System Debt, which I do not concede, I do not believe that the Macomb Acquisition Agreement would have

necessarily been ratified for a lesser amount. There were a variety of concessions and discounts given to MIDDD to expedite and close on the agreement. I do not know if those concessions would have been granted if MIDDD was also challenging the validity and/or amount of 2004-2005 Sinkhole Repairs.

17. I was interviewed by the Federal Bureau of Investigations or the United States Attorney's Office. The subject of my interview was the City of Detroit's contract procedures. At no point in my conversation did the 2004-2005 Sinkhole Repairs, CS-1368 or fraud or excessive charges come up.

18. I do not recall anyone representing Macomb County or MIDDD mentioning excessive charges for the 2004-2005 Sinkhole Repairs to me at any time before the December 2010 First Superseding Indictment in the *Kilpatrick* criminal investigations. In fact, at no time until the date the First Superseding Indictment in the *Kilpatrick* case was released, was I aware that there were any claims that are or were reasonably expected to become the subject of litigation affecting the Macomb System, as defined in the Macomb Acquisition Agreement, or the transactions contemplated by the Macomb Acquisition Agreement, except for property damage claims by residents near the Sinkhole that were settled prior to the September 2, 2010 Macomb Acquisition Agreement closing.

Further Affiant sayeth not.



Robert Walter

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

On July 14, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Robert Walter, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed it.

Subscribed and sworn to before me
this 14 day of July, 2014.

Monica R. Barnes
Notary Public

_____ County, _____
Acting in _____ County, _____

My Commission Expires: _____

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MONICA R. BARNES
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires June 28, 2015

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

-----X	:	
In re	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	:	
-----X	:	

AFFIDAVIT OF DARRYL LATIMER

STATE OF _____)
) SS.
COUNTY OF _____)

I, Darryl Latimer, being first duly sworn, depose and state as follows:

1. I am an adult and otherwise competent to testify to the facts stated below. If called as a witness, I can testify to the following facts from my own personal knowledge. I make this Affidavit based upon my own personal knowledge and my review of records kept in the ordinary course of business.

2. I have a Bachelor's Degree from Wayne State University in General Business Studies and a Master's Degree from Central Michigan University in General Administration.

3. I began working for the City of Detroit over 28 years ago. I began by working in the Recreation Department as a play leader. I then moved to the Detroit Water and Sewerage Department ("DWSD") as a messenger. I was the head of the Contracts and Grants Department during the 2004-2005 time period in question.

4. There was a major collapse of the Macomb Interceptor System ("Macomb Interceptor") on 15 Mile at or around Hayes in August of 2004, creating a massive sinkhole and necessitating immediate and emergency repairs due to the risk to the public safety and well-being ("2004-2005 Sinkhole Repairs"). These repairs began immediately and were completed in 2005.

5. The Contracts and Grants Department within DWSD reviews all invoices or other requests for payments based on whether the request conforms with the terms of the contract under which the payment is being requested. The Engineering Department, on the other hand, makes the determination regarding whether work is necessary or reasonable.

6. On or around February 2010, I was promoted by Director Pam Turner to Deputy Director of DWSD. Director Pam Turner left the department and retired on or around July 2010,

leaving me as the highest ranking employee in DWSD, but I was never formally given the title of Interim Director or Director of DWSD.

7. The Macomb Interceptor and related appurtenances were some of the only sewer assets owned by City's that was outside of the City's border. For a variety of reasons, the City decided to sell these assets.

8. At the time I became the Deputy Director of DWSD around February 2010, the terms of the Acquisition Agreement ("Acquisition Agreement") (attached as Exhibit A) were nearly complete. I signed the September 2, 2010 Acquisition Agreement transferring certain assets to the Macomb Interceptor Drain Drainage District ("MIDDD") based upon the recommendation of Counsel and after the Acquisition Agreement was approved by the DWSD Water Board and City Counsel. By the time the Acquisition Agreement was signed, Director Pam Turner had retired, and it was my responsibility to sign on behalf of the DWSD. I did not read the agreement in depth – but I was well aware that DWSD and MIDDD had negotiated the terms for a few years.

9. The underlying premise of the Acquisition Agreement was that MIDDD would purchase the Macomb Interceptor System debt owed on the system ("System Debt"), less various amounts negotiated by the parties.

10. I was not involved in negotiating any of the terms of the Acquisition Agreement, including but not limited to what the System Debt was, and as far as I knew then (and know now) the System Debt, including the charges for the 2004-2005 Sinkhole Repair, was legitimate and not excessive. The Acquisition Agreement was signed in 2010, while the repairs were completed in 2005. It never crossed my mind that MIDDD would take the position, years after the repairs were completed, that the charges for them were excessive and that MIDDD was

somehow defrauded by DWSD. To my knowledge, MIDDD never questioned the amount of the System Debt by accusing DWSD that any amount was fraudulent or excessive. Further, I was never personally made aware that MIDDD complained about the cost of any item in the Acquisition Agreement beyond negotiations in the normal course of coming to an agreement with which both parties were comfortable.

11. On September 2, 2010, I also signed the Settlement and Release Agreement attached as Exhibit B to this affidavit, which agreement was part of the closing documents associated with the Acquisition Agreement. Again, I signed on the advice of counsel as the DWSD representative, and I was not involved in the negotiation of the Settlement and Release Agreement. That being said, my general understanding regarding this Settlement and Release Agreement was that it resolved and released all claims known and unknown between the parties that related in any way whatsoever to the Macomb Interceptor, any items in the Acquisition Agreement, and/or any disputes between DWSD, Macomb County or MIDDD.

12. I am aware that in this matter, MIDDD has taken the position that the City of Detroit knew about allegedly excessive repair costs charged for the 2004-2005 Sinkhole Repairs that were eventually incorporated in the calculation of System Debt in the Acquisition Agreement prior to the signing of the agreement.

13. Consultant Services contract 1368 (“CS-1368”), awarded to Inland Waters (“Inland”), covered a variety of projects – the 2004-2005 Sinkhole Repairs being only one of them. The original CS-1368, as well as amendments 1, 4 and 5 were “as needed” contracts pertaining only to sewer lining tasks and were priced on a unit pricing system; they did not pertain the 2004-2005 Sinkhole Repairs. While CS 1368-4 contained language indicating that it

was for sewer repairs, the CS 1368-4 amounts were not part of the 2004-2005 Sinkhole Repair costs.

14. The 2004-2005 Sinkhole Repairs were covered by CS-1368 through amendments two and three. These amendments, CS 1368-2 in the amount of \$35,000,000 and CS 1368-3 in the amount of \$23,000,000, totaled \$58,000,000 and were “cost plus fees” contracts that were submitted because of the change in both type of work (from lining to extensive repair) and the emergency nature of the same. The unit pricing model simply did not apply to this contract. While I believe there were two requests for payment on 1368-2 and 3 which Engineering disallowed then partially restored, I believe these payments amounted to two or three hundred thousand dollars. I have not seen or heard anything to lead me to believe that there were excessive charges totaling millions of dollars for 2004-2005 Sinkhole Repairs. In fact, I have not seen or heard anything to lead me to believe there were *any* excessive charges for 2004-2005 Sinkhole Repairs. As far as I am concerned, MIDDD’s claim that there were \$26,000,000 of excessive charges is ludicrous.

15. Even assuming there are excessive charges in the Macomb System Debt, which I do not concede, I do not believe that the Macomb Acquisition Agreement would have necessarily been ratified for a lesser amount. As I understand, There were a variety of concessions and discounts given to MIDDD to expedite and close on the agreement. I do not know if those concessions would have been granted if MIDDD was charged a lower amount for the 2004-2005 Sinkhole Repairs.

16. I was interviewed more than once by the Federal Bureau of Investigations (“FBI”) and the U.S. attorney’s Office and testified once or twice before the Grand Jury. I believe these interviews and testimony began around February 2010. The thrust of their investigation seemed

to be on the City Local Economic Development Department (LED), not DWSD. I gathered that the FBI and U.S. Attorney's Office believed that the LED was showing favoritism to Bobby Ferguson Enterprises and, thus, giving him excessive credit in the rating system for instance for being a Detroit based company or a Minority company. This credit was considered in deciding who would be awarded contracts, and, thus, Ferguson Enterprises could have received contracts which it should have not gotten. Ferguson was a subcontractor, not the general contractor, on the 2004-2005 Sinkhole Repairs. I believe that the general contractor, Inland Waters, selected him, and LED would not have been involved.

17. I believe that there may have been brief mention of CS-1368 in my interviews with the FBI, the U.S. Attorney's office or Grand Jury testimony. However, I do not recall any discussion about excessive charges paid to cover the 2004-2005 Sinkhole Repairs, nor do I recall any suggestion that there may have been fraud in connection with the 2004-2005 Sinkhole Repairs.

18. Further, I do not recall anyone mentioning excessive charges to me until the 2011 indictment allegations by counsel for DWSD. At no time until the date the First Superseding Indictment in the *Kilpatrick* case was released, was I aware that there were any claims that are or were reasonably expected to become the subject of litigation affecting the Macomb System, as defined in the Macomb Acquisition Agreement, or the transactions contemplated by the Acquisition Agreement.

Further Affiant sayeth not.


Darryl Latimer

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

On July 14, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Darryl Latimer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed it.

Subscribed and sworn to before me
this 14 day of July, 2014.

Debra L Ragland

Notary Public
Wayne County, *Michigan*
Acting in *Wayne* County, *Michigan*
My Commission Expires: *3-2-2018*

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

-----X
In re : Chapter 9
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
Debtor. : Hon. Steven W. Rhodes
-----X

DECLARATION OF MARK JACOBS

I, Mark Jacobs, , declare under penalty of perjury as follows:

1. I am an adult and otherwise competent to testify to the facts stated below. If called as a witness, I can testify to the following facts from my own personal knowledge. I make this Declaration based upon my own personal knowledge and my review of records kept in the ordinary course of business.

2. I am an attorney and a partner at the firm of Dykema Gossett PLLC in Detroit, Michigan.

3. Since 1989, I have represented the Detroit Water and Sewerage Department (“DWSD”) on numerous occasions, including negotiation and completion of the May 19, 2009 Settlement Agreement (“Global Settlement Agreement”) (attached as Exhibit A), negotiation and completion of the sale of certain DWSD assets to the Oakland Macomb Interceptor Drain Drainage District (“OMIDDD”) (attached as Exhibit B) (“OMIDDD Acquisition Agreement”), and negotiation and September 2, 2010 completion of the sale of certain DWSD assets to the Macomb Interceptor Drain Drainage District (“MIDDD”) (attached as Exhibit C) (“MIDDD Acquisition Agreement”).

4. There was a major collapse of the Macomb Interceptor System (“Macomb Interceptor”) on 15 Mile at or around Hayes in August of 2004, creating a massive sinkhole and necessitating immediate and emergency repairs due to the risk to the public safety and well-being (“2004-2005 Sinkhole Repairs”). These repairs began immediately and were completed in 2005.

5. The Macomb Interceptor and related appurtenances were some of the only sewer assets owned by the City of Detroit that were outside of the City’s border. The Macomb Interceptor was also the only central trunk line which brought all sewer flow from Macomb County into the DWSD system. Both Oakland and Macomb counties had a variety of disputes

with DWSD and vice versa, ultimately culminating in the Global Settlement Agreement resolving many disputes for financial consideration. The Global Settlement Agreement was intended to settle all outstanding disputes between DWSD and Oakland and Macomb Counties and to codify an agreement to create the OMIDDD and MIDDD with the express intent of finalizing the sale of certain DWSD assets to each entity respectively.

6. The underlying premise of the OMIDDD Acquisition Agreement was that OMIDDD would purchase Oakland-only portions of the system and portions of the systems serving both Oakland and Macomb counties by paying the outstanding pro-rated principal as of the Closing Date on any bonded debt for which a portion of the debt service is allocated to certain facilities (“Oakland System Debt”), less various amounts negotiated by the parties.

7. My recollection is that the OMIDDD Acquisition Agreement was initially drafted by counsel for OMIDDD, Craig Hupp, a Bodman attorney. The team negotiating on behalf of OMIDDD included representatives from Macomb County, chiefly Mr. William Misterovich. Many of the provisions in the OMIDDD Acquisition Agreement were proposed by OMIDDD through Mr. Hupp and negotiated by all the parties over a significant period of time through arms-length discussions. The value of the Oakland System Debt and negotiated concessions to it were similarly negotiated by all parties over a significant period of time through arms-length discussions.

8. After execution of the OMIDDD Acquisition Agreement, the same parties (including Mr. Misterovich, but not including Oakland County representatives) began negotiating transfer of Macomb-only assets to the MIDDD through the MIDDD Acquisition Agreement.

9. Similar to the OMIDDD Acquisition Agreement, the underlying premise of the MIDDD Acquisition Agreement was that MIDDD would purchase Macomb-only portions of the system by paying the outstanding pro-rated principal as of the Closing Date on any bonded debt for which a portion of the debt service is allocated to certain facilities (“Macomb System Debt”), less various amounts negotiated by the parties. This agreement was first informally reached between Director of DWSD Victor Mercado and Macomb County Public Works Commissioner Anthony Marrocco around 2006.

10. The MIDDD Acquisition Agreement used, as a baseline, the OMIDDD Acquisition Agreement, which had already been thoroughly negotiated by the same parties through lengthy arms-length negotiations. The primary changes to the MIDDD Acquisition Agreement were in Schedule 3.8, which outlined Macomb System Debt, less various amounts negotiated by the parties that are outlined therein. Schedule 3.8 was also negotiated over a lengthy period of time through arms-length negotiations.

11. At the time of the agreement between Director Mercado and Commissioner Marrocco, DWSD estimated that the Macomb System Debt would be over \$116 million at the time the sale would conclude. The final Macomb System Debt amount in Schedule 3.8 of the Macomb Acquisition Agreement – after extensive negotiation and review by MIDDD – was less than \$90 million.

12. To my knowledge, I was present at or copied on most or all communications between DWSD and MIDDD regarding the amount of Macomb System Debt. At no point did anyone from MIDDD ever, in any respect, indicate or suggest that any portion of the 2004-2005 Sinkhole Repair Costs reflected in Schedule 3.8 (referred to on that schedule as “2004 Repairs”) of the MIDDD Acquisition Agreement was inaccurate, fraudulent, excessive, or question it in

any way whatsoever. I first learned that MIDD intended to make a claim such as the claim asserted in the MIDD Federal District Court action in front of Judge Cleland when Mr. Hupp so advised me shortly before that action was filed.

13. MIDD had the ability, over the many years of negotiations of the OMIDD Acquisition Agreement and MIDD Acquisition Agreement, to undertake due diligence necessary to satisfy itself regarding the underlying transaction.

14. As far as I knew when the the MIDD Acquisition Agreement was negotiated and entered into, the Macomb System Debt, including the charges for the 2004-2005 Sinkhole Repair, was a legitimate and not excessive amount that was arrived at after extensive negotiation and concession by both DWSD and MIDD.

15. On September 2, 2010, MIDD and DWSD also signed the Settlement and Release Agreement attached as Exhibit D to this Declaration, which agreement was part of the closing documents associated with the Macomb Acquisition Agreement. Except as specifically provided therein, this Settlement and Release Agreement was intended to resolve and release all claims between the parties that related in any way whatsoever to the Macomb Interceptor, any items in the Macomb Acquisition Agreement, or any disputes between DWSD, Macomb County or MIDD.

16. I was never interviewed by the Federal Bureau of Investigations or the United States Attorney's Office. I was never asked to testify in front of the Grand Jury.

17. I do not recall anyone mentioning excessive charges for the 2004-2005 Sinkhole Repairs to me at any time before the December 2010 First Superseding Indictment in the *Kilpatrick* criminal investigations. In fact, at no time until the date the First Superseding Indictment in the *Kilpatrick* case was released, was I aware that there were any claims that are or

were reasonably expected to become the subject of litigation affecting the Macomb System, as defined in the Macomb Acquisition Agreement, or the transactions contemplated by the Macomb Acquisition Agreement.

I declare under penalty of perjury that the foregoing is true and correct based on my own personal knowledge and my review of records kept in the ordinary course of business this fourteenth day of July, 2014.



Mark Jacobs

22633432.2\022765-00202

91

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. CR-10-20403-NGE

HON. NANCY G. EDMUNDS

v.

D-1 KWAME M. KILPATRICK,
D-2 BOBBY W. FERGUSON,
D-3 BERNARD N. KILPATRICK,
D-4 VICTOR M. MERCADO, and
D-5 DERRICK A. MILLER,

Defendants.

VIOLATIONS:
18 U.S.C. § 1962(d) (RICO conspiracy)
18 U.S.C. § 666(a) (bribery)
18 U.S.C. § 1951 (extortion)
18 U.S.C. §§ 1341, 1343 (mail/wire fraud)
18 U.S.C. § 1512 (obstruction of justice)
26 U.S.C. § 7206(1) (false tax return)
26 U.S.C. § 7201 (tax evasion)
18 U.S.C. § 2 (aiding & abetting)
18 U.S.C. § 1963 (forfeiture)

FIRST SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At all times relevant to this indictment:

1. Defendant KWAME M. KILPATRICK ("KWAME KILPATRICK") served as a representative to the Michigan House of Representatives from 1996 through 2001. He was elected Mayor of the City of Detroit in November 2001 and re-elected in November 2005. He held the position of Mayor from January 1, 2002 to September 18, 2008. During that time, his annual salary ranged from about \$158,000 to \$176,000. The City of Detroit ("City") was a unit of local government, a municipal corporation and a political subdivision of the State of Michigan within the Eastern District of Michigan. The City provided services to its citizens through departments, agencies and offices of the executive branch of the City, which was headed by ~~KWAME KILPATRICK~~. KWAME KILPATRICK's duties and responsibilities included

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FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. CR-10-20403-NGE

Plaintiff,

HON. NANCY G. EDMUNDS

v.

D-1 KWAME M. KILPATRICK,
D-2 BOBBY W. FERGUSON,
D-3 BERNARD N. KILPATRICK,

Defendants.

VERDICT FORM

We, the Jury, after due deliberation, find the following unanimous verdict on the charges in the fourth superseding indictment:

Count One: Racketeering Conspiracy

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Defendant Bobby W. Ferguson

Not Guilty Guilty

Defendant Bernard N. Kilpatrick

Not Guilty Guilty

*no
consensus
for B. Kilpatrick*

Count Two: Extortion - Sewer Lining Contract (CS 1368)

Defendant Kwame M. Kilpatrick

Not Guilty _____ **Guilty** X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Defendant Bobby W. Ferguson

Not Guilty _____ **Guilty** X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm X

Count Three: Extortion - Amendment to Sewer Lining Contract (CS 1368)

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right

Induced by wrongful fear of economic harm

Defendant Bobby W. Ferguson

Not Guilty Guilty

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right

Induced by wrongful fear of economic harm

Count Four: Extortion - Baby Creek/Patton Park (PC 748)

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Defendant Bobby W. Ferguson

Not Guilty _____ Guilty X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Count Five: Attempted Extortion - Oakwood Pump Station (PC 755)

Defendant Kwame M. Kilpatrick

Not Guilty _____ **Guilty** X

If you find the defendant guilty of attempted extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the attempted extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Defendant Bobby W. Ferguson

Not Guilty _____ **Guilty** X

If you find the defendant guilty of attempted extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the attempted extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Count Seven: Extortion - Outfalls Contract (DWS 849)

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty _____

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm _____

Defendant Bobby W. Ferguson

Not Guilty _____ Guilty X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm X

*No concensus
on K. Kilpatrick*

07-18

Count Eight: Extortion - Asbestos Abatement

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty _____

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm _____

Defendant Bobby W. Ferguson

Not Guilty _____ Guilty X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm X

Count Nine: Extortion - Repair of Eastside Water Mains (CM 2014)

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Defendant Bobby W. Ferguson

Not Guilty _____ Guilty X

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right X

Induced by wrongful fear of economic harm X

Count Ten: Extortion - Eastside Sewer Repair (DWS 865)

Defendant Kwame M. Kilpatrick

Not Guilty X Guilty _____

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm _____

Defendant Bobby W. Ferguson

Not Guilty X Guilty _____

If you find the defendant guilty of extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm _____

Count Fifteen: Attempted Extortion - Sludge Contract

Defendant Bernard N. Kilpatrick

Not Guilty **Guilty** _____

If you find the defendant guilty of attempted extortion, you must indicate which method(s) you determined, beyond a reasonable doubt, were used to commit the attempted extortion:

Induced under color of official right _____

Induced by wrongful fear of economic harm _____

Count Sixteen: Bribery - \$90,000 Bribe

NO Compensator

Defendant Kwame M. Kilpatrick

on #16

Not Guilty _____ Guilty _____

Defendant Bobby W. Ferguson

Not Guilty _____ Guilty _____

Count Seventeen: Bribery - \$75,000 Bribe

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Defendant Bobby W. Ferguson

Not Guilty _____ Guilty X

Count Eighteen: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Count Nineteen: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Count Twenty: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Twenty-One: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Twenty-Two: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Count Twenty-Three: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Count Twenty-Four: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Twenty-Five: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Twenty-Six: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Twenty-Seven: Mail Fraud

Defendant Kwame M. Kilpatrick

Not Guilty X Guilty _____

Count Twenty-Eight: Wire Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Twenty-Nine: Wire Fraud

Defendant Kwame M. Kilpatrick

Not Guilty X Guilty _____

Count Thirty: Wire Fraud

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Thirty-One: Subscribing False Tax Return

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Thirty-Two: Subscribing False Tax Return

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Thirty-Three: Subscribing False Tax Return

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Thirty-Four: Subscribing False Tax Return

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Count Thirty-Five: Subscribing False Tax Return

Defendant Kwame M. Kilpatrick

Not Guilty Guilty

Count Thirty-Six: Income Tax Evasion

Defendant Kwame M. Kilpatrick

Not Guilty _____ Guilty X

Count Thirty-Seven: Subscribing False Tax Return

Defendant Bernard N. Kilpatrick

Not Guilty X Guilty _____

Count Thirty-Eight: Subscribing False Tax Return

Defendant Bernard N. Kilpatrick

Not Guilty _____ Guilty X

s/Jury Foreperson

In compliance with the Privacy Policy adopted by the Judicial Conference, the verdict form with the original signature has been filed under seal.

Dated: 3/8/13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT,

Plaintiff,

vs.

Case No: 2:11-cv-13101

Hon.

KWAME KILPATRICK, VICTOR MERCADO,
DERRICK A. MILLER, FERGUSON'S ENTERPRISES, INC.
F/K/A FERGUSON ENTERPRISES, INC., BOBBY W. FERGUSON,
a Michigan corporation, INLAND WATERS POLLUTION CONTROL, INC.,
a Michigan corporation, DENNIS OSZUST, ROBERT L. WILLIAMS,
WALTER ROZYCKI, ANTHONY SOAVE, L. D'AGOSTINI & SONS, INC.,
a Michigan corporation, ANTONIO D'AGOSTINI, L. ROBERT D'AGOSTINI,
JAMES D'AGOSTINI, MERSINO DEWATERING, INC., a Michigan Corporation,
RODNEY A. MERSINO, MARCO MERSINO, J-MACK AGENCY, LLC D/B/A
J-MACK SECURITY, a Michigan limited liability company, JOSEPH M. MACKSOUND,
ROTOR ELECTRIC COMPANY OF MICHIGAN, LLC F/K/A ROTOR ELECTRIC
COMPANY, a Michigan limited liability company, BENJAMIN ROSENBERG,
PATRIOT PUMPS, LLC D/B/A THOMPSON PUMP MIDWEST, an Indiana corporation,
BRIAN LENAGHAN, ROHRSCHEIB SONS CAISSONS, INC., a Michigan corporation,
STEVE ROHRSCHEIB, HAYWARD BAKER, INC. D/B/A DENVER GROUTING, a
Delaware corporation and wholly owned subsidiary of KELLER FOUNDATIONS INC.,
a Maryland corporation, JOE HARRIS, GREAT LAKES DIVING & SALVAGE, INC., a
Michigan corporation, WENDY GOUIN, THOMAS GOUIN, O'LAUGHLIN
CONSTRUCTION COMPANY, a Michigan corporation, MARK E. O'LAUGHLIN,
DUBAY'S LANDSCAPING SERVICES, INC., a Michigan corporation,
LAWRENCE R. DUBAY, LAKE SHORE, INC. D/B/A LAKESHORE ENGINEERING
SERVICES, INC., a Michigan corporation, AVINASH RACHMALE, SUPERIOR
ENGINEERING ASSOCIATES, INC., a Michigan corporation, BHARAT PATEL,
FUTURENET GROUP, INC. D/B/A MULTI SOLUTIONS GROUP, INC.,
a Michigan corporation and PERRY MEHTA,
Defendants.

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COMPLAINT

NOW COMES Plaintiff Macomb Interceptor Drain Drainage District, by and through its counsel Kirk, Huth & Lange, P.C., O'Reilly Rancilio, P.C. and William W. Misterovich, Esq., and complains as follows:

PRELIMINARY STATEMENT

1. This civil action is brought to recover damages arising from illegal activities prohibited by 18 USC 1964(a) and (c) ("Civil RICO"), 15 USC §1 of the Sherman Act, 15 USC §13 and §13a of the Clayton Antitrust Act and for breach of contract, fraud and tortious interference; for damages and other remedies authorized by these federal statutes and under state law including consequential and exemplary damages; and for all other relief which this Honorable Court deems just and proper under the circumstances set forth herein.

JURISDICTIONAL ALLEGATIONS

2. This Court has jurisdiction over this matter pursuant to 15 USC §4 and §5 (federal antitrust), 18 USC §1964(a) (Civil RICO), 28 USC §1331 (federal question) and 28 USC §1337 (commerce) because the claims brought are under federal statutes and involve federal questions.

3. Venue is properly established in the Court pursuant to 28 USC §1391(b)(2) because the events giving rise to this claim occurred in the City of Sterling Heights, County of Macomb, which is included within the Eastern District of Michigan. Venue is further established

pursuant to 28 USC 1391(b)(2) and/or (3) given that a substantial number of the Defendants did and/or continue to reside within the Eastern District of Michigan.

THE PARTIES AND FACTUAL BACKGROUND

4. Plaintiff is a special purpose public corporation established under the Drain Code, PA 40 of 1956, MCL 280.1 et seq. operating and existing under the Michigan Constitution and the laws of the State of Michigan.

5. The primary cause of this action is a widespread scheme to overcharge the Detroit Water and Sewerage Department (“DWSD”) for time, labor and materials to stabilize and repair a sewer collapse at 15 Mile Road in the City of Sterling Heights, County of Macomb, in the Eastern District for the State of Michigan (hereinafter the “Project”) which is specifically identified in the *First Superceding Indictment* issued in Criminal Case No. 10-20403-NGE for a criminal RICO conspiracy, bribery, extortion, fraud, obstruction of justice, tax evasion and aiding and abetting. **Exhibit A.**

6. The predicate acts of the scheme were principally advanced by the exertion of authority from the former Mayor of the City of Detroit Kwame Kilpatrick (“Kilpatrick”), the former Director of the City of Detroit Water and Sewer Department Victor Mercado (“Mercado”) and the former Deputy Chief of Staff to Michigan State Representative Kilpatrick namely Derrick A. Miller (“Miller”). **See e.g. Exhibit B.**

7. On information and belief, Kilpatrick and Mercado, with the assistance of Miller, schemed to receive financial compensation out of the Project for themselves and for their long-time companion Bobby W. Ferguson and his business Ferguson’s Enterprises, Inc. f/k/a Ferguson Enterprises, Inc. (collectively hereinafter “Ferguson”).

8. More particularly, these individuals began the scheme by approving and/or executing Amendment No. 2 in or about November 2004 (“Amendment 2”) to Contract No. CS-1368 for Consulting Services between Inland Waters Pollution Control, Inc. and DWSD dated in or about February 2002 (the “Inland Contract”). **Exhibit C.**

9. Amendment 2 to the Inland Contract designated Inland, as opposed to other qualified competitors, as general contractor/consultant on the Project and was executed only after Inland Waters Pollution Control, Inc., by and through its President Robert L. Williams, Vice President/General Manager Dennis Oszust and Project Managers Walter Rozycki and Tony Soave (collectively hereinafter referred to as “Inland”), agreed to cooperate in the scheme. **Exhibit D.**

10. Importantly, Inland represented that the Project would not exceed a total cost of \$35,000,000.00 in Amendment 2 to the Inland Contract. **Exhibit D, p. 3, 15.**

11. However, as a result of the scheme, the Project totaled \$54,467,200.00.

12. Additionally, Inland submitted a budget dated 9/30/04 identifying a Project total of \$33,702,881.70. A gate structure that was not installed that accounted for \$1,980,000.00 of this total, making the actual budget for the Project \$31,722,881.70, *according to Inland* (hereinafter the “Inland Budget”). **Exhibit E.** The actual costs charged upon completion exceed the Inland Budget by \$23,000,000.00.

13. The Inland Budget identified that the total cost of the Project should not have exceeded \$33,702,881.70, including the following totals for relevant categories of work:

- a. Bypass pumping and Bulkhead sewers: \$11,473,961.59;
- b. Temporary earth retention system and removal/replacement of damaged sewer pipes: \$6,862,466.12;
- c. Sewer cleaning charges: \$585,200.00;

- d. Pavement restoration charges: \$880,000.00; and
- e. Landscape restoration charges: \$275,000.00.

14. Plaintiff's independent evaluation of the Project confirms that the total cost of the Project should not have exceeded \$29,000,000.00, including the following totals for relevant categories of work:

- a. Bypass pumping and Bulkhead sewers: \$7,968,200.00;
- b. Temporary earth retention system and removal/replacement of damaged sewer pipes: \$4,555,400.00;
- c. Sewer cleaning charges: \$825,000.00;
- d. Pavement restoration charges: \$957,200.00; and
- e. Landscape restoration charges: \$160,300.00.00.

15. To accomplish the scheme, Inland presented and received payment from DWSD upon grossly inflated and inaccurate invoices, assessed unreasonable and bad-faith profit markups and approved excessive subcontractor overcharges pursuant to unlawful agreements to participate in and further the scheme in the means described in **Exhibit A** and otherwise.

16. In April 2005, Mercado and Inland even added a "Costing Supplement" to Amendment 2 to the Inland Contract to increase the profits to be received by designating new "multipliers" on the Project and indicating that overages will be paid only on "negotiated" terms. **Exhibit D, p. 18-21.**

17. As a product of the scheme, Inland benefitted by receipt of at least \$5,013,911.00.

18. On information and belief, Inland paid Ferguson the sum of \$350,000.00 for work Ferguson did not do in exchange for approval of at least one of the amendments to the Inland Contract. **See Exhibit A.**

19. Ferguson accomplished the scheme by invoicing for work not actually performed and for charging grossly improper rates for work it did perform. Indeed, discrepancies are prevalent in the charges assessed by Ferguson and the work identified to have been actually performed by them in the daily reports associated with the Project.

20. As a product of the scheme, Ferguson benefitted by receipt of at least \$2,483,258.00.

21. Subcontractor L. D'Agostini & Sons, Inc., by and through its President Antonio D'Agostini, Vice President L. Robert D'Agostini and Secretary/Treasurer James D'Agostini (collectively hereinafter referred to as "LDS"), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

22. To wit, LDS reached an agreement with Kilpatrick, Ferguson, Miller and/or Mercado whereby inflated invoices they submitted on the Project would be approved for payment so long as Ferguson received an amount equal to the amount to be paid to LDS.

23. As a product of the scheme, LDS benefitted by receipt of at least \$16,379,231.00.

24. LDS accomplished the scheme by charging for personnel and equipment being on-site that was not on-site and/or not necessary to their performance. LDS further accomplished the scheme by assessing exorbitant mark-ups on the charges of their subcontractors and suppliers.

25. Subcontractor Mersino Dewatering, Inc., by and through its President Rodney A. Mersino and Project Manager Marco Mersino (collectively hereinafter referred to as "Mersino"), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

26. In particular, Mersino charged an approximate sum of \$4,503,204.00 for dewatering services when actual charges on the Project should not have exceeded \$2,119,480.00, according to the Inland Budget.

27. As a product of the scheme Mersino benefitted by receipt of a total sum of \$4,503,204.00. Mersino accomplished the scheme of overcharging by invoicing for personnel and equipment that was not on-site and/or not necessary to performance of their tasks.

28. Subcontractor J-Mack Agency, LLC d/b/a J-Mack Security, by and through its President Joseph M. Macksound (collectively hereinafter referred to as "J-Mack"), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

29. In particular, J-Mack charged an approximate sum of \$743,160.00 for security services when actual charges over the 11 month period should not have exceeded \$120,700.00, according to the Inland Budget. J-Mack accomplished the scheme of overcharging by charging unreasonable rates for services and for more personnel than were on-site and/or were necessary to accomplish their tasks.

30. Subcontractor Rotor Electric Company of Michigan, LLC f/k/a Rotor Electric Company, by and through its President Benjamin Rosenberg, (collectively hereinafter referred to as "Rotor"), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

31. In particular, Rotor received the inordinate sum of \$1,888,191 for electrical services provided on the Project when actual charges were not to exceed \$605,000.00, according to the Inland Budget. Rotor accomplished the scheme of overcharging by indentifying personnel and equipment on-site which were not on-site and/or not necessary to performance of their tasks.

32. Subcontractor Patriot Pumps, LLC d/b/a Thompson Pump Midwest, by and through its President Brian Lenaghan (collectively hereinafter referred to as “Thompson Pump”), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

33. In particular, Thompson Pump charged an approximate sum of \$5,188,422.00 for pump rental and maintenance for bypass pumping on the Project when actual charges for same should not have exceeded \$4,504,561.59, according to the Inland Budget. Thompson accomplished these scheme of overcharging by indentifying personnel and equipment on-site that was not on-site and/or not necessary to performance of its tasks.

34. Rohrscheib Sons Caissons, Inc., by and through its President and Project Manager Steve Rohrscheib (collectively hereinafter referred to as “Rohrscheib”), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

35. In particular, Rohrscheib received the extraordinary sum of \$3,956,038.00 for constructing three (3) access shafts and assisting with construction of the temporary earth retention system. Rohrscheib accomplished the scheme of overcharging by charging grossly excessive rates, double billing and submitting invoices for work claimed to have been done months after their assignments were complete and they were off-site.

36. Subcontractor Hayward Baker, Inc., a wholly owned subsidiary of Keller Foundations Inc., and d/b/a Denver Grouting, by and through its Secretary and Project Manager Joe Harris (collectively hereinafter “Hayward-Denver”) was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

37. In particular, Hayward-Denver received the sum of \$510,598.00 for jet grouting on the Project. Hayward-Denver accomplished the scheme charging for jet grouting services twice; once as Hayward Baker, Inc. and then again as Denver Grouting. Hayward-Denver further accomplished the scheme by submitting invoices for work claimed to have been done months after their assignments were complete and they were off-site.

38. Subcontractor Great Lakes Diving & Salvage, Inc., by and through its President Wendy Gouin and Vice President Thomas Gouin (collectively hereinafter "Great Lakes"), was aware of and participated in the scheme by, among other things, presenting and receiving payment upon grossly inflated and inaccurate invoices.

39. In particular, Great Lakes received the sum of \$872,317.00 for diving for sewer clean-out and bulkhead removal/installation. Great Lakes accomplished the scheme of overcharging by invoicing at unreasonable rates because of a union picket and submitting invoices for work claimed to have been done months after their assignments were complete and they were off-site.

40. Subcontractor O'Laughlin Construction Company by and through its President Mark E. O'Laughlin (collectively hereinafter referred to as "OLCC"), participated in the scheme by presenting invoices for and receiving payment on the sum of \$2,042,158.00 for purportedly providing "assistance" to other contractors on the Project though there is no indication that OLCC provided services commensurate with this compensation in the daily reports associated with the Project.

41. Subcontractor Dubay's Landscaping Services, Inc., by and through its President Lawrence R. Dubay (collectively hereinafter "Dubay") participated in the scheme by presenting

invoices for and receiving payment on the sum of \$85,663.00 though there is no indication that they actually provided necessary services in the daily reports associated with the Project.

42. On information and belief, Dubay was a subcontractor of Ferguson.

43. Subcontractors Lakeshore Engineering Services, Inc., by and through its President Avinash Rachmale (collectively hereinafter “Lakeshore”), Superior Engineering Associates, Inc., by and through its Vice President Bharat Patel (collectively hereinafter “Superior”) and FutureNet Group, Inc. d/b/a Multi Solutions Group, Inc., by and through its President Perry Mehta (collectively hereinafter “Multi Solutions”) participated in the scheme by presenting invoices and receiving payment for engineering and other services though there is no indication that they actually provided necessary services in the daily reports associated with the Project.

44. The grossly inflated Project total of \$54,467,200.00 became the direct responsibility of Plaintiff by way of the Macomb Interceptor Acquisition Agreement by and between the City of Detroit and Plaintiff dated September 2, 2010 (the “Macomb Agreement”) wherein Plaintiff acquired certain assets of the DWSD, including the 15 Mile Road Interceptor in Sterling Heights. **Exhibit F.**

45. Plaintiff financed the acquisition of DWSD assets, including payment on the Project total of \$54,467,200.00, through the sale of drain bonds.

46. Importantly, Paragraphs 2.4 and 2.9(b)(8) of the Macomb Agreement assign to the Plaintiff any and all rights held by the City of Detroit “under any contracts, warranties or guaranties that apply to services or goods” relating to the Project. **Exhibit F.**

47. Plaintiff was further damaged by the scheme because DWSD amortized the inflated costs for the Project into usage charges for the system in the years before the Macomb

Agreement, more specifically beginning with the rate-year 2005-2006 and ending with the rate-year 2009-2010, together with Seven and a Half Percent (7.5%) interest annually.

48. Plaintiff learned of the scheme when the *First Superseding Indictment* issued in Criminal Case No. 10-20403-NGE on or about December 15, 2010 identifying a criminal RICO conspiracy, bribery, extortion, fraud, obstruction of justice, tax evasion and aiding and abetting by and among these Defendants and describing the incidence of such illegal activities on the Project. **See Exhibit A.**

COUNT I – VIOLATION OF CIVIL RICO STATUTES
ALL DEFENDANTS

49. Plaintiff incorporates, by reference, the preceding paragraphs hereof as though fully re-stated herein.

50. Plaintiff and Defendants are “persons” as described USC Sections 1961(3) and/or 1964(c).

51. By virtue of the scheme illustrated in the preceding paragraphs, all Defendants did acquire and maintain, directly or indirectly, an interest in and/or control of a RICO enterprise of individuals who were associated in fact with respect to the Project and who did engage in, and whose activities did affect, interference with commerce in violation of 18 USC §1951, as set forth in 18 USC §1961(1)(B).

52. Additionally, Defendants Kilpatrick, Mercado, Miller, Ferguson, Inland and LDS, aiding and abetting each other, did commit calculated and premeditated violations of Civil RICO in a manner in which they operated under color of official right and/or intentionally threatened continuity of contracts of and between themselves and by and between the other Defendants in violation of 18 USC §1951, as set forth in 18 USC §1961(1)(B).

53. Defendants Kilpatrick, Mercado, Miller, Ferguson, Inland and LDS, all aiding and abetting each other, did also knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that they obtained payments from DWSD, by themselves or through Inland, LDS, Ferguson and/or Mersino in connection with the Project which were induced by wrongful fear of economic harm and under color of official right in violation of 18 USC §1951, as set forth in 18 USC §1961(1)(B).

54. Defendants Kilpatrick, Mercado, Miller, Ferguson, Inland and LDS, all aiding and abetting each other, did also knowingly and unlawfully violate MCL 750.117 and 750.118 which charges as a felony the bribery of a public officer, agent, servant or employee in order to influence such person's action and a felony to accept such a bribe.

55. *Respondeat superior* renders any and all principals/contractors liable for their agents/subcontractors misconduct where they have knowledge of, operate, participate in and/or receive a benefit from a RICO enterprise.

56. The aforementioned racketeering activities did affect interstate commerce in that, among other things, they prevented legitimate bidding and performance by non-participating contractors and subcontractors on the Project.

57. The effect of the enterprise was grossly inflated charges for the Project, which were in direct contradiction to Amendment 2 to the Inland Contract and the Inland Budget, causing damage to Plaintiff who paid for same via the Macomb Agreement and in system usage charges and is thereby entitled to recover threefold the damages sustained and the cost of the suit, including reasonable attorney fees, pursuant to 18 USC §1964(c).

WHEREFORE PLAINTIFF REQUESTS that this Honorable Court enter a judgment in its favor for threefold the damages sustained as a result of Defendants' participation in a

Racketeer Influenced and Corrupt Organization, and the cost of this action, including reasonable attorney fees, as provided for by 18 USC §1964(c) and such other relief as may be appropriate.

COUNT II – VIOLATION OF SHERMAN ACT
ALL DEFENDANTS

58. Plaintiff incorporates, by reference, the preceding paragraphs hereof as though fully re-stated herein.

59. During the relevant time period, and as set forth in more detail in the preceding paragraphs, all Defendants did enter into contracts and agreements with and between each other and various non-parties that unreasonably restrained trade with regard to the Project in violation of 15 USC §1 of the Sherman Act.

60. More particularly, the Defendants agreed to use and authorized Inland as general contractor on the Project in order to coordinate prices and terms to further their scheme of overcharging, to obtain wrongful benefit and to pay individuals who did not perform work on the Project in exchange for continuity.

61. The agreements harmed competition by foreclosing the possibility that Plaintiffs would have obtained lower prices from these and/or other contractors and subcontractors and secured better contract terms, but for the collusion.

62. The coordination on prices and terms regarding the Project was not necessary to protect any legitimate interests.

63. These agreements resulted in grossly inflated charges for the Project, which were in direct contradiction to Amendment 2 to the Inland Contract and the Inland Budget, causing damage to Plaintiff who paid for same.

WHEREFORE PLAINTIFF REQUESTS that this Honorable Court enter a judgment in its favor for the damages sustained as a result of Defendants' violation of the Sherman Act and

the cost of this action, including reasonable attorney fees, as provided for by 15 USC §1 and such other relief as may be appropriate.

COUNT III – VIOLATION OF CLAYTON ANTITRUST ACT
ALL DEFENDANTS

64. Plaintiff incorporates, by reference, the preceding paragraphs hereof as though fully re-stated herein.

65. During the relevant time period, and as set forth in the preceding paragraphs, Defendants Kilpatrick, Mercado, Miller, Ferguson, Inland and LDS did, either directly or indirectly, discriminate in price and terms between different contractors, subcontractors and material suppliers, of like experience, grade and quality, so as to prevent or substantially lessen competition and tend to create a monopoly with regard to those providing services to and materials for the Project in violation of 15 USC §13(a) and §13a of the Clayton Antitrust Act.

66. All Defendants, as set forth in the preceding paragraphs, did contribute to the discrimination in price and terms between different contractors, subcontractors and material suppliers by agreeing to the scheme to put them on unequal footing with others, participating in and contracting upon same and knowingly invoicing for and receiving payment on grossly inflated charges for time, labor and materials provided related to the Project in violation of 15 USC §13(e)-(f) and §13a of the Clayton Antitrust Act.

67. Additionally, Defendants Kilpatrick, Mercado, Miller, Ferguson, Inland and LDS did contract for and/or receive premiums, commissions, compensation, benefit or other value on unequal terms to others not involved in or agreeable to the scheme in violation of 15 USC §13(c)-(d) of the Clayton Antitrust Act.

68. These violations of the Clayton Antitrust Act caused Plaintiff to pay inflated rates for time, labor and materials on the Project in direct contradiction to Amendment 2 to the Inland Contract and the Inland Budget and causing damage to Plaintiff who paid for same.

WHEREFORE PLAINTIFF REQUESTS that this Honorable Court enter a judgment in its favor for the damages sustained as a result of Defendants' violation of the Clayton Antitrust Act and the cost of this action, including reasonable attorney fees, as provided for by 15 USC §13 and such other relief as may be appropriate.

COUNT IV – BREACH OF CONTRACT
DEFENDANTS INLAND

69. Plaintiff incorporates, by reference, the preceding paragraphs hereof as though fully re-stated herein.

70. DWSD and Inland were parties to the Inland Contract and Amendment 2 thereof.

71. By way of the Macomb Agreement, Plaintiff is the assignee of all rights of DWSD under Amendment 2 to the Inland Contract.

72. DWSD and/or Plaintiff fully performed its obligations under Amendment 2 to the Inland Contract including full payment for the Project.

73. Inland breached the Inland Contract by (a) failing to fulfill its warranty that “all of the prices, terms, warranties and benefits [on the Project] are comparable to or better than the equivalent terms presently being offered by [Inland] to any other customer for the performance of like services pursuant to paragraph 20.01 of the Inland Contract; (b) failing to provide all subcontracts and seek approval of all payments to subcontractors pursuant to paragraph 12.01-12.02 of the Inland Contract; (c) demanding payment in excess of the specified contract amount for the Project, which was \$35,000,000.00 per Amendment 2; (d) failing to perform in a “satisfactory and proper manner” as required by Amendment 2; and (e) refusing to comply with

and/or require its associates to comply with applicable Federal, state and local laws, ordinances, code(s), regulations and policies pursuant to paragraph 15.01 of the Inland Contract.

74. These breaches of the parties' agreements resulted in damage to Plaintiff in that it was required to pay inflated rates for time, labor and materials on the Project in direct contradiction to Amendment 2 to the Inland Contract and the Inland Budget.

WHEREFORE PLAINTIFF REQUESTS that this Honorable Court enter a judgment in its favor for the damages sustained as a result of Defendants' breach of contract, together with costs and attorney fees and such other relief as may be appropriate.

COUNT V – FRAUDULENT MISREPRESENTATION
ALL DEFENDANTS

75. Plaintiff incorporates, by reference, the preceding paragraphs hereof as though fully re-stated herein.

76. By way of the Inland Contract, Amendment 2 to the Inland Contract, the Inland Budget, submission of contractor and subcontractor invoices and daily logs and during on-site daily reports, Defendants made various representations with regard to the Project including the following:

- a. Defendants represented that they would use their best efforts to complete the Project in a cost-efficient manner not to exceed \$35,000,000.00;
- b. Defendants represented that they select only subcontractors and material suppliers who agreed to use their best efforts to complete the Project in a cost-efficient manner;
- c. Defendants represented that the Project should not exceed the costs in the budget they submitted dated 9/30/04; and

d. Defendants represented that the invoices submitted for charges associated with the Project were accurate and listed only services and materials actually provided on the Project.

77. These representations by the Defendants were knowingly and/or innocently false when made and were reasonably relied upon by DWSD, of which the Plaintiff is the assignee.

78. In fact, the costs of the Project exceeded Amendment 2 to the Inland Contract and the Inland Budget by at least \$23,000,000.00.

79. These representations did induce Plaintiff, as assignee to DWSD, and to its substantial detriment, to pay Defendants the full amount set forth by them for time, labor and materials associated with the Project.

80. Plaintiff suffered substantial economic loss as a result of these misrepresentations and their losses have substantially benefited Defendants.

WHEREFORE PLAINTIFF REQUESTS that this Honorable Court enter a judgment in its favor for the damages sustained as a result of Defendants' fraud, as determined by the trier of fact, together with costs and attorney fees and such other relief as may be appropriate.

COUNT VI – TORTIOUS INTERFERENCE
ALL DEFENDANTS

81. Plaintiffs incorporate, by reference, the preceding paragraphs hereof as though fully re-stated herein.

82. Plaintiffs, as assignees of DWSD, did have an ongoing business relationship and expectancy with regard to the Project of which the Defendants were well-aware.

83. Defendants intentionally and improperly interfered with the business relationship and expectancy of the Plaintiff by orally agreeing as follows:

a. To pay certain individuals and/or entities for work they did not perform;

- b. To select only contractors, subcontractors and material suppliers who would assist them in the scheme to overcharge for the Project;
- c. By threatening to discontinue contractors, subcontractors and/or materials suppliers from the Project if they did not assist with and/or participate in the scheme to overcharge for the Project or cover-up of the same;
- d. By agreeing on price and terms of contracts related to the Project, rather than permitting open bidding and/or allowing interested contractors, subcontractors and/or material suppliers to bid on equal footing with one another; and/or
- e. By representing that charges would not exceed the amount identified in Amendment 2 to the Inland Contract or the Inland Budget.

84. Defendants' intentional and improper interference directly resulted in a grossly inflated total of \$54,467,200.00 for the Project --- which is \$23,000,000.00 more than it should have cost according to the Inland Budget and \$26,000,000.00 more than it should have cost according to independent evaluation.

85. If not for the grossly inflated charges on the Project, the Macomb Agreement had a reasonable likelihood of future economic benefit for Plaintiff.

86. As a direct and proximate result of Defendants' wrongful conducts, Plaintiff has suffered substantial economic injury in that it paid the grossly inflated charges assessed on the Project and lost business opportunities otherwise available for such funds.

WHEREFORE PLAINTIFF REQUESTS that this Honorable Court enter a judgment in its favor for the damages sustained as a result of Defendants' interference, as determined by the trier of fact, together with costs and attorney fees and such other relief as may be appropriate.

Respectfully submitted,

By: s/Raechel M. Badalamenti
KIRK, HUTH & LANGE, PLC
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Dated: July 18, 2011

AND

By: s/Lawrence M. Scott
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(586) 997-6462

Dated: July 18, 2011

AND

By: s/William W. Misterovich
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(586) 307-8210

Dated: July 18, 2011

PROSE_EFILER

**U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:11-cv-13101-RHC-MKM**

Macomb Interceptor Drain Drainage District v. Kilpatrick et al Date Filed: 07/18/2011
 Jury Demand: Both
 Assigned to: District Judge Robert H. Cleland Nature of Suit: 470 Racketeer/Corrupt
 Referred to: Magistrate Judge Mona K. Majzoub Organization
 Cause: 18:1961 Racketeering (RICO) Act Jurisdiction: Federal Question

Date Filed	#	Docket Text
07/18/2011	1	COMPLAINT filed by All Plaintiffs against All Defendants. Plaintiff requests summons issued. Receipt No: 0645-3073406 - Fee: \$ 350. County of 1st Plaintiff: Macomb - County Where Action Arose: Macomb - County of 1st Defendant: Out of State. [Previously dismissed case: No] [Possible companion case(s): None] (Attachments: # 1 Exhibit A- First Superseding Indictment, # 2 Exhibit B- Documents regarding Detroit Order 2004-5, # 3 Exhibit C- Inland Waters Contract CS-1368 dated Feb 2002, # 4 Exhibit D- Amendment 2 to Inland Waters Contract CS-1368, # 5 Exhibit E- Inland Waters Budget dated 9/30/04, # 6 Exhibit F- Macomb Acquisition Agreement) (Badalamenti, Raechel) (Entered: 07/18/2011)
07/19/2011	2	SUMMONS Issued for *Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, Lawrence R Dubay, Dubai's Landscaping Services, Inc., Bobby W. Ferguson, Ferguson's Enterprises, Inc, FutureNet Group, Inc., Thomas Gouin, Wendy Gouin, Great Lakes Diving & Salvage, Inc., Joe Harris, Hayward Baker, Inc, Inland Waters Pollution Control, Inc., J-Mack Agency, LLC, Kwame Kilpatrick, L. D'Agostini & Sons, Inc., Lakeshore Engineering Services, Inc., Brian Lenaghan, Joseph M Macksound, Perry Mehta, Victor Mercado, Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc., Derrick A. Miller, Mark E O'Laughlin, O'Laughlin Construction Company, Dennis Oszust, Bharat Patel, Patriot Pumps, LLC, Avinash Rachmale, Steve Rohrscheib, Rohrscheib Sons Caissons, Inc., Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC, Walter Rozycki, Anthony Soave, Superior Engineering Associates, Inc., Robert L. Williams* (BSoc) (Entered: 07/19/2011)
07/19/2011		A United States Magistrate Judge of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form is available for download at http://www.mied.uscourts.gov (BSoc) (Entered: 07/19/2011)
07/19/2011	3	

		ATTORNEY APPEARANCE: Lawrence M. Scott appearing on behalf of Macomb Interceptor Drain Drainage District (Attachments: # 1 Proof of Service) (Scott, Lawrence) (Entered: 07/19/2011)
07/29/2011	4	ATTORNEY APPEARANCE: Mark L. McAlpine appearing on behalf of Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc. (McAlpine, Mark) (Entered: 07/29/2011)
07/29/2011	5	ATTORNEY APPEARANCE: Marcus R. Sanborn appearing on behalf of Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc. (Sanborn, Marcus) (Entered: 07/29/2011)
07/29/2011	6	ATTORNEY APPEARANCE: David M. Zack appearing on behalf of Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc. (Zack, David) (Entered: 07/29/2011)
08/05/2011	7	NOTICE of Appearance by William W. Misterovich on behalf of All Plaintiffs. (Misterovich, William) (Entered: 08/05/2011)
08/08/2011	8	NOTICE of Appearance by Paul M. Mersino on behalf of Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Mersino, Paul) (Entered: 08/08/2011)
08/09/2011	9	WAIVER OF SERVICE Returned Executed. Antonio D'Agostini waiver sent on 7/26/2011, answer due 9/26/2011. (Zack, David) (Entered: 08/09/2011)
08/09/2011	10	WAIVER OF SERVICE Returned Executed. L. D'Agostini & Sons, Inc. waiver sent on 7/26/2011, answer due 9/26/2011. (Zack, David) (Entered: 08/09/2011)
08/09/2011	11	WAIVER OF SERVICE Returned Executed. James D'Agostini waiver sent on 7/26/2011, answer due 9/26/2011. (Zack, David) (Entered: 08/09/2011)
08/09/2011	12	WAIVER OF SERVICE Returned Executed. L. Robert D'Agostini waiver sent on 7/26/2011, answer due 9/26/2011. (Zack, David) (Entered: 08/09/2011)
08/10/2011	13	WAIVER OF SERVICE Returned Executed. Perry Mehta waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/10/2011)
08/10/2011	14	WAIVER OF SERVICE Returned Executed. FutureNet Group, Inc. waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/10/2011)
08/10/2011	15	WAIVER OF SERVICE Returned Executed. Anthony Soave waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/10/2011)
08/10/2011	16	WAIVER OF SERVICE Returned Executed. Benjamin Rosenberg waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/10/2011)
08/10/2011	17	WAIVER OF SERVICE Returned Executed. Rotor Electric Company of Michigan, LLC waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/10/2011)

08/15/2011	18	WAIVER OF SERVICE Returned Executed. Joseph M Macksound waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/15/2011)
08/15/2011	19	WAIVER OF SERVICE Returned Executed. J-Mack Agency, LLC waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/15/2011)
08/15/2011	20	WAIVER OF SERVICE Returned Executed. Mersino Dewatering, Inc. waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/15/2011)
08/15/2011	21	WAIVER OF SERVICE Returned Executed. Rodney A Mersino waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/15/2011)
08/15/2011	22	WAIVER OF SERVICE Returned Executed. Marco Mersino waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/15/2011)
08/24/2011	23	ATTORNEY APPEARANCE: John S. Mrowiec - NOT SWORN appearing on behalf of Joe Harris, Hayward Baker, Inc (Mrowiec - NOT SWORN, John) (Entered: 08/24/2011)
08/24/2011	24	ATTORNEY APPEARANCE: Erik R. Nelson - NOT SWORN appearing on behalf of Joe Harris, Hayward Baker, Inc (Nelson - NOT SWORN, Erik) (Entered: 08/24/2011)
08/26/2011	25	WAIVER OF SERVICE Returned Executed. Joe Harris waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/26/2011)
08/26/2011	26	WAIVER OF SERVICE Returned Executed. Hayward Baker, Inc waiver sent on 7/26/2011, answer due 9/26/2011. (Badalamenti, Raechel) (Entered: 08/26/2011)
08/29/2011	27	NOTICE of Appearance by Patrick A. Facca on behalf of Joe Harris, Hayward Baker, Inc. (Facca, Patrick) (Entered: 08/29/2011)
08/31/2011	28	NOTICE of Appearance by Michael F. Jacobson on behalf of Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki. (Jacobson, Michael) (Entered: 08/31/2011)
08/31/2011	29	NOTICE of Appearance by David J. Poirier on behalf of Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki. (Poirier, David) (Entered: 08/31/2011)
08/31/2011	30	WAIVER OF SERVICE Returned Executed. Inland Waters Pollution Control, Inc. waiver sent on 7/26/2011, answer due 9/26/2011. (Poirier, David) (Entered: 08/31/2011)
08/31/2011	31	WAIVER OF SERVICE Returned Executed. Dennis Oszust waiver sent on 7/26/2011, answer due 9/26/2011. (Poirier, David) (Entered: 08/31/2011)
08/31/2011	32	

		WAIVER OF SERVICE Returned Executed. Walter Rozycki waiver sent on 8/5/2011, answer due 10/4/2011. (Poirier, David) (Entered: 08/31/2011)
09/01/2011	33	MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Attachments: # 1 Exhibit Sample RICO Case Statement) (Zack, David) (Entered: 09/01/2011)
09/01/2011	34	ANSWER to Complaint with Affirmative Defenses by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Parfitt, Chris) (Entered: 09/01/2011)
09/01/2011	35	CERTIFICATE OF SERVICE re 34 Answer to Complaint by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc. (Parfitt, Chris) (Entered: 09/01/2011)
09/01/2011	36	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Rohrscheib Sons Caissons, Inc. (Parfitt, Chris) (Entered: 09/01/2011)
09/02/2011	37	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by L. D'Agostini & Sons, Inc. (Zack, David) (Entered: 09/02/2011)
09/06/2011	38	STIPULATION AND ORDER Extending Date for Inland Waters Pollution Control Inc., Dennis Oszust and Walter Rozycki to file a Responsive Pleading, (Responses due by 10/4/2011) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 09/06/2011)
09/07/2011	39	NOTICE of Appearance by Thomas M. Fallucca on behalf of Anthony Soave. (Fallucca, Thomas) (Entered: 09/07/2011)
09/07/2011	40	MOTION to Dismiss by Anthony Soave. (Attachments: # 1 Exhibit Case History: Emergency Repair, # 2 Exhibit Article June 22, 2005 Detroit news) (Fallucca, Thomas) (Entered: 09/07/2011)
09/07/2011	41	MOTION to Dismiss <i>Claims as Time Barred</i> by Anthony Soave. (Fallucca, Thomas) (Entered: 09/07/2011)
09/15/2011	42	ANSWER to Complaint with Affirmative Defenses by Kwame Kilpatrick. (Thomas, James) (Entered: 09/15/2011)
09/16/2011	43	NOTICE of hearing on 33 MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> , 40 MOTION to Dismiss, 41 MOTION to Dismiss <i>Claims as Time Barred</i> . Motion Hearing set for 11/2/2011 02:00 PM before District Judge Robert H. Cleland (LWag) (Entered: 09/16/2011)
09/19/2011	44	ANSWER to Complaint with Affirmative Defenses <i>Amended</i> by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Parfitt, Chris) (Entered: 09/19/2011)
09/19/2011	45	CERTIFICATE OF SERVICE re 44 Answer to Complaint by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc. (Parfitt, Chris) (Entered: 09/19/2011)

09/21/2011	46	STIPULATION AND ORDER Extending Time to file Response as to 33 MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> : (Responses due by 10/6/2011) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 09/21/2011)
09/26/2011	47	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Hayward Baker, Inc (Mrowiec - NOT SWORN, John) (Entered: 09/26/2011)
09/26/2011	48	ANSWER to Complaint by J-Mack Agency, LLC, Joseph M Macksound. (Leaf, Martin) (Entered: 09/26/2011)
09/26/2011	49	MOTION to Dismiss by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Mersino, Paul) (Entered: 09/26/2011)
09/26/2011	50	ANSWER to Complaint with Affirmative Defenses by Joe Harris, Hayward Baker, Inc. (Facca, Patrick) (Entered: 09/26/2011)
09/26/2011	51	STIPULATION AND ORDER Extending Time to File Response as to 40 MOTION to Dismiss, 41 MOTION to Dismiss <i>Claims as Time Barred</i> : (Responses due by 10/6/2011) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 09/26/2011)
09/26/2011	52	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Mersino Dewatering, Inc. (Mersino, Paul) (Entered: 09/26/2011)
09/29/2011	53	MOTION for Sanctions <i>Under Rule 11</i> by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Attachments: # 1 Exhibit 1 - Proof of Service) (Mersino, Paul) (Entered: 09/29/2011)
10/03/2011	54	NOTICE of hearing on 53 MOTION for Sanctions <i>Under Rule 11</i> , 49 MOTION to Dismiss. Motion Hearing set for 11/16/2011 02:00 PM before District Judge Robert H. Cleland (LWag) (Entered: 10/03/2011)
10/04/2011	55	NOTICE of Appearance by Stephen P. Stella on behalf of Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC. (Stella, Stephen) (Entered: 10/04/2011)
10/04/2011	56	ANSWER to Complaint with Affirmative Defenses with Jury Demand by Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC. (Stella, Stephen) (Entered: 10/04/2011)
10/04/2011	57	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC identifying Corporate Parent Rotor Electric Company of Michigan, LLC f/k/a Rotor Electric Company for Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC. (Stella, Stephen) (Entered: 10/04/2011)
10/04/2011	58	MOTION to Dismiss by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1 -Article, # 3 Exhibit 2 - Article, # 4 Exhibit 3 - Award Letter, # 5 Exhibit 4 - Letter) (Poirier, David) (Entered: 10/04/2011)
10/04/2011	59	

		STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Inland Waters Pollution Control, Inc. (Poirier, David) (Entered: 10/04/2011)
10/06/2011	60	RESPONSE to 40 MOTION to Dismiss filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Detroit News Article, 12/17/2010, # 2 Exhibit Defendant Soave's Web Journal Article, # 3 Exhibit Inland's Certificate of Merger, # 4 Defendant Miller's Rule 11 Plea Agreement) (Badalamenti, Raechel) (Entered: 10/06/2011)
10/06/2011	61	RESPONSE to 41 MOTION to Dismiss <i>Claims as Time Barred</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Rule 11 Plea Agreement) (Badalamenti, Raechel) (Entered: 10/06/2011)
10/06/2011	62	RESPONSE to 33 MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Crain's Detroit Business Article, 8/15/2011, # 2 Exhibit Michigan Construction Law Digest Article, 4/27/2009, # 3 Exhibit Walbridge v. City of Detroit Opinion and Order, Docket 08-0627 (10/18/08), # 4 Exhibit Crain's Detroit Business Article, 7/27/2011, # 5 Exhibit Township of Grosse Ile Press Release, 7/25/2011, # 6 Exhibit Rule 11 Plea Agreement) (Badalamenti, Raechel) (Entered: 10/06/2011)
10/10/2011	63	Ex Parte MOTION for Leave to File Excess Pages by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 10/10/2011)
10/10/2011	64	MOTION to Strike 60 Response to Motion, <i>to Dismiss for Failure to State a Claim</i> by Anthony Soave. (Fallucca, Thomas) (Entered: 10/10/2011)
10/10/2011	65	NOTICE of Appearance by Lauren Du Val Donofrio on behalf of All Plaintiffs. (Donofrio, Lauren) (Entered: 10/10/2011)
10/10/2011	66	Ex Parte MOTION for Leave to File Excess Pages <i>with regard to Docket No 60</i> by All Plaintiffs. (Donofrio, Lauren) (Entered: 10/10/2011)
10/10/2011	67	Ex Parte MOTION for Leave to File Excess Pages <i>with regard to Docket No 62</i> by All Plaintiffs. (Donofrio, Lauren) (Entered: 10/10/2011)
10/11/2011		TEXT-ONLY ORDER GRANTING 67 Ex Parte MOTION for Leave to File Excess Pages <i>with regard to Docket No 62</i> filed by Macomb Interceptor Drain Drainage District, GRANTING 63 Ex Parte MOTION for Leave to File Excess Pages filed by Antonio D'Agostini, L. Robert D'Agostini, James D'Agostini, L. D'Agostini & Sons, Inc.,and GRANTING 66 Ex Parte MOTION for Leave to File Excess Pages <i>with regard to Docket No 60</i> filed by Macomb Interceptor Drain Drainage District. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/11/2011)
10/11/2011	68	NOTICE of Appearance by Gordon D. Todd - NOT SWORN on behalf of Anthony Soave. (Todd - NOT SWORN, Gordon) (Entered: 10/11/2011)
10/11/2011	69	NOTICE of Appearance by Thomas C. Green - NOT SWORN on behalf of Anthony Soave. (Green - NOT SWORN, Thomas) (Entered: 10/11/2011)

10/12/2011	70	NOTICE of Appearance by David J. Poirier on behalf of Robert L. Williams. (Poirier, David) (Entered: 10/12/2011)
10/12/2011	71	NOTICE of Appearance by Michael F. Jacobson on behalf of Robert L. Williams. (Jacobson, Michael) (Entered: 10/12/2011)
10/12/2011	72	MOTION to Dismiss by Robert L. Williams. (Poirier, David) (Entered: 10/12/2011)
10/13/2011	73	NOTICE of Appearance by Matthew C. Herstein on behalf of Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Herstein, Matthew) (Entered: 10/13/2011)
10/14/2011	74	STIPULATION AND ORDER Regarding Defendant Soave's 64 MOTION to Strike 60 Response to Motion, <i>to Dismiss for Failure to State a Claim</i> Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/14/2011)
10/14/2011	75	STIPULATION AND ORDER for Extension of Time for Responsive Pleadings from Defendants O'Laughlin Construction Company and Mark E. O'Laughlin, (Responses due by 11/14/2011) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/14/2011)
10/17/2011	76	MOTION for Leave to File Excess Pages <i>Regarding Mersino Defendants' Motion to Dismiss (Docket #49)</i> by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 10/17/2011)
10/17/2011	77	RESPONSE to 53 MOTION for Sanctions <i>Under Rule 11</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Document Continuation) (Badalamenti, Raechel) (Entered: 10/17/2011)
10/17/2011	78	AMENDED by J-Mack Agency, LLC, Joseph M Macksound <i>Ammended Answer</i> (Leaf, Martin) (Entered: 10/17/2011)
10/17/2011	79	RESPONSE to 49 MOTION to Dismiss filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 10/17/2011)
10/19/2011		TEXT-ONLY NOTICE: Hearing on Motions to Dismiss are Cancelled re 43 Notice of Hearing on Motion, 54 Notice of Hearing on Motion (LWag) (Entered: 10/19/2011)
10/19/2011		TEXT-ONLY ORDER GRANTING 76 MOTION for Leave to File Excess Pages <i>Regarding Mersino Defendants' Motion to Dismiss (Docket #49)</i> filed by Macomb Interceptor Drain Drainage District. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/19/2011)
10/19/2011	80	NOTICE of Joinder/Concurrence in 49 MOTION to Dismiss filed by Mersino Dewatering, Inc., Marco Mersino, Rodney A Mersino by Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC (Stella, Stephen) (Entered: 10/19/2011)
10/19/2011	81	REPLY to Response re 41 MOTION to Dismiss <i>Claims as Time Barred</i> filed by Anthony Soave. (Fallucca, Thomas) (Entered: 10/19/2011)
10/19/2011	82	REPLY to Response re 40 MOTION to Dismiss <i>For failure to State a Claim</i> filed by Anthony Soave. (Fallucca, Thomas) (Entered: 10/19/2011)

10/20/2011	83	REPLY to Response re 33 MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> MOTION to Dismiss <i>under Federal Rule of Civil Procedure 12(b)(6)</i> filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 10/20/2011)
10/24/2011	84	REPLY to Response re 53 MOTION for Sanctions <i>Under Rule 11</i> filed by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Mersino, Paul) (Entered: 10/24/2011)
10/24/2011	85	ORDER ADJOURNING Motion Hearings set for 11/2/2011 and 11/16/2011 re 43 Notice of Hearing on Motion, 54 Notice of Hearing on Motion. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/24/2011)
10/24/2011	86	NOTICE of Joinder/Concurrence in 80 Notice of Joinder/Concurrence filed by Rotor Electric Company of Michigan, LLC, Benjamin Rosenberg by Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC <i>Defendants Rotor Electric Company Of Michigan, LLC And Benjamin Rosenberg's Reply In Support Of Their Concurrence With The Mersino Defendants' Motion To Dismiss</i> (Stella, Stephen) (Entered: 10/24/2011)
10/24/2011	87	MOTION for Leave to File Excess Pages <i>in Response to Inland Defendants' Motion to Dismiss (Docket # 58)</i> by All Plaintiffs. (Donofrio, Lauren) (Entered: 10/24/2011)
10/24/2011	88	RESPONSE to 58 MOTION to Dismiss filed by All Plaintiffs. (Donofrio, Lauren) (Entered: 10/24/2011)
10/25/2011		TEXT-ONLY ORDER GRANTING 87 MOTION for Leave to File Excess Pages <i>in Response to Inland Defendants' Motion to Dismiss (Docket # 58)</i> filed by Macomb Interceptor Drain Drainage District. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/25/2011)
10/25/2011	89	NOTICE of Appearance by Thomas D. Noonan on behalf of Mark E O'Laughlin, O'Laughlin Construction Company. (Noonan, Thomas) (Entered: 10/25/2011)
10/26/2011	90	WAIVER OF SERVICE Returned Executed. Victor Mercado waiver sent on 8/5/2011, answer due 10/4/2011. (Badalamenti, Raechel) (Entered: 10/26/2011)
10/26/2011	91	NOTICE of Pro Se Appearance by Victor Mercado. (DTyl) (Entered: 10/27/2011)
10/31/2011	92	ATTORNEY APPEARANCE: Christian P. Collis appearing on behalf of Patriot Pumps, LLC (Collis, Christian) (Entered: 10/31/2011)
10/31/2011	93	ATTORNEY APPEARANCE: Christian P. Collis appearing on behalf of Brian Lenaghan (Collis, Christian) (Entered: 10/31/2011)
10/31/2011	94	ANSWER to Complaint with Affirmative Defenses by Brian Lenaghan. (Collis, Christian) (Entered: 10/31/2011)
10/31/2011	95	ANSWER to Complaint with Affirmative Defenses by Patriot Pumps, LLC. (Collis, Christian) (Entered: 10/31/2011)

10/31/2011	96	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Patriot Pumps, LLC identifying Corporate Parent Patriot Pump LLC for Patriot Pumps, LLC. (Collis, Christian) (Entered: 10/31/2011)
10/31/2011	97	Ex Parte MOTION for Leave to File Excess Pages <i>in Reply to Plaintiff's Response in Opposition to the Their Motion to Dismiss</i> by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Mersino, Paul) (Entered: 10/31/2011)
10/31/2011	98	REPLY to Response re 49 MOTION to Dismiss filed by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Mersino, Paul) (Entered: 10/31/2011)
11/01/2011		TEXT-ONLY ORDER GRANTING 97 Ex Parte MOTION for Leave to File Excess Pages <i>in Reply to Plaintiff's Response in Opposition to the Their Motion to Dismiss</i> filed by Mersino Dewatering, Inc., Marco Mersino, Rodney A Mersino. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 11/01/2011)
11/04/2011	99	MOTION to Dismiss by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Herstein, Matthew) (Entered: 11/04/2011)
11/04/2011	100	CERTIFICATE OF SERVICE re 99 MOTION to Dismiss by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc. (Herstein, Matthew) (Entered: 11/04/2011)
11/04/2011	101	MOTION for Alternate Service <i>and Extension of Summonses</i> by All Plaintiffs. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A- Affidavit Regarding Ferguson Defendants, # 3 Exhibit B- Tax Assessor Record regarding Ferguson Defendants, # 4 Exhibit C- Affidavit regarding Dubai Defendants, # 5 Exhibit D- Tax Assessor Record regarding Dubai Defendants, # 6 Exhibit E- Request for Waiver Envelope to Superior/Patel Defendants, # 7 Exhibit F- Affidavit regarding Superior Defendant, # 8 Exhibit G- Tax Assessor Record regarding Superior Defendant) (Badalamenti, Raechel) (Entered: 11/04/2011)
11/07/2011	102	Ex Parte MOTION for Leave to File Excess Pages by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 11/07/2011)
11/07/2011	103	REPLY to Response re 72 MOTION to Dismiss, 58 MOTION to Dismiss filed by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 11/07/2011)
11/10/2011	104	NOTICE of Appearance by Stephen A. Bromberg on behalf of Mark E O'Laughlin, O'Laughlin Construction Company. (Bromberg, Stephen) (Entered: 11/10/2011)
11/10/2011	105	APPLICATION for Pro Se E-Filing Login and Password by Victor M. Mercado. [APPROVED] (KCla) (Entered: 11/10/2011)
11/10/2011		Pro Se E-filing Account Created for Victor M. Mercado. (VLun) (Entered: 11/10/2011)

11/10/2011		Pro Se E-filing Account Created for Victor M. Mercado. (VLun) (Entered: 11/10/2011)
11/11/2011	106	RESPONSE to 49 MOTION to Dismiss <i>Concurrence and Request for Dismissal</i> filed by Rotor Electric Company of Michigan LLC and Benjamin Rosenberg filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 11/11/2011)
11/15/2011	107	STIPULATION AND ORDER for Extension of Time for Defendants O'Laughlin Construction Compnay and Mark E. O'Laughlin to file a Responsive pleading, (Responses due by 12/14/2011) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 11/15/2011)
11/15/2011		TEXT-ONLY ORDER GRANTING 102 Ex Parte MOTION for Leave to File Excess Pages filed by Walter Rozycki, Dennis Oszust, Inland Waters Pollution Control, Inc., Robert L. Williams. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 11/15/2011)
11/16/2011	108	OPINION AND ORDER granting in part and denying in part 101 Plaintiff's Motion for Alternate Service and Extension of Summons. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 11/16/2011)
11/16/2011	109	CERTIFICATE of Service/Summons Returned Executed. Dubai's Landscaping Services, Inc. served on 11/4/2011, answer due 11/28/2011. (Badalamenti, Raechel) (Entered: 11/16/2011)
11/16/2011	110	CERTIFICATE of Service/Summons Returned Executed. Lawrence R Dubai served on 11/4/2011, answer due 11/28/2011. (Badalamenti, Raechel) (Entered: 11/16/2011)
11/17/2011	111	MOTION to Dismiss by Brian Lenaghan. (Collis, Christian) (Entered: 11/17/2011)
11/17/2011	112	MOTION to Dismiss by Patriot Pumps, LLC. (Collis, Christian) (Entered: 11/17/2011)
11/17/2011		REQUEST for SUMMONS for Derrick A. Miller. (Badalamenti, Raechel) (Entered: 11/17/2011)
11/17/2011		REQUEST for SUMMONS for Bobby W. Ferguson, Ferguson's Enterprises, Inc, Thomas Gouin, Wendy Gouin, Great Lakes Diving & Salvage, Inc., Derrick A. Miller, Bharat Patel. (Badalamenti, Raechel) (Entered: 11/17/2011)
11/18/2011	113	SUMMONS Issued for *Bobby W. Ferguson, Ferguson's Enterprises, Inc, Thomas Gouin, Wendy Gouin, Great Lakes Diving & Salvage, Inc., Derrick A. Miller, Bharat Patel* (TMcg) (Entered: 11/18/2011)
11/18/2011	114	CERTIFICATE of Service/Summons Returned Executed. Superior Engineering Associates, Inc. served on 11/16/2011, answer due 12/7/2011. (Badalamenti, Raechel) (Entered: 11/18/2011)
11/28/2011	115	RESPONSE to 99 MOTION to Dismiss filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Crain's Business Article, dated

		July 24, 2011, # 2 Exhibit Rule 11 Plea Agreement) (Badalamenti, Raechel) (Entered: 11/28/2011)
11/29/2011	116	ATTORNEY APPEARANCE: Daniel J. Donahue appearing on behalf of Lawrence R Dubay, Dubay's Landscaping Services, Inc. (Donahue, Daniel) (Entered: 11/29/2011)
12/02/2011	117	ANSWER to Complaint with Affirmative Defenses <i>and Proof of Service</i> by Lawrence R Dubay, Dubay's Landscaping Services, Inc.. (Donahue, Daniel) (Entered: 12/02/2011)
12/02/2011	118	STATEMENT of DISCLOSURE of CORPORATE AFFILIATIONS and FINANCIAL INTEREST by Lawrence R Dubay, Dubay's Landscaping Services, Inc. (Donahue, Daniel) (Entered: 12/02/2011)
12/07/2011	119	NOTICE of Appearance by Ronald E. Kaplovitz on behalf of Perry Mehta. (Kaplovitz, Ronald) (Entered: 12/07/2011)
12/07/2011	120	NOTICE of Appearance by Ronald E. Kaplovitz on behalf of FutureNet Group, Inc.. (Kaplovitz, Ronald) (Entered: 12/07/2011)
12/07/2011	121	ANSWER to Complaint with Affirmative Defenses by Perry Mehta. (Kaplovitz, Ronald) (Entered: 12/07/2011)
12/07/2011	122	ANSWER to Complaint with Affirmative Defenses by FutureNet Group, Inc.. (Kaplovitz, Ronald) (Entered: 12/07/2011)
12/07/2011	123	MOTION to Dismiss by Perry Mehta. (Kaplovitz, Ronald) (Entered: 12/07/2011)
12/07/2011	124	MOTION to Dismiss by FutureNet Group, Inc. (Kaplovitz, Ronald) Modified on 12/8/2011 (KKra). [ON BEHALF OF FUTURENET GROUP, INC AND PERRY MEHTA] (Entered: 12/07/2011)
12/07/2011	125	MOTION to Dismiss by Perry Mehta. (Kaplovitz, Ronald) Modified on 12/7/2011 (KKra). [DOCUMENT IS A DUPLICATE OF ENTRY 124] (Entered: 12/07/2011)
12/08/2011	126	MOTION for Leave to File Excess Pages <i>Regarding Response in Opposition to Patriot Pump Defendants' Motion(s) to Dismiss (Dockets 111 and 112)</i> by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 12/08/2011)
12/08/2011	127	RESPONSE to 112 MOTION to Dismiss, 111 MOTION to Dismiss filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Exhibit #1 - Miller Plea Agreement) (Badalamenti, Raechel) (Entered: 12/08/2011)
12/09/2011	128	STIPULATION AND ORDER for Extension of time for defendants O'Laughlin Construction Company and Mark E. O'Laughlin to file a responsive pleading, (Responses due by 1/16/2012) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 12/09/2011)
12/09/2011		TEXT-ONLY ORDER GRANTING re 126 MOTION for Leave to File Excess Pages <i>Regarding Response in Opposition to Patriot Pump Defendants' Motion</i>

		(s) to Dismiss (Dockets 111 and 112) filed by Macomb Interceptor Drain Drainage District. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 12/09/2011)
12/09/2011	129	REPLY to Response re 99 MOTION to Dismiss filed by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Attachments: # 1 Exhibit A) (Herstein, Matthew) (Entered: 12/09/2011)
12/19/2011	130	MOTION to Dismiss by FutureNet Group, Inc., Perry Mehta. (Kaplovitz, Ronald) Modified on 12/19/2011 (KKra). [AMENDED] (Entered: 12/19/2011)
12/19/2011	131	AMENDED ANSWER to Complaint with Affirmative Defenses by Lawrence R Dubay, Dubay's Landscaping Services, Inc.. (Donahue, Daniel) (Entered: 12/19/2011)
12/22/2011	132	NOTICE of Appearance by Anthony S. Spokojny on behalf of Thomas Gouin, Wendy Gouin, Great Lakes Diving & Salvage, Inc.. (Spokojny, Anthony) (Entered: 12/22/2011)
12/22/2011	133	NOTICE by FutureNet Group, Inc., Perry Mehta of withdrawal of 124 MOTION to Dismiss. (Kaplovitz, Ronald) (Entered: 12/22/2011)
12/22/2011	134	NOTICE of Appearance by Walter J. Piszczatowski on behalf of Lakeshore Engineering Services, Inc., Avinash Rachmale. (Piszczatowski, Walter) (Entered: 12/22/2011)
12/27/2011	135	NOTICE of Appearance by Olivia N. Keuten on behalf of All Plaintiffs. (Keuten, Olivia) (Entered: 12/27/2011)
12/27/2011	136	NOTICE of Appearance by Scott S. Yaldo on behalf of Bharat Patel, Superior Engineering Associates, Inc.. (Yaldo, Scott) (Entered: 12/27/2011)
12/28/2011	137	NOTICE TO APPEAR: Status/Scheduling Conference set for 2/10/2012 02:00 PM before District Judge Robert H. Cleland (LWag) (Entered: 12/28/2011)
12/29/2011	138	ANSWER to Complaint by Victor M. Mercado. (Mercado, Victor) (Entered: 12/29/2011)
12/29/2011	139	Second MOTION for Alternate Service <i>and for Extension of Summonses</i> by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A- Returned Envelope from attempted first class mail service upon Miller, # 3 Exhibit B- Second Returned Envelope from attempted first class mail service upon Miller, # 4 Exhibit C- Appearance Bond Signed By Derrick A. Miller, # 5 Exhibit D- Miller Plea Agreement, # 6 Exhibit E - Refusal to accept service letter from Miller's criminal attorney, # 7 Exhibit F- Affidavit of Non-Service re Miller, # 8 Exhibit G- First Affidavit of Non-Service re Ferguson Defendants, # 9 Exhibit H- Second Affidavit of Non-Service re: Ferguson Defendants, # 10 Exhibit I- Refusal to accept service letter from Fergusons' criminal attorney, # 11 Exhibit J- Tax Assessor Record for Ferguson) (Badalamenti, Raechel) (Entered: 12/29/2011)
01/03/2012	140	NOTICE of Appearance by Patrick S. McKay on behalf of All Plaintiffs. (McKay, Patrick) (Entered: 01/03/2012)

01/10/2012	141	OPINION AND ORDER granting 139 Plaintiff's Second Motion for Alternate Service and Extension of Summons. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 01/10/2012)
01/10/2012		REQUEST for SUMMONS for Bobby W. Ferguson, Ferguson's Enterprises, Inc, Derrick A. Miller. (McKay, Patrick) (Entered: 01/10/2012)
01/10/2012	142	SUMMONS Issued for *Bobby W. Ferguson* (DPer) (Entered: 01/10/2012)
01/10/2012	143	SUMMONS Issued for *Ferguson's Enterprises, Inc* (DPer) (Entered: 01/10/2012)
01/10/2012	144	SUMMONS Issued for *Derrick A. Miller* (DPer) (Entered: 01/10/2012)
01/10/2012	145	MOTION to Intervene by City of Detroit. (Watson, Jerome) (Entered: 01/11/2012)
01/11/2012	146	INDEX of Exhibits by City of Detroit (Attachments: # 1 Exhibit 1A - Macomb Acquisition Agreement, # 2 Document Continuation 1B -, # 3 Exhibit 2A - Settlement Agreement, # 4 Document Continuation 2B, # 5 Exhibit C - Commodities Exp. Co. v. City of Detroit) (Watson, Jerome) (Entered: 01/11/2012)
01/11/2012	147	EXHIBIT 4 - <i>Intv. Compl.</i> re 146 Exhibit Index, 145 MOTION to Intervene by City of Detroit (Attachments: # 1 Document Continuation <i>Intv. Compl. cont'd</i>) (Watson, Jerome) (Entered: 01/11/2012)
01/11/2012	148	EXHIBIT re 147 Exhibit by All Defendants (Attachments: # 1 Exhibit Exhibit 1 to Exhibit 4, # 2 Exhibit Exhibit 2 to Exhibit 4, # 3 Exhibit Exhibit 3 to Exhibit 4, # 4 Exhibit Exhibit 4 to Exhibit 4, # 5 Exhibit Exhibit 5 to Exhibit 4, # 6 Exhibit Exhibit 6 to Exhibit 4, # 7 Exhibit Exhibit 7 to Exhibit 4, # 8 Exhibit Exhibit 8 to Exhibit 4, # 9 Exhibit Exhibit 9 to Exhibit 4, # 10 Exhibit Exhibit 10 to Exhibit 4, # 11 Exhibit Exhibit 11 to Exhibit 4, # 12 Exhibit Exhibit 12 to Exhibit 4) (Sahu, Saura) (Entered: 01/11/2012)
01/11/2012	149	NOTICE of Appearance by Don W. Blevins on behalf of Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Blevins, Don) (Entered: 01/11/2012)
01/11/2012	150	ANSWER to Complaint with Affirmative Defenses by Bharat Patel, Superior Engineering Associates, Inc.. (Yaldo, Scott) (Entered: 01/11/2012)
01/12/2012	151	STIPULATION AND ORDER for Extension of Time for defendants O'Laughlin Construction Company and Mark E O'Laughlin, (Responses due by 2/1/2012) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 01/12/2012)
01/12/2012	152	NOTICE of Appearance by Jerome R. Watson on behalf of All Defendants. (Watson, Jerome) [APPEARANCE FOR INTERVENOR PLAINTIFF CITY OF DETROIT] Modified on 1/13/2012 (DPer). (Entered: 01/12/2012)
01/12/2012	153	NOTICE of Appearance by Saura J. Sahu on behalf of All Defendants. (Sahu, Saura)[APPEARANCE FOR INTERVENOR PLAINTIFF CITY OF DETROIT] Modified on 1/13/2012 (DPer). (Entered: 01/12/2012)

01/13/2012	154	NOTICE by Macomb Interceptor Drain Drainage District <i>Proof of Service of Mailing Pursuant to Order for Alternate Service Regarding Defendants Derrick Miller, Bobby W. Ferguson and Ferguson's Enterprises</i> (McKay, Patrick) (Entered: 01/13/2012)
01/13/2012	155	ORDER Setting Briefing Schedule on Non-Party City of Detroit's Motion to Intervene and Terminating Without Prejudice Defendants' 33 Motion to Dismiss; 40 Motion to Dismiss; 41 Motion to Dismiss; 49 Motion to Dismiss; 53 Motion for Sanctions; 58 Motion to Dismiss; 72 Motion to Dismiss; 99 Motion to Dismiss; 111 Motion to Dismiss; 130 Motion to Dismiss. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 01/13/2012)
01/17/2012	156	NOTICE of Appearance by Irene B. Hathaway on behalf of City of Detroit. (Hathaway, Irene) (Entered: 01/17/2012)
01/17/2012	157	NOTICE of Appearance by Joseph W. Uhl on behalf of City of Detroit. (Uhl, Joseph) (Entered: 01/17/2012)
01/24/2012	158	NOTICE by Macomb Interceptor Drain Drainage District <i>Proof of Service on Derrick Miller by Posting at USDC Pursuant to Order for Alternate Service of Process</i> (McKay, Patrick) (Entered: 01/24/2012)
01/24/2012	159	NOTICE by Macomb Interceptor Drain Drainage District <i>Proof of Service on Derrick Miller by Posting at WCCC Pursuant to Order for Alternate Service of Process</i> (McKay, Patrick) (Entered: 01/24/2012)
01/24/2012	160	NOTICE by Macomb Interceptor Drain Drainage District <i>Proof of Service on Bobby Ferguson by Posting at his home Pursuant to Order for Alternate Service of Process</i> (McKay, Patrick) (Entered: 01/24/2012)
01/24/2012	161	NOTICE by Macomb Interceptor Drain Drainage District <i>Proof of Service on Ferguson's Enterprises by Posting at its Office Pursuant to Order for Alternate Service of Process</i> (McKay, Patrick) (Entered: 01/24/2012)
01/25/2012	162	MOTION for Reconsideration re 155 Order on Motion to Dismiss,,,,,, Order on Motion for Sanctions,,,,,, by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Attachments: # 1 Exhibit Ex. 1, # 2 Exhibit Ex. 2, # 3 Exhibit Ex. 3, # 4 Exhibit Ex. 4, # 5 Exhibit Ex. 5, # 6 Exhibit Ex. 6) (Zack, David) (Entered: 01/25/2012)
01/26/2012	163	RESPONSE to 145 MOTION to Intervene <i>Statement</i> filed by Anthony Soave. (Fallucca, Thomas) (Entered: 01/26/2012)
01/27/2012	164	CERTIFICATE of Service/Summons Returned Executed. Bobby W. Ferguson served on 1/23/2012, answer due 2/13/2012; Ferguson's Enterprises, Inc served on 1/23/2012, answer due 2/13/2012; Derrick A. Miller served on 1/20/2012, answer due 2/10/2012. (McKay, Patrick) (Entered: 01/27/2012)
01/27/2012	165	ATTORNEY APPEARANCE: Kevin B. Hirsch appearing on behalf of Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams (Hirsch, Kevin) (Entered: 01/27/2012)
01/27/2012	166	

		ATTORNEY APPEARANCE: David W. Williams appearing on behalf of Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams (Williams, David) (Entered: 01/27/2012)
01/27/2012	167	NOTICE of Joinder/Concurrence in 162 MOTION for Reconsideration re 155 Order on Motion to Dismiss,,,,,,, Order on Motion for Sanctions,,,,,,, MOTION for Reconsideration re 155 Order on Motion to Dismiss,,,,,,, Order on Motion for Sanctions,,,,,,, filed by Antonio D'Agostini, L. Robert D'Agostini, James D'Agostini, L. D'Agostini & Sons, Inc. by Joe Harris, Hayward Baker, Inc or, in the Alternative, Motion for Clarification (Nelson - NOT SWORN, Erik) (Entered: 01/27/2012)
01/27/2012	168	RESPONSE to 145 MOTION to Intervene <i>IN OPPOSITION</i> filed by Inland Waters Pollution Control, Inc., Brian Lenaghan, Dennis Oszust, Patriot Pumps, LLC, Walter Rozycki, Robert L. Williams. (Attachments: # 1 Exhibit 1 - 10/4/2010 Letter from U.S. Department of Justice) (Poirier, David) (Entered: 01/27/2012)
01/27/2012	169	RESPONSE to 145 MOTION to Intervene filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Attachments: # 1 Exhibit Ex. 1, # 2 Exhibit Ex. 2, # 3 Exhibit Ex. 3, # 4 Exhibit Ex. 4, # 5 Exhibit Ex. 5, # 6 Exhibit Ex. 6, # 7 Exhibit Ex. 7, # 8 Exhibit Ex. 8, # 9 Exhibit Ex. 9) (Zack, David) (Entered: 01/27/2012)
01/27/2012	170	RESPONSE to 145 MOTION to Intervene <i>As a Matter of Right Under Fed.R.Civ.P. 24(A)</i> filed by Lakeshore Engineering Services, Inc., Avinash Rachmale. (Geller, Robert) (Entered: 01/27/2012)
02/01/2012	171	NOTICE of Appearance by Jeremy R. Heuer - NOT SWORN on behalf of Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC. (Heuer - NOT SWORN, Jeremy) (Entered: 02/01/2012)
02/03/2012	172	ATTORNEY APPEARANCE: Randall M. Lending - NOT SWORN appearing on behalf of Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC (Lending - NOT SWORN, Randall) (Entered: 02/03/2012)
02/03/2012	173	REPLY to Response re 145 MOTION to Intervene filed by City of Detroit. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1. Hiar v Hingston, # 3 Exhibit 2. Hanner v City of Dearborn Heights, # 4 Exhibit 3. Sparks v M&T Bank, # 5 Exhibit 4. Chandler v Wackenhut Corp.) (Sahu, Saura) (Entered: 02/03/2012)
02/03/2012	174	REPLY to Response re 145 MOTION to Intervene filed by City of Detroit. (Attachments: # 1 Exhibit 1. Grange Mut. Cas. Co. v Mack) (Sahu, Saura) (Entered: 02/03/2012)
02/03/2012	175	REPLY to Response re 145 MOTION to Intervene (<i>Re: Inland Waters</i>) filed by City of Detroit. (Sahu, Saura) (Entered: 02/03/2012)
02/03/2012	176	MOTION for Leave to File <i>to File First Amended Complaint</i> by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Exhibit A - Proposed First Amended Complaint, # 2 Document Continuation Exhibits to Proposed First Amended Complaint, # 3 Document Continuation Cont.

		Exhibits to Proposed First Amended Complaint, # 4 Document Continuation Cont. Exhibits to Proposed First Amended Complaint) (Badalamenti, Raechel) (Entered: 02/03/2012)
02/06/2012	177	NOTICE of Appearance by W. Mack Faison on behalf of City of Detroit. (Faison, W.) (Entered: 02/06/2012)
02/07/2012	178	OPINION AND ORDER denying 162 D'Agostini Defendants Motion for Reconsideration and denying 167 Notice of Joinder/Concurrence, filed by Hayward Baker, Inc, Joe Harris. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/07/2012)
02/08/2012	179	STIPULATION AND ORDER for dismissal without prejudice as to defendants, Lakeshore Engineering Services, Inc. and Avinash Rachmale. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/08/2012)
02/10/2012	180	[STRICKEN] NOTICE of Appearance by Ronald E. Kaplovitz on behalf of FutureNet Group, Inc.. (Kaplovitz, Ronald) Modified on 2/21/2012 (LWag). (Entered: 02/10/2012)
02/10/2012		Minute Entry - Status Conference held on 2/10/2012 before District Judge Robert H. Cleland. (LWag) (Entered: 02/10/2012)
02/10/2012	181	MOTION for Withdrawal of Attorney James C. Thomas; Michael C. Naughton by Kwame Kilpatrick. (Thomas, James) (Entered: 02/10/2012)
02/13/2012		TEXT-ONLY ORDER STRIKING 180 Notice of Appearance filed by FutureNet Group, Inc.. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/13/2012)
02/16/2012	182	RESPONSE to 176 MOTION for Leave to File <i>to File First Amended Complaint</i> filed by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A - Letter dated September 7, 2011, # 3 Exhibit B - Rule 11 Motion) (Mersino, Paul) (Entered: 02/16/2012)
02/16/2012	183	RESPONSE to 176 MOTION for Leave to File <i>to File First Amended Complaint</i> filed by Anthony Soave. (Todd, Gordon) (Entered: 02/16/2012)
02/17/2012	184	EXHIBIT <i>to Motion to Withdraw as Counsel</i> by Kwame Kilpatrick (Attachments: # 1 Exhibit Consent to Withdrawal) (Thomas, James) (Entered: 02/17/2012)
02/17/2012	185	RESPONSE to 176 MOTION for Leave to File <i>to File First Amended Complaint</i> filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 02/17/2012)
02/17/2012	186	RESPONSE to 176 MOTION for Leave to File <i>to File First Amended Complaint</i> filed by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 02/17/2012)
02/23/2012	187	REPLY to Response re 176 MOTION for Leave to File <i>to File First Amended Complaint</i> filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 02/23/2012)

02/24/2012	188	Joint MOTION for Summary Judgment by Anthony Soave. (Fallucca, Thomas) (Entered: 02/24/2012)
02/24/2012	189	NOTICE of hearing on 145 MOTION to Intervene. Motion Hearing set for 4/4/2012 02:00 PM before District Judge Robert H. Cleland (LWag) (Entered: 02/24/2012)
02/27/2012	190	Amended MOTION for Summary Judgment <i>Joint</i> by Anthony Soave. (Fallucca, Thomas) (Entered: 02/27/2012)
02/28/2012	191	MOTION to Strike 187 Reply to Response to Motion <i>or for Leave to File Surreply in Order to Respond to New and False Allegations</i> by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Attachments: # 1 Exhibit Ex. 1, Letter from David M. Zack to Raechel M. Badalamenti) (Zack, David) (Entered: 02/28/2012)
02/28/2012	192	ORDER Suspending briefing on 190 Amended MOTION for Summary Judgment <i>Joint</i> 188 Joint MOTION for Summary Judgment filed by Anthony Soave and Suspending any further motion practice, or briefing on currently filed motions. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/28/2012)
03/01/2012	193	REQUEST FOR CLERK'S ENTRY OF DEFAULT as to Derrick A. Miller by Macomb Interceptor Drain Drainage District. (McKay, Patrick) (Entered: 03/01/2012)
03/01/2012	194	REQUEST FOR CLERK'S ENTRY OF DEFAULT as to Bobby W. Ferguson by Macomb Interceptor Drain Drainage District. (McKay, Patrick) (Entered: 03/01/2012)
03/01/2012	195	REQUEST FOR CLERK'S ENTRY OF DEFAULT as to Ferguson's Enterprises, Inc by Macomb Interceptor Drain Drainage District. (McKay, Patrick) (Entered: 03/01/2012)
03/01/2012	196	CLERK'S ENTRY OF DEFAULT as to *Bobby W. Ferguson, Ferguson's Enterprises, Inc, Derrick A. Miller* (TMcg) (Entered: 03/01/2012)
03/12/2012	197	ORDER Holding in Abeyance 181 MOTION for Withdrawal of Attorney James C. Thomas; Michael C. Naughton filed by Kwame Kilpatrick. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 03/12/2012)
03/21/2012	198	SUPPLEMENTAL BRIEF re 181 MOTION for Withdrawal of Attorney James C. Thomas; Michael C. Naughton filed by Kwame Kilpatrick. (Thomas, James) (Entered: 03/21/2012)
03/28/2012	199	ORDER granting 181 Motion to Withdraw as Attorney for defendant Kwame Kilpatrick, Individually Tolling deadlines as to defendant Kilpatrick until 4/19/2012 and Directing Counsel to serve defendant Kilpatrick with a copy of this order.. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 03/28/2012)
04/04/2012		Minute Entry - Motion Hearing held on 4/4/2012 re 145 MOTION to Intervene filed by City of Detroit before District Judge Robert H. Cleland. Disposition:

		Oral arguments on motion to intervene. Order to follow.(Court Reporter Larry Przybysz) (Bankston, T) (Entered: 04/05/2012)
04/19/2012		Remark - At request of current counsel, Defendant Kilpatrick's deadline to obtain new counsel is extended to Monday, 4/23/2012. (LWag) (Entered: 04/19/2012)
04/20/2012	200	TRANSCRIPT of Motion Hearing held on April 4, 2012. (Court Reporter/Transcriber: Lawrence R. Przybysz) (Number of Pages: 48) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made remotely electronically available to the public without redaction after 90 days. Redaction Request due 5/11/2012. Redacted Transcript Deadline set for 5/21/2012. Release of Transcript Restriction set for 7/19/2012. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Przybysz, L) (Entered: 04/20/2012)
04/25/2012	201	CERTIFICATE OF SERVICE re 199 Order on Motion to Withdraw as Attorney, by Kwame Kilpatrick (Naughton, Michael) (Entered: 04/25/2012)
05/07/2012	202	OPINION AND ORDER Granting 145 City of Detroit and Detroit Water and Sewerage Department's Motion to Intervene, Imposing Briefing Schedules and Reinstating Rule 12 Responsive Pleadings Deadlines. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 05/07/2012)
05/07/2012		TEXT-ONLY CERTIFICATE OF SERVICE re 202 Order on Motion to Intervene, on Kwame Kilpatrick at 455 E FM 1382, Suite 3-136, Cedar Hill, TX 75104. (LWag) (Entered: 05/07/2012)
05/10/2012	203	CERTIFICATE OF SERVICE re 145 MOTION to Intervene by City of Detroit (Watson, Jerome) (Entered: 05/10/2012)
05/16/2012	204	MEMORANDUM <i>Notice of Change of Address</i> by Superior Engineering Associates, Inc. (Yaldo, Scott) (Entered: 05/16/2012)
05/21/2012	205	INTERVENOR COMPLAINT <i>Of The Plaintiff City of Detroit Through The Detroit Water And Sewerage Department</i> filed by City of Detroit, Detroit Water and Sewerage Department against Bobby W. Ferguson, Ferguson's Enterprises, Inc, Inland Waters Pollution Control, Inc., Kwame Kilpatrick, L. D'Agostini & Sons, Inc., Victor M. Mercado, Derrick A. Miller. (Attachments: # 1 Index of Exhibits Index, # 2 Exhibit Miller Plea Agreement, # 3 Exhibit 4th Superseding Indictment, # 4 Exhibit Packet of Orders, # 5 Exhibit 11-25-02 Order Re: Contract Procurement Oversight, # 6 Exhibit Contract CS-1368, # 7 Exhibit Contract CM-1368-2, # 8 Exhibit Contract CM-1368-3, # 9 Exhibit Contract CM-1368-4) (Watson, Jerome) (Entered: 05/21/2012)
05/21/2012		REQUEST for SUMMONS for Bobby W. Ferguson, Ferguson's Enterprises, Inc, Inland Waters Pollution Control, Inc., Kwame Kilpatrick, L. D'Agostini & Sons, Inc., Victor M. Mercado, Derrick A. Miller. (Watson, Jerome) (Entered: 05/21/2012)

05/21/2012	206	RESPONSE to 190 Amended MOTION for Summary Judgment <i>Joint</i> , 188 Joint MOTION for Summary Judgment filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A- Macomb Acquisition Agreement with Schedule 3.8, dated 09/02/2010, # 3 Exhibit B- Bill of Sale dated 09/02/2010, # 4 Exhibit C- Affidavit of R. Craig Hupp, # 5 Exhibit D- Article, Assigning Common Law Claims for Fraud) (Badalamenti, Raechel) (Entered: 05/21/2012)
05/21/2012	207	Ex Parte MOTION for Leave to File Excess Pages <i>Regarding Response Brief filed as Docket #206</i> by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 05/21/2012)
05/22/2012	208	SUMMONS Issued for *Bobby W. Ferguson, Ferguson's Enterprises, Inc, Inland Waters Pollution Control, Inc., Kwame Kilpatrick, L. D'Agostini & Sons, Inc., Victor M. Mercado, Derrick A. Miller* (TMcg) (Entered: 05/22/2012)
05/23/2012		Set/Reset Deadlines as to 188 Joint MOTION for Summary Judgment, 190 Amended MOTION for Summary Judgment <i>Joint</i> . City of Detroit and Water Department's Responses due by 5/29/2012 Replies due by 6/5/2012 (LWag) (Entered: 05/23/2012)
05/23/2012		TEXT-ONLY ORDER GRANTING 207 Ex Parte MOTION for Leave to File Excess Pages <i>Regarding Response Brief filed as Docket #206</i> filed by Macomb Interceptor Drain Drainage District. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 05/23/2012)
05/29/2012	209	MOTION for Partial Summary Judgment by Perry Mehta. (Kaplovitz, Ronald) (Entered: 05/29/2012)
05/29/2012	210	CERTIFICATE of Service/Summons Returned Executed. Inland Waters Pollution Control, Inc. served on 5/29/2012, answer due 6/19/2012. (Watson, Jerome) (Entered: 05/29/2012)
05/29/2012	211	CERTIFICATE of Service/Summons Returned Executed. Bobby W. Ferguson served on 5/24/2012, answer due 6/14/2012. (Watson, Jerome) (Entered: 05/29/2012)
05/29/2012	212	CERTIFICATE of Service/Summons Returned Executed. Ferguson's Enterprises, Inc served on 5/24/2012, answer due 6/14/2012. (Watson, Jerome) (Entered: 05/29/2012)
05/29/2012	213	RESPONSE to 190 Amended MOTION for Summary Judgment <i>Joint</i> filed by City of Detroit. (Attachments: # 1 Index of Exhibits Index, # 2 Exhibit A - Macomb County Interceptor Acquisition Agreement, # 3 Exhibit B - Medilink Ins. Co., Ltd. v Comerica Bank, # 4 Exhibit C - Hillside Productions, Inc. v County of Macomb, # 5 Exhibit D - Stacey v ZF Lemforder Corp., # 6 Exhibit E - Ayoub v Unum Life Ins. Co. of Am., # 7 Exhibit F - Andrews v Strategic Outsourcing Inc., # 8 Exhibit G - Biography of R. Craig Hupp) (Watson, Jerome) (Entered: 05/29/2012)
05/30/2012	214	

		MOTION to Dismiss by Mark E O'Laughlin, O'Laughlin Construction Company. (Attachments: # 1 Exhibit A - part one, # 2 Exhibit A - part two) (Noonan, Thomas) (Entered: 05/30/2012)
05/31/2012	215	ANSWER to 205 Intervenor Complaint,, by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Herstein, Matthew) (Entered: 05/31/2012)
05/31/2012	216	CERTIFICATE OF SERVICE re 215 Answer (Free) by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc. (Herstein, Matthew) (Entered: 05/31/2012)
05/31/2012	217	NOTICE of hearing on 188 Joint MOTION for Summary Judgment, 190 Amended MOTION for Summary Judgment <i>Joint</i> , 176 MOTION for Leave to File <i>to File First Amended Complaint</i> . Motion Hearing set for 7/25/2012 02:00 PM before District Judge Robert H. Cleland (LWag) (Entered: 05/31/2012)
05/31/2012		TEXT-ONLY CERTIFICATE OF SERVICE re 217 Notice of Hearing on Motion, on Kwame Kilpatrick at 455 E FM 1382, SUITE 3-136, CEDAR HILL, TX 75104. (LWag) (Entered: 05/31/2012)
06/01/2012	218	MOTION to Dismiss <i>under Rule 12(B)(6)</i> by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 06/01/2012)
06/04/2012	219	MOTION to Dismiss by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 06/04/2012)
06/05/2012	220	REPLY to Response re 190 Amended MOTION for Summary Judgment <i>Joint</i> , 188 Joint MOTION for Summary Judgment <i>Concurring Defendants</i> filed by Anthony Soave. (Fallucca, Thomas) (Entered: 06/05/2012)
06/05/2012	221	MOTION to Dismiss by Steve Rohrscheib, Rohrscheib Sons Caissons, Inc.. (Herstein, Matthew) (Entered: 06/05/2012)
06/05/2012	222	REPLY to Response re 190 Amended MOTION for Summary Judgment <i>Joint</i> , 188 Joint MOTION for Summary Judgment filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 06/05/2012)
06/06/2012	223	CERTIFICATE of Service/Summons Returned Executed. L. D'Agostini & Sons, Inc. served on 6/5/2012, answer due 6/26/2012. (Sahu, Saura) (Entered: 06/06/2012)
06/06/2012	224	Joint MOTION to Strike 222 Reply to Response to Motion <i>filed by Plaintiff MIDD</i> by Anthony Soave. (Fallucca, Thomas) (Entered: 06/06/2012)
06/06/2012	225	RESPONSE to 224 Joint MOTION to Strike 222 Reply to Response to Motion <i>filed by Plaintiff MIDD</i> filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 06/06/2012)
06/08/2012	226	REPLY to Response re 224 Joint MOTION to Strike 222 Reply to Response to Motion <i>filed by Plaintiff MIDD Joint Reply</i> filed by Anthony Soave. (Fallucca, Thomas) (Entered: 06/08/2012)
06/11/2012	227	ORDER Tolling Deadlines for Responsive pleadinga and SUSPENDING further Motion Practice and Briefing on Pending Motions to Dismiss re 221

		MOTION to Dismiss filed by Rohrscheib Sons Caissons, Inc., Steve Rohrscheib, 218 MOTION to Dismiss <i>under Rule 12(B)(6)</i> filed by Antonio D'Agostini, L. Robert D'Agostini, James D'Agostini, L. D'Agostini & Sons, Inc., 219 MOTION to Dismiss filed by Walter Rozycki, Dennis Oszust, Inland Waters Pollution Control, Inc., Robert L. Williams, 214 MOTION to Dismiss filed by Mark E O'Laughlin, O'Laughlin Construction Company. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 06/11/2012)
06/11/2012		TEXT-ONLY CERTIFICATE OF SERVICE re 227 Order,, on Kwame Kilpatrick at 455 E FM 1382, Suite 3-136, Cedar Hill, TX 75104. (LWag) (Entered: 06/11/2012)
06/12/2012		Attorney Olivia N. Keuten is discontinued from receiving Notices of Electronic Filing. (Keuten, Olivia) (Entered: 06/12/2012)
06/12/2012	228	ORDER denying Concurring Defendants' 224 Joint Motion to Strike. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 06/12/2012)
06/12/2012		TEXT-ONLY CERTIFICATE OF SERVICE re 228 Order on Motion to Strike on Kwame Kilpatrick at 455 E FM 1382, Suite 3-136, Cedar Hill, TX 75104. (LWag) (Entered: 06/12/2012)
06/15/2012	229	CERTIFICATE of Service/Summons Returned Executed. Kwame Kilpatrick served on 6/2/2012, answer due 6/25/2012. (Sahu, Saura) (Entered: 06/15/2012)
06/15/2012	230	REQUEST FOR CLERK'S ENTRY OF DEFAULT as to Bobby W. Ferguson by City of Detroit, Detroit Water and Sewerage Department. (Sahu, Saura) (Entered: 06/15/2012)
06/15/2012	231	REQUEST FOR CLERK'S ENTRY OF DEFAULT as to Ferguson's Enterprises, Inc by City of Detroit, Detroit Water and Sewerage Department. (Sahu, Saura) (Entered: 06/15/2012)
06/15/2012	232	CLERK'S ENTRY OF DEFAULT as to *Bobby W. Ferguson* (KKra) (Entered: 06/15/2012)
06/15/2012	233	CLERK'S ENTRY OF DEFAULT as to *Ferguson's Enterprises, Inc* (KKra) (Entered: 06/15/2012)
07/13/2012	234	CERTIFICATE of Service/Summons Returned Executed. Victor M. Mercado served on 6/25/2012, answer due 7/16/2012. (Sahu, Saura) (Entered: 07/13/2012)
07/25/2012		Minute Entry - Motion Hearing held on 7/25/2012 re 190 Amended MOTION for Summary Judgment <i>Joint</i> filed by Anthony Soave, 188 Joint MOTION for Summary Judgment filed by Anthony Soave, 176 MOTION for Leave to File <i>to File First Amended Complaint</i> filed by Macomb Interceptor Drain Drainage District before District Judge Robert H. Cleland. Disposition: TAKEN UNDER ADVISEMENT(Court Reporter Christin Russell) (LWag) (Entered: 07/25/2012)
08/20/2012	235	NOTICE by All Plaintiffs <i>Supplemental Notice</i> (Scott, Lawrence) (Entered: 08/20/2012)

08/28/2012	236	NOTICE of Joinder/Concurrence in by Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC <i>Notice/Motion To Join Amended Motion For Summary Judgment (Docket Nos. 188, 190)</i> (Stella, Stephen) (Entered: 08/28/2012)
09/17/2012	237	OPINION AND ORDER denying 176 Plaintiff's Motion for Leave to File a First Amended Complaint; granting 190 Concurring Defendants' Motion for Summary Judgment; terminating as moot 191 D'Agostini Defendants' Motion to Strike; granting 209 Defendants Futurenet Group, Inc., and Perry Mehta's Motion for Partial Summary Judgment and Directing Plaintiff Macomb Interceptor to Show Cause by 9/24/2012, why summary judgment should not be entered in favor of all remaining non-moving Defendants on the non-contractual claims.. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 09/17/2012)
09/17/2012		TEXT-ONLY CERTIFICATE OF SERVICE re 237 Order on Motion for Leave to File, Order on Motion for Summary Judgment, Order on Motion to Strike, Order on Motion for Partial Summary Judgment, on Victor M. Mercado at 7066 SE Bay Hill Drive, Stuart, FL 34997. (LWag) (Entered: 09/17/2012)
09/17/2012		TEXT-ONLY CERTIFICATE OF SERVICE re 237 Order on Motion for Leave to File, Order on Motion for Summary Judgment, Order on Motion to Strike, Order on Motion for Partial Summary Judgment, on Kwame Kilpatrick at 455 E FM 1382, Suite 3-136, Cedar Hill, TX 75104. (LWag) (Entered: 09/17/2012)
09/21/2012	238	Ex Parte MOTION to Extend Summons and to Allow Permission to Serve by Alternate Means by City of Detroit, Detroit Water and Sewerage Department. (Watson, Jerome) (Entered: 09/21/2012)
09/23/2012	239	Amended MOTION Ex Parte to Extend and Issue Second Summons by City of Detroit, Detroit Water and Sewerage Department. (Watson, Jerome) (Entered: 09/23/2012)
09/24/2012	240	Amended MOTION for Leave to File <i>First Amended Complaint</i> by All Plaintiffs. (Attachments: # 1 Exhibit A - Revised Proposed First Amended Complaint, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit) (Badalamenti, Raechel) (Entered: 09/24/2012)
09/24/2012	241	RESPONSE to 237 Order on Motion for Leave to File,,, Order on Motion for Summary Judgment,,,,, Order on Motion to Strike,,, Order on Motion for Partial Summary Judgment,, by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 09/24/2012)
09/29/2012	242	ORDER granting 239 Motion to Extend the Service Deadline and Receive New Summons for defendant Derrick A. Miller. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 09/29/2012)
10/03/2012	243	TRANSCRIPT of Motion Hearing held on 7/25/12. (Court Reporter/Transcriber: Christin E. Russell) (Number of Pages: 48) The parties have 21 days to file with the court and Court Reporter/Transcriber a Redaction Request of this transcript. If no request is filed, the transcript may be made

		remotely electronically available to the public without redaction after 90 days. Redaction Request due 10/24/2012. Redacted Transcript Deadline set for 11/5/2012. Release of Transcript Restriction set for 1/2/2013. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, the transcript is publicly available. (Russell, C.) (Entered: 10/03/2012)
10/03/2012		TEXT-ONLY CERTIFICATE OF SERVICE of Transcript on Kwame Kilpatrick at 455 E. FM 1382, Suite 3-136, Cedar Hill, TX 75104. (Russell, C.) (Entered: 10/03/2012)
10/05/2012		Attorney Lauren DuVal Donofrio is discontinued from receiving Notices of Electronic Filing. Reason: No longer with firm. (Donofrio, Lauren) (Entered: 10/05/2012)
10/08/2012	244	RESPONSE to 240 Amended MOTION for Leave to File <i>First Amended Complaint</i> filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 10/08/2012)
10/08/2012	245	RESPONSE to 240 Amended MOTION for Leave to File <i>First Amended Complaint</i> filed by Anthony Soave. (Fallucca, Thomas) (Entered: 10/08/2012)
10/09/2012	246	RESPONSE to 240 Amended MOTION for Leave to File <i>First Amended Complaint (in Opposition)</i> filed by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 10/09/2012)
10/15/2012	247	REPLY to Response re 240 Amended MOTION for Leave to File <i>First Amended Complaint re: the D'Agostini Defendant's Memorandum of Law (Docket #244)</i> filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 10/15/2012)
10/15/2012	248	REPLY to Response re 240 Amended MOTION for Leave to File <i>First Amended Complaint re: Defendant Soave's Response in Opposition (Docket #245)</i> filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 10/15/2012)
10/17/2012	249	REPLY to Response re 240 Amended MOTION for Leave to File <i>First Amended Complaint Re: Inland Defendant's Brief in Opposition (Docket #246)</i> filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 10/17/2012)
10/31/2012	250	MOTION for Sanctions <i>under Rule 11 against counsel for the Macomb Interceptor Drain Drainage District</i> by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 10/31/2012)
10/31/2012	251	OPINION AND ORDER GRANTING Summary Judgment to the Non-Moving Defendants and DENYING 240 Plaintiff's Motion to Amend the Complaint. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 10/31/2012)
10/31/2012		

		TEXT-ONLY CERTIFICATE OF SERVICE re 251 Order on Motion for Leave to File on Kwame Kilpatrick at 455 E FM 1382, Suite 3-136, Cedar Hill, TX 75104. (LWag) (Entered: 10/31/2012)
10/31/2012	252	MOTION for Sanctions (<i>Rule 11</i>) With Respect to Plaintiff Macomb Interceptor Drain Drainage District's Motion for Leave to File (Revised) First Amended Complaint and Proposed (Revised) First Amended Complaint by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A - Rule 11 Communication Notice, # 3 Exhibit B - Email Communication, # 4 Exhibit C - Inland Defendants' Response) (Poirier, David) (Entered: 10/31/2012)
11/14/2012	253	MOTION to Dismiss <i>Counts III and VIII of the City of Detroit's Complaint-In-Intervention</i> by L. D'Agostini & Sons, Inc.. (Attachments: # 1 Exhibit Ex. 1, DWSD Suspension and Debarment Policy, # 2 Exhibit Ex. 2, Trans. of Hearing on Walbridge Aldinger, Co.s Motion for a TRO and Preliminary Injunction, Feb. 7, 2012, # 3 Exhibit Ex. 3, Letter from James Fausone to David Zack, dated Jan. 26, 2012, # 4 Exhibit Ex. 4, Transcript of March 7, 2012 Debarment Hearing, # 5 Exhibit Ex. 5, Minutes of the March 14, 2012 DWSD Board Meeting) (Zack, David) (Entered: 11/14/2012)
11/14/2012	254	MOTION for Sanctions <i>under Rule 11 against the City of Detroit</i> by L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 11/14/2012)
11/14/2012	255	RESPONSE to 250 MOTION for Sanctions <i>under Rule 11 against counsel for the Macomb Interceptor Drain Drainage District</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Exhibit Exhibit D, # 5 Exhibit Exhibit E, # 6 Exhibit Exhibit F, # 7 Exhibit Exhibit G, # 8 Exhibit Exhibit H, # 9 Exhibit Exhibit I) (Badalamenti, Raechel) (Entered: 11/14/2012)
11/14/2012	256	MOTION for Reconsideration re 251 Order on Motion for Leave to File by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit 1 re: Rohrscheib File, # 2 Exhibit 2 re: Great Lakes Diving, # 3 Exhibit 3 re: NTH Engineering File) (Badalamenti, Raechel) (Entered: 11/14/2012)
11/16/2012	257	Emergency MOTION for Sanctions <i>Regarding Unauthorized Ex Parte Subpoenas</i> by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc., Dennis Oszust, Walter Rozycki, Anthony Soave, Robert L. Williams. (Attachments: # 1 Exhibit Ex. 1, E-mail from David M. Zack to Raechel Badalamenti, Nov. 15, 2012, 11:40 a.m., # 2 Exhibit Ex. 2, E-mail from Raechel Badalamenti to David M. Zack, Nov. 15, 2012, 1:27 p.m., # 3 Exhibit Ex. 3, Subpoena directed to NTH, # 4 Exhibit Ex. 4, Subpoena directed to Superior Engineering, # 5 Exhibit Ex. 5, Subpoena directed to Inland, # 6 Exhibit Ex. 6, Grievance Administrator v. Stefani, No. 09-47-GA, Attorney Discipline Board, May 11, 2011)) (Zack, David) (Entered: 11/16/2012)
11/16/2012	258	Ex Parte MOTION for Leave to File <i>to File a Response to the Macomb Interceptor Drain Drainage District's Motion for Partial Reconsideration</i> by L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 11/16/2012)

11/19/2012	259	STIPULATION AND ORDER Extending Time to File a response as to 252 MOTION for Sanctions (<i>Rule 11</i>) With Respect to Plaintiff Macomb Interceptor Drain Drainage District's Motion for Leave to File (Revised) First Amended Complaint and Proposed (Revised) First Amended Complaint : (Responses due by 11/20/2012) Signed by District Judge Robert H. Cleland. (LWag) (Entered: 11/19/2012)
11/19/2012	260	RESPONSE to 252 MOTION for Sanctions (<i>Rule 11</i>) With Respect to Plaintiff Macomb Interceptor Drain Drainage District's Motion for Leave to File (Revised) First Amended Complaint and Proposed (Revised) First Amended Complaint filed by All Plaintiffs. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F) (Badalamenti, Raechel) (Entered: 11/19/2012)
11/19/2012	261	Ex Parte MOTION For Leave to File a Response to Plaintiff's Motion for Partial Reconsideration by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 11/19/2012)
11/21/2012		REQUEST for SUMMONS for Derrick A. Miller. (Sahu, Saura) (Entered: 11/21/2012)
11/26/2012	262	SUMMONS Issued for *Derrick A. Miller* (KKra) (Entered: 11/26/2012)
11/26/2012	263	REPLY to Response re 250 MOTION for Sanctions <i>under Rule 11 against counsel for the Macomb Interceptor Drain Drainage District</i> filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 11/26/2012)
11/28/2012	264	RESPONSE to 254 MOTION for Sanctions <i>under Rule 11 against the City of Detroit</i> filed by City of Detroit, Detroit Water and Sewerage Department. (Attachments: # 1 Exhibit 1. LD&S Br. Served Copy) (Watson, Jerome) (Entered: 11/28/2012)
11/30/2012	265	MOTION for Certificate of Appealability by All Plaintiffs. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Badalamenti, Raechel) Modified on 12/4/2012 (PMil).[DOCUMENT ENTITLED PLAINTIFF'S MOTION FOR CERTIFICATION PURSUANT TO FEDERAL RULE 54(b) REGARDING ORDERS DATED 9/17/2012 AND 10/31/2012 AND/OR FOR AN ORDER CERTIFYING AN INTERLOCUTORY APPEAL UNDER 28U.S.C.1292(b)] (Entered: 11/30/2012)
11/30/2012	266	RESPONSE to 257 Emergency MOTION for Sanctions <i>Regarding Unauthorized Ex Parte Subpoenas</i> filed by Macomb Interceptor Drain Drainage District. (Badalamenti, Raechel) (Entered: 11/30/2012)
12/05/2012	267	RESPONSE to 253 MOTION to Dismiss <i>Counts III and VIII of the City of Detroit's Complaint-In-Intervention</i> filed by City of Detroit, Detroit Water and Sewerage Department. (Watson, Jerome) (Entered: 12/05/2012)
12/05/2012	268	REPLY to Response re 254 MOTION for Sanctions <i>under Rule 11 against the City of Detroit</i> filed by L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 12/05/2012)

12/07/2012	269	REPLY to Response re 257 Emergency MOTION for Sanctions <i>Regarding Unauthorized Ex Parte Subpoenas</i> filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc., Dennis Oszust, Walter Rozycki, Anthony Soave, Robert L. Williams. (Attachments: # 1 Exhibit Ex. 1, Transcript of April 4, 2012 hearing, # 2 Exhibit Ex. 2, Transcript of July 25, 2012 hearing, # 3 Exhibit Ex. 3, E-mail from David M. Zack, Dec. 3, 2012, 3:59 p.m.) (Zack, David) (Entered: 12/07/2012)
12/07/2012	270	STIPULATED ORDER of Dismissal with prejudice as to the Inland Waters Pollution Control, Inc.as to the Intervening Complaint. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 12/07/2012)
12/13/2012	271	REPLY to Response re 252 MOTION for Sanctions (<i>Rule 11</i>) <i>With Respect to Plaintiff Macomb Interceptor Drain Drainage District's Motion for Leave to File (Revised) First Amended Complaint and Proposed (Revised) First Amended Complaint</i> filed by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 12/13/2012)
12/14/2012	272	RESPONSE to 265 MOTION for Certificate of Appealability filed by Anthony Soave. (Todd, Gordon) (Entered: 12/14/2012)
12/14/2012	273	RESPONSE <i>Brief in Opposition to Plaintiff's Motion for Certification Pursuant to Rule 54(B) Regarding Orders Dated 9//17/2012 and 10/31/2012 and/or For an Order Certiffying an Interlocutory Appeal Under 28 U.S.C. 1292(B)</i> by Inland Waters Pollution Control, Inc., Dennis Oszust, Benjamin Rosenberg, Rotor Electric Company of Michigan, LLC, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 12/14/2012)
12/14/2012	274	NOTICE of Joinder/Concurrence in 272 Response to Motion filed by Anthony Soave, 273 Response (Free), filed by Rotor Electric Company of Michigan, LLC, Benjamin Rosenberg, Walter Rozycki, Dennis Oszust, Inland Waters Pollution Control, Inc., Robert L. Williams by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc. (Zack, David) (Entered: 12/14/2012)
12/17/2012	275	NOTICE of Joinder/Concurrence in 274 Notice of Joinder/Concurrence, filed by Antonio D'Agostini, L. Robert D'Agostini, James D'Agostini, L. D'Agostini & Sons, Inc. by Mark E O'Laughlin, O'Laughlin Construction Company (Noonan, Thomas) (Entered: 12/17/2012)
12/17/2012	276	RESPONSE to 265 MOTION for Certificate of Appealability filed by Marco Mersino, Rodney A Mersino, Mersino Dewatering, Inc.. (Mersino, Paul) Modified on 12/19/2012 (PMil).[DOCUMENT ENTITLED THE MERSINO WATERING DEFENDANTS' NOTICE OF CONCURRENCE WITH CO-DEFENDANTS' RESPONSES IN OPPOSITION TO MIDD'S MOTION FOR CERTIFICATION] (Entered: 12/17/2012)
12/18/2012	277	NOTICE of Joinder/Concurrence in by Perry Mehta (Kaplovitz, Ronald) Modified on 12/19/2012 (PMil).[DOCUMENT ENTITLED FUTURENET GROUP, INC. DBA MULTI SOLUTIONS GROUP INC. AND PERRY MEHTA'S NOTICE OF JOINDER IN OPPOSITION TO THE MACOMB

		INTERCEPTOR DRAIN DRAINAGE DISTRICT'S MOTION FOR CERTIFICATION] (Entered: 12/18/2012)
12/21/2012	278	REPLY to Response re 265 MOTION for Certificate of Appealability filed by All Plaintiffs. (Badalamenti, Raechel) (Entered: 12/21/2012)
12/24/2012	279	REPLY to Response re 253 MOTION to Dismiss <i>Counts III and VIII of the City of Detroit's Complaint-In-Intervention</i> filed by L. D'Agostini & Sons, Inc.. (Attachments: # 1 Exhibit Ex. 1, M.L. Elrick, Jennifer Dixon and Jim Schaefer, Detroit mayor's pal got inside scoop on contracts, Detroit Free Press, March 9, 2008, # 2 Exhibit Ex. 2, M.L. Elrick and Jennifer Dixon, 7-million assist for Mayor's friend?; Pal called unfit for hotel project; City denies influence, Detroit Free Press, April 6, 2008, # 3 Exhibit Ex. 3, M.L. Elrick, Kilpatrick helped friends get grants; A lasting friendship: Mayor weathers it all with Ferguson, Detroit Free Press, May 18, 2008, # 4 Exhibit Ex. 4, The Fix for that Sinking Feeling, In the Flow (DWSD Winter 2005)) (Zack, David) (Entered: 12/24/2012)
12/27/2012	280	ORDER granting 258 Motion and granting 261 Motion to Respond to Plaintiff's Motion for Partial Reconsideration Response due by 1/4/2013. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 12/27/2012)
12/28/2012	281	NOTICE of Appearance by Albert B. Addis on behalf of Macomb Interceptor Drain Drainage District. (Addis, Albert) (Entered: 12/28/2012)
01/04/2013	282	RESPONSE to 256 MOTION for Reconsideration re 251 Order on Motion for Leave to File <i>The Inland Defendants' Brief in Opposition to Plaintiff's Motion for Partial Reconsideration</i> filed by Inland Waters Pollution Control, Inc., Dennis Oszust, Walter Rozycki, Robert L. Williams. (Poirier, David) (Entered: 01/04/2013)
01/04/2013	283	RESPONSE to 256 MOTION for Reconsideration re 251 Order on Motion for Leave to File filed by Antonio D'Agostini, James D'Agostini, L. Robert D'Agostini, L. D'Agostini & Sons, Inc.. (Zack, David) (Entered: 01/04/2013)
01/08/2013	284	Emergency MOTION for Alternate Service (<i>Ex Parte</i>) by City of Detroit, Detroit Water and Sewerage Department. (Attachments: # 1 Exhibit Plea Agreement, # 2 Exhibit Garibay v Sullivan) (Watson, Jerome) (Entered: 01/08/2013)
01/10/2013	285	OPINION AND ORDER denying 284 Intervening Plaintiff's Emergency Motion for Alternate Service of Process. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 01/10/2013)
01/15/2013	286	CERTIFICATE of Service/Summons Returned Executed. [DERRICK MILLER WAS ONLY SERVED NOT] City of Detroit served on 1/14/2013, answer due 2/4/2013; Detroit Water and Sewerage Department served on 1/14/2013, answer due 2/4/2013. (Watson, Jerome) [DOCKET ERROR-WRONG PARTY SELECTED SHOULD BE DERRICK MILLER] Modified on 1/16/2013 (TMcg). (Entered: 01/15/2013)
02/11/2013	287	OPINION AND ORDER denying Satellite Motions - 250 Motion for Sanctions; 252 Motion for Sanctions; 253 Motion to Dismiss; 254 Motion for

		Sanctions; 256 Motion for Reconsideration ; 257 Motion for Sanctions. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/11/2013)
02/11/2013	288	ORDER Vacating 287 Order on Motion for Sanctions,, Order on Motion to Dismiss,, Order on Motion for Reconsideration, Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/11/2013)
02/11/2013	289	AMENDED OPINION AND ORDER DENYING Satellite Motions re - 256 MOTION for Reconsideration re 251 Order on Motion for Leave to File, 252 MOTION for Sanctions (<i>Rule 11</i>) <i>With Respect to Plaintiff Macomb Interceptor Drain Drainage District's Motion for Leave to File (Revised) First Amended Complaint and Proposed (Revised) First Amended Complaint</i> , 265 MOTION for Certificate of Appealability filed by Macomb Interceptor Drain Drainage District, 254 MOTION for Sanctions <i>under Rule 11 against the City of Detroit</i> , 250 MOTION for Sanctions <i>under Rule 11 against counsel for the Macomb Interceptor Drain Drainage District</i> , 257 Emergency MOTION for Sanctions <i>Regarding Unauthorized Ex Parte Subpoenas</i> . Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/11/2013)
02/11/2013	290	OPINION AND ORDER GRANTING 253 MOTION to Dismiss <i>Counts III and VIII of the City of Detroit's Complaint-In-Intervention</i> filed by L. D'Agostini & Sons, Inc., DISMISSING WITHOUT PREJUDICE Counts III and VIII of Detroit's Complaint and the City of Detroit may submit an Amended Complaint by 2/18/2013. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 02/11/2013)
02/11/2013		TEXT-ONLY CERTIFICATE OF SERVICE re 289 Order, 288 Order to Vacate, 290 Order, 287 Order on Motion for Sanctions, Order on Motion to Dismiss,, Order on Motion for Reconsideration, on Kwame Kilpatrick at 455 E. FM 1382, Suite 3-136, Cedar Hill, TX 75104. (LWag) (Entered: 02/11/2013)
02/21/2013	291	NOTICE TO APPEAR BY TELEPHONE: Status Conference set for 2/28/2013 01:30 PM before District Judge Robert H. Cleland (LWag) (Entered: 02/21/2013)
02/28/2013		Minute Entry - Telephone Conference held on 2/28/2013 before District Judge Robert H. Cleland. Disposition: Order to be issued setting briefing schedule for a motion to dismiss from Inland (LWag) (Entered: 02/28/2013)
03/05/2013	292	ORDER Setting Briefing Schedule and Vacating Deadline (Inland Waters' Motion to Dismiss due by 3/15/2013; Responses due by 4/12/2013, Replies due by 4/26/2013) and vacating the deadline for the City of Detroit to amend the complaint until further order of the Court. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 03/05/2013)
03/08/2013	293	NOTICE by L. D'Agostini & Sons, Inc. re 292 Order, Set Motion and R&R Deadlines/Hearings,, 290 Order, <i>Letter Requesting Reinstatement of February 18, 2013 Deadline for City of Detroit to File an Amended Complaint</i> (Zack, David) (Entered: 03/08/2013)
03/15/2013	294	Amended MOTION Inland now brings this amended motion to dismiss with prejudice the remaining one breach of contract count in MIDD's Complaint.

		by Inland Waters Pollution Control, Inc.. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Speedy Effort Fixes Macomb Interceptor Giant Sinkhole, MI-APWA Great Lakes Reporter, Spring 2006, # 3 Exhibit Emergency Repair of Oakland-Macomb Interceptor Collapse: A Case History, N. Am. Tunneling 415 (2006), # 4 Exhibit CS-1368, Amendment 3) (Poirier, David) Modified on 3/15/2013 (PMil).[DOCUMENT ENTITLED DEFENDANT INLAND WATERS POLLUTION CONTROL,INC.'S AMENDED MOTION TO DISMISS] (Entered: 03/15/2013)
03/18/2013	295	ORDER Construing as a Motion to Reconsider re: 293 Notice/Letter filed by L. D'Agostini & Sons, Inc. and DENYING the letter seeking relief. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 03/18/2013)
04/12/2013	296	MOTION for Leave to File Excess Pages by Macomb Interceptor Drain Drainage District. (Addis, Albert) (Entered: 04/12/2013)
04/12/2013		TEXT-ONLY ORDER GRANTING 296 MOTION for Leave to File Excess Pages filed by Macomb Interceptor Drain Drainage District. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 04/12/2013)
04/12/2013	297	RESPONSE to 294 Amended MOTION Inland now brings this amended motion to dismiss with prejudice the remaining one breach of contract count in MIDDD's Complaint. <i>Response to Inland Waters Amended Motion to Dismiss</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Index of Exhibits, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit) (Addis, Albert) (Entered: 04/12/2013)
04/12/2013	298	RESPONSE to 294 Amended MOTION Inland now brings this amended motion to dismiss with prejudice the remaining one breach of contract count in MIDDD's Complaint. <i>Exhibit 11 to Plaintiff's Response to Inland waters Amended Motion to Dismiss</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit) (Addis, Albert) (Entered: 04/12/2013)
04/12/2013	299	RESPONSE to 294 Amended MOTION Inland now brings this amended motion to dismiss with prejudice the remaining one breach of contract count in MIDDD's Complaint. <i>Exhibit 11, Part 2 of Plaintiff's Response to Defendant Inlands Amended Motion to Dismiss</i> filed by Macomb Interceptor Drain Drainage District. (Attachments: # 1 Exhibit) (Addis, Albert) (Entered: 04/12/2013)
04/26/2013	300	Ex Parte MOTION for Leave to File Excess Pages <i>to File Reply Brief in Excess of Five Pages</i> by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 04/26/2013)
04/26/2013	301	REPLY to Response re 294 Amended MOTION Inland now brings this amended motion to dismiss with prejudice the remaining one breach of contract count in MIDDD's Complaint. <i>Defendant Inland Waters Pollution Control, Inc.'s Reply in Further Support of Amended Motion to Dismiss</i> filed by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 04/26/2013)
05/07/2013		

		TEXT-ONLY ORDER GRANTING 300 Ex Parte MOTION for Leave to File Excess Pages to File <i>Reply Brief in Excess of Five Pages</i> filed by Inland Waters Pollution Control, Inc.. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 05/07/2013)
07/03/2013	302	ORDER granting 294 Defendant Inland Waters Pollution Control's Motion to dismiss and directing the plaintiff to submit the amended complaint (alleging the one contract claim) no later that 7/15/2013.. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 07/03/2013)
07/05/2013	303	Notice of E-mail Delivery Failure as to attorney Joseph W. Uhl. Bounced NEF for 302 Order on Motion - Free. (TMcg) (Entered: 07/05/2013)
07/11/2013	304	Ex Parte MOTION TO EXTEND Time to File First Amended Complaint by All Plaintiffs. (Addis, Albert) (Entered: 07/11/2013)
07/11/2013	305	RESPONSE to 304 Ex Parte MOTION TO EXTEND Time to File First Amended Complaint <i>Brief in Opposition</i> filed by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 07/11/2013)
07/12/2013	306	REPLY to Response re 304 Ex Parte MOTION TO EXTEND Time to File First Amended Complaint filed by All Plaintiffs. (Addis, Albert) (Entered: 07/12/2013)
07/12/2013		TEXT-ONLY ORDER GRANTING 304 Ex Parte MOTION TO EXTEND Time to File First Amended Complaint filed by Macomb Interceptor Drain Drainage District - Amended Complaint due no later than 7/22/2013 Signed by District Judge Robert H. Cleland. (LWag) (Entered: 07/12/2013)
07/22/2013	307	AMENDED COMPLAINT with Jury Demand filed by All Plaintiffs against All Defendants. NO NEW PARTIES ADDED. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R, # 20 Exhibit S, # 21 Exhibit T, # 22 Exhibit U, # 23 Exhibit V, # 24 Exhibit W) (Addis, Albert) (Entered: 07/22/2013)
08/06/2013	308	Ex Parte MOTION <i>to File Responsive Pleading to Plaintiff's Amended Complaint on or Before August 16, 2013</i> by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 08/06/2013)
08/06/2013	309	RESPONSE to 308 Ex Parte MOTION <i>to File Responsive Pleading to Plaintiff's Amended Complaint on or Before August 16, 2013</i> filed by All Plaintiffs. (Attachments: # 1 Exhibit) (Addis, Albert) (Entered: 08/06/2013)
08/13/2013		TEXT-ONLY ORDER Granting Inland Waters Pollution Control, Inc.'s 308 Ex Parte MOTION <i>to File Responsive Pleading to Plaintiff's Amended Complaint on or Before August 16, 2013</i> (Response due by 8/16/2013). Signed by District Judge Robert H. Cleland. (Monda, H) (Entered: 08/13/2013)
08/16/2013	310	MOTION to Dismiss <i>Plaintiff Macomb Interceptor Drain Drainage District's First Amended Complaint</i> by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 08/16/2013)

08/20/2013	311	NOTICE OF HEARING on 310 MOTION to Dismiss <i>Plaintiff Macomb Interceptor Drain Drainage District's First Amended Complaint</i> . Motion Hearing set for 10/16/2013 at 2:00 PM before District Judge Robert H. Cleland. (Monda, H) (Entered: 08/20/2013)
09/06/2013	312	RESPONSE to 310 MOTION to Dismiss <i>Plaintiff Macomb Interceptor Drain Drainage District's First Amended Complaint</i> filed by All Plaintiffs. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C) (Addis, Albert) (Entered: 09/06/2013)
10/01/2013	313	REPLY to Response re 310 MOTION to Dismiss <i>Plaintiff Macomb Interceptor Drain Drainage District's First Amended Complaint in Further Support</i> filed by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 10/01/2013)
10/11/2013		TEXT-ONLY NOTICE: Hearing on 10/16/13 is Cancelled re 310 MOTION to Dismiss <i>Plaintiff Macomb Interceptor Drain Drainage District's First Amended Complaint</i> , (LWag) (Entered: 10/11/2013)
11/07/2013	314	OPINION AND ORDER denying 310 Defendant's Motion to Dismiss Plaintiff's First Amended Complaint. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 11/07/2013)
11/08/2013	315	NOTICE TO APPEAR: Scheduling Conference set for 11/20/2013 10:00 AM before District Judge Robert H. Cleland (LWag) (Entered: 11/08/2013)
11/08/2013		TEXT-ONLY CERTIFICATE OF SERVICE re 314 Order on Motion to Dismiss, 315 Notice to Appear on Kwame Kilpatrick Pris. No. 44678-039 at FCI MILAN, P. O. Box 1000, Milan, MI 48160. (LWag) (Entered: 11/08/2013)
11/08/2013		TEXT-ONLY CERTIFICATE OF SERVICE re 314 Order on Motion to Dismiss, 315 Notice to Appear on Bobby W. Ferguson Pris. No. 44950-039 at FCI Milan, P.O. Box 1000, Milan, MI 48160. (LWag) (Entered: 11/08/2013)
11/13/2013		Set Deadlines/Hearings: AT THE REQUEST OF COUNSEL - Status Conference re-set for 11/26/2013 10:00 AM before District Judge Robert H. Cleland (LWag) (Entered: 11/13/2013)
11/19/2013	316	DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Addis, Albert) (Entered: 11/19/2013)
11/20/2013	317	DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Poirier, David) (Entered: 11/20/2013)
11/25/2013	318	ANSWER to Amended Complaint with Affirmative Defenses with Jury Demand by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 11/25/2013)
11/25/2013	319	MOTION for Reconsideration re 314 Order on Motion to Dismiss <i>Plaintiff's First Amended Complaint</i> by Inland Waters Pollution Control, Inc.. (Poirier, David) (Entered: 11/25/2013)
11/25/2013	320	

		Mail Returned as Undeliverable. Mail sent to Bobby W. Ferguson re Certificate of Service, 314 Order on Motion to Dismiss, 315 Notice to Appear (DWor) (Entered: 11/26/2013)
11/26/2013	321	CERTIFICATE OF SERVICE by Inland Waters Pollution Control, Inc. <i>Upon Bobby Ferguson and Kwame Kilpatrick</i> (Poirier, David) (Entered: 11/26/2013)
11/26/2013		Minute Entry for proceedings held before District Judge Robert H. Cleland: Status Conference held on 11/26/2013 (LWag) (Entered: 11/27/2013)
11/27/2013		TEXT-ONLY CERTIFICATE OF SERVICE re 314 Order on Motion to Dismiss on Bobby W. Ferguson Pris. No. 44950-039 at FCI Milan, P.O. Box 1000, Milan, MI 48160. (Re-sent on 11/27/2013) (LWag) (Entered: 11/27/2013)
12/10/2013	322	SCHEDULING ORDER: Discovery due by 10/27/2014 Dispositive Motion Cut-off set for 12/1/2014 Final Pretrial Conference set for 3/9/2015 02:00 PM before District Judge Robert H. Cleland Jury Trial set for 3/23/2015 09:00 AM before District Judge Robert H. Cleland Signed by District Judge Robert H. Cleland. (Refer to image for additional dates) (LWag) (Entered: 12/10/2013)
12/16/2013	323	[STRICKEN} DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Addis, Albert) Modified on 12/19/2013 (LWag). (Entered: 12/16/2013)
12/18/2013	324	PRELIMINARY WITNESS LIST by Detroit Water and Sewerage Department (Watson, Jerome) (Entered: 12/18/2013)
12/18/2013	325	Preliminary WITNESS LIST by Inland Waters Pollution Control, Inc. (Poirier, David) (Entered: 12/18/2013)
12/18/2013	326	PLAINTIFF MACOMB INTERCEPTOR DRAIN DRAINAGE DISTRICT PRELIMINARY WITNESS LIST by All Plaintiffs (Addis, Albert) (Entered: 12/18/2013)
12/19/2013		TEXT-ONLY ORDER STRIKING 323 Discovery Plan - Rule 26f. 26(a) Initial Disclosures are not to be filed on the docket Signed by District Judge Robert H. Cleland. (LWag) (Entered: 12/19/2013)
12/23/2013	327	OPINION AND ORDER denying 319 Plaintiff's Motion for Reconsideration. Signed by District Judge Robert H. Cleland. (LWag) (Entered: 12/23/2013)
06/06/2014	328	[STRICKEN] NOTICE by All Plaintiffs (Addis, Albert) Modified on 6/6/2014 (TMcg). (Entered: 06/06/2014)
06/06/2014		NOTICE of Error directed to: Albert B. Addis re 328 Notice (Other). Document is prohibited discovery, disclosure or a certificate of service thereof. Document was stricken. [No Image Associated with this docket entry] (TMcg) (Entered: 06/06/2014)

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PACER Login:	mc3037	Client Code:	022765/00202
Description:	Docket Report	Search Criteria:	2:11-cv-13101-RHC-MKM
Billable Pages:	23	Cost:	2.30

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT, a municipal
corporation, and its Detroit Water and
Sewerage Department,

Intervening Plaintiff,

vs.

KWAME KILPATRICK, an individual;
BERNARD N. KILPATRICK, an individual;
VICTOR M. MERCADO, an individual;
DERRICK A. MILLER, an individual;
BOBBY W. FERGUSON, an individual;
FERGUSON ENTERPRISES, INC., a
Michigan corporation; XCEL
CONSTRUCTION SERVICES, INC., a
Michigan corporation; INLAND WATERS
POLLUTION CONTROL, INC., a Michigan
corporation; INLAND/XCEL LLC, a
Michigan limited liability corporation;
LAKESHORE ENGINEERING SERVICES,
INC., a Michigan corporation; and L.
D'AGOSTINI & SONS, INC. D/B/A LD&S,
a Michigan corporation;

Defendants;

and

MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT,

Plaintiff,

vs.

KWAME KILPATRICK, et al.,

Defendants.

Case No. 2:11-CV-13101

Hon. Robert H. Cleland
Mag. Judge Mona K. Majzoub

**INTERVENING-PLAINTIFF
CITY OF DETROIT AND ITS
DETROIT WATER AND
SEWERAGE DEPARTMENT'S
MOTION TO INTERVENE AS A
MATTER OF RIGHT UNDER
FED. R. CIV. P. 24(A)**

MILLER, CANFIELD, PADDOCK AND STONE, P.L.L.C.

**INTERVENING-PLAINTIFF CITY OF DETROIT AND ITS DETROIT WATER AND
SEWERAGE DEPARTMENT'S MOTION TO INTERVENE AS A MATTER OF
RIGHT UNDER FED. R. CIV. P. 24(A)**

For the reasons set forth in the Brief filed concurrently with this Motion, Intervening-Plaintiff City of Detroit and its Detroit Water and Sewerage Department, through its attorneys Miller, Canfield, Paddock and Stone, P.L.C., respectfully asks the Court to enter an order allowing it to intervene in this lawsuit as a matter of right pursuant to Fed. R. Civ. P. 24(a).

On January 9 and 10, counsel for the Intervening-Plaintiff attempted to contact the attorney of record for Plaintiff and each Defendant or, where appropriate, the Defendant and to explain the nature of the relief sought in this Motion. Pursuant to their counsel, Joseph M. Macksound, the J-Mack Agency, Anthony Soave, Perry Mehta, FutureNet Group, Inc., Dubai's Landscaping Services, Inc., Lawrence R. Dubay, Superior Engineering Associates, Inc., and Bharat Patel do not oppose the relief sought. Counsel for the Intervening-Plaintiff was unable to obtain concurrence from any other Defendant in the relief sought, thereby necessitating this Motion.

WHEREFORE, Intervening-Plaintiff City of Detroit and its Detroit Water and Sewerage Department requests this Court grant its Motion and enter an order allowing it to intervene in this lawsuit as a matter of right pursuant to Fed. R. Civ. P. 24(a).

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Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
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Dated: January 10, 2012

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT, a municipal
corporation, and its Detroit Water and
Sewerage Department,

Intervening Plaintiff,

vs.

KWAME KILPATRICK, an individual;
BERNARD N. KILPATRICK, an individual;
VICTOR M. MERCADO, an individual;
DERRICK A. MILLER, an individual;
BOBBY W. FERGUSON, an individual;
FERGUSON ENTERPRISES, INC., a
Michigan corporation; XCEL
CONSTRUCTION SERVICES, INC., a
Michigan corporation; INLAND WATERS
POLLUTION CONTROL, INC., a Michigan
corporation; INLAND/XCEL LLC, a
Michigan limited liability corporation;
LAKESHORE ENGINEERING SERVICES,
INC., a Michigan corporation; and L.
D'AGOSTINI & SONS, INC. D/B/A LD&S,
a Michigan corporation;

Defendants;

and

MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT,

Plaintiff,

vs.

KWAME KILPATRICK, et al.,

Defendants.

Case No. 2:11-CV-13101

Hon. Robert H. Cleland
Mag. Judge Mona K. Majzoub

**INTERVENING-PLAINTIFF
CITY OF DETROIT AND ITS
DETROIT WATER AND
SEWERAGE DEPARTMENT'S
BRIEF IN SUPPORT OF ITS
MOTION TO INTERVENE AS A
MATTER OF RIGHT UNDER
FED. R. CIV. P. 24(A)**

MILLER, CANFIELD, PADDOCK AND STONE, P.L.L.C.

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STATEMENT OF ISSUES PRESENTED

- I. Are the City of Detroit and its Detroit Water and Sewerage Department (together referred to as “DWSD”) entitled to intervene in this lawsuit as a matter of right under Fed. R. Civ. P. 24(a) because: (1) DWSD has legal interests related to the transactions that are the subject of action; (2) the disposition of the action may, as a practical matter, impair or impede DWSD’s ability to protect its legal interests; (3) DWSD’s legal interests are not adequately represented by existing parties; and (4) DWSD’s application to intervene is timely?

Intervening-Plaintiff City of Detroit answers: “Yes”

Plaintiff Macomb Interceptor Drain Drainage District answers:

Defendants answer:

MOST APPROPRIATE OR CONTROLLING AUTHORITIES

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MILLER, CANFIELD, PADDOCK AND STONE, P.L.L.C.

INTERVENING-PLAINTIFF CITY OF DETROIT AND ITS DETROIT WATER AND SEWERAGE DEPARTMENT’S BRIEF IN SUPPORT OF ITS MOTION TO INTERVENE AS A MATTER OF RIGHT UNDER FED. R. CIV. P. 24(A)

Last July, Plaintiff Macomb Interceptor Drain Drainage District (“MID”) sued 39 Defendants – including City of Detroit officials, a principal contractor and various subcontractors – alleging that Defendants engaged in a widespread corruption scheme against the City of Detroit and the Detroit Water and Sewerage Department (together referred to as “DWSD”) in connection with the repair of a sewer collapse at 15 Mile Road in the City of Sterling Heights in Macomb County. (Compl., ECF No. 1 at 3.) MID alleges that the unlawful activities arising out of this corrupt scheme were committed against DWSD. MID also alleges, however, that it holds all of DWSD’s rights of recovery for these unlawful activities as a result of the Macomb Interceptor Acquisition Agreement. In that Agreement, MID purchased from DWSD certain Macomb County sewer assets (the “Macomb System”), including the assets involved in the 15 Mile Road sewer repair, and MID was assigned all “rights under all contracts, warranties and guaranties that apply to services or goods related to the Macomb System.”

MID’s claims in this lawsuit include not only a breach of DWSD’s sewer-repair contract, but also various statutory and common-law torts based upon the unlawful activities committed against DWSD. In motions to dismiss, contrary to MID’s allegations, certain of the Defendants argue that the tort claims belong to DWSD and that MID lacks standing to bring these claims. (*See, e.g.*, Defs.’ Mots. to Dismiss, ECF Nos. 33, 40, 58.) DWSD seeks to intervene because the Defendants have placed its entitlement to the tort claims squarely at issue. Without attempting to resolve the issue at this point, it is clear that DWSD has an interest in this lawsuit.

DWSD also seeks to intervene because its interests here are significantly broader than the issues raised in the Complaint and related motions. MID incorporates by reference in its Complaint the First Superseding Indictment in a related criminal matter, *United States v. Kwame*

Kilpatrick, et al., E.D. Mich. Case No. 10-CR-20403, where the federal government not only alleges misconduct in relation to the 15 Mile Road collapse by some of the same parties who are Defendants here, but also describes a broad criminal conspiracy against DWSD in a wide variety of sewer and non-sewer related projects (the “Kilpatrick Indictment”). Adverse decisions in this case could impact DWSD’s broader interests, including its right to recover damages against Defendants for the other projects, which are the focus of the Kilpatrick Indictment. Neither MID nor any other party to the lawsuit is in a position to advocate for and protect DWSD’s broader interests.

Accordingly, pursuant to Federal Rule of Civil Procedure 24(a), DWSD timely files this motion seeking to intervene by right while this lawsuit is still in the early pleading stages.¹ For the reasons set forth herein, DWSD’s motion should be granted.

I. STATEMENT OF FACTS

On July 18, 2011, MID filed a six-count Complaint against 39 city officials and contractors, alleging that:

The primary cause of this action is a widespread scheme to overcharge the Detroit Water and Sewerage Department (“DWSD”) for time, labor and materials to stabilize and repair a sewer collapse at 15 Mile Road in . . . Sterling Heights . . . which is specifically identified in the *First Superseding Indictment* issued in Criminal Case No. 10-20403-NGE for a criminal RICO conspiracy, bribery, extortion, fraud, obstruction of justice, tax evasion and aiding and abetting. (Compl. ECF No. 1 ¶ 5.)

MID’s Complaint contains claims for breach of contract, civil RICO, violations of the Sherman Antitrust Act, violations of the Clayton Antitrust Act, fraud, and tortious interference with business relations. MID’s Complaint also incorporates by reference the First Superseding Indictment in *United States v. Kwame Kilpatrick, et al.*, E.D. Mich. Case No. 10-CR-20403,

¹ A copy of DWSD’s Proposed Intervenor Complaint is attached to this motion as Exhibit 4.

which includes the 15 Mile Road project as part of a broad criminal conspiracy committed by a number of parties in the present lawsuit.

Although Defendants committed their misconduct with respect to the 15 Mile Road collapse against DWSD, MID alleges that it obtained the right to the claims flowing from this misconduct as part of the Macomb Interceptor Acquisition Agreement (the “Macomb Acquisition Agreement”). (*Id.* ¶ 44.) The Macomb Acquisition Agreement transferred to MID the water/sewer assets located in Macomb County in exchange for payment of an amount equal to the “System Debt” as defined in the agreement. (*See* Exh. 1: Acquisition Agreement at art. 2.) Assigning to MID the “rights under all contracts, warranties and guaranties that apply to services or goods related to the Macomb System,” (*see, e.g.*, Exh. 1 ¶ 2.4), the Macomb Acquisition Agreement was part of a global settlement of disputes between the City of Detroit, DWSD and the Counties of Wayne, Oakland and Macomb, which were pending in *United States v. City of Detroit*, E.D. Mich. Case. No. 77-71100). (*See* Exh. 2: Settlement Agreement.)

The parties do not dispute that the assignment transferred DWSD’s contractual rights to MID in connection with the 15 Mile Road sewer-repair contract, which rights are set forth in Amendment No. 2 to the Consulting Services Contract entered into between the City of Detroit and Inland Waters Pollution Control, Inc. (“Inland Waters”). MID argues that the assignment clauses in the Macomb Acquisition Agreement also transferred tort claims. In motions to dismiss, various Defendants, including Inland Waters and L. D’Agostini & Sons, Inc., specifically dispute this point. LD&S argues that “the limited assignment clauses invoked by the [MID] do not assign tort claims.” (ECF No. 33 at 7.) These Defendants also argue that MID lacks standing as a matter of law to assert the federal statutory claims because it cannot piggy-back on the harm suffered by DWSD. (*See, e.g.*, ECF No. 33 at 9-10.) According to them, none of the various tort claims were ever assigned by DWSD.

It is clear from these pleadings and motions to dismiss that either MID or DWSD holds the tort claims. With both in the lawsuit, the matter can be determined on the merits with the full participation of all interested parties. Despite MID's efforts to pursue the Defendants' misconduct, there is a significant possibility that its approach will not fully advocate and protect DWSD's interests. There are significant differences in MID's and DWSD's approaches to the present litigation. For example, unlike the proposed Intervention Complaint, MID's Complaint does not allege fraudulent concealment, common-law conspiracy, or breach of fiduciary duty (or aiding and abetting or knowingly participating in a breach of fiduciary duty), and does not seek damages for disgorgement of profits or unjust enrichment.

The lawsuit is still in the early stages. Pursuant to the Court's Order, some Defendants' answers to the Complaint were not due until this month. In the meantime, some Defendants have filed answers. Others have filed motions to dismiss, including D'Agostini & Sons, Inc. (and the individual Defendants related to it), Inland Waters, and Anthony Soave. (*See* ECF Nos. 33, 40, 41, 58.) Almost all of the motions to dismiss raise the issues that are the subject matter of this Motion to Intervene. None of the motions have yet been heard.

II. ARGUMENT

A. Applicable Standards Under Rule 24.

Intervention may be by right or by permission. DWSD seeks to intervene as a matter of right. Fed. R. Civ. P. 24(a). Under Rule 24(a), DWSD is entitled to intervene as a matter of right upon a showing that: (1) DWSD has an interest related to the transactions that are the subject of action; (2) the disposition of the action may, as a practical matter, impair or impede DWSD's ability to protect that interest; (3) DWSD's interest is not adequately represented by existing parties; and (4) the application to intervene is timely. *United States v. Detroit Intern. Bridge Co.*, 7 F.3d 497, 499 (6th Cir. 1993); *see Commodities Exp. Co. v. City of Detroit*, 09-CV-11060-DT,

2009 WL 5171844 at *1-*2 (E.D. Mich. Dec. 21, 2009) (Cleland, J.) (Exh. 3). Each of these requirements is met here.

B. DWSD Has an Interest Related to the Transactions that Are the Subject of the Action.

DWSD has an interest in the tort claims alleged in this lawsuit. Defendants themselves argue that the tort claims asserted by MID actually belong to DWSD. The Sixth Circuit “opted for a rather expansive notion of the interest sufficient to invoke intervention of right.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). Although a party seeking intervention must show a “significantly protectable” interest at issue in the litigation, *Donaldson v. United States*, 400 U.S. 517, 532 (1971), which is “direct[and] substantial,” *Jansen*, 904 F.2d at 341, the Sixth Circuit reads these requirements broadly. “For example, an intervenor need not have the same standing necessary to initiate a lawsuit.” *Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) (citing *Miller*, 103 F.3d at 1245; *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1991)). In addition, an intervenor does not have to have “a specific legal or equitable interest.” *Miller*, 103 F.3d at 1245, *quoted in Grutter*, 188 F.3d at 398 (concluding interest in gaining admission to university was substantial enough). “[C]lose cases should be resolved in favor of recognizing an interest under Rule 24(a),” *id.* at 1247; let alone cases like this one where the interest is obvious.

A litigant is entitled to intervene where it could be entitled to a portion of the recovery. *See Horrigan v. Thompson*, 145 F.3d 1331 (Table), 1998 WL 246008, at *2 (6th Cir. May 7, 1998). If Defendants are right and MID’s tort claims actually belong to DWSD, then DWSD would certainly be entitled to a portion of any recovery awarded on those claims.

In addition, “[t]he possibility of adverse *stare decisis* effects provides intervenors with sufficient interest to join an action.” *Jansen*, 904 F.2d at 342 (class of intervenors whose interests

were protected by consent decree had sufficient interest to intervene in suit interpreting the decree because adverse interpretation of agreement could bind them). The torts here concern misconduct that, according to the federal criminal indictment, is a part of a broader fraudulent scheme perpetrated against the DWSD. DWSD's interests are likewise broader than MID's. Decisions about the part of the scheme raised by MID (such as whether a racketeering conspiracy existed, what its aims were and who it included) could have adverse *stare decisis* effects on DWSD's efforts to obtain redress for the whole scheme. This is sufficient to demonstrate the kind of interest that entitles DWSD to intervene. In light of its clear legal interests in the current lawsuit, DWSD is entitled to intervene by right.

C. Without Intervention, Disposition of the Lawsuit Will Impair or Impede DWSD's Ability to Protect Its Interests as a Practical Matter.

The potentially negative impact that resolution of the lawsuit may have on DWSD's interests also favors intervention. "To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is *possible* if intervention is denied. This burden is minimal." *Miller*, 103 F.3d at 1247 (emphasis added), *quoted in Grutter*, 188 F.3d at 399. *See also Grutter*, 188 F.3d at 400 (potential impairment of students' access to the university was enough to satisfy element).

Denial of DWSD's motion to intervene could impair or impede DWSD's interests for at least three reasons. First, procedurally the Court could reach an adverse decision as to the tort claims, such as finding that they are barred by relevant statutes of limitations. The statute of limitations defenses raised by some of the Defendants in motions to dismiss will likely involve conduct and action of DWSD, including what information DWSD knew or should have known. At least some of the Defendants ostensibly argue that as DWSD's assignee, MID's right to toll

the various statutes of limitations depends not upon what MID knew or should have known, but rather upon what DWSD knew or should have known.

Second, it is possible that the Court could make a decision on the merits without first determining whether the tort claims belong to MID or DWSD. Such a decision could impair DWSD's interests in these claims without providing DWSD an opportunity to be heard.

Third, requiring DWSD to resort to another forum in an effort to protect its interests would place it at a severe disadvantage because it would:

- (1) face the possibility that a court might find some or all of its claims or interests to be precluded by the results here if this case reaches a judgment first, *see generally Detroit Intern. Bridge Co.*, 7 F.3d at 501 (potential decision elsewhere about interests);
- (2) lose the benefit of this Court's growing knowledge and experience about this case, *see Horrigan*, 1998 WL 246008, at *3;
- (3) face the prospect that this Court will determine the overall pool of the damages based solely on MID's and Defendants' evidence (without allowing the DWSD to plead and prove facts that might increase the overall recovery), *see Purnell*, 925 F.2d at 949.

In addition, and as noted earlier, DWSD could face "the possibility of adverse *stare decisis* effects" if it is not allowed to intervene to protect its broader interests. *Jansen*, 904 F.2d at 342. The tort claims here involve some of the same misconduct, conspiracies and schemes that are alleged in other projects set forth in the Kilpatrick Indictment. Adverse decisions on various factual and legal issues could impact DWSD's rights to recover on these other projects.

Any one of these practical disadvantages would support finding a right to intervene. Taken together, they compel the conclusion that DWSD is entitled to intervene in this lawsuit.

D. MID Cannot Adequately Represent DWSD.

Courts do not impose a substantial burden to establish whether another party might fall short in representing the intervenor's interests. "[T]he burden of making that showing should be minimal." *Trbovich v. United Mine Wkrs.*, 404 U.S. 528, 538 n.10 (1972). If the existing parties are unlikely to make all the same arguments, that can suffice. *Grutter*, 188 F.3d at 400 (quoting *Miller*, 103 F.3d at 1247). The DWSD need only show a "*potential* for inadequate representation." *Grutter*, 188 F.3d at 400.

Here, from both a liability and a damages perspective, MID is not likely to adequately represent DWSD's interests, especially the broader interests discussed above. *See Purnell*, 925 F.2d at 949-50 (discussing "interest adverse to the proposed intervenor"). In regard to liability, intervention is appropriate where the intervenor and representative might disagree about some of the arguments to be made, regardless of whether they share common interests in the overall approach to the claims. *See Grutter*, 188 F.3d at 401 (university might not present all the same arguments as students); *Jansen*, 904 F.2d at 343 (black intervenors in reverse discrimination suit shared goal with city of enforcing consent decree to remedy past discrimination but had sufficiently different interests where they interpreted the decree differently, advanced different arguments, and said the city's hiring process failed to comply with the consent decree); *Detroit Intern. Bridge Co.*, 7 F.3d at 502 (in condemnation suit, intervening land holders were not adequately represented by major landholder who also had an interest in the intervenors' competitor). Here, MID has not asserted all the claims that DWSD alleges in its Intervention Complaint or all the allegations about Defendants' fraudulent concealment of the cause of action, which bears upon the tolling of various statutes of limitations. (*Compare* Exh. 4, with Compl., ECF No. 1.) Further, even if parties seek the same kinds of damages, their interests are still sufficiently adverse where, as here, their individual damages differ or their interests are not

identical. *Purnell*, 925 F.2d at 949-50. The difference in the approaches that MID and DWSD will likely pursue – as discussed above – is enough to entitle DWSD to intervene.

E. The Motion Is Timely.

Finally, this Motion is timely. Rule 24 does not prescribe a deadline for the petition. “Timeliness is to be determined from all the circumstances.” *NAACP v. New York*, 413 U.S. 345, 366 (1973). The Sixth Circuit uses a five-factor test that considers:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors’ failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Jansen, 904 F.2d at 340. Intervention can be timely even after motions for summary judgment have been filed, depending on the circumstances. *Id.* (petition filed within weeks of learning that city’s response to summary judgment failed to adequately represent the intervenors’ arguments and interests in the litigation). This Court found a request to be timely even after discovery closed and the parties had nearly completed briefing a motion for permanent injunction and declaratory judgment. *See Commodities Exp. Co.*, 2009 WL 5171844 at *2 (Exh. 3).

This lawsuit has just begun. The time for responding to the Complaint will soon elapse, and motions to dismiss have not yet been heard. Intervention would not cause any prejudice to the litigants and would promote judicial economy. DWSD’s request to intervene should be deemed to be timely.

III. CONCLUSION

For each of the foregoing reasons, DWSD respectfully asks that the Court grant its Motion to Intervene by right and award such other relief as the Court deems appropriate.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
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Dated: January 10, 2012

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record and to Victor Mercado, who are all CM/ECF participants. In addition, I initiated efforts to serve via process server Bobby Ferguson, Ferguson Enterprises, Inc., Bernard Kilpatrick, and Derrick Miller, who ostensibly have evaded attempts at service by other parties in this lawsuit.

s/Jerome R. Watson
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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MACOMB INTERCEPTOR DRAIN DRAINAGE
DISTRICT,

Plaintiff,

v.

Case No. 11-13101

KWAME KILPATRICK, et al.,

Defendants.

**OPINION AND ORDER GRANTING CITY OF DETROIT AND DETROIT
WATER AND SEWERAGE DEPARTMENT'S MOTION TO INTERVENE,
IMPOSING BRIEFING SCHEDULES, AND REINSTATING
RULE 12 RESPONSIVE PLEADINGS DEADLINES**

Nonparties the City of Detroit and the Detroit Water and Sewerage Department (collectively the "City of Detroit" or the "City") filed a motion to intervene in this litigation. Numerous Defendants filed responses in opposition to the City's motion. The court heard oral arguments on April 4, 2012. For the reasons stated below, the court will grant the motion.

I. BACKGROUND

On July 18, 2011, Plaintiff Macomb Interceptor Drain Drainage District ("Macomb Interceptor") initiated this case against 40 Defendants alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68, the Sherman Antitrust Act, 15 U.S.C. §§ 1-7, the Clayton Antitrust Act, 15 U.S.C. §§ 12-27, and asserting various state-law contract and tort claims. Plaintiff's claims arise from Defendants' involvement in the 2004-2005 repair of a collapsed sewer interceptor at 15

Mile Road in Sterling Heights, Michigan, (hereinafter the “15 Mile Road Repair Project”). Specifically, Plaintiff alleges that Defendant Kwame Kilpatrick, then the Mayor of the City of Detroit, along with various City of Detroit officials conspired with the principal contractor overseeing the 15 Mile Road Repair Project, Defendant Inland Waters Pollution Control Inc., and numerous subcontractors to “overcharge the Detroit Water and Sewerage Department . . . for time, labor and materials to stabilize and repair a sewer collapse at 15 Mile Road.” (Pl.’s Compl. ¶ 5, Dkt. #1.) Plaintiff further avers that the alleged misconduct of Defendants related to the 15 Mile Road Repair Project was part of a much larger corruption scheme during Defendant Kwame Kilpatrick’s tenure as Mayor of Detroit, principally involving Defendants Kwame Kilpatrick, Victor Mercado, Derrick Miller, Bobby Ferguson, and nonparty Bernard Kilpatrick.¹ This broader scheme is alleged to have operated for nearly a decade seeking to steer public works contracts and illicit benefits to associates of Defendant Kwame Kilpatrick and officials throughout his administration. (See Pl.’s Compl. Ex. A, Dkt. #1-1.)

Although Defendants’ alleged scheme was perpetrated against the Detroit Water and Sewerage Department, Plaintiff contends that it obtained the right to assert its claims when, in September 2010, it entered into the Macomb Interceptor Acquisition Agreement (“Macomb Agreement”) with the Detroit Water and Sewerage Department. (Pl.’s Resp. to D’Agostini Defendants’ Mot. to Dismiss 15-17, Oct. 6, 2011, Dkt. # 62.) The Macomb Agreement transferred to Plaintiff sewer assets located in Macomb

¹The concept of an overarching municipal corruption scheme is the central allegation in a criminal case currently pending before Hon. Nancy G. Edmunds. See *United States v. Kilpatrick*, Case No. 10-20403 (E.D. Mich.). Plaintiff incorporates by reference in its complaint the first superseding indictment from this case.

County formerly owned by the Detroit Water and Sewerage Department and assigned to Plaintiff “all of [Detroit Water and Sewerage Department’s] rights under all contracts, warranties, and guarantee to apply to services or goods related to the Macomb System.” (Pl.’s Compl. Ex. F ¶ 2.4, Dkt. # 1-6.) At least some Defendants have maintained that this assignment of rights did not assign to Plaintiff the rights to any tort claims arising from the 15 Mile Road Repair Project, and that therefore the Detroit Water and Sewerage Department, not Plaintiff, has standing to assert such claims. (See e.g., D’Agostini Defendants’ Mot. to Dismiss 7, Sept. 1, 2011, Dkt. # 33.) These same Defendants have also argued that Plaintiff lacks standing to assert its statutory claims because indirect purchasers lack standing under RICO and antitrust laws to sue for overcharges. (*Id.* at 9.)

The City of Detroit now seeks to intervene in this case arguing that it has a substantial interest in the resolution of the dispute about who may properly assert the statutory and tort claims arising out of the 15 Mile Road Repair Project. (City of Detroit’s Br. Supp. Mot. Intervene 1, Jan. 10, 2012, Dkt. # 145.) The City further contends that its interest in the overarching corruption scheme is broader than Plaintiff’s interest and, as a result, it should be permitted to file an intervening complaint broader in scope than Plaintiff’s. The proposed intervening complaint is not limited to the 15 Mile Road Repair Project and instead asserts claims spanning the entire length of the alleged corruption scheme. While broadening the scope of the corruption scheme, the City asserts claims against only 11 Defendants, eight of whom are named and three of whom are unnamed in Plaintiff’s original complaint.

II. STANDARD

Motions to intervene are governed by Federal Rule of Civil Procedure 24, which provides, in part, that:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

...

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Fed. R. Civ. P. 24.

III. DISCUSSION

The City of Detroit contends that it is entitled to intervention as of right. The criteria that must be satisfied before an intervention as of right will be granted pursuant to Federal Rule of Civil Procedure 24(a) are: (1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the

applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court. *United States v. Tennessee*, 260 F.3d 587, 591-92 (6th Cir. 2001) (citing *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997)). "The applicant has the burden of demonstrating the four prongs, and the failure to satisfy any of the four prongs prevents the applicant from intervening as of right." *Johnson v. City of Memphis*, 73 F. App'x 123, 131 (6th Cir. 2003) (citing *Linton v. Comm'n of Health & Env't*, 973 F.2d 1311, 1317 (6th Cir. 1992)). Upon review of each prong, explained below, the court concludes that the City of Detroit has satisfied the requirements to intervene as of right, but further finds that the City's intervention should be restricted to the scope of the claims, *i.e.*, those claims arising directly from the 15 Mile Road Repair Project, asserted in Plaintiff's original complaint.

A. Timeliness

The D'Agostini Defendants² argue that the City of Detroit's motion is untimely because the case was pending for nearly six months before the City filed its motion to intervene. (D'Agostini Defs.' Resp. to City of Detroit's Mot. Intervene 11-12, Jan. 27, 2012, Dkt. # 169.) Mere delay in filing a motion to intervene, however, is insufficient to establish the untimeliness of the motion. Instead, the United States Court of Appeals for the Sixth Circuit has held that the following factors should be considered in determining the timeliness prong when considering a motion to intervene:

²The D'Agostini Defendants include Defendants L. D'Agostini & Sons, Inc., Antonio D'Agostini, L. Robert D'Agostini, and James D'Agostini.

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Johnson, 73 F. App'x at 131. Here, the D'Agostini Defendants claim that the six month delay has prejudiced them because the stigma and the harm to their business interests this case has caused will persist further into the future as a result of the City of Detroit's intervention. (D'Agostini Defs.' Resp. to City of Detroit's Mot. Intervene 12.) The prejudice complained of by the D'Agostini Defendants, however, is not derived from the City of Detroit's six month delay in filing its motion, but rather from the mere fact that the D'Agostini Defendants are named defendants in the original complaint. Indeed, were the court to deny the City of Detroit's motion, the City would be free to initiate an independent lawsuit naming the D'Agostini Defendants as defendants, and thus subjecting the D'Agostini Defendants to exactly the same impact they attribute to the City's delay. Furthermore, the court finds that the remaining timeliness factors militate in favor of finding the City of Detroit's motion timely. The case is still in a nascent phase; the court has not entered a scheduling order nor has court-supervised discovery commenced. In fact, the City of Detroit filed its motion before the final Defendants were even served by Plaintiff. Additionally, the purpose of intervention, at least in part, is to determine the threshold question of who has standing to assert the statutory and tort claims arising from the 15 Mile Road Repair Project. This issue affects the viability of

nearly every claim Plaintiff asserts and it should be addressed with the participation of the City of Detroit. The City of Detroit's motion to intervene is timely.

B. Interest in Case and Impairment of the City of Detroit's Ability to Protect its Interest in the Absence of Intervention

While a nonparty seeking intervention must demonstrate that it has a substantial interest in the pending litigation, the Sixth Circuit has adopted a "rather expansive notion of the interest sufficient to invoke intervention of right." *Miller*, 103 F.3d at 1245. "For example, an intervenor need not have the same standing necessary to initiate a lawsuit." *Id.* Here, neither Plaintiff nor Defendants argue that the City of Detroit fails to demonstrate it has a substantial interest in the case. Further, upon the court's independent review of the City of Detroit's motion and the record, it is apparent that the original parties pointedly dispute whether it is the City of Detroit or Plaintiff that has standing to assert the statutory and tort claims expressed in Plaintiff's complaint. The City of Detroit has no less than a substantial interest in this case.

Although they do not challenge the City of Detroit's interest in the case, Defendants nevertheless argue that the City of Detroit's motion to intervene would be moot if the court first determined who has standing to assert the statutory and tort claims in Plaintiff's complaint. (See e.g., Def. Soave's to City of Detroit's Mot. Intervene¹, Jan. 26, 2012, Dkt. # 163; Inland Waters Pollution Control Defs.' Resp. to City of Detroit's Mot. Intervene 10, Jan. 27, 2012, Dkt. # 168; D'Agostini Defs.' Resp. To City of Detroit's Mot. Intervene 12-14,.) As the City of Detroit observes, however, adjudicating an intervenor's interests in a case before deciding a pending motion to intervene would invariably moot any motion to intervene. (City of Detroit's Reply to

Inland Waters Pollution Control Resp. 4, Feb. 3, 2012, Dkt. # 175.) Moreover, the court reiterates now what it originally stated in its order denying the D'Agostini Defendants' motion for reconsideration, (2/7/2012 Order 3, Dkt. # 178): were the court to adopt Defendants' proposed order of operation, the City of Detroit would be denied a meaningful opportunity to argue on behalf of its purported interests in the statutory and tort claims and would be subjected to the very impairment that Rule 24 seeks to avoid. Accordingly, the court finds that adjudicating the standing issue prior to granting the City of Detroit intervention as of right would impair the City's ability to protect its interests. The court declines the invitation to determine whether the City of Detroit or Plaintiff has standing to raise the statutory and tort claims without first permitting the City of Detroit to intervene and properly articulate its interest in the claims.

C. Adequacy of Representation of the City of Detroit's Interest by Original Parties

The parties do not contest the City of Detroit's argument that Plaintiff and Defendants fail to adequately represent Detroit's possible interests in this case, and the court finds that the City's claimed interests in the statutory and tort claims arising from the 15 Mile Road Repair Project are adverse to both Plaintiff's and Defendants's interest in this case. Plaintiff cannot adequately represent the City of Detroit's interests in the claims arising from 15 Mile Road Repair Project because Plaintiff is adverse to Detroit, maintaining that the Detroit assigned those very claims to it in the Macomb Agreement. Further, the City of Detroit's position in this case is in direct opposition to the interests of Defendants, who cannot be expected to properly represent the City's interest in this case.

D. Defendants' Futility Objections to the City of Detroit's Motion

Finally, numerous Defendants challenge the City of Detroit's intervention in this case on the grounds that the claims asserted in the City's proposed complaint are futile and fail as a matter of law. (See *e.g.*, D'Agostini Defs.' Resp. to City of Detroit's Mot. Intervene 7, 9.) Specially, the D'Agostini Defendants argue that the City of Detroit failed to properly plead its proposed breach of fiduciary duty claim and that, in any event, the claim is time barred, (*id.*), and the Lakeshore Engineering Defendants maintain that the City of Detroit failed to properly plead the constituent elements of a civil RICO claim, (Def. Lakeshore Eng'g Servs., Inc.'s Resp. to City of Detroit's Mot. Intervene 5-12, Jan. 27, 2012, Dkt. # 170). While the D'Agostini Defendants cite numerous cases from other district and circuit courts supporting the proposition that an intervenor must state a well-pleaded claim or defense in order to succeed on a motion to intervene, no Defendant proffers a single Sixth Circuit case, nor is the court familiar with any such case, adopting a futility exception to intervention. Indeed, such an exception to intervention as of right would likely contradict the Sixth Circuit's expansive intervention doctrine, a doctrine that does not require an intervenor to have standing to initiate its own lawsuit or even "a specific legal or equitable interest" in the case. *Miller*, 103 F.3d at 1245 (quoting *Purnell*, 925 F.2d at 948) (internal quotation marks omitted). Even were the court to adopt a futility exception, the City of Detroit's claims, at least on initial review, are not plainly meritless. Unlike the intervening plaintiff in *SEC v. American Board of Trade, Inc.*, 830 F.2d 431 (2d Cir. 1987), a case cited by the D'Agostini Defendants in which the United States Court of Appeals for the Second Circuit affirmed

a district court's denial of a motion to intervene as of right because the proposed claims were "frivolous on their face" and "clearly meritless," 830 F.2d at 443, the City of Detroit's complaint is not so meritless or otherwise deficient that the court could state that the City's claims are "frivolous on their face." The most prudent course of action, especially given the City of Detroit's abbreviated opportunity to address Defendants' futility arguments in its reply briefs, is to allow the City to assert its claims and then permit Defendants to attack them, if they so choose, in fully-briefed Rule 12 motions. This will ensure Defendants have an opportunity early in the proceedings to challenge the legal sufficiency of the City of Detroit's claims while also permitting the City to more fairly and completely defend its positions.

E. Scope of Intervention

Having determined that the City of Detroit satisfies the requirements for intervening as of right, the court now considers Defendants' request to limit the scope of the City of Detroit's intervention to participation in the adjudication of the issue of whether the City of Detroit or Plaintiff has standing to bring the statutory and tort claims arising out of the 15 Mile Road Repair Project. Defendants argue that the City of Detroit's proposed intervening complaint "seeks to significantly expand the scope of this litigation from one relating to the work performed on one discrete project over the course of a limited time period . . . to include claims regarding various distinct contracts and necessitating a review of the entire relationship between the [Detroit Water and Sewerage Department] and numerous Defendants, spanning more than six years." (Inland Waters Pollution Control's Resp. to City of Detroit's Mot. Intervene 12.) The City of Detroit acknowledges that its proposed intervening complaint is broader than

Plaintiff's but argues that it should nevertheless be permitted to "bring all its claims related to the same underlying scheme in order to avoid piecemeal litigation and potential preclusion issues." (City of Detroit's Reply to Inland Waters Pollution Control Defs.' Resp. 2.)

As the United States Court of Appeals for the First Circuit has observed, "the extent to which an [intervenor] can enlarge the issues in the case beyond those that the original plaintiff and defendant wish to litigate . . . is fraught with difficulty." *Cotter v. Mass. Ass'n of Minority Law Enforcement Officers*, 219 F.3d 31, 36 (1st Cir. 2000). On one hand, once a court grants intervention as of right, "the intervener becomes a 'party', [sic] within the meaning of the Rules, 'entitled to litigate fully on the merits.'" *Hartley Pen Co. v. Lindy Pen Co.* 16 F.R.D. 141, 153 (S.D. Cal. 1954) (quoting *Park & Tilford v. Schulte*, 160 F.2d 984, 989 n.1 (2d Cir. 1947)); see also *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1246 (11th Cir. 2006) ("Once a court grants intervention . . . , the 'intervenor is treated as if [it] were an original party and has equal standing with the original parties.'" (quoting *Marcaida v. Rascoe*, 569 F.2d 828, 831 (5th Cir.1978)) (per curiam)). On the other hand, there is Supreme Court guidance holding that "an intervenor is admitted to the proceeding as it stands, and in respect of the pending issues, but is not permitted to enlarge those issues or compel an alteration of the nature of the proceeding." *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 498 (1944). Further, the advisory committee's note to the 1966 Amendment to Federal Rule of Civil Procedure 24 provides: "An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." And, while the advisory

committee's note has been challenged by at least one leading federal procedure treatise for failing to cite any authority in support of this statement, see 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure*, § 1922, pp. 630-31 (3d ed. 2007), courts have interpreted the language to allow district courts to impose restrictions on an intervenor as of right, see e.g., *Southern v. Plumb Tools*, 696 F.2d 1321, 1322 (11th Cir. 1983) (“[C]onditions can be imposed even when a party intervenes as a matter of right under Rule 24(a)(2).”); *Newport News Shipbuilding and Drydock Co. v. Peninsula Shipbuilders’ Ass’n*, 646 F.2d 117, 122 (4th Cir. 1981) (“Even intervention of right may properly be made conditional by the exigencies of the particular case.”); *Santiago-Sepulveda v. Esso Standard Oil Co. (Puerto Rico)*, 256 F.R.D. 39, 43-44 (D. P.R. 2009) (restricting the scope of intervention of a successor in interest by preventing counterclaims and observing that the intervenor “effectively seek[s] to create a separate case within a case. . . [by] naming new parties and raising new issues that were not raised by the principal parties”); *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 383 (1987) (Brennan, J., concurring) (“[R]estrictions on participation may also be placed on an intervenor of right and on an original party.” (citing Rule 24(a) advisory committee’s note)).

Defendants’ request to limit the City of Detroit’s intervention to the threshold question of who has standing to assert the statutory and tort claims contained in Plaintiff’s complaint plainly contravenes the principle that an intervenor, once permitted to intervene, is “entitled to litigate fully on the merits,” *Hartley Pen Co.* 16 F.R.D. at 153, and “has equal standing with the original parties,” *Marcaida* 569 F.2d at 831. Accordingly, the court declines to limit the City of Detroit’s intervention to solely the

standing determination. Nevertheless, granting the City of Detroit unrestricted intervention at this time and permitting it to file its proposed intervening complaint would exponentially broaden the scope of the current litigation. The City of Detroit does not contest Defendants' assertion that its proposed intervening complaint is substantially broader in scope and introduces additional parties and claims not directly arising from the 15 Mile Road Repair Project. Indeed, the City of Detroit itself states that its interests "are significantly broader than the issues raised in the Complaint." (City of Detroit's Br. Supp. Mot. Intervene 1.) As the court in *Santiago-Sepulveda* observed, granting an intervenor's request to add additional parties and issues that were not raised by the original parties "is effectively seeking to create a separate case within a case" and "would . . . grant an impermissible 'enlargement' of the case." 256 F.R.D. at 44. Limiting the City of Detroit's intervention to only those claims directly arising out of the 15 Mile Road Repair Project, and not the broader, overarching corruption scheme, ensures that the City of Detroit has a meaningful opportunity to protect its purported interests in the claims asserted by Plaintiff while also preventing the impermissible enlargement of the scope of the issues contained in Plaintiff's original complaint.

The court finds unpersuasive the City of Detroit's contention that restricting intervention to only those claims arising out of the 15 Mile Road Repair Project will not fully protect the City's interests in the case. In its briefs, and during oral arguments, the City of Detroit alludes to broader interests in the alleged corruption scheme that may be impaired or impeded if it is not permitted to file its proposed complaint. Specifically, it suggests that "[d]ecisions about the part of the scheme raised by [Macomb Interceptor] (such as whether a racketeering conspiracy existed, what its aims were and who it

included) could have adverse *stare decisis* effects on [the Detroit Water and Sewer Department's] efforts to obtain redress for the whole scheme," (City of Detroit's Br. Supp. Mot. to Intervene Br. 6), and may cause "potential preclusion issues," (City of Detroit's Reply to Inland Waters Pollution Control Resp. 2). However, any potential impairment of the City of Detroit's interests in the broader scheme due to the possible effect of issue preclusion will be accounted for by immediately resolving, once the City of Detroit files its intervening complaint, the issue of standing to assert the claims arising from the 15 Mile Road Repair Project. The doctrine of issue preclusion, also referred to as collateral estoppel, bars "successive litigation of an issue of fact or law actually litigated [between the parties or their privies] and resolved in a valid court determination essential to the prior judgment." *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001). In the instant case, if the court determines that the City of Detroit does not have standing and is not a proper party to this action, any claims it wishes to assert that arise from the broader corruption scheme will not be barred by a court determination in this case. Alternatively, if the court ultimately determines that the City of Detroit, and not Plaintiff, has standing to assert the tort and statutory claims arising from the 15 Mile Road Repair Project, Plaintiff's tort and statutory claims will be dismissed, and the City may avoid the consequences of issue preclusion by filing a motion for leave to amend to add additional claims arising out of the broader corruption scheme.³ The City's

³During oral arguments counsel for the Inland Water Pollution Control Defendants argued that if the court finds that the City of Detroit has standing to assert the statutory and tort claims arising out of the 15 Mile Road Repair Project, the court would likely, under the prevailing law related to supplemental jurisdiction, dismiss Plaintiff's complaint in its entirety. As a result, counsel maintained, the court would necessarily have to dismiss the City's intervening complaint, thereby forcing the City to

contention, asserted during oral arguments, that its interests in the broader corruption scheme may nonetheless be practically harmed because factual determinations in this case may informally influence a district judge's ruling in an independent action brought the City is without merit. Such an argument assumes that a federal court will either ignore the well-established limits of the doctrine of issue preclusion or misapply the doctrine. The court is unwilling to make such an assumption.

Finally, determining the threshold issue of standing renders moot the City of Detroit's additional arguments that its interests will be impaired if the court "makes a decision on the merits without first determining whether the tort claims belong to [Plaintiff or the City]" or reaches "an adverse decision as to the tort claims, such as finding that they are barred by relevant statutes of limitations," (City of Detroit's Br. Supp. Mot. Intervene 6-7).

Accordingly, limiting the City of Detroit's intervention to those claims arising directly from the 15 Mile Road Repair Project properly protects the City's interests in this case while preventing an impermissible expansion of the scope of the original lawsuit.

IV. CONCLUSION

initiate a new and independent action. Contrary to counsel's contention, however, a plaintiff-intervenor with an independent jurisdictional basis for his claims may continue to litigate even after the dismissal of the original plaintiff. *United States Steel v. Env'tl. Prot. Agency*, 614 F.2d 843, 845 (3d Cir. 1979) (citing *Magdoff v. Saphin Television & Appliance, Inc.*, 228 F.2d 214 (5th Cir. 1955) and *Hunt Tool Co. v. Moore, Inc.*, 212 F.2d 685 (5th Cir. 1955)) ("The weight of authority in the United States Courts of Appeals supports the principle that an intervenor can continue to litigate after dismissal of the party who originated the action."); 7C Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1920, pp. 612-13 (3d ed. 2007) ("The case law is scanty and unsatisfactory on when and whether a claim of an intervenor can proceed to decision after a dismissal of the original action. It is clear that this is proper if there are independent grounds for jurisdiction of the intervenor's claim.")

For the reasons stated above, IT IS ORDERED that nonparties the City of Detroit and the Detroit Water and Sewerage Department's motion to intervene [Dkt. # 145] is GRANTED. The City of Detroit and Detroit Water and Sewerage Department are DIRECTED to file an intervening complaint, limited in scope to only those claims directly arising out of the 15 Mile Road Repair Project, on or before **May 21, 2012**. The Clerk of the Court is DIRECTED to add the City of Detroit and the Detroit Water and Sewerage Department as intervening Plaintiffs.

IT IS FURTHER ORDERED that Plaintiff Macomb Interceptor Drain Drainage District is DIRECTED to file a response to Defendants' "Joint Motion for Summary Judgment" [Dkt. ## 188, 190] on or before **May 21, 2012**.⁴ Plaintiff-Intervenors the City of Detroit and the Detroit Water and Sewerage Department are DIRECTED to file a

⁴Plaintiff Macomb Interceptor requested during oral arguments that its pending motion for leave to amend the original complaint be decided before the court addresses Defendants' joint dispositive motion. After reviewing Macomb Interceptor's motion and Defendants' various response briefs, the court believes that the motion can be adjudicated simultaneously with Defendants' dispositive motion. Defendants challenge Macomb Interceptor's request for leave to amend on several grounds, but primarily argue that amendment would be futile because Plaintiff does not have standing to assert any tort or statutory claims arising out of the 15 Mile Road Repair Project. (See, e.g., D'Agostini Defs.' Resp. to Pl. Macomb Interceptor's Mot. Leave Amend 3, 5, Feb. 17, 2012, Dkt. # 185; Inland Waters Pollution Control Defs.' Resp. to Pl. Macomb Interceptor's Mot. Leave Amend 3, Feb. 17, 2012, Dkt. # 186; Def. Soave's Resp. to Pl. Macomb Interceptor's Mot. Leave Amend 4, Feb. 16, 2012, Dkt. # 183.) The same argument is the basis of Defendants' pending dispositive motion, and the challenge to Plaintiff's standing applies with equal force to both the original complaint and the proposed amended complaint. Accordingly, whether Plaintiff's proposed amended complaint is futile relies, in large part, on a determination of whether Plaintiff has standing to assert its claims. By deciding the two pending motions contemporaneously, the court will in effect provide Plaintiff the full opportunity to address Defendants' no-standing argument that Plaintiff in its reply brief argues it would not have. (Pl. Macomb Interceptor's Reply 1, Feb. 23, 2012, Dkt. # 187).

response on or before **May 28, 2012**. Any replies shall be filed on or before **June 4, 2012**.

Finally, IT IS ORDERED that the deadlines for the service of responsive pleadings contemplated by Federal Rule of Civil Procedure 12, originally tolled in the court's January 13, 2012 order, are REINSTATED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 7, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 7, 2012, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT, a municipal corporation,
through the Detroit Water and Sewerage
Department,

Intervening Plaintiff,

vs.

KWAME KILPATRICK, an individual;
VICTOR M. MERCADO, an individual;
DERRICK A. MILLER, an individual; BOBBY
W. FERGUSON, an individual; FERGUSON
ENTERPRISES, INC., a Michigan corporation;
INLAND WATERS POLLUTION CONTROL,
INC., a Michigan corporation; and L.
D'AGOSTINI & SONS, INC., D/B/A LD&S, a
Michigan corporation;

Defendants;

and

MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT,

Plaintiff,

vs.

KWAME KILPATRICK, et al.,

Defendants.

Case No. 2:11-CV-13101

Judge Robert H. Cleland
Mag. Judge Mona K. Majzoub

**INTERVENING COMPLAINT OF
THE PLAINTIFF CITY OF DETROIT
THROUGH THE DETROIT WATER
AND SEWERAGE DEPARTMENT**

JURY TRIAL DEMANDED

**INTERVENING COMPLAINT OF THE PLAINTIFF CITY OF DETROIT THROUGH
THE DETROIT WATER AND SEWERAGE DEPARTMENT**

Intervening Plaintiff City of Detroit (“City of Detroit”) through the Detroit Water and Sewerage Department (“DWSD”) (collectively, “Intervening Plaintiff”), by its undersigned counsel, state for its Complaint against Defendants Kwame M. Kilpatrick, Victor M. Mercado, Derrick A. Miller, Bobby W. Ferguson, Ferguson Enterprises, Inc., Inland Waters Pollution Control, Inc., and L. D’Agostini & Sons, Inc., d/b/a LD&S, as follows:

GENERAL PATTERN OF ILLEGAL CONDUCT

1. The City of Detroit and DWSD seek to recover damages caused by former Mayor Kwame M. Kilpatrick and persons and entities that diverted or helped to divert roughly \$58 million in City of Detroit monies for their own private gain. Their illegal conduct involved bribery, extortion, money laundering, and unlawful contract fixing (often bid-rigging) between 2004 and 2006, with money and/or other gratuities ultimately flowing back to Kilpatrick and his friends. Kilpatrick, DWSD Director Victor Mercado, and Kilpatrick’s friend Bobby Ferguson were the chief architects of and participants in the illegal conduct. Other individual participants included Derrick Miller, a key member of Kilpatrick’s mayoral administration. The contractor and subcontractor participants included Inland Waters Pollution Control, Inc. and Ferguson Enterprises, Inc. Each participant willingly participated in order to get a share of the ill-gotten profits at the taxpayers’ expense.

2. Defendants availed themselves of and relied upon the unlawful use by Kilpatrick of his authority and influence as Mayor and as the federal Court-appointed Special Administrator of DWSD, with the assistance of Mercado and Miller, to manipulate and amend DWSD contracts so that those contracts, amendments, and the payments made under them would be disproportionately awarded to Ferguson, Ferguson Enterprises, Inc., Inland Waters, and

subcontractors associated with these companies. These contractors and subcontractors benefited from the ability to amend their contracts without scrutiny, oversight, or competitive bidding. Once the public works projects were awarded, the contractors and subcontractors received the enhanced profits associated with water and sewerage contracts, together with excessive management and consulting fees, costly extra services, and, in some instances, padded invoices as to time, material, and equipment.

3. To obtain these excessive and unlawful profits, fees, expenses, and costs, some participants in the illegal conduct, through known and unknown current and past owners, officers, employees, agents and representatives, made unlawful payments and/or provided unlawful gratuities to Kilpatrick, Ferguson, and Ferguson-controlled entities. Participants who may not have been actively involved in bribery, extortion, and bid rigging “turned a blind eye” to these unlawful activities but willingly facilitated and benefited from them. Moreover, all of the participants actively participated or were involved in money laundering and other unlawful activities.

4. The illegal conduct was fraudulently concealed from disclosure to other officials of the City of Detroit, including the Detroit City Council, the DWSD Board of Water Commissioners, federal and state law enforcement, and the news media. Upon information and belief, Defendants hid their ill-gotten gains, including bribery and extortion payments by, among other things, passing invoices and costs through the City of Detroit’s billing and invoicing system. By misusing this system, Defendants helped to conceal the misconduct and launder the money. The fraudulent concealment continued until the federal government, using the vast resources available to it, empanelled a grand jury and issued a First Superseding Indictment, dated December 15, 2010.

5. Pursuant to the Court's 05/07/2012 Order (ECF No. 202), this Intervening Complaint is limited to claims that directly arise from Amendments 2 and 3 of CS-1368, one of the numerous DWSD contracts that involve misconduct by Defendants and others.¹ The two amendments alone cost the City of Detroit about \$58 million. The Intervening Plaintiff intervenes to assert its rights to recover damages against the named Defendants, including RICO, tort-related damages, contract damages, unjust enrichment damages and disgorgement of unlawfully obtained profits.

JURISDICTION

6. Pursuant to 28 U.S.C. § 1331, this Court has federal question subject-matter jurisdiction over the Intervening Plaintiff's claims under the civil Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*

7. The Court has supplemental subject-matter jurisdiction over the Intervening Plaintiff's remaining claims pursuant to 28 U.S.C. § 1367 because those claims are so related to (a) the Intervening Plaintiff's federal claims as to form part of the same case or controversy, and (b) the federal claims of Plaintiff Macomb Interceptor Drain Drainage District as to form part of the same case or controversy.

8. The Court has personal jurisdiction over the individual Defendants pursuant to Mich. Comp. L. § 600.701 because each of the individual Defendants either currently resides in Michigan or consented to Michigan's jurisdiction. This Court also has personal jurisdiction over Defendants Kwame M. Kilpatrick, Victor M. Mercado, and Derrick A. Miller pursuant to Mich.

¹ Consistent with the Court's Order, the Intervening Plaintiff reserves the right to assert broader conspiracy claims and other claims that – although related in some manner to these two amendments – actually arise out of various other DWSD contracts and a larger and longer pattern of Defendants' misconduct.

Comp. L. § 600.715 because they transacted the business described herein within Michigan and performed or caused the tortious acts and consequences described herein within Michigan.

9. The Court has personal jurisdiction over the corporate Defendants pursuant to Mich. Comp. L. § 600.711 because they are incorporated under Michigan’s laws, have consented to jurisdiction, and/or have carried on a continuous and systematic part of their general business in Michigan.

10. As discussed more fully below, each of the Defendants engaged in activity evincing sufficient minimum contacts with the State of Michigan.

VENUE

11. Venue is proper here pursuant to the general provisions of 18 U.S.C. § 1391(b)(2) for reasons including that a substantial part of the events or omissions giving rise to the claim occurred in this District and the water and sewer system property at issue is located here.

12. Venue is also proper here pursuant to 18 U.S.C. § 1965 as the Intervening Plaintiff is asserting civil RICO claims, and the Defendants transacted relevant business in this District.

RELEVANT TIME PERIOD

13. The “relevant time period” of the misconduct that forms the basis of the claims asserted herein is from approximately August 2004 to approximately 2006. The period of the fraudulent concealment of the misconduct continued until December 15, 2010.

PARTIES

Intervening Plaintiff

14. The City of Detroit is a municipal corporation located in Wayne County, Michigan. It was incorporated pursuant to the Michigan Home Rule Cities Act, Mich. Comp. L. § 117.1, and is a political subdivision of the State of Michigan. DWSD, a department of the City

of Detroit, provides water service and wastewater treatment services to residents of the City of Detroit and neighboring southeastern Michigan communities. In general, DWSD is governed by a Board of Water Commissioners (the “DWSD Board”). During the relevant time period, a Director was in charge of the day-to-day affairs of DWSD.

Plaintiff

15. Macomb Interceptor Drain Drainage District (“MID”) is a special purpose public corporation established under the Michigan Drain Code of 1956, Mich. Comp. L. 280.1 *et seq.*, operating and existing under the Michigan Constitution and the laws of Michigan.

Defendants

16. Defendant Kwame M. Kilpatrick (“Kilpatrick”), an individual, is currently a resident of Texas. Kilpatrick was the elected Mayor of the City of Detroit from 2002 to 2008. In his capacity as Mayor, Kilpatrick was the chief executive officer for the City of Detroit, and his duties included supervising and directing the DWSD, which were operated and funded by the City of Detroit. From January 2002 to January 2006, Kilpatrick was also the federal Court-appointed “Special Administrator” of DWSD. In this capacity – discussed more fully below – Kilpatrick had extensive power and authority to control, manage, and operate DWSD and other departments of the City of Detroit. Kilpatrick is also the lead criminal Defendant in *United States v. Kilpatrick, et al.*, E.D. Mich. Case No. 10-CR-20403 (the “Kilpatrick Prosecution”), which concerns some of the same misconduct alleged here.

17. Defendant Victor M. Mercado (“Mercado”), an individual, is, upon information and belief, a resident of Florida. Mercado served as the Director of DWSD from 2002 to 2008. As the Director of DWSD, Mercado was responsible for the overall direction and administration of DWSD. As alleged in indictments in the Kilpatrick Prosecution, from 2002 to 2008 Mercado had supervisory authority over the awarding of more than \$2 billion of contracts between DWSD

and private contractors. At various times, Mercado also served as the designee (i.e., designated agent) of Special Administrator Kilpatrick and performed duties and functions on behalf of the Special Administrator. Mercado is named as a Defendant in the Kilpatrick Prosecution.

18. Defendant Derrick A. Miller (“Miller”), an individual, is currently a resident of Virginia. Miller worked in Kilpatrick’s mayoral administration from 2002 to 2007, serving in various positions including as Chief Administrative Officer and Chief Information Officer for the City of Detroit. During this period, Miller became involved in the bidding and awarding of DWSD contracts. Miller is named as a Defendant in the Kilpatrick Prosecution. On August 19, 2011, Miller signed a plea agreement (“Miller Plea Agreement”) admitting that he engaged in two of the crimes charged (bribery and filing a false tax return), as set forth in a Second Superseding Information in the Kilpatrick Prosecution. (Ex. 1: Miller Plea Agreement, which is incorporated by reference herein.)

19. Defendant Bobby W. Ferguson (“Ferguson”), an individual, is, upon information and belief, a resident of Wayne County, Michigan. During the relevant time period, Ferguson was Kilpatrick’s close friend and confidant. Ferguson owned, operated, and/or controlled Ferguson Enterprises, Inc. Ferguson is named as a Defendant in the Kilpatrick Prosecution.

20. Defendant Ferguson Enterprises, Inc. (“FEI”), a Michigan for-profit corporation, is a Ferguson-controlled company that was primarily engaged in the business of providing construction, demolition, and/or excavation services. FEI has its principal place of business in Wayne County, Michigan. During the relevant time period, FEI entered into contracts or subcontracts to perform work for DWSD and performed work for DWSD as a contractor or subcontractor within this judicial district.

21. Defendant Inland Waters Pollution Control, Inc. (“Inland Waters”), a Michigan for-profit corporation, is primarily engaged in the business of waste collection and transportation.

Inland Waters has its principal place of business in Oakland County, Michigan. During the relevant time period, Inland Waters entered into contracts to perform work for DWSD and performed work for DWSD as a contractor or subcontractor within this judicial district.

22. Defendant L. D'Agostini & Sons, Inc., d/b/a LD&S ("LD&S"), a Michigan for-profit corporation, is primarily engaged in providing general contracting and/or construction services. LD&S has its principal place of business in Macomb County, Michigan. During the relevant time period, LD&S entered into contracts or subcontracts to perform work for DWSD and performed work for DWSD as a contractor or subcontractor within this judicial district.

THE KILPATRICK INDICTMENT AND PROSECUTION

23. The Intervening Plaintiff's claims are based upon conduct first unveiled in the Kilpatrick Prosecution. On December 15, 2010, a grand jury returned a First Superseding Indictment in the Kilpatrick Prosecution, naming Kilpatrick, Ferguson, Bernard Kilpatrick, Mercado, and Miller as Defendants. That indictment alleged a criminal RICO conspiracy, bribery, extortion, obstruction of justice, mail fraud, wire fraud, and money laundering in relation to a number of projects entered into by DWSD, including the DWSD project at issue in this case: the repair of the Macomb Interceptor sewer at 15 Mile Road in Sterling Heights, Michigan under Amendments 2 and 3 to DWSD contract CS-1368.

24. On August 19, 2011, Miller agreed to enter a guilty plea to certain crimes in the Kilpatrick Prosecution. A Second Superseding Information was issued against Miller on September 12, 2011. As part of his plea agreement, Miller admitted that, at Kilpatrick's direction, he steered millions of dollars of City of Detroit business to Ferguson. Miller admitted that Kilpatrick with assistance from Mercado and Miller pressured contractors to add Ferguson-controlled companies to DWSD contracts they had received, or risk having the contracts held up or canceled. Miller admitted that Mercado and other City of Detroit officials influenced the

awarding of contracts to teams that included Ferguson-controlled companies, including reevaluating or fixing bids if Ferguson's companies were not part of the winning team. Miller admitted that he and other City of Detroit officials gave Ferguson inside information about contracts or bid evaluations to give Ferguson an edge over competing bidders.

25. On November 16, 2011, the grand jury returned a Third Superseding Indictment, which essentially expanded upon some of the facts and occurrences as set forth in the First Superseding Indictment, including criminal RICO conspiracy, bribery, extortion, obstruction of justice, mail fraud, wire fraud, and money laundering. On February 15, 2012, the grand jury returned a Fourth Superseding Indictment, which essentially expanded upon the same facts and occurrences. (Ex. 2: 4th Superseding Indictment, which is incorporated by reference herein.)

GENERAL ALLEGATIONS

I. Kilpatrick is Elected Mayor and Appointed as the Federal Court's Special Administrator

26. Kilpatrick's term as Mayor began on January 2, 2002, following his election in November 2001.

27. When Kilpatrick became Mayor, an environmental lawsuit was pending in the United States District Court for the Eastern District of Michigan entitled *United States v. City of Detroit, Detroit Water and Sewerage Department and State of Michigan*, E.D. Mich. Case No. 77-71100. Judge John Feikens presided over the lawsuit, which concerned the City of Detroit and DWSD's compliance with provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the "City of Detroit Environmental Case").

28. On December 3, 2001, Judge Feikens entered an order entitled "Order Continuing Special Administratorship for the Detroit Water and Sewerage Department," in which he appointed Kilpatrick as the federal Court's Special Administrator of DWSD, effective as of

January 1, 2002. Judge Feikens' December 3, 2001 Order granted to Kilpatrick (as prior orders of the Court had granted to former Mayors Coleman Young and Dennis Archer) broad federal powers over DWSD, including authority over the contracting and procurement operations of the DWSD Board. The Order also gave Kilpatrick authority over all other departments of the City of Detroit insofar as their powers affected the City of Detroit's compliance with the Clean Water Act and related environmental laws (as set forth in a series of consent judgments entered by the Court). (Ex. 3: Packet of Court Orders, which is incorporated by reference herein.)

29. Kilpatrick's appointment as Special Administrator did not authorize him to violate federal, state or local criminal laws or render him in any manner immune from civil liability.

30. The December 3, 2001 Order required Kilpatrick to "find and hire a Director of the DWSD [who] shall be clearly and completely responsible for the overall success of the [DWSD] in achieving its mission, goals and objectives"

31. Pursuant to Kilpatrick's authority as Special Administrator, in or around June 2002, Kilpatrick appointed Mercado as the Director of DWSD.

32. Sometime in early 2002, Kilpatrick appointed Miller as Chief Administrative Officer, and Miller became involved in the bidding and awarding of DWSD contracts.

33. On November 25, 2002, Judge Feikens issued an Order in the City of Detroit Environmental Case, which authorized Kilpatrick as Special Administrator to retain Infrastructure Management Group ("IMG"), a consulting group, to advise Kilpatrick and Mercado on "potential cost containment strategies related to the operation and maintenance activities of DWSD" and on issues related to DWSD's contracting and procurement operations. The Court "note[d] that IMG is a national leader in utility services and has expertise in contract design and procurement processes" The Order required "that as to contracts which are in a monetary amount over \$500,000.00, IMG shall report monthly its comments regarding those

contracts and related procurement practices to the Special Administrator and to this Court.” (Ex. 4: 11/25/2002 Order, which is incorporated by reference herein.)

34. The contract at issue in this case, CS-1368 (Amendments 2 and 3), is in a monetary amount over \$500,000.

II. Background Information as to CS-1368, Amendments 2 and 3

35. In November 2001, DWSD, through the DWSD Board, approved Inland Waters to receive Contract CS-1368 and Contract CS-1362. The scope of these two contracts encompassed sewer inspection, lining, and rehabilitation services for sewers within the City of Detroit. CS-1362 pertained to smaller-diameter sewer pipes, and CS-1368 pertained to larger-diameter sewer pipes. Each contract was in the amount of \$25 million.

36. In or around December 2001, DWSD, through the DWSD Board, approved combining CS-1362 with CS-1368 to produce a single contract for sewer inspection, lining, and rehabilitation services throughout the City of Detroit. The combined contract continued under the designation CS-1368. (Ex. 5: Contract CS-1368, which is incorporated by reference herein.) The work was to be completed on the basis of individual task orders, with the total amount paid on the contract not to exceed \$50 million.

37. CS-1368 included covenants in which Inland Waters, the CONSULTANT, covenanted, warranted and agreed as follows:

13.01 The CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services under this Contract. The CONSULTANT further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

The CONSULTANT further covenants that no officer, member or employee of the CITY and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract has any personal or

financial interest, direct or indirect, in this Contract or in the proceeds thereof in accordance with Article 2, Section 2-106 "Standards of Conduct" of the Charter of the City of Detroit.

13.02 The CONSULTANT also hereby warrants that it has not and will not employ any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage, or contingent fee, either directly or indirectly. The CONSULTANT further agrees that if this warranty is breached, the CITY may, at its option, terminate this Contract without penalty, liability or obligation, or may at its election, deduct from any amounts owed to the CONSULTANT hereunder any amounts of such commission, percentage, brokerage, or contingent fee.

* * * * *

13.04 The CONSULTANT shall include the provisions of this article in any subcontract it enters into pursuant to this Contract.

38. CS-1368 also contained the following contractual provisions to which Inland

Waters agreed:

- To “perform in a satisfactory and proper manner, as determined within the sole and reasonable discretion of the DWSD, the Services” specified in the contract (Article 2.01);
- To provide the labor, materials, and equipment to fully perform (on an as-needed basis) the inspection, cleaning, and rehabilitation/lining repairs discussed therein and to provide informational updates to DWSD about the work (Article 2.05, as set forth in 2.05a-2.05bb);
- To obtain the DWSD Director’s prior approval of all subcontracts for work under CS-1368, as amended (Article 3.01);
- To “furnish ‘as-built’ information to DWSD . . . [o]n completion of each Task Order [under the contract]” (Article 2.01a);
- To “deliver in a timely fashion and on a regular schedule a CPM Scheduling and Monitoring Report or other presentation such as a Gantt Chart meeting the approved standards of DWSD. The CPM Report shall include detailed tasks, schedules, deliverables, decision points, and subcontractor participation, and shall be loaded to indicate scheduled personnel requirements” (Article 2.01b);
- “To submit a written Progress Status Report monthly describing progress on the work of the Contract by updating the CPM Report” detailing

“which activities were reformed [sic] by [Inland Waters] and which were performed by Subcontractors,” as well as the obligation that “[a]t regular intervals, [Inland Waters’] supervisors, higher than the Project Manager (if any) will make checks on verifications of the reports” (Article 6.07c);

- To “maintain full and complete books, ledgers, journals, accounts, or records . . . in which are kept all entries reflecting its operation pursuant to this Contract” (Article 6.09);
- To allow the City of Detroit to audit Inland Waters’ books and records at any time in relation to Inland Waters’ work on CS-1368 (Articles 6.09, 6.10, and 7.02);
- To submit invoices based on the work actually completed as set forth in accurate Scheduling and Monitoring reports (Article 8);
- To indemnify the City of Detroit against all attorney fees and costs incurred “by reason of . . . any negligent or tortious act, error or omission of [Inland Waters] or any of its Associates” in connection with the contract (Article 9.01);
- To tender upon request and upon the completion of the contract, all of its original work product (or copies if originals are unavailable), including documents, data, drawings, maps, photographs, files, supplies, notes, reports, and other materials related to the contract, which are the City of Detroit’s property (Article 11.04);
- To deliver to DWSD an executed copy of any subcontract, within 15 days of receiving it, and to refrain from seeking payment as to a subcontractor before delivering such executed copy of that subcontractor’s subcontract (Article 12.01); and
- To “comply with and [to] require its Associates to comply with (a) all applicable Federal, state and local laws, ordinances, code(s), regulations and policies, including, but not limited to, all security regulations in effect from time to time on the CITY’s premises; and (b) all applicable codes and regulations for materials, belonging to the CITY or developed in relation to this contract,” (Article 15.01).

39. As part of the process in the awarding of the combined CS-1368 to Inland Waters, the DWSD Board approved the specific Detroit-based and/or small-business subcontractors who were to work with Inland Waters on CS-1368: C.J. Williams & Associates, Superior Engineering Associates, Inc., Willie McCormick & Associates, Inc., LD&S, and Superior Construction &

Management LLC. Although all of the Ferguson-controlled companies are Detroit-based, not one Ferguson-controlled company, including FEI, was among the approved subcontractors.

40. In or about early 2002, and as alleged in the Kilpatrick Indictment, Kilpatrick's father, Bernard Kilpatrick, alerted Mayor Kilpatrick that Inland Waters' approved list of subcontractors on CS-1368 did not contain any Ferguson-controlled company.

41. As alleged in the Kilpatrick Indictment, in or about early 2002, despite the DWSD Board's decision to award CS-1368 to Inland Waters, Kilpatrick used his powers as Special Administrator to refuse to approve CS-1368 for the single reason that no Ferguson-controlled company had been retained as a subcontractor on CS-1368.

42. Apparently acting for Kilpatrick, as alleged in the Kilpatrick Indictment, in or about early 2002, Miller instructed a representative of Inland Waters to give Ferguson 5% of the work on CS-1368.

43. In furtherance of Kilpatrick's scheme to have a Ferguson-controlled company retained as a subcontractor on CS-1368, as alleged in the Kilpatrick Indictment, in or about April 2002, Kilpatrick told an Inland Waters representative that, if Inland Waters wanted to receive approval of CS-1368, a Ferguson-controlled company needed to be substituted for Inland Waters' minority contractor.

44. Inland Waters subsequently subcontracted work on CS-1368 to FEI.

45. Inland Waters did not advise the DWSD Board of the existence of its discussions relative to the awarding of subcontractor work to Ferguson on CS-1368 and, in fact, concealed this information from the DWSD Board, the Detroit City Council, and the general public.

46. In November 2004, through a first amendment to CS-1368 ("CS-1368-1"), Inland Waters received additional DWSD work projects. Amendment 1 to CS-1368, in the amount of \$10 million, increased the total amount of CS-1368 to \$60 million.

47. CS-1368-1 provides in Section IV that “[e]xcept as herein amended, the terms and conditions of the Contract, dated July 26, 2002 [CS-1368], shall remain the same and govern the relationship of the parties.” CS-1368-1 did not contain any amendment that rescinded, changed, revised or affected in any manner the covenants, warranties and agreements as set forth in Articles 13.01, 13.02 or 13.04 of CS-1368. CS-1368-1 also did not contain any amendment that rescinded, changed, revised or affected in any manner the agreements as set forth in Articles 2.01, 2.01a, 2.01b, 2.05, 3.01, 6.07c, 6.09, 6.10, 7.02, 8, 9.01, 11.04, 12.01, or 15.01 of CS-1368.

48. As alleged in the Kilpatrick Indictment, during the relevant time period, on at least 18 occasions Kilpatrick requested the use of the private jets of Inland Waters for the personal use of Kilpatrick and his friends, family, and associates, including Bernard Kilpatrick and Ferguson.

49. As alleged in the Kilpatrick Indictment, Kilpatrick did not reimburse Inland Waters for the use of its private jets.

50. As alleged in the Kilpatrick Indictment, and upon information and belief, Inland Waters, or persons or corporations authorized by and working in the interest of Inland Waters, provided this free private jet service, worth over \$260,000, in part so Kilpatrick and the Mayor’s Office would promote the business interests of Inland Waters with the City of Detroit, and Inland Waters knowingly received and accepted the benefits derived from these bribes and unlawful gratuities.

51. As alleged in the Kilpatrick Indictment, in or about 2006, after Kilpatrick had used the private jets a number of times, a representative of Inland Waters asked Kilpatrick if he thought he should start paying for some of the flights because “it did not look good” for the representative to provide the flights for free. As alleged in the Kilpatrick Indictment, Kilpatrick said he would see about it but never otherwise responded to Inland Waters’ representative.

52. Upon information and belief, Inland Waters continued to provide Kilpatrick's flights for the purpose of promoting the business and profits that Inland Waters received from contracts with the City of Detroit.

53. As alleged in the Kilpatrick Indictment, the flights had a fair market value to Kilpatrick of more than \$260,000 and an added variable cost to Inland Waters (and/or its representative) of more than \$120,000.

54. As alleged in the Kilpatrick Indictment, the flights provided to Kilpatrick are as follows:

Para. No.	Date(s)	Destination (s)	Flights	Passengers	Added Cost to Owner	Fair Market Value
55.	2/25/04 - 2/28/04	Washington, DC	2	4	\$4,473.59	\$7,750.00
56.	4/12/04 - 4/16/04	Orlando	2	8	\$8,947.19	\$11,760.00
57.	7/24/04 - 7/25/04	East Hamptons, Boston	2	3	\$3,890.08	\$10,466.00
58.	10/15/04 - 10/16/04	Houston	2	6	\$10,114.20	\$14,659.00
59.	5/19/05	Cleveland	2	9	\$1,167.02	\$2,025.00
60.	5/27/05 - 5/28/05	Greensboro, NC	2	1	\$4,279.08	\$6,160.00
61.	7/7/06 - 7/8/06	Houston	2	2	\$9,919.70	\$16,919.00
62.	8/2/06 - 8/6/06	Bermuda	3	9	\$11,281.23	\$20,382.00
63.	10/27/06 - 10/28/06	Tallahassee	2	3	\$7,974.66	\$10,480.00
64.	4/12/07	Naples, FL to Detroit	1	5	\$4,668.10	\$13,765.00
65.	5/1/07	Tallahassee	2	7	\$7,196.65	\$10,360.00
66.	5/27/07 - 5/29/07	Tallahassee	2	7	\$7,391.15	\$20,625.00
67.	6/13/07 - 6/14/07	Tallahassee	2	3	\$7,196.65	\$10,360.00
68.	6/30/07 - 8/14/07	Tallahassee	2	7	\$7,196.6	\$22,240.00
69.	9/16/07 - 9/17/07	Tallahassee	2	3	\$7,391.15	\$20,720.00

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70.	11/2/07 - 11/5/07	Tallahassee, Miami	3	6	\$10,308.71	\$26,880.00
71.	12/27/07	Tallahassee	1	5	\$3,890.08	\$10,360.00
72.	1/23/08 - 1/27/08	Tallahassee	2	5	\$7,585.66	\$28,582.00
	Totals				\$124,871.55	\$264,493.00

73. In the months after Inland Waters began providing free flights to Kilpatrick (and partly as a result of those flights), Inland Waters received an additional series of amendments to CS-1368, including Amendments 2 and 3, which pertain to the repair of the Macomb Interceptor sewer at 15 Mile Road in Sterling Heights, Michigan. Amendments 2 and 3 were in the amount of \$35 million and \$23 million, respectively, without any requirement that Inland Waters had to competitively bid on the amendments.

III. CS-1368, Amendments 2 and 3

Kilpatrick, Mercado, Ferguson, and Inland Waters Unlawfully Steer CS-1368 Work on the 15-Mile Road Interceptor Sewer Collapse Project to Ferguson, and Allow Ferguson and Possibly Other Contractors to Submit Inaccurate and Padded Invoices

74. On or about August 22, 2004, a sewer collapse occurred at 15 Mile Road in the City of Sterling Heights, Michigan.

75. DWSD immediately began a program to repair the 15 Mile Road Sewer Collapse (the "15 Mile Road Sewer Collapse Project").

76. Within days of the sewer collapse, Mercado and/or his designee held daily morning meetings to discuss repairs at the 15 Mile Road Sewer Collapse Project.

77. As alleged in the Kilpatrick Indictment, on or about September 1, 2004, after visiting the site of the sewer collapse, Kilpatrick discussed with Ferguson about how they could get work for a Ferguson-controlled company at the site. As alleged in the Kilpatrick Indictment, Ferguson advised Kilpatrick that although Inland Waters would be overseeing the overall repair

project, subcontractor LD&S hired all the subcontractors at the site. As alleged in the Kilpatrick Indictment, Kilpatrick responded, "Perfect! That's what I needed," and Ferguson replied, "We need to mee [meet] on how, I move in [to get the work], I got a great idea sir."

78. As alleged in the Kilpatrick Indictment, on or about September 7, 2004, Kilpatrick asked Ferguson whether Ferguson had determined his share of the work on the 15 Mile Road Collapse Project. As alleged in the Kilpatrick Indictment, Ferguson responded that LD&S wanted to share the work with Ferguson on a 50/50 basis, but that Kilpatrick had to instruct Mercado about the arrangement, including that Kilpatrick would personally review LD&S's invoices to ensure that Ferguson was getting his share: "just let victor [Mercado] know [if LD&S] makes 2.00 fei [FEI] needs to make 2.00 also you will look at the invoices to make sure." Upon information and belief, a reasonable opportunity for further investigation or discovery will likely yield evidence to support that LD&S divided the available work on the 15 Mile Road Collapse Project between itself and a Ferguson-controlled company, so that both could profit.

79. Until the 15 Mile Road Collapse Project, DWSD maintained a standard practice on its other sewer and water-repair projects of requiring DWSD inspectors at sewer repair sites to prepare "Daily Engineering Inspection Reports," which detailed, among other things, the time each employee of each contractor or subcontractor spent on the job each day and the equipment used or stored on the job site each day.

80. Rather than use the standard "Daily Engineering Inspection Reports" for the 15 Mile Road Collapse Project, Mercado instructed DWSD inspectors to use a "Daily Press Report," which did not contain the actual hours worked by each employee each day or the equipment used on the site each day.

81. Use of Daily Press Reports instead of the standard Daily Engineering Inspection Reports resulted in substantially reducing the amount of accurate information as to the work being performed each day on the 15 Mile Road Sewer Collapse Project and, upon information and belief, made it much more difficult to monitor and evaluate the work activities of Inland Waters and its subcontractors, including FEI.

82. Mercado knew that the Daily Press Reports made it substantially more difficult to monitor and evaluate the work activities on the 15 Mile Road Sewer Collapse Project.

83. Mercado also approved and set into place a work monitoring and payment system for the 15 Mile Road Sewer Collapse Project, which relied almost entirely on Inland Waters' review of subcontractors' submitted time and equipment sheets. This system operated without effective checks and monitoring by DWSD inspectors and other officials.

84. By reducing the involvement of DWSD staff in supervising the contractors' work, by transferring management and supervisory responsibilities to outside contractors, and by reducing or eliminating portions of DWSD's written record of the contractor's purported activities, Mercado aided, abetted, participated in and furthered the pattern of racketeering through which Defendants conducted the Kilpatrick Enterprise.

85. As alleged in the Kilpatrick Indictment, in approximately September 2004, NTH Consultants, Ltd. ("NTH") was hired to evaluate and design the repair of the 15 Mile Road Sewer Collapse. NTH estimated that the cost of the repairs at the 15 Mile Road Sewer Collapse would be about \$31 million.

Entry into CS-1368-2

86. On September 28, 2004, Kilpatrick issued Special Administrator Order Number 2004-5, authorizing Mercado to enter into an emergency amendment (Amendment 2) to CS-1368 increasing the contract by \$35 million and increasing the total amount of the contract to \$95

Million (“CS-1368-2”). (Ex. 6: Amendment CS-1368-2, which is incorporated by reference herein.)

87. CS-1368-2 was executed for Inland Waters by Robert Williams, its President, and Renne Pricopio, Kathryn Dickey, Rechanda Cespedes and Debra Roland.

88. CS-1368-2 provides in Section VI that “[e]xcept as herein amended, the terms and conditions of the Contract, dated July 26, 2002 [CS-1368], and as previously amended, shall remain the same and govern the relationship of the parties.” CS-1368-2 did not contain any amendment that rescinded, changed, revised or affected in any manner the covenants, warranties and agreements as set forth in Articles 13.01, 13.02 or 13.04 of CS-1368. CS-1368-2 also did not contain any amendment that rescinded, changed, revised or affected in any manner the agreements as set forth in Articles 2.01a, 2.01b, 2.05, 3.01, 6.07c, 6.09, 6.10, 7.02, 8, 9.01, 11.04, 12.01 or 15.01 of CS-1368. Although CS-1368-2 expanded the scope of services in Article 2.01, it did not contain any amendment that rescinded, changed, revised or affected in any manner Inland Waters’ agreement in that Article to “perform in a satisfactory and proper manner, as determined within the sole and reasonable discretion of the DWSD,” the services required under the contract.

89. The \$35 million increase was \$4 million more than NTH’s estimate of the cost for repairs at the 15 Mile Road Sewer Collapse.

90. During the Winter of 2004 and Spring of 2005, Inland Waters exceeded its budget on the work on the 15 Mile Road Sewer Collapse.

91. As alleged in the Kilpatrick Indictment, on or about May 3, 2005, Ferguson told representatives from Inland Waters that people “Downtown” would not understand if he did not get sufficient revenue from work on the sewer collapse, which could hurt Inland Waters’ chances of getting another amendment increasing the scope of CS-1368. As alleged in the Kilpatrick

Indictment, Inland Waters' representatives understood that Ferguson's reference to people "Downtown" meant the Mayor's Office.

Entry into CS-1368-3

92. On May 18, 2005, Kilpatrick issued Special Administrator Order Number 2005-7, authorizing Mercado to enter into Amendment 3 to CS-1368 with Inland Waters "to add funding to complete the repairs and restoration of the Romeo Arm [at 15 Mile Road] ("CS-1368-3"). (Ex. 7: Amendment CS-1368-3, which is incorporated by reference herein.)

93. On or about June 16, 2005, DWSD approved CS-1368-3, which increased the amount of CS-1368 by another \$23 million, increasing the new total amount of the contract up to \$118 million.

94. At this point, the \$58 million amount that was allocated to the 15 Mile Road Sewer Collapse was \$27 million more than NTH's estimate of \$31 million.

95. Victor Mercado (by authorization) signed CS-1368-3 as Special Administrator. On behalf of Inland Waters, the following officers executed CS-1368-3: President Robert Williams, Kathryn Dickey, Carrie Pendolino, Rechanda Cespedes and Debra Roland.

96. CS-1368-3 provides that "[e]xcept as herein amended, the terms and conditions of the Contract, dated July 26, 2002 [CS-1368], and as previously amended, shall remain the same and govern the relationship of the parties." CS-1368-3 did not contain any amendment that rescinded, changed, revised or affected in any manner the covenants, warranties and agreements as set forth in Articles 13.01, 13.02 or 13.04 of CS-1368. CS-1368-3 also did not contain any amendment that rescinded, changed, revised or affected in any manner the agreements as set forth in Articles 2.01 (as amended by CS-1368-2), 2.01a, 2.01b, 2.05, 3.01, 6.07c, 6.09, 6.10, 7.02, 8, 9.01, 11.04, 12.01 or 15.01 of CS-1368.

Additional Wrongful Conduct Related to CS-1368-3

97. Upon information and belief, a reasonable opportunity for further investigation or discovery will likely yield evidence to support that during the repair of the 15 Mile Road Sewer Collapse, Inland Waters, FEI, LD&S, and the other subcontractors knew that Ferguson had a close personal relationship with Kilpatrick, that a by-product of this close personal relationship was that Kilpatrick wanted Ferguson to get whatever work Ferguson wanted on the 15 Mile Road Sewer Collapse Project, and that Ferguson took advantage of this relationship to secure payment for work which was not done and/or for equipment that was not used.

98. Upon information and belief, a reasonable opportunity for further investigation or discovery will likely yield evidence to support that Inland Waters knew that FEI's requests for payment included work which was not done and/or equipment that was not used but nonetheless submitted FEI's payment requests to the City of Detroit representing that they were accurate and complete and later representing that they had been audited and found to be accurate and complete.

99. Relying upon the representations of Inland Waters as to the accuracy and completeness of FEI's and all other subcontractor invoices, as well as the accuracy and completeness of its own invoices, the City of Detroit paid the invoices submitted by Inland Waters.

100. During the period of the repairs to the 15 Mile Road Sewer Collapse, Inland Waters and FEI knew that Inland Waters' process of paying FEI's invoices and passing on FEI's costs to the City of Detroit was intended to conceal and did conceal the unlawful nature, source, ownership, and/or control of proceeds that FEI, Ferguson, Kilpatrick, and/or others gained through bribery, extortion, and other unlawful conduct in connection with the repair work.

101. Without waiver of its claims and without limitation as to its damages, Intervening Plaintiff adopts and incorporates herein Plaintiff MID's claim that as a result of inflated invoices submitted on the 15 Mile Road Sewer Collapse, the cost of the repairs of the 15 Mile Road Sewer Collapse was increased by at least \$23 million.

IV. Aftermath and Consequences of CS-1368, Amendments 2 and 3

102. As alleged in the Kilpatrick Indictment, in July 2005, Mercado asked the DWSD Board for authorization to amend CS-1368 for the fourth time, in the amount of \$12 million to fund the original sewer-inspection project until two new sewer rehabilitation contracts could be formulated ("CS-1368-4"). (Ex. 8: Amendment CS-1368-4, which is incorporated by reference herein.)

103. As alleged in the Kilpatrick Indictment, in or about the Summer of 2005, Ferguson told representatives of Inland Waters and its partner (who is not named in the Indictment) that DWSD would not authorize the \$12 million sewer-lining amendment if they did not pay him \$500,000 to \$700,000, representing profits Ferguson claimed he should have received had he been given more work on the 15 Mile Road Sewer Collapse Project.

104. As alleged in the Kilpatrick Indictment, in or about the Fall of 2005, Mercado asked a representative of Inland Waters if the company had resolved things yet with Ferguson. Mercado's inquiry reveals that he was aware of and supported Ferguson's attempt to condition Mercado's and/or Kilpatrick's approval of CS-1368-4 on Inland Waters' payment of these additional monies.

105. As alleged in the Kilpatrick Indictment, in or about December 2005, at Ferguson's office, Ferguson told a representative of Inland Waters' partner that the \$12 million sewer-lining amendment would sit on the Mayor's desk unapproved until Ferguson got the compensation he wanted for the sewer collapse.

106. As alleged in the Kilpatrick Indictment, in or about late 2005, Miller told a representative of Inland Waters that Inland Waters must resolve Ferguson's complaint about the 15-Mile sewer collapse. Miller's statement reveals that he was aware of and supported Ferguson's attempt to condition Kilpatrick and Mercado's approval of CS-1368-4 on Inland Waters' payment of the additional monies to Ferguson.

107. As alleged in the Kilpatrick Indictment, on or about December 16, 2005, at a restaurant in the City of Detroit, Ferguson, after conferring separately in the restaurant with Miller, approached a representative of Inland Waters and demanded \$350,000 on the 15 Mile Road Sewer Collapse Project.

108. As alleged in the Kilpatrick Indictment, in or about late December 2005, Inland Waters and its partner agreed to pay Ferguson a total of \$350,000 for alleged profits that Ferguson demanded on the 15 Mile Road Collapse Project.

109. Inland Waters was aware that Ferguson was not lawfully entitled to \$350,000 in profits on the 15 Mile Road Collapse Project.

110. Upon information or belief, Inland Waters agreed to pay \$350,000 to Ferguson with the expectation and for the purpose of making substantial profits on CS-1368, further amendments to CS-1368, and certain future DWSD contracts.

111. Upon information and belief, Inland Waters directly or indirectly paid the \$350,000 that Ferguson demanded.

V. **Kilpatrick, Mercado, Ferguson, Miller, FEI, Inland Waters, and LD&S Fraudulently Conceal their Activities in Connection with (a) the Manipulation and Fixing of the Awarding of DWSD Contracts and the Profits from those Contracts, (b) the Submission of Invalid and Inaccurate Invoices and Other Payment-Related Documents on DWSD contracts, and/or (c) the Participating in Other Tortious or Unlawful Activity Including Bribery, Extortion, and/or Money Laundering**

112. Kilpatrick, Mercado, Ferguson, Miller, FEI, and Inland Waters agreed to conceal – and were successful in fraudulently concealing – their unlawful activities from disclosure to the DWSD Board and other DWSD officials; the City of Detroit, including the City Council; the federal judiciary, including the long-tenured federal judge who presided over the City of Detroit Environmental Case; IMG, the consulting group approved by the Court to assist Mayor Kilpatrick and Mercado on matters related to DWSD contracting and procurement operations and to report monthly to the Court on contracts valued at over \$500,000; federal, state, and city law enforcement officials; and the inquiring and investigatory efforts of the media. Upon information and belief, a reasonable opportunity for further investigation or discovery will likely yield evidence to support that LD&S participated in these efforts in order to fraudulently conceal its own wrongdoing.

113. Defendants’ concealment efforts were made impregnable by virtue of (a) Kilpatrick’s positions as Mayor and DWSD Special Administrator; (b) Mercado’s positions as Director of DWSD and sometimes special-designee of the Special Administrator, with the ultimate authority with respect to day-to-day operations at DWSD; and (c) Miller’s position as a trusted fiduciary and confidant of Mayor Kilpatrick.

114. Kilpatrick and Mercado developed practices and procedures with respect to the awarding and implementation of DWSD contracts which obscured the unlawful activities in relation to the rigging of bids and contracts; the use of amendments to expand the contract amounts without the scrutiny competitive bidding process; the submission of invalid and padded

invoices as to the time, material, and equipment used; the positioning of DWSD officials, such as engineers and inspectors, on projects in such a way that they were not aware of the unlawful activities; and the effective limiting of oversight, review, and approval of invoices to just the prime contractor on a project.

115. For the purpose of concealing unlawful activities, Mercado's practices and procedures included (a) reducing the DWSD staff who had been responsible for reviewing and overseeing outside contractors' work; (b) reducing the DWSD's internal documentation relating to the work performed on a contract; and (c) using Defendants (who were outside companies) to perform the review and oversight tasks that DWSD employees previously performed. For example, with respect to the 15 Mile Road Sewer Collapse Project, Mercado (a) used Daily Press Reports instead of the standard Daily Engineering Inspection Reports; (b) decreased the authority and opportunity of the DWSD inspectors to inspect and evaluate the daily activities of the contractors on site; and (c) allowed Inland Waters effectively to become the sole arbiter of the validity and correctness of the invoices submitted by its contractors.

116. Through express and implied threats, Kilpatrick, Mercado, and Ferguson were able to create an environment where non-Defendant contractors who may have known of or suspected unlawful conduct refused to come forward and disclose such information to persons who were not a part of the unlawful conduct.

117. The Intervening Plaintiff did not learn of Defendants' wrongful conduct or realize that it had been injured or damaged as a result of this wrongful conduct until the United States unveiled the First Superseding Indictment in the Kilpatrick Prosecution on December 15, 2010.

118. Defendants conducted their bribery, extortion, other racketeering crimes, and other tortious misconduct in secret and only between the participants. Defendants' wrongful conduct – and the deciphering, interpretation, and revealing of its tortious, injurious, and

potentially criminal nature – came to light only through law enforcement use of wire taps and the disclosure of email and text messages.

119. Between the time of Defendants’ conduct and December 15, 2010, the Intervening Plaintiff acted in a reasonably diligent manner when it:

- Reviewed and relied upon the contracts that were presented to it, including the covenants Defendants made about the lack of conflicts of interest in relation to the contracts;
- Relied upon the City of Detroit’s published ordinances, rules, and formal written Standards of Conduct, which prohibited – among other things – public officials from performing official acts for private gain, disclosing confidential information to third-parties for private gain, and using municipal resources for commercial gain;
- Relied upon the oversight and supervision of DWSD and its operations by Judge Feikens, the presiding judge in the City of Detroit Environmental Case;
- Relied on the review and analysis of contracts in excess of \$500,000 by IMG, the consulting firm approved and appointed in the City of Detroit Environmental Case;
- Relied upon Kilpatrick’s authority as Special Administrator, which essentially preempted any conflicting efforts or authority of the DWSD Board and other City of Detroit officials;
- Relied upon the provisions of the City of Detroit Charter which vested the authority to investigate and/or initiate a lawsuit in the Mayor’s Office; and
- Relied upon Kilpatrick, Mercado, and Miller to fulfill their fiduciary duties under federal and state law and the City of Detroit Charter, including disclosing any breaches of fiduciary duties committed by themselves or others.

INTERVENING PLAINTIFF'S CLAIMS

**COUNT 1: Civil RICO – Conducting an Enterprise Through Racketeering Under
18 U.S.C. § 1962(c)
(All Defendants except LD&S)**

120. For purposes of the Intervening Plaintiff's civil RICO claim, the City of Detroit is a person within the meaning of 18 U.S.C. §§ 1961(3).

THE KILPATRICK ENTERPRISE: MEMBERS AND ASSOCIATES

121. For purposes of the Intervening Plaintiff's civil RICO claim, each of the following Defendants is a person within the meaning of 18 U.S.C. §§ 1961(3), who, during the relevant time period, was a member and associate of and a participant in the Kilpatrick Enterprise:

- Former Mayor Kwame Kilpatrick
- Bobby W. Ferguson
- Victor M. Mercado
- Derrick A. Miller
- Inland Waters Pollution Control, Inc.
- Ferguson Enterprises, Inc.

122. As set forth in detail below, each of the above Defendants engaged in conduct as a member or associate of and a participant in the Kilpatrick Enterprise, which conduct included a pattern of racketeering activity.

123. As set forth in detail above and below, the pattern of racketeering activity, which included numerous related and repeated predicate acts, took place over a period of four (4) years or more and was part of a longer pattern of racketeering activity that partly falls outside of the scope of this initial Intervention Complaint (as limited by the Court's 05/07/2012 Order).

124. As set forth in detail below, the predicate acts included bribery, extortion, and money laundering.

125. As set forth in detail below, the pattern of racketeering activity caused injury to the business and property of the City of Detroit and DWSD.

THE KILPATRICK ENTERPRISE: OBJECTIVES

126. Based upon information and belief, and as set forth in the Kilpatrick Indictment, Defendants Kilpatrick, Ferguson, Mercado, Miller, Inland Waters, and FEI and other participants known and unknown, associated together in an ongoing organization for the common purpose of financially enriching themselves and their friends and associates in connection with work performed for DWSD. They operated as an association-in-fact enterprise within the meaning of 18 U.S.C. § 1961(4) (the "Kilpatrick Enterprise" or "Enterprise").

127. The Kilpatrick Enterprise engaged in, and its affairs substantially affected and involved, interstate commerce as a result of its members and their agents procuring contracts with out-of-state companies for the goods and services involved in performing work for DWSD, and using interstate wires to transmit funds, to send and receive billing and payment-related documents and for other communications.

128. The members of the Kilpatrick Enterprise hid, disguised, and fraudulently concealed their unlawful activities from disclosure to the City of Detroit officials, including the Detroit City Council, the DWSD Board, the federal court, law enforcement and the media. The concealment was made possible as Kilpatrick and Mercado -- in their positions of authority, including Kilpatrick's position as the federal Court-appointed Special Administrator for DWSD -- essentially controlled the actions of DWSD.

THE KILPATRICK ENTERPRISE: MEANS AND METHODS OF
CONDUCTING THE KILPATRICK ENTERPRISE
THROUGH A PATTERN OF RACKETEERING ACTIVITY

129. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, including the sections entitled "General Pattern of Illegal Conduct," "The Kilpatrick Indictment and Prosecution," "Jurisdiction," "Venue," "Parties" and "General Allegations," including specifically the sections pertaining to the repair of the Macomb Interceptor sewer at 15 Mile Road in Sterling Heights, Michigan:

- I. Kilpatrick is Elected Mayor and Appointed the Federal Court's Special Administrator;
- II. Background Information as to CS-1368, Amendments 2 and 3, which includes allegations concerning the manipulating and fixing of the contract to award subcontractor work to Ferguson and his company and the payment of bribes by Inland Waters;
- III. CS-1368, Amendments 2 and 3, which includes allegations concerning the continued steering of subcontractor work to Ferguson and his company, the submission of inaccurate and padded invoices, the awarding of exorbitant amendments to the contract, and the cover-up of unlawful activity;
- IV. Aftermath and Consequences of CS-1368, Amendments 2 and 3, which includes allegations concerning the continued unlawful activity of the contractors involved in CS-1368, Amendments 2 and 3; and
- V. Kilpatrick, Mercado, Ferguson, Miller, FEI, Inland Waters, and LD&S Fraudulently Concealed their Activities in Connection with (a) the Manipulation and Fixing of the Awarding of DWSD Contracts and the Profits from those Contracts, (b) the Submission of Invalid and Inaccurate Invoices and Other Payment-Related Documents on

DWSD contracts, and/or (c) the Participating in Other Tortious or Unlawful Activity Including Bribery, Extortion, and/or Money Laundering;

which are referred to herein collectively as the “Intervening Plaintiff’s Allegations.”

130. The Kilpatrick Enterprise was conducted through an overall pattern of misconduct, racketeering activity, and fraudulent concealment, which encompassed and weaved its way through a number of DWSD contracts for the period from approximately January 1, 2002 to approximately December 31, 2008. The contract at issue in the present action is CS-1368, Amendments 2 and 3, which pertains to repair of the Macomb Interceptor sewer at 15 Mile Road in Sterling Heights, Michigan.

131. During the relevant time period, known and unknown current and past owners, officers, employees, agents and representatives of some or all of the corporate entities that were part of the Kilpatrick Enterprise were authorized to act and did act for the benefit of their affiliated corporate entity in furtherance of the Kilpatrick Enterprise.

132. During the relevant time period, at various times, known and unknown persons or entities were authorized to act and did act for the benefit of one or more of the corporate entities that were part of the Kilpatrick Enterprise.

133. During the relevant time period, the corporate entities that were part of the Kilpatrick Enterprise knowingly accepted and received the benefit from the acts of the persons and entities set forth above.

134. By their actions as specifically set forth in the Intervening Plaintiff’s Allegations, Defendants Kilpatrick, Mercado, and Miller willingly committed the following acts while participating in and conducting the affairs of the Kilpatrick Enterprise:

- participated in bribery in violation of 18 U.S.C. § 201;
- acted as willing associates of the Kilpatrick Enterprise; and

- participated in the activity of the Kilpatrick Enterprise in manipulating and fixing the unlawful awarding of DWSD contracts and profits.

135. By their actions as specifically set forth in the Intervening Plaintiff's Allegations, Defendants Ferguson, and FEI willingly committed the following acts while participating in and conducting the affairs of the Kilpatrick Enterprise:

- participated in, aided, and abetted bribery in violation of 18 U.S.C. § 201;
- participated in money laundering in violation of 18 U.S.C. § 1956;
- participated in extortion in violation of 18 U.S.C. § 1951;
- acted as a willing associate of the Kilpatrick Enterprise; and
- participated in the activity of the Kilpatrick Enterprise in manipulating and fixing the unlawful awarding of DWSD contracts and profits.

136. By its actions as specifically set forth in the Intervening Plaintiff's Allegations, Defendant Inland Waters willingly committed the following acts while participating in and conducting the affairs of the Kilpatrick Enterprise:

- paid a bribe in violation of 18 U.S.C. § 201;
- engaged in money laundering in violation of 18 U.S.C. § 1956;
- acted as a willing associate of the Kilpatrick Enterprise; and
- participated in the activity of the Kilpatrick Enterprise in manipulating and fixing the unlawful awarding of DWSD contracts and profits.

137. By their actions as specifically set forth in the Intervening Plaintiff's Allegations, Defendants' racketeering activities directly, legally, and proximately caused millions of dollars in injury to the City of Detroit and DWSD and their business and property.

138. Defendants FEI and Inland Waters would not have been awarded or allowed to participate as contractors or subcontractors in CS-1368, Amendments 2 and 3, if these Defendants had not engaged in the racketeering activities specified in this Complaint. As a result

of their racketeering activities, Defendants FEI and Inland Waters obtained gross receipts of about \$58 million on CS-1368, Amendments 2 and 3.

139. The damages to the City of Detroit and DWSD include:

- (1) increased contract costs and lost savings due to non-competitive bidding, bid-rigging, extortion, and money laundering;
- (2) lost value and excess costs due to bribery;
- (3) payments made pursuant to excessive and unnecessary contract, consulting, and other fees, expenses, and costs; and
- (4) any and all other appropriate damages.

140. As a result of Defendants' violations of 18 U.S.C. § 1962, the City of Detroit and DWSD are entitled under 18 U.S.C. 1961, *et seq.*, to recover an amount equal to the total gross receipts obtained by these Defendants on CS-1368, Amendments 2 and 3, which are approximately \$58 million.

141. Alternatively, as a result of Defendants' violations of 18 U.S.C. § 1962, the City of Detroit and DWSD are entitled under 18 U.S.C. 1961, *et seq.*, to recover an amount equal to all profits received by these Defendants on CS-1368, Amendments 2 and 3, which, upon information and belief, exceeds \$10 million.

142. As a result of Defendants' violations of 18 U.S.C. § 1962, the City of Detroit and DWSD are entitled under 18 U.S.C. § 1964(c) to recover treble damages, attorney fees, and costs.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment against these Defendants (except LD&S) in an amount and manner to be determined at trial together with gross receipts or profits, treble damages, interest, costs, and attorneys' fees.

COUNT 2: Breach of Fiduciary Duty
(Defendants Kilpatrick, Mercado, and Miller)

143. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

144. Defendant Kilpatrick, as Mayor and the federal Court's appointed Special Administrator, was a fiduciary of the City of Detroit, DWSD, and the citizens of the City of Detroit.

145. Defendant Mercado, as the Director of DWSD and the sometimes-designated agent acting on behalf of the Special Administrator, was a fiduciary of the City of Detroit, DWSD, and the citizens of the City of Detroit.

146. Defendant Miller, as a member of Kilpatrick's mayoral administration who served as Chief Administrative Officer and Chief Information Officer for the City of Detroit, was a fiduciary of the City of Detroit, DWSD, and the citizens of the City of Detroit.

147. Kilpatrick, Mercado, and Miller owed fiduciary duties to the City of Detroit, DWSD, and the citizens of the City of Detroit, including the duties of loyalty, honesty, good faith, fair dealing, prudence, and competency.

148. Moreover, as the public officers who were in charge of the administration and operation of DWSD, Kilpatrick and Mercado were charged and entrusted with the fiduciary duty and obligation to manage and operate DWSD so as to protect, promote, and advance the interests of the City of Detroit, DWSD, and the public, including ensuring that the public funds of the City of Detroit and DWSD were lawfully spent in the best interests of the City of Detroit, DWSD and the citizens of the City of Detroit.

149. Also, as the public officers who were in charge of the administration and operation of DWSD, Kilpatrick and Mercado had the fiduciary duty to make certain that the

public funds of the City of Detroit and DWSD were not spent for or diverted to the personal gain of themselves or their friends and associates, or unlawfully paid, transferred or delivered to entities and individuals who did business with DWSD as contractors or subcontractors.

150. In his position as the federal Court's appointed Special Administrator of DWSD, although entrusted with extensive power and authority to control, manage, and operate DWSD, Kilpatrick nonetheless could not exercise that power and authority (or delegate that power and authority to be used) in his self-interest or in the pecuniary interest of his friends, associates, and business partners, or exercise that power and authority (or delegate that power and authority to be used) against the interest of the City of Detroit, DWSD, and the citizens of the City of Detroit and for the benefit of particular entities or individuals who did business with DWSD as contractors or subcontractors. As Special Administrator, neither Kilpatrick nor anyone to whom he delegated his power and authority was authorized to violate federal, state, or local criminal laws or was immune from civil liability, restitution, equitable remedies, or civil retribution.

151. By their acts as specifically set forth in the "General Allegations" section of this Complaint, including engaging in bribery, extortion, money laundering, and contract-rigging or bid-rigging, Defendants Kilpatrick, Mercado, and Miller breached their fiduciary duties to the City of Detroit, DWSD, and the citizens of the City of Detroit. These breaches legally, proximately, and actually caused damage to the City of Detroit and DWSD.

152. The damages to the City of Detroit and DWSD include:

- (1) increased contract costs and lost savings due to non-competitive bidding, bid-rigging, extortion, and money laundering;
- (2) lost value and excess costs due to bribery;
- (3) payments made pursuant to excessive and unnecessary contract, consulting, and other fees, expenses, and costs; and
- (4) any and all other appropriate damages.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment against Defendants Kilpatrick, Mercado, and Miller, jointly and severally, in an amount to be determined at trial, including exemplary, enterprise, and unjust enrichment damages and disgorgement of profits, together with interest, costs and attorneys' fees.

COUNT 3: Aiding and Abetting/Knowing Participation in Breach of Fiduciary Duties
(All Defendants)

153. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

154. Defendants Kilpatrick, Mercado, Miller, Ferguson, FEI, Inland Waters, and LD&S knew that Kilpatrick, Mercado, and Miller had the fiduciary duties identified in the preceding Count.

155. Defendants Kilpatrick, Mercado, Miller, Ferguson, FEI, Inland Waters, and LD&S knew that when Defendants Kilpatrick, Mercado, and Miller engaged in the actions specifically set forth in the "General Allegations" section of this Complaint, including engaging in bribery, extortion, money laundering, and contract-rigging or bid-rigging, Kilpatrick, Mercado, and Miller breached their fiduciary duties to the City of Detroit, DWSD, and the citizens of the City of Detroit.

156. By their actions as specifically set forth in the "General Allegations" section of this Complaint, including engaging in bribery, extortion, money laundering, and contract-rigging or bid-rigging, Defendants Kilpatrick, Mercado, Miller, Ferguson, FEI, Inland Waters, and LD&S substantially assisted in, aided, abetted and facilitated Kilpatrick, Mercado, and Miller's above-described breaches of their fiduciary duties. Such assistance legally, proximately, and actually caused damage to the City of Detroit and DWSD.

157. The damages to the City of Detroit and DWSD include:

- (1) increased contract costs and lost savings due to non-competitive bidding, bid-rigging, extortion, and money laundering;
- (2) lost value and excess costs due to bribery;
- (3) payments made pursuant to excessive and unnecessary contract, consulting, and other fees, expenses, and costs; and
- (4) any and all other appropriate damages.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment against Defendants Kilpatrick, Mercado, Miller, Ferguson, FEI, Inland Waters, and LD&S, jointly and severally, in an amount to be determined at trial, including exemplary, enterprise, and unjust enrichment damages and disgorgement of profits, together with interest, costs and attorneys' fees.

COUNT 4: Civil Bribery
(Defendants Kilpatrick, Mercado, Miller, Ferguson, FEI, and Inland Waters)

158. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

159. Defendant Kilpatrick, as Mayor and the federal Court's appointed Special Administrator, was a public governmental official, agent and fiduciary of the City of Detroit, DWSD, and the citizens of the City of Detroit.

160. Defendant Mercado, as the Director of DWSD and the sometimes-designated agent acting on behalf of the Special Administrator, was a public governmental official, agent and fiduciary of the City of Detroit, DWSD, and the citizens of the City of Detroit.

161. As detailed in the Complaint, including the "General Allegations" section, Kilpatrick and Mercado solicited and/or demanded that:

- they personally be given cash, and/or plane rides, and/or other valuable consideration; and/or
- Ferguson and/or Ferguson-controlled companies be given cash, valuable contracts, and/or other valuable consideration;

in exchange for their willingness to be influenced in the performance of their official acts and/or to be induced to do, or to omit to do, one or more acts in violation of their official duties.

162. As detailed in the Complaint, including the “General Allegations” section, Ferguson, FEI, and Inland Waters corruptly and voluntarily made unlawful promises or agreed to the solicitations and/or demands of Kilpatrick and Mercado that:

- they personally be given cash, and/or plane rides, and/or other valuable consideration; and/or
- Ferguson and/or Ferguson-controlled companies be given cash, valuable contracts, and/or other valuable consideration;

in exchange for their willingness to be influenced in the performance of their official acts and/or to be induced to do, or to omit to do, one or more acts in violation of their official duties.

163. Kilpatrick, Mercado, and possibly other public officials acting at the direction of Kilpatrick and Mercado accepted the valuable consideration and promises offered by Ferguson, FEI, and Inland Waters.

164. It was the intent of Ferguson, FEI, and Inland Waters that the valuable consideration or promises provided by them to Kilpatrick, Mercado, and possibly other public officials influence Kilpatrick, Mercado and possibly other public officials in the performance of their official acts and/or induce them to do, or to omit to do, one or more acts in violation of their official duties.

165. As stated in previous counts, Ferguson, FEI, and Inland Waters knew that Kilpatrick, Mercado, and possibly other public officials had the fiduciary duties identified in the preceding counts.

166. It was the intent of Ferguson, FEI, and Inland Waters that the valuable consideration provided by them to Kilpatrick, Mercado, and possibly other public officials including Miller caused them to breach their fiduciary duties.

167. The solicitations, demands, gifts, offerings, promises, and/or agreements to give the above-described bribes legally, proximately, and actually caused the City of Detroit and DWSD to suffer substantial economic and other injuries.

WHEREFORE, Intervening Plaintiff requests entry of a judgment against Kilpatrick, Mercado, Miller, Ferguson, FEI, and Inland Waters, jointly and severally, in an amount to be determined at trial together with interest, costs and attorneys' fees.

COUNT 5: Fraudulent Inducement
(Inland Waters)

168. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

169. As set forth more specifically above, in order to induce DWSD to enter into CS-1368, and specifically Amendments 2 and 3 of CS-1368, Defendant Inland Waters made the material representations that (a) it has no interest and would not acquire any interest that would conflict with the performance of its services and duties under Amendments 2 and 3 of CS-1368; (b) no city official who has the responsibility for overseeing the awarding or the review of Amendments 2 and 3 of CS-1368 has any personal or financial interest in Amendments 2 and 3 of CS-1368; and (c) it will not employ any person to secure or assist in the securing of Amendments 2 and 3 of CS-1368 upon agreement or arrangement for payment or payments made to that person. (*See* Compl. ¶¶ 37-38, *supra*.)

170. As set forth more specifically above, the representations in the preceding paragraph were false when Inland Waters made them.

171. When Inland Waters made the above representations, it either (a) knew that Kilpatrick, Mercado, Ferguson, and FEI had conflicts of interest and yet were involved in

soliciting or obtaining the contract; or (b) made the representations recklessly without knowledge of their truth.

172. When Inland Waters made the above representations, it intended that DWSD would rely upon those representations in awarding Amendments 2 and 3 of CS-1368 to Inland Waters.

173. DWSD actually did rely upon the Defendants' above representations.

174. As a result of the DWSD's reliance upon Defendant's above misrepresentations, Inland Waters directly harmed and damaged the City of Detroit and DWSD.

175. The damages to the City of Detroit and DWSD include:

- (1) increased contract costs and lost savings due to non-competitive bidding, bid-rigging, extortion, and money laundering;
- (2) lost value and excess costs due to bribery;
- (3) payments made pursuant to excessive and unnecessary contract, consulting, and other fees, expenses, and costs; and
- (4) any and all other appropriate damages.

176. The City of Detroit's and DWSD's injuries were also enhanced by the pattern of amending (rather than competitively bidding) contracts. This pattern provided Defendants opportunities for even more excessive profits and other fees, expenses, and costs.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment against Inland Waters in an amount to be determined at trial together with interest, costs and attorneys' fees.

COUNT 6: Unjust Enrichment
(All Defendants Except LD&S)

177. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

178. Defendants Kilpatrick, Mercado, and Miller have been unjustly enriched through the corrupt allocation of public contracts by the receipt of kickbacks, portions of profits, and other monies to which they were not legally entitled, with an inequity resulting to the City of Detroit from the retention of the benefits by these Defendants.

179. Defendants Ferguson, FEI, and Inland/Xcel have been unjustly enriched by the receipt of profits and/or benefits attributable to fraud, dishonest services, and/or to purported work not performed and/or services not provided, with an inequity resulting to the City of Detroit from the retention of the benefits by these Defendants. As set forth more specifically above, the value of the services each Defendant provided was inadequate in relation to the payments the City of Detroit rendered for such services.

180. All the Defendants (except LD&S) have received and retained benefits from the City of Detroit by virtue of their above described fraudulent, inequitable, or otherwise improper actions.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment, including but not limited to the disgorgement of profits, against all Defendants except LD&S in an amount to be determined at trial, together with interest, costs and attorneys' fees.

COUNT 7: Constructive Trust
(All Defendants Except LD&S)

181. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

182. As set forth in this Complaint, the Defendants (except LD&S) obtained the Intervening Plaintiff's money, property, and/or valuable consideration through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of a weakness in the Intervening Plaintiff's standard practices or personnel, or taking undue advantage of the

Intervening Plaintiff's necessities, and/or other similar conduct which render it unconscionable for these Defendants to hold that money, property, and/or valuable consideration.

183. The money, property, and/or valuable consideration referenced in the preceding paragraph – together with any interest, profits, or additional consideration that Defendants received on the money, property, and/or valuable consideration referenced in the preceding paragraph – should be deemed to be held in constructive trust for the benefit of the Intervening Plaintiff.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment against all Defendants (except LD&S), which includes but is not limited to the imposition of a constructive trust on the money, property, profits, interest, and other items of value described above.

COUNT 8: Action for Accounting
(All Defendants)

184. The Intervening Plaintiff realleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

185. As a result and consequence of the claims which have been asserted by the Intervening Plaintiff in this action, Defendants have a duty to account to the Intervening Plaintiff because they received the Intervening Plaintiff's monies under circumstances that on their face appear to be the result of fraud, unjust enrichment, concealment or other improper or inequitable conduct.

186. Each of the Defendants has failed to account to the Intervening Plaintiff for the monies they received.

WHEREFORE, the Intervening Plaintiff requests entry of a judgment compelling all Defendants to render an accounting, including all evidence of the services they provided for the monies they received.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Jerome R. Watson (P27082)
W. Mack Faison (P13274)
Irene Bruce Hathaway (P32198)
Saura J. Sahu (P69627)

By: /s/ Jerome R. Watson

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Dated: May 21, 2012

20,155,373.3\022765-00197

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MACOMB INTERCEPTOR DRAIN DRAINAGE
DISTRICT,

Plaintiff,

and

CITY OF DETROIT and DETROIT WATER AND
SEWERAGE DEPARTMENT,

Plaintiff-Intervenors,

v.

Case No. 11-13101

KWAME KILPATRICK, et al.,

Defendants.

OPINION AND ORDER (1) GRANTING CONCURRING DEFENDANTS' "AMENDED MOTION FOR SUMMARY JUDGMENT"; (2) GRANTING DEFENDANTS FUTURENET GROUP, INC., AND PERRY MEHTA'S "MOTION FOR PARTIAL SUMMARY JUDGMENT"; (3) DIRECTING PLAINTIFF MACOMB INTERCEPTOR TO SHOW CAUSE WHY SUMMARY JUDGMENT SHOULD NOT BE GRANTED IN FAVOR OF NON-MOVING DEFENDANTS ON NON-CONTRACTUAL CLAIMS; (4) DENYING PLAINTIFF MACOMB INTERCEPTOR'S "MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT"; AND (5) TERMINATING AS MOOT THE D'AGOSTINI DEFENDANTS' "MOTION TO STRIKE REPLY TO RESPONSE . . ."

Pending before the court are Concurring Defendants' "Amended Motion for Summary Judgment," Defendants Futurenet Group, Inc., and Perry Mehta's "Motion for Partial Summary Judgment," and Plaintiff Macomb Interceptor Drain Drainage District's ("Macomb Interceptor's") "Motion for Leave to File First Amended Complaint." Because Macomb Interceptor lacks standing to assert its non-contractual claims, the court will grant the motions for summary judgment and deny the motion for leave to amend. The

court will also direct Macomb Interceptor, pursuant to Federal Rule of Civil Procedure 56(f), to show cause why summary judgment should not be entered in favor of the non-moving Defendants on each of the non-contractual claims.

I. BACKGROUND

Macomb Interceptor sues forty Defendants for allegedly violating the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961–68, the Sherman Antitrust Act, 15 U.S.C. §§ 1–7, the Clayton Antitrust Act, 15 U.S.C. §§ 12–27, and state contract and tort laws. The claims arise from Defendants’ involvement in the 2004-2005 repair of a collapsed sewer interceptor at 15 Mile Road in Sterling Heights, Michigan, (hereafter, the “15 Mile Interceptor Repair Project” or “Project”). Macomb Interceptor avers that Defendant Kwame Kilpatrick, then the Mayor of the City of Detroit, along with various City of Detroit officials conspired with the principal contractor overseeing the 15 Mile Interceptor Repair Project, Defendant Inland Waters Pollution Control, Inc., and numerous subcontractors to “overcharge the Detroit Water and Sewerage Department . . . for time, labor and materials to stabilize and repair a sewer collapse at 15 Mile Road.” (Pl.’s Compl. ¶ 5, Dkt. # 1.) Macomb Interceptor further alleges that the misconduct was part of a widespread corruption scheme during Defendant Kwame Kilpatrick’s tenure as Mayor of Detroit. This broader scheme is alleged to have operated for nearly a decade seeking to steer public works contracts and illicit benefits to associates of Defendant Kwame Kilpatrick and officials throughout his administration. (See Pl.’s Compl. Ex. A, Dkt. #1-1.)

It is undisputed that the scheme as alleged was perpetrated against Plaintiff-Intervenors, the City of Detroit and the Detroit Water and Sewerage Department

(collectively, the “City of Detroit” or “City”), not Macomb Interceptor. Macomb Interceptor, though, maintains that it has standing to assert claims arising from the Project based on two independent grounds: (1) it obtained the right, through an assignment clause, to assert any claims, whether sounding in state tort or contract law or federal statutory law, originally possessed by the City of Detroit when, in September 2010, Macomb Interceptor and the City of Detroit entered into the Macomb Interceptor Acquisition Agreement (“Acquisition Agreement” or “Agreement”); and (2) the Project’s alleged scheme-inflated cost resulted in Macomb Interceptor paying a higher price to acquire the Macomb System and users paying a higher rate for the water and sewerage system before the execution of the Agreement. The Acquisition Agreement, which is part of a larger global settlement in *United States v. City of Detroit*, No. 77-71100 (E.D. Mich.), a decades-long lawsuit related to the City of Detroit’s compliance with federal environmental laws, transferred to Macomb Interceptor sewer assets located in Macomb County formerly owned by the City of Detroit and also assigned “all of [Detroit Water and Sewerage Department’s] rights under all contracts, warranties, and guarantees that apply to services or goods related to the Macomb System.” (Acquisition Agreement art. II, § 2.4, Dkt. # 206-2.)

On May 7, 2012, the court granted the City of Detroit’s motion to intervene, recognizing that a dispute exists about who may properly assert the non-contractual claims arising from the 15 Mile Interceptor Repair Project. Since the initiation of this case, many Defendants have maintained that the City of Detroit, not Macomb Interceptor, has standing to assert the statutory and tort law claims contained in the Complaint. A large number of these Defendants (referred to hereafter as the

“Concurring Defendants”¹, filed a joint motion for summary judgment, seeking dismissal of Counts I, II, III, V, and VI of the Complaint on the grounds that Macomb Interceptor lacks standing to maintain these Counts. Exhaustive briefing ensued, with Macomb Interceptor filing a response in opposition and the City of Detroit filing a response in support of Concurring Defendants’ motion. The Concurring Defendants and Macomb Interceptor replied.

II. STANDARD

Under Federal Rule of Civil Procedure 56, summary judgment is proper when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). When deciding a motion for summary judgment, the court “is not to ‘weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Sagan v. United States*, 342 F.3d 493, 497 (6th Cir. 2003) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). “The central issue is ‘whether the

¹The Concurring Defendants are: Anthony Soave; D’Agostini & Sons, Inc.; L. Robert D’Agostini; James D. D’Agostini; Inland Waters Pollution Control, Inc.; Robert L. Williams; Dennis Oszust; Walter Rozycki; Merisno Dewatering, Inc.; Rodney A. Mersino; Marco Mersino; Drian Lenaghan; Patriot Pumps, Inc.; Rohrscheib Sons Caissons, Inc.; Steve Rohrscheib; O’Laughlin Construction Company; Mark E. O’Laughlin; Dubay’s Landscaping Services; Lawrence R. Dubay; Victor M. Mercado; and Hayward Baker.

Defendants Futurenet Group, Inc., and Perry Mehta filed an independent motion for summary judgment, in which they join in Concurring Defendants’ joint motion for summary judgment. In their motion, these two Defendants indicate that Macomb Interceptor’s counsel stated that she did not object to them joining Concurring Defendants’ motion for summary judgment. Defendants Rotor Electric Company of Michigan, LLC, and Benjamin Rosenberg also submitted an unopposed motion to join the Concurring Defendants’ joint motion for summary judgment. Accordingly, as a matter of efficiency, the court will include Defendants Futurenet Group, Inc., Perry Mehta, Rotor Electric Company of Michigan, LLC, and Benjamin Rosenberg in the group of Concurring Defendants.

evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 497 (quoting *Anderson*, 477 U.S. at 251-52). “The judge’s inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the [movant] is entitled to a verdict” *Anderson*, 477 U.S. at 252.

The party seeking summary judgment has the initial burden of showing the absence of a genuine dispute as to a material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmovant, who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. It is not enough for the nonmovant to “simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, the nonmovant must sufficiently allege a fact that, if proven, “would have [the] effect of establishing or refuting one of essential elements of a cause of action or defense asserted by the parties.” *Midwest Media Prop. L.L.C. v. Symmes Twp., Ohio*, 503 F.3d 456, 469 (6th Cir. 2007) (alteration in original) (quoting *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984)) (internal quotation marks omitted).

Both parties must support their assertions “that a fact cannot be or is genuinely disputed” by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A). Alternatively, either party may carry its burden by “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible

evidence to support the fact.” *Id.* 56(c)(1)(B). “The court must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor.” *Sagan*, 342 F.3d at 497 (citing *Matsushita*, 475 U.S. at 587).

III. DISCUSSION

Macomb Interceptor’s Complaint alleges three federal claims and three state-law claims. Macomb Interceptor did not exist at the time of the alleged wrongdoing, and thus cannot be owed directly a legal duty giving rise to state-law tort claims, so its standing to assert state-law claims here is premised on its contention that the City of Detroit, through the Acquisition Agreement, assigned to it all rights to pursue claims arising from the 15 Mile Interceptor Repair Project. Macomb Interceptor also relies, in part, on this same assignment argument to establish its standing to bring the federal claims, but alternatively argues that it suffered injuries, wholly independent and distinct from the City of Detroit’s, that permit it to recover under the federal antitrust statutes and RICO. In their motion for summary judgment, Concurring Defendants argue that Macomb Interceptor has standing to assert only the breach of contract claim against Defendant Inland Waters Pollution Control and has failed to establish that it has standing, whether through an assignment or based on independent injury, to maintain the Complaint’s non-contractual claims.

A. Standing Based on Assignment in Macomb Agreement

Macomb Interceptor argues that it acquired the City of Detroit’s rights to pursue all claims arising from the 15 Mile Interceptor Repair Project, whether sounding in state-law or federal statutory law, through an assignment clause in the Acquisition Agreement. Specifically, in the Complaint, Macomb Interceptor points to sections 2.4

and 2.9(b)(8) of the Agreement, which provide, respectively, that “Detroit shall assign to [Macomb Interceptor] all of its rights under all contracts, warranties and guarantees that apply to services or goods related to the Macomb System,” (Acquisition Agreement art. II, § 2.4), and that “[a]t closing, . . . Detroit shall deliver to MID . . . an assignment of all rights under any contracts, warranties, or guarantees that apply to services or goods related to the facilities comprising the Macomb System,” (*id.* at art. II, § 2.9(b)(8)).

Concurring Defendants and the City of Detroit concede that these clauses assign to Macomb Interceptor state-law contract claims arising out of the 15 Mile Interceptor Repair Project, but maintain that the clauses do not assign claims sounding in tort or federal statutory law. The court agrees with Concurring Defendants and the City of Detroit. The incorporation of the clause “under all contracts, warranties and guarantees” expressly limits the preceding assignment of “all of its rights.” Accordingly, the City of Detroit assigned to Macomb Interceptor the City’s rights to contracts related to the 15 Mile Interceptor Repair Project, including the right to recover for damages caused by breaches of those contracts, but not the City’s rights to then-unknown causes of action sounding in state tort law or federal statutory law.

Under Michigan law, “[a]n assignment is a contract between the assignor and the assignee and is interpreted according to the rules of contract construction.” *Burkhart v. Lapham*, No. 291705, 2010 WL 4905568, at *2 (Mich. Ct. App. Dec. 2, 2010) (citing 6 Am. Jur. 2d Assignments § 109). “The primary goal in interpreting contracts is to determine and enforce the parties’ intent.” *Old Kent Bank v. Sobczak*, 620 N.W.2d 663, 666-67 (Mich. Ct. App. 2000) (citing *Rasheed v. Chrysler Corp.*, 517 N.W.2d 19, 29 n.28 (Mich. 1994)). “In ascertaining the meaning of a contract, [the court] give[s] the words

used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument.” *Rory v. Cont’l Ins. Co.*, 703 N.W.2d 23, 28 (Mich. 2005) (citing *Wilkie v. Auto-Owners Ins. Co.*, 664 N.W.2d 776, 780 (Mich. 2003)). Additionally, “[e]very word in the agreement must be taken to have been used for a purpose, and no word should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument.” *Associated Truck Lines, Inc. v. Baer*, 77 N.W.2d 384, 386 (Mich. 1956) (quoting *Laevin v. St. Vincent de Paul Soc’y*, 36 N.W.2d 163, 164 (Mich. 1949)) (internal quotation marks omitted).

If a court determines that “the contractual language is unambiguous, [it] must interpret and enforce the contract as written, because an unambiguous contract reflects the parties’ intent as a matter of law.” *In re Smith Trust*, 745 N.W.2d 754, 758 (Mich. 2008) (citing *Frankenmuth Mut. Ins. Co. v. Masters*, 595 N.W.2d 832, 837 (Mich. 1999)).

Accordingly, a court may not consider extrinsic evidence of the parties’ intent to vary the meaning of a contract that is clear and unambiguous. *Burkhardt v. Bailey*, 680 N.W.2d 453, 464 (Mich. Ct. App. 2004). Where a court concludes, as a matter of law, that a contract is ambiguous, extrinsic evidence may be admissible for interpretive purposes. See *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 372 (6th Cir. 1998). “A contract is ambiguous when two provisions ‘irreconcilably conflict with each other,’” *Coates v. Bastian Bros., Inc.*, 741 N.W.2d 539, 543 (Mich. Ct. App. 2007) (quoting *Klapp*, 663 N.W.2d at 453), “or ‘when [a term] is equally susceptible to more than a single meaning,’” *id.* (alteration in original) (quoting *Mayor of Lansing v. Mich. Pub. Serv. Comm.*, 680 N.W.2d 840, 847 (Mich. 2004)). “[I]f a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not

be said to be ambiguous or, indeed, fatally unclear.” *Raska v. Farm Bureau Mut. Ins. Co. of Mich.*, 314 N.W.2d 440, 441 (Mich. 1982). Furthermore, “the parties’ disagreement regarding the meaning of contract language does not, by itself, create an ambiguity.” *Harbor Park Market, Inc. v. Gronda*, 743 N.W.2d 585, 589 n.3 (Mich. Ct. App. 2007) (citing *Gortney v. Norfolk & W. Ry. Co.*, 549 N.W.2d 612, 615 (Mich. Ct. App. 1996)).

Macomb Interceptor focuses on the use of the phrase “all of its rights” in sections 2.4 and 2.9(b)(8) in arguing that the assignment contained in section 2.4 is an absolute assignment to it to pursue all claims arising from the 15 Mile Interceptor Repair Project, and quotes *Skotak v. Vic Tanny Intern, Inc.*, 513 N.W.2d 428 (Mich. Ct. App. 1994) for the proposition that “there is no broader classification than the word ‘all[,]’ [and] [i]n its ordinary and natural meaning, the word ‘all’ leaves no room for exceptions.” 513 N.W. 2d at 430. To be sure, Macomb Interceptor is correct that the use of the word “all” is unambiguous and does not permit the imposition of unenumerated exceptions or limitations. But the word “all” does not alone signal an absolute assignment of any and all rights to causes of action initially belonging to an assignor. The contractual language at issue in *Skotak*, a liability waiver contained in a gym membership contract, illustrates this point and reveals the weakness in Macomb Interceptor’s reliance on *Skotak*’s declaration regarding the breadth of the word “all.”

The plaintiff in that case, the wife of a gym member who suffered a fatal heart attack at the gym, argued that the liability waiver signed by her husband was ambiguous and did not extend to claims of negligent training and supervision. The Michigan Court of Appeals, rejecting the ambiguity argument and holding that the waiver covered “all”

claims, observed that the waiver’s inclusive language, which provided for the waiver of “any and all claims, demands, damages, rights of action, or causes of action, . . . arising out of the Member’s . . . use of the facility” was a clear expression of the defendant’s “intention to disclaim liability for all negligence, including its own.” *Id.* at 619 (ellipses in original). The unambiguous intent of the defendant in that case to waive all liability was not premised simply on the incorporation of the phrase “any and all,” but instead on the relationship between that phrase and the succeeding contractual language, which provided necessary context to the phrase “any and all.”

Here, Macomb Interceptor’s interpretation of “all of its rights” fails to account for the contractual language that follows “all of its rights” and which provides the necessary context required to give meaning to section 2.4’s assignment. Unlike the breadth of the language that followed “any and all” in *Skotak*, the assignment of “all of its rights” contained in section 2.4 is *limited*: it refers specifically to “all” those rights under “contracts, warranties and guarantees that apply to services or goods related to the Macomb System.” (Acquisition Agreement art. II, § 2.4.) For the court to accept Macomb Interceptor’s contention that “all” assigns any right that the City of Detroit may have had in a cause of action arising from the 15 Mile Interceptor Repair Project, it would have to effectively excise the crucial language following the invocation of the word “all” that explains what is actually being assigned. Because Michigan law provides that “[e]very word in the agreement must be taken to have been used for a purpose,” *Associated Truck Lines, Inc.*, 77 N.W.2d at 386 (quoting *Laevin*, 36 N.W.2d at 164) (internal quotation marks omitted), Macomb Interceptor’s argument that the use of “all of its rights” in the assignment clause constituted an absolute assignment of any and all

rights the City of Detroit had must be rejected. Accordingly, the key to deciding whether section 2.4 assigned the City of Detroit's rights to non-contractual claims related to the Project is determining the proper interpretation of the unambiguous language, "rights under all contracts, warranties and guarantees."

In spite of the parties' conflation of the two concepts, an assignment provision incorporating the language "rights under all contracts" does not *per se* assign claims or causes of action, but instead assigns only rights and obligations arising under a contract. See Restatement (Second) of Contracts § 328 (1981) ("[A]n assignment of 'the contract' or of 'all my rights under the contract' or an assignment in similar general terms is an *assignment of the assignor's rights and a delegation of his unperformed duties under the contract.*" (emphasis added)); Mich. Comp. Laws § 440.2210(5) (same). To the extent that such an assignment permits the assignee to assert claims or causes of action, it does so on the grounds that among the rights that arise under a contract is the right to enforce the provisions of the contract and to recover damages for noncompliance with those provisions. However, the ability of an assignee to enforce contractually-created rights does not necessarily permit the assignee to also bring tort or statutory claims that are merely related somehow to the contractual relationship but that arose outside of the rights created by the contract. See *Int'l Design Concepts, LLC v. Sakes Inc.*, 486 F. Supp. 2d 229, 236 (S.D.N.Y. 2007) (applying New York law, which like Michigan has incorporated the Restatement's and Uniform Commercial Code's construction of an assignment of "all my rights under the contract," and observing that "an assignment of all contractual rights does not necessarily include an assignment of all tort claims; rather whether tort claims are encompassed within the assignment is a

matter of contract interpretation”). This is so because rights arising under contracts, which include warranty and guarantee rights, are fundamentally distinct from common-law tort or statutorily-created legal duties. See *Fultz v. Union-Commerce Assocs.*, 683 N.W.2d 587, 592 (Mich. 2004) (“[A] tort action stemming from misfeasance of a contractual obligation [is] the ‘violation of a legal duty separate and distinct from the contractual obligation.’” (quoting *Rinaldo’s Constr. Corp. v. Mich. Bell Tel. Co.*, 559 N.W.2d 647 (Mich. 1997))). Accordingly, where an assignment clause does no more than assign rights arising from contracts, it cannot be read to include an assignment of non-contractual claims. See *Fox v. Hirschfeld*, 142 N.Y.S. 261, 263 (N.Y. App. Div. 1913) (holding that the contractual provision, “I hereby sell, assign, transfer, and set over . . . all my right, title, and interest in and to the within contract’ . . . was not appropriate to assign a cause of action arising, not under the contract, but for the fraudulent representations of defendant *dehors* the contract”).

The inclusion of “rights under contracts, warranties and guarantees” in section 2.4 unambiguously reveals the intent of the contracting parties to assign only contractually-created rights. These do not include claims arising under tort or federal statutory law. Therefore, Macomb Interceptor lacks standing, as an assignee of the City of Detroit, to assert the claims contained in Counts I, II, III, V, and VI of the Complaint.

Macomb Interceptor’s reliance on extraneous evidence is unavailing in support of its argument that section 2.4 was an absolute assignment of all claims, known or unknown at the time of contracting, related to the 15 Mile Interceptor Repair Project. Where contractual provisions are unambiguous, as sections 2.4 and 2.9(b)(8) are, extrinsic evidence to assist in interpretation of the provisions is not permitted.

Burkhardt, 680 N.W.2d at 464. Moreover, the evidence itself does not establish that section 2.4 assigns all possible claims related to the Project.

In its briefing and during oral argument, Macomb Interceptor repeatedly quotes language in the Bill of Sale, which, based on the integration clause in the Acquisition Agreement, is not a formal part of the contracting parties' Agreement. (See Acquisition Agreement art. XII, § 12.5 ("This Agreement constitutes the sole understanding of the parties hereto with respect to the matters provided for herein No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by Detroit and [Macomb Interceptor] and in compliance with Section 12.12.")) Specifically, it argues that the following provision of the Bill of Sale transferred to it the right to prosecute "any and all claims" arising out of the Project:

Without limiting the prior paragraph, Detroit hereby constitutes and appoints the District the true and lawful agent and attorney-in-fact of Detroit, with full power of substitution and resubstitution, in whole or in part, in name and stead of Detroit but on behalf and for the benefit of the District and its successors and assigns, from time to time:

(a) to demand, receive and collect any and all of the Transferred Assets and to give receipts and releases for and with respect to the same, or any part thereof;

(b) to institute and prosecute, in the name of Detroit or otherwise, any and all proceedings at law, in equity or otherwise, that the District or its successors and assigns may deem proper in order to collect or reduce to possession any of the Transferred Assets and *in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be*; and

(c) to do all things legally permissible, required or reasonably deemed by the District to be required to recover and collect the Transferred Assets and to use Detroit's name in such manner

as the District may reasonably deem necessary for the collection and recovery of same.

(Bill of Sale 1, Dkt. # 206-3 (emphasis added).) Although broad in scope, this appointment of Macomb Interceptor as a “lawful agent and attorney-in-fact of Detroit,” does not, as Macomb Interceptor argues, transfer the right to prosecute “any and all claims.” Subsection (b) of the above-quoted language expressly provides, with respect to the assignment of claims and rights, that Macomb Interceptor’s authority to “institute and prosecute” legal and equitable proceedings is limited to those proceedings deemed proper “in order to collect or enforce any claim or right of any kind *hereby assigned or transferred, or intended so to be.*” (*Id.* (emphasis added).) Contrary to Macomb Interceptor’s argument, the Bill of Sale does not grant it the right to prosecute “any and all claims” of every description, but only all such claims and rights transferred or assigned in the Acquisition Agreement. Subsection (b) strengthens the conclusion that section 2.4 did not transfer or assign non-contractual claims arising from the Project and strengthens the court’s determination that Macomb Interceptor does not have standing as an assignee to bring its non-contractual claims.

Furthermore, the proffered affidavit of an attorney who represented Macomb Interceptor during the negotiation of the Acquisition Agreement is not only inadmissible as extrinsic evidence of the parties’ intent, but it is also speculative. At most, it may serve as evidence of Macomb Interceptor’s subjective intent. In support of its assertion that the “expressed intent of these parties” was for Macomb Interceptor to obtain the City of Detroit’s rights to pursue non-contract based claims related to the Project, Macomb Interceptor relies on the affidavit as its evidence: “[b]ecause Macomb County

was taking on all risk and obligations (except accrued tort and a few other expressly defined liabilities), it intended to obtain all of Detroit's rights and interests of whatever kind associated with the facilities and real estate-related rights being transferred so that the County would stand in Detroit's shoes after the transaction for anything related to the facilities being transferred." (Hupp Aff. ¶ 11, Dkt. # 206-4) (see Pls.' Resp. to Concurring Defs.' Mot. Summ. J. 23). The affidavit, though, says nothing of the parties' *expressed* intent, and shows only that Macomb County—presumably the entity negotiating the terms of the Acquisition Agreement before the creation of Macomb Interceptor—had a *subjective* intent to obtain any and all claims arising from the Project. It does not show that such an intent was actually expressed to the City of Detroit, that the City of Detroit had the same intent, or that such an intent was reflected in the Agreement.

Finally, the affidavit's concluding paragraph, also cited by Macomb Interceptor, is likely inadmissible, irrespective of the prohibition against extrinsic evidence, as speculative. The affiant states:

[A]t the time the acquisition agreement was negotiated and at the time the Macomb transaction closed, Macomb County was completely unaware of the alleged fraudulent and tortious acts set forth in the Kilpatrick indictment or any other tort or other claims Detroit might have had associated with the facilities being transferred. Accordingly, no reference to such claims was made in the acquisition agreement nor was the possibility of such claims expressly considered when the terms of the transaction were negotiated. However, any rights Detroit might have had to assert a tort or other claim associated with the facilities being transferred would likewise have been regarded by Macomb County as being part and parcel of what it was acquiring from Detroit. I have no doubt that had possible tort or other claims against third parties related to a Macomb County sewer been known at the time of the transaction, they would have been specifically listed among the assets transferred to Macomb County.

(*Id.* ¶ 13.) That Macomb Interceptor’s attorney who negotiated the terms of the Acquisition Agreement *now* “has no doubt” that the non-contractual claims would have been expressly included in the Agreement had the parties known of the claims at the time of contracting does not demonstrate that the parties intended, at the time of contracting, to transfer such claims to Macomb Interceptor. The statement is, in fact, not much more than conjecture as to how two contracting parties may have acted if they had additional information.

Accordingly, section 2.4’s unambiguous language expresses an intent to transfer only the City of Detroit’s “rights under all contracts, warranties and guarantees” and does not operate as a transfer or assignment of claims arising out of state tort law or federal statutory law. Therefore, Macomb Interceptor lacks standing as an assignee.

**B. Standing Based on Injury Suffered as Purchaser
of the Macomb System and as Ratepayer**

Concurring Defendants’ motion also challenges the Complaint’s assertion that Macomb Interceptor has standing, independent of any assignment by the City of Detroit, to bring the federal antitrust and RICO claims, because Macomb Interceptor has suffered independent injuries redressable under these federal statutes. Macomb Interceptor argues that the following two alleged injuries maintain its federal claims: (1) paying an inflated price for the Macomb System as a result of 15 Mile Interceptor Repair Project’s cost overruns caused by Concurring Defendants’ actions and (2) paying higher system usage charges during the time between the 15 Mile Interceptor Repair Project and the execution of the Acquisition Agreement.

Although Macomb Interceptor focuses on constitutional standing principles to establish its right to bring its federal claims, Concurring Defendants challenge Macomb Interceptor's standing on an analytically distinct ground: the more stringent requirements a plaintiff must satisfy to demonstrate that his particular alleged injury permits him to bring a claim under the antitrust statutes and RICO. See *Cnty. of Oakland v. City of Detroit*, 866 F.2d 839, 845-51 (6th 1989) (acknowledging the distinction between constitutional standing requirements and those requirements judicially imposed for RICO and federal antitrust claims). The question, therefore, is not simply whether Macomb Interceptor suffered a concrete, particularized injury, traceable to the challenged actions, and redressable by a favorable ruling—indeed, Concurring Defendants and the City of Detroit appear to concede that Macomb Interceptor can, on satisfactory proofs, establish that it suffered an “injury-in-fact,” by showing that the 15 Mile Interceptor Repair Project's cost overrun, allegedly caused by anticompetitive conduct and a RICO conspiracy, was a but-for cause of its paying a higher price to acquire the Macomb System through the Acquisition Agreement—but instead whether the claimed injuries suffered by Macomb Interceptor permit it to maintain causes of action under the antitrust statutes and RICO.

Concurring Defendants contend that Macomb Interceptor, an entity not in existence during the alleged injurious conduct, is an “indirect purchaser” barred from maintaining claims under the federal statutes. Macomb Interceptor argues that the indirect purchaser doctrine cited by Concurring Defendants bars only claims brought by plaintiffs who suffer “damages other than those resulting from the alleged misconduct,” (Pl. Macomb Interceptor's Resp. to Concurring Defs.' Mot. Summ. J. 26), and argues

that the doctrine does not apply here because it “is the only entity having actually paid the fixed amount of \$54,467,200.00 for the repair project to have been completed by the named-Defendants,” (*id.* at 27).

1. Antitrust Standing

Section 4 of the Clayton Act defines the class of persons entitled to seek damages under the antitrust statutes and provides that “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States.” 15 U.S.C. § 15. Although broad on its face, the language “has of necessity been judicially confined to limit the remed[ies] available . . . to particular classes of persons and for redress of particular forms of injury.” *Southaven Land Co., Inc. v. Malone & Hyde, Inc.*, 715 F.2d 1079, 1081 (6th Cir. 1983). Specifically, the United States Supreme Court has limited the scope of § 4 by identifying several factors a court must consider before finding that a plaintiff has standing under the antitrust statutes, *see Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983) (establishing five factors courts should consider when deciding whether a plaintiff has standing to assert antitrust claims), and by establishing the indirect purchaser doctrine, which bars individuals who are not direct purchasers from seeking relief under the statutes, *see Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

Under the indirect purchaser doctrine, a plaintiff who does not purchase directly from an alleged antitrust violator generally lacks standing to sue under the antitrust statutes. *See id.* at 729; *Jewish Hosp. Assoc. v. Stewart Mech. Enters., Inc.*, 628 F.2d 971, 973 (6th Cir. 1980). The genesis of the doctrine can be found in *Hanover Shoe*,

Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968), in which the Supreme Court “rejected an antitrust defendant’s argument that [a] plaintiff could have suffered no legally cognizable injury from illegal overcharges that were reflected, in turn, in the prices charged by the plaintiff to its own customers.” *Cnty. of Oakland v. City of Detroit*, 866 F.2d 839, 847 (6th Cir. 1989) (citing *Hanover Shoe*, 392 U.S. at 489). Later, in *Illinois Brick*, the Supreme Court extended the reasoning of *Hanover Shoe* to bar the *offensive* use of what it called the pass-on theory, holding that an “overcharged direct purchaser, and not others in the chain of manufacture or distribution, is the party ‘injured in his business or property’ within the meaning” of § 4 of the Clayton Act. *Illinois Brick*, 431 U.S. at 729.

In *Illinois Brick*, various governmental entities sued concrete brick manufacturers for conspiring to raise the cost of concrete bricks. The governmental entities, though, did not purchase the bricks directly from the defendants, and could only demonstrate injury by invoking the pass-on theory of injury, *i.e.*, by proving “that the overcharge was passed on to them through intervening links in the distribution chain.” *Id.* at 727-28. The bricks at issue in that case were first purchased directly from the manufacturers “by masonry contractors and used by them to build masonry structures.” *Id.* at 726. General contractors then incorporated these structures into buildings, which were ultimately sold to the governmental entities. *Id.* In concluding that the governmental entities did not suffer cognizable antitrust injuries because the defendants had not

directly sold any concrete bricks to them, the Supreme Court established a near-categorical bar against the offensive use of a pass-on theory by indirect purchasers.²

Illinois Brick identified two principal concerns underlying the bar against indirect-purchaser claims. First, it observed that “allowing offensive but not defensive use of pass-on would create a serious risk of multiple liability for defendants.” *Id.* at 730. A one-sided application of *Hanover Shoe*’s bar against the defensive use of pass-on “substantially increases the possibility of inconsistent adjudications and therefore of unwarranted multiple liability for the defendant by presuming that one plaintiff (the direct purchaser) is entitled to full recovery while preventing the defendant from using that presumption against the plaintiff.” *Id.* Simply put, the Supreme Court said that it was “unwilling to ‘open the door to duplicative recoveries’ under § 4.” *Id.* at 731 (quoting *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 264 (1972)).

Second, it reasoned that the “principal basis for the decision in *Hanover Shoe* was the Court’s perception of the uncertainties and difficulties” associated with applying the pass-on concept, including the need to analyze economic decisions in the real world as opposed to an “economist’s hypothetical model,” and that “the costs to the judicial system and the efficient enforcement of the antitrust laws of attempting to reconstruct those decisions in the courtroom” applied with equal, if not greater, force to cases involving the offensive pass-on theory. *Id.* at 731-32. Because “[e]fforts to apportion the recovery among everyone who could have absorbed part of the overcharge ‘would

² There are two narrow exceptions not relevant in this case: (1) cases involving “cost-plus” contracts between the direct and indirect purchasers and (2) cases alleging that “the direct purchaser is owned or controlled by its customer.” *Illinois Brick*, 431 U.S. 720, 736 n.16.

add whole new dimensions of complexity to treble-damages suits and seriously undermine their effectiveness[.]” *Cnty. of Oakland*, 866 F.2d at 848 (quoting *Illinois Brick*, 431 U.S. at 737), the Supreme Court reaffirmed its conclusion in *Hanover Shoe* “that the antitrust laws will be more effectively enforced by concentrating the full recovery for the overcharge in the direct purchasers rather than by allowing every plaintiff potentially affected by the overcharge to sue only for the amount it could show was absorbed by it.” *Illinois Brick*, 431 U.S. at 735.

The Supreme Court, while acknowledging that the difficulties and uncertainties associated with applying the pass-on theory may “be less substantial in some contexts than in others,” *id.* at 743, has resisted calls to carve out exceptions (other than the two already recognized, see n.2, above) to the categorical bar on the offensive and defensive use of the pass-on concept, see *id.* at 743-745; *Kansas v. UtiliCorp United, Inc.*, 497 U.S. 199, 216-17 (1990) (“[E]ven assuming that any economic assumptions underlying the *Illinois Brick* rule might be disproved in a specific case, we think it an unwarranted and counterproductive exercise to litigate a series of exceptions. Having stated the rule in *Hanover Shoe*, and adhered to it in *Illinois Brick*, we stand by our interpretation of § 4.”).

Addressing the second claimed injury first—paying higher system usage charges—Macomb Interceptor has proffered no evidence in support of its allegation that as an “end user of the Detroit sewer system” it was “damaged by the scheme because DWSD amortized the inflated costs for the Project into usage charges for the system in the years before the Macomb Agreement.” (Compl. ¶ 47). Having been created only in 2009 for the express purpose of purchasing the Macomb System, Macomb Interceptor

(as opposed to Macomb County—not a party to this suit) apparently never purchased water and sewerage services from the City of Detroit. Nor is there any evidence that the City of Detroit passed on the inflated repair costs by incorporating those costs in the usage charges for the system.

In any event, this type of injury is precisely the type that the indirect purchaser doctrine says is not cognizable under the antitrust statutes. Macomb Interceptor's reliance on *County of Oakland*, to argue otherwise is misplaced. In that case, the counties were suing both the bid-rigging contractors and the City of Detroit, alleging that the City of Detroit was a constituent part of the alleged anticompetitive scheme and RICO conspiracy. Accordingly, the Sixth Circuit concluded that the counties were direct buyers, who purchased sewerage services directly from a member of the alleged scheme and who then themselves passed on the overcharges to end-users of the sewerage system. Here, the City of Detroit is neither named as a defendant nor alleged to have been a part of the scheme. Macomb Interceptor, instead, argues that its alleged injury of paying higher usage rates was the result of the City of Detroit incorporating the Project's inflated costs and passing them on to users further down the sewerage distribution line. Thus, Macomb Interceptor stands in the position of an indirect purchaser who has not suffered an "injury" under the antitrust statutes.

Macomb Interceptor's other asserted injury, the paying of an inflated acquisition price for the Macomb System, is premised on facts that are in some respects different from the facts in a typical indirect-purchaser action. For example, unlike the alleged overcharge at issue in *Illinois Brick*, which was passed on through traditional channels of manufacturing and distribution, Macomb Interceptor alleges that the overcharge from

the 15 Mile Interceptor Repair Project was passed on to it through the Acquisition Agreement, the terms of which were extensively negotiated and which was a part of a larger global settlement in a lawsuit related to municipal water and sewerage services in southeastern Michigan. Nevertheless, the concerns animating the doctrine and the Supreme Court's resistance to carving out exceptions to the near-categorical rule convince this court that the doctrine applies with equal force to bar Macomb Interceptor's antitrust claims.

First, Macomb Interceptor's contention that the doctrine operates only to bar claims brought by individuals who suffer "damages other than those resulting from the alleged misconduct," (Pl. Macomb Interceptor's Resp. to Concurring Defs.' Mot. Summ. J. 26), is inconsistent with the Supreme Court's statement that an indirect purchaser is anyone who is not the "immediate buyer from the alleged antitrust violators." *UtiliCorp United*, 497 U.S. at 207. Here, Macomb Interceptor neither purchased any services from Concurring Defendants nor signed any contract related to the 15 Mile Interceptor Repair Project. Indeed, it would be logically impossible for Macomb Interceptor to claim as much because it was not created until 2009, four years after the completion of the Project. The direct purchaser of such services was the City of Detroit, or more accurately, the DWSD, which entered into Contract No. CS-1368 and subsequent amendments with Defendant Inland Waters Pollution Control for consulting services, (Compl. ¶ 8), and which, upon being presented with allegedly "grossly inflated and inaccurate invoices" related to the Project, paid the demanded amounts.

Macomb Interceptor's purported injuries—paying a higher price to the City of Detroit to acquire the Macomb System and paying a higher sewerage system usage fee

as a result of Concurring Defendants' alleged conduct—parallels the harm suffered by the governmental entities in *Illinois Brick*. Even if satisfactorily proven, these injuries are necessarily predicated on an initial injury suffered by the City of Detroit, the direct purchaser, and then passed on to Macomb Interceptor. As much has been admitted by Macomb Interceptor when it alleges in the Complaint that “[t]he primary cause of this action is a *widespread scheme to overcharge the Detroit Water and Sewerage Department* . . . for time, labor and materials to stabilize and repair a sewer collapse.” (Compl. ¶ 5 (emphasis added).) Accordingly, Macomb Interceptor is an indirect purchaser, whose alleged injuries were a result of the City of Detroit’s purportedly passing on the cost of the Project through the Acquisition Agreement and usage rates.

Moreover, as the court suggests above, the two primary concerns underlying the indirect purchaser doctrine are present in this case and support the court’s conclusion that Macomb Interceptor, as an indirect purchaser, has not suffered a cognizable antitrust injury. First, contrary to Macomb Interceptor’s repeated assertions to the effect that “[it] is undisputed that Detroit cannot recover the overcharges being sought by [Macomb Interceptor],” (Pl. Macomb Interceptor’s Resp. to Concurring Defs.’ Mot. Summ. J. 24), *Hanover Shoe*, *Illinois Brick*, and *County of Oakland* make clear that a direct purchaser, such as the City of Detroit, has standing to bring antitrust claims, irrespective of the fact that the relevant overcharge may have been entirely passed on to indirect purchasers. Thus, given the City of Detroit’s standing to seek recovery of treble damages on the entire overcharge, allowing Macomb Interceptor to seek the same damages would expose Concurring Defendants to duplicative liability, a result the Supreme Court in *Illinois Brick* foreclosed when it held that it was “unwilling to ‘open the

door to duplicative recoveries' under § 4." 431 U.S. at 731 (quoting *Standard Oil Co. Of Cal.*, 405 U.S. at 264).

Additionally, to avoid the bar against duplicative recoveries while also allowing Macomb Interceptor to establish standing as an indirect purchaser, the court would need to address the "difficulties and uncertainties" that accompany an attempt to apportion damages between direct and indirect purchasers. Macomb Interceptor's own conflicting assertions illustrate this point. On the one hand, Macomb Interceptor avers that the entire price of the 15 Mile Interceptor Repair Project was passed on to it through the Acquisition Agreement, and thus, it "paid in full for the 15 Mile Interceptor repair." (Pl. Macomb Interceptor's Resp. to Concurring Defs.' Mot. Summ. J. 24; see *also* Compl. ¶ 44.) But Macomb Interceptor also maintains that the City of Detroit passed on the cost of the Project to users of water and sewerage services in southeast Michigan for at least four years prior to the Acquisition Agreement. (See Compl. ¶ 47; Pl. Macomb Interceptor's Resp. to Concurring Defs.' Mot. Summ. J. 29.) The court would therefore be tasked with analyzing usage rates charged to counties, municipalities, and end users over the course of four years to determine what amount was passed on through usage rates and what amount was passed on to Macomb Interceptor through the Acquisition Agreement. Even if this were possible, a dubious assumption to say the least, the court would still be required to analyze the Acquisition Agreement, which was the product of a global settlement in a much larger case involving a decades-long legal battle amongst the federal government, the City of Detroit, and several counties in southeast Michigan, to determine what portion of the price paid by Macomb Interceptor to acquire the entire Macomb System is attributable

to the 15 Mile Interceptor Repair Project's cost. And, if these Gordian calculations were not enough, the court, having permitted Macomb Interceptor to establish standing based on a pass-on theory of injury, would have to decide whether any other indirect purchasers of water and sewerage services, such as other counties, municipalities, or individual users, could also establish standing as an indirect purchaser. These complex and unwieldy determinations are the very thing the Supreme Court has said "would greatly complicate and reduce the effectiveness of already protracted treble-damages proceedings." *Illinois Brick*, 431 U.S. at 732.

As Macomb Interceptor's purported injuries are premised entirely on the theory that the City of Detroit passed on to it overcharges caused by a corruption scheme, *Illinois Brick* forecloses recovery and Macomb Interceptor is barred from asserting claims under the federal antitrust statutes.

2. RICO Standing

The antitrust-standing analysis also bars Macomb Interceptor from establishing standing to assert its RICO claim. See *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 616 (6th Cir. 2004) ("[I]ndirect purchasers lack standing under RICO and the antitrust laws to sue for overcharges passed on to them by middlemen." (citing *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268-69 (1992); *Illinois Brick*, 431 U.S. at 729)); *Cnty. of Oakland*, 866 F.2d at 851 (after determining that the plaintiffs, as direct purchasers, were the proper party to bring antitrust claims, observing that "[a]lthough we have focused primarily on the antitrust laws in the foregoing discussion, most of what we have said is applicable also to the treble damage provision of RICO"). Patterned after § 4 of the Clayton Act, the civil action provision of RICO provides that

“[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). And consistent with judicial interpretation of § 4’s language, courts have held that “mere allegation and/or evidence that an injury to the plaintiff would not have occurred “but for” the defendant’s alleged RICO violation (that is, that the plaintiff sustained a mere “injury in fact”) is insufficient to establish” a right to sue under RICO. *Pik-Coal Co. v. Big Rivers Elec. Corp.*, 200 F.3d 884, 889 (6th Cir. 2000) (citing *Holmes*, 503 U.S. at 265-68)). In *Holmes*, the Supreme Court adopted its § 4 jurisprudence and held that a plaintiff establishes a right to sue under RICO only by showing that a defendant’s alleged violation was also the proximate cause of his injury, and noted that at common law “a plaintiff who complained of harm flowing merely from the misfortunes visited upon a third person by the defendant’s acts was generally said to stand at too remote a distance to recover.” 503 U.S. at 268-69. The Court explained why “directness of relationship” was an imperative part of standing to sue under both the antitrust statutes and RICO:

First, the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff’s damages attributable to the violation, as distinct from other, independent, factors. Second, quite apart from problems of proving factual causation, recognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries. And, finally, the need to grapple with these problems is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any problems attendant upon suits by plaintiffs injured more remotely.

Id. at 269-70 (citations omitted).

In the instant case, Macomb Interceptor's alleged injuries do not flow directly from the alleged acts of Concurring Defendants, but indirectly, from "the misfortunes visited upon a third person," *i.e.*, the City of Detroit. Accordingly, consistent with the conclusion that Macomb Interceptor lacks standing to bring its antitrust claims, it likewise is unable to sue under RICO.

C. Macomb Interceptor's State-law Breach of Contract Claim Against Defendant Inland Water Pollution Control

Generally, when all federal claims are dismissed before trial, pendant state-law claims should be dismissed or remanded to the state court. See *Musson Theatrical, Inc. v. Fed. Express Corp.*, 89 F.3d 1244, 1254-55 (6th Cir.1996). However, "overwhelming interests in judicial economy may allow a district court to properly exercise its discretion and decide a pendent state claim even if the federal claim has been dismissed before trial." *Aschinger v. Columbus Showcase Co.*, 934 F.2d 1402, 1412 (6th Cir. 1991). In light of the scope of this action and the fact that the case will proceed on the City of Detroit's Intervening Complaint, the court finds this to be a rare instance in which judicial economy dictates the exercise of supplemental jurisdiction over a remaining state-law claim.

D. Macomb Interceptor's Pending Motion for Leave to Amend Complaint

Because Macomb Interceptor lacks standing to assert its non-contractual claims, its motion for leave to amend the complaint must be denied as futile. While leave to amend under Federal Rule of Civil Procedure 15 is generally freely granted, the presence of factors "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue

prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment” counsel in favor of denying leave. *Jet, Inc. v. Sewage Aeration Sys.*, 165 F.3d 419, 425 (6th Cir. 1999). In the case of futility, “[a]mendment of a complaint is futile when the proposed amendment would not permit the complaint to survive a motion to dismiss.” *Miller v. Calhoun Cnty.*, 408 F.3d 803, 817.

Macomb Interceptor’s proposed amended complaint incorporates a large number of additional factual allegations related to the underlying corruption scheme and adds three additional state-law claims, for fraudulent concealment, civil conspiracy, and aiding and abetting. Because standing to assert the non-contractual claims in the proposed amended complaint remains predicated on the assignment in the Acquisition Agreement and the alleged independent injuries discussed above, the proposed amendment would not withstand a motion to dismiss. Therefore, the motion for leave will be denied.

IV. CONCLUSION

For the reasons stated above, IT IS ORDERED that Concurring Defendants’ “Amended Motion for Summary Judgment” [Dkt. # 190] and Defendants Futurenet Group, Inc., and Perry Mehta’s “Motion for Partial Summary Judgment” [Dkt. # 209] are GRANTED. Summary Judgment will be entered in favor of Concurring Defendants and Defendants Futurenet Group, Inc., Perry Mehta, Rotor Electric Company of Michigan, LLC, and Benjamin Rosenberg on Counts I, II, III, V, and VI.

IT IS FURTHER ORDERED that Plaintiff Macomb Interceptor is DIRECTED TO SHOW CAUSE, in writing, on or before **September 24, 2012**, why summary judgment

should not be entered in favor of all remaining non-moving Defendants on the non-contractual claims.

IT IS FURTHER ORDERED that Plaintiff Macomb Interceptor's "Motion for Leave to File First Amended Complaint" [Dkt. # 176] is DENIED.

IT IS FURTHER ORDERED that the D'Agostini Defendants' "Motion to Strike Reply to Response . . ." [Dkt. # 191] is TERMINATED AS MOOT.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 17, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 17, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

In The Matter Of:
In re: City of Detroit, Michigan

Anthony V. Marrocco
July 10, 2014



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

1
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5
6 In re:) Case No. 13-53845
7 CITY OF DETROIT, MICHIGAN)
8) Chapter 9
9 Debtor)
10) Hon. Steven W. Rhodes
11
12
13 The Deposition of ANTHONY V. MARROCCO,
14 Taken at 21777 Dunham Road,
15 Clinton Township, Michigan,
16 Commencing at 10:15 a.m.,
17 Thursday, July 10, 2014,
18 Before Melinda S. Moore, CSR-2258.
19
20
21
22
23
24
25

Page 3

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Page 2

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Page 5

1 Clinton Township, Michigan
 2 Thursday, July 10, 2014
 3 10:15 a.m.
 4 ANTHONY V. MARROCCO,
 5 was thereupon called as a witness herein, and
 6 after having first been duly sworn to testify to
 7 the truth, the whole truth and nothing but the
 8 truth, was examined and testified as follows:
 9 **MR. WATSON:** Let the record reflect
 10 that this will be a deposition taken pursuant to
 11 Notice to be used for all purposes appropriate
 12 under the applicable court rules.
 13 **EXAMINATION**
 14 **BY MR. WATSON:**
 15 Q. Mr. Marrocco, I'll be asking you a series of
 16 questions. If you don't understand the question,
 17 want me to rephrase it or accommodate you in some
 18 way, please ask that I do so and I will try to
 19 accommodate. Otherwise, I'll assume you've heard
 20 the question, understand it, and are responding
 21 to it, okay?
 22 **A. Okay.**
 23 Q. Have you been deposed before?
 24 **A. Probably.**
 25 Q. So you know a court reporter cannot take down a

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1 nod of the head or non-verbal gesture. You have
 2 to answer verbally.
 3 **A. So be it.**
 4 Q. Will you state your name for the record.
 5 **A. Anthony Marrocco.**
 6 Q. And, Mr. Marrocco, will you tell us your
 7 educational background.
 8 **A. High school, Notre Dame High School in Harper**
 9 **Woods, University of Detroit college in Detroit,**
 10 **bachelor of arts degree.**
 11 Q. What was -- you're currently an employee of
 12 Macomb County?
 13 **A. Yes.**
 14 Q. What was your work experience prior to Macomb
 15 County?
 16 **A. Prior to Macomb County, I built houses and**
 17 **developed property.**
 18 Q. Did you own your own company?
 19 **A. I worked with my father.**
 20 Q. What was the name of the company?
 21 **A. I have various companies -- Marrocco Enterprises,**
 22 **Amanda Corporation, Frosinone Company,**
 23 **F-r-o-s-i-n-o-n-e, partnership, Tava Investments,**
 24 **commercial -- some apartments.**
 25 Q. And your father owned these companies or were you

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1 joint owners?
 2 **A. He owned some. Other ones I was partnered with.**
 3 Q. And how long did you do that, approximately?
 4 **A. Well, when I was in high school, I helped him. I**
 5 **worked for him in the building-of-houses business**
 6 **in my summers in high school.**
 7 Q. When did you graduate from high school?
 8 **A. 1966.**
 9 Q. When did you start at Macomb County?
 10 **A. As commissioner?**
 11 Q. Or just any employment at the county.
 12 **A. Full-time or part-time?**
 13 Q. Full-time.
 14 **A. January 1, 1993.**
 15 Q. And I take it from the time you started working
 16 with your father until '93 you were in this
 17 constructing homes business?
 18 **A. Yeah.**
 19 Q. What was the position you started with at Macomb
 20 County?
 21 **A. In January '93?**
 22 Q. Yes.
 23 **A. Public Works Commissioner.**
 24 Q. How long did you remain in that position?
 25 **A. I am -- up to this day, I am currently the Public**

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1 **Works Commissioner.**
 2 Q. And what are your job duties as Public Works
 3 Commissioner?
 4 **A. I administer the Office of Public Works for the**
 5 **County of Macomb. And the Office of Public Works**
 6 **oversees a lot of construction in the county,**
 7 **whether it's sanitary sewer, storm sewer, water**
 8 **main projects. We sell bonds to finance projects.**
 9 **We have a Soil Erosion Department that issues soil**
 10 **erosion permits for probably 90% of the building**
 11 **that goes on in Macomb County. What else do we**
 12 **do? We review prints that come in our office. I**
 13 **don't do these individually. I administer the**
 14 **office and make sure I have the proper people**
 15 **working in the proper place.**
 16 Q. Now, as I understand, there's only one Public
 17 Works Commissioner?
 18 **A. For the county, yes.**
 19 Q. For the county.
 20 **A. But there are public works officials in other**
 21 **communities.**
 22 Q. As part of your duty as Public Works
 23 Commissioner, did you have any dealings with the
 24 Detroit Water and Sewerage Department?
 25 **A. As Public Works Commissioner?**

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1 Q. Yes.
 2 **A. Yes.**
 3 Q. And can you explain the nature of your business
 4 dealings with DWSD.
 5 **MS. BADALAMENTI:** What time period?
 6 **BY MR. WATSON:**
 7 Q. Well, let's start off initially when you started,
 8 and then let's go to the 2000 -- early 2000 time
 9 frame.
 10 **A. When I started in '93, I guess the initial**
 11 **dealings with Detroit were basically overseeing**
 12 **the rates that Detroit passed on to Macomb County,**
 13 **and then we would pass the rates on to the**
 14 **communities within the water -- excuse me, within**
 15 **the sanitary sewer district. So we only deal with**
 16 **Detroit on the sanitary sewer and the wastewater**
 17 **end. We're the primary customer.**
 18 Q. And as I understand it, Detroit owned the system?
 19 **A. Yes.**
 20 Q. How did it come about that Detroit owned the
 21 Macomb County sewer system? Do you know?
 22 **A. Well, I want to say probably -- hopefully my facts**
 23 **are correct. Probably in the 70s there was a big**
 24 **interceptor sewer brought out to Macomb County at**
 25 **15 Mile and extended over to Oakland County, and**

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1 **it was all basically put in with federal grant**
 2 **money. Detroit put that sewer in; therefore they**
 3 **were the owner of the sewer.**
 4 Q. At some point was it decided that Detroit would
 5 sell the system to Macomb and Macomb would
 6 purchase the system from Detroit?
 7 **A. Eventually.**
 8 Q. And were you involved in that decision-making
 9 process?
 10 **A. Which decision?**
 11 Q. To -- from looking at it from Macomb's
 12 perspective, for Macomb to purchase the system
 13 from Detroit.
 14 **A. Yes, I was involved.**
 15 Q. I've heard rumors about some handshake deal
 16 between you and the director of the Detroit
 17 system that set the broad parameters for that
 18 purchase. Do you recall that at all?
 19 **A. No.**
 20 Q. Okay. Can you describe the nature of the
 21 negotiations or describe the negotiation process
 22 that eventually resulted in Macomb purchasing the
 23 system.
 24 **MS. BADALAMENTI:** I think that's a
 25 vague question that calls for a narrative. Can

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1 you narrow down the time frame?
 2 **BY MR. WATSON:**
 3 Q. Well, when did negotiations first start with
 4 regard to the purchase of the system by Macomb
 5 from Detroit? Do you know?
 6 **A. Oh, I would say approximately 2007.**
 7 Q. Were you involved in the initial conversations
 8 regarding this purchase?
 9 **A. I probably was.**
 10 Q. What was your involvement?
 11 **A. Initially the involvement was that we wanted to**
 12 **buy the system, from Detroit, that served Macomb**
 13 **County so we could maintain it.**
 14 Q. And who are you talking with from Detroit about
 15 this?
 16 **A. Probably would have been the director at the time.**
 17 Q. Who was the director at the time?
 18 **A. I think that was Victor Mercado.**
 19 Q. In these discussions with Mercado, was it you and
 20 Mercado? Were others involved in the
 21 discussions?
 22 **A. I don't remember.**
 23 Q. Did these discussions eventually result in some
 24 type of agreement to purchase the system?
 25 **A. Eventually it did.**

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1 Q. Do you recall there was a long-standing federal
 2 court case involving Detroit in which Judge
 3 Feikens was in effect overseeing Detroit's
 4 running of the sewer system? Do you recall such
 5 a case?
 6 **A. Yes.**
 7 Q. And if I call that the sludge case, is that what
 8 it was referred to?
 9 **A. Not to my knowledge.**
 10 Q. What did you refer to it as?
 11 **A. Just an -- the EPA was forcing Detroit to make**
 12 **improvements to the system to clean up the Detroit**
 13 **River.**
 14 Q. And was Macomb from time to time involved in that
 15 case?
 16 **A. Yes.**
 17 Q. Do you know why Macomb would get involved?
 18 **A. Not exactly sure why, because you're looking at**
 19 **when the initial, I guess, lawsuit was filed by**
 20 **the EPA, which I'm guessing was back in the 70s.**
 21 **It was way before my time.**
 22 Q. Did Macomb ever assert any claims against Detroit
 23 for Detroit's operation or what it considered
 24 faulty operation or excess charges in regard to
 25 the sewer system?

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1 **A. When? Give me a time frame.**
 2 Q. Well, I'm thinking 2000 -- early 2000s. Do you
 3 recall any of that?
 4 **A. I don't recall that.**
 5 **MARKED FOR IDENTIFICATION:**
 6 DEPOSITION EXHIBIT 1
 7 10:26 a.m.
 8 **BY MR. WATSON:**
 9 Q. Let me hand you, Mr. Marrocco, what's been marked
 10 as Exhibit No. 1. And my question to you is:
 11 Can you identify that document?
 12 **A. On the face it is -- United States of America is**
 13 **the plaintiff and counter-defendant versus the**
 14 **State of Michigan as defendant and**
 15 **counter-plaintiff versus City of Detroit, a**
 16 **municipal corporation, and Detroit Water and**
 17 **Sewerage Department, defendant and**
 18 **cross-plaintiff, and including all communities and**
 19 **agencies under contract with the City of Detroit**
 20 **for sewage treatment services.**
 21 Q. Was Macomb County one of the, I guess we could
 22 say, communities under contract with the City of
 23 Detroit for sewage treatment services?
 24 **A. Yes, at this time, I believe, whatever date this**
 25 **is.**

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1 Q. In thumbing through the agreement, I'm looking at
 2 page 7.
 3 **A. Um-hmm.**
 4 Q. Does that appear to be your signature on the
 5 agreement?
 6 **A. There's another page 7. There's two page 7s.**
 7 Q. Yeah. The second page 7.
 8 **A. Yes.**
 9 Q. Are you familiar with this agreement?
 10 **A. Without having -- no, not by just looking at it.**
 11 **I'd have to read it.**
 12 Q. Okay. Can you take a few minutes to look it
 13 over.
 14 **MS. BADALAMENTI:** Is there something
 15 specific you want to ask him about? I mean, it's
 16 a pretty lengthy agreement.
 17 **MR. WATSON:** Yes. I'm going to ask him
 18 about some of the language in the agreement.
 19 **THE WITNESS:** I've kind of looked at
 20 the first two pages.
 21 **BY MR. WATSON:**
 22 Q. Does that refresh your recollection at all?
 23 **A. Yeah, it does, a little bit.**
 24 Q. In looking at the first page of the agreement, I
 25 see it says "This Settlement Agreement...is made

Page 15

1 May 12, 2009," and lists various parties,
 2 including Detroit and the County of Macomb. Do
 3 you see that language?
 4 **A. Um-hmm. Yes.**
 5 Q. Do you remember entering into this agreement?
 6 **A. I remember entering into an agreement.**
 7 Q. And was the court involved in overseeing the
 8 negotiations between Detroit and Macomb and other
 9 entities that resulted in this agreement? Do you
 10 recall that?
 11 **A. I don't think they were in this. Because there's**
 12 **some issues here that -- I can't answer that. I**
 13 **don't think so necessarily.**
 14 Q. Okay. Would you have read this agreement before
 15 you signed it?
 16 **A. I probably would have had my legal counsel read**
 17 **it.**
 18 Q. Who was your legal counsel at that time?
 19 **A. Well, my deputy -- chief deputy Bill Misterovich.**
 20 Q. Okay.
 21 **A. He would have been in-house, and obviously we had**
 22 **Bodman, I believe, would have been the attorneys**
 23 **outside that we hired.**
 24 Q. Okay. I want to ask you about a few of the
 25 provisions. Let's go to the page that starts off

Page 16

1 Settlement Agreement. I think it's actually page
 2 1 of the agreement.
 3 **A. Okay.**
 4 Q. I'm looking at Background and Purpose. A-iii
 5 reads in part "All disputes related to the
 6 interest rate charged to Macomb related to debt
 7 service associated with the cost of repairs of
 8 the 2004 collapse." Do you see that language?
 9 **A. Yes.**
 10 Q. Was there a dispute between Detroit and Macomb in
 11 regard to interest rate related to debt service
 12 associated with the 2004 sewer collapse repairs?
 13 **A. Yes.**
 14 Q. And was that dispute settled by this agreement?
 15 **A. It was a global settlement.**
 16 Q. So it settled everything?
 17 **A. Yes.**
 18 Q. Okay. Then the next paragraph talks about "All
 19 disputes and claims between the parties related
 20 to costs for repairs and renovation of the
 21 interceptor sewers listed in Exhibit 1." Do you
 22 see that language?
 23 **A. Yes.**
 24 Q. Do you know what the interceptor sewers were?
 25 Was that --

Page 17

1 **A. I don't understand what you mean, do I know what**
 2 **the interceptor sewers are.**
 3 Q. I guess my question is: Were the interceptor
 4 sewers at least part of that system, the sewers
 5 that collapsed -- the 15 Mile and Hayes sewer
 6 collapse problems?
 7 **A. Was that part of that?**
 8 Q. Yes.
 9 **A. If it's on Exhibit 1 of Exhibit D, I guess it**
 10 **would be.**
 11 **MARKED FOR IDENTIFICATION:**
 12 **DEPOSITION EXHIBIT 2**
 13 10:32 a.m.
 14 **BY MR. WATSON:**
 15 Q. Let me hand to you what's been marked as Marrocco
 16 Exhibit 2. Are you familiar with this document
 17 at all, Letter of Intent?
 18 **A. Not really.**
 19 Q. If you go back to Exhibit 1, the Settlement
 20 Agreement, and thumb through about half of it,
 21 you'll see a page marked Exhibit D.
 22 **A. Is there a page number?**
 23 Q. 1704 in the top right-hand corner?
 24 **MS. BADALAMENTI:** We don't have 1704.
 25 **THE WITNESS:** Is this the Letter of

Page 18

1 Intent that you're referring to?
 2 **BY MR. WATSON:**
 3 Q. Yes.
 4 **A. Okay. There's no marking.**
 5 Q. And unfortunately on this document, Exhibit 1,
 6 the Letter of Intent -- the Exhibit 1 to the
 7 Letter of Intent was not attached. That's why I
 8 made Exhibit 2 the Letter of Intent with
 9 Exhibit 1 attached to it, which gets a little
 10 confusing.
 11 **A. You'll have to excuse me. I came in late last**
 12 **night from Miami and I had to get here early**
 13 **today, so my mind is a little foggy. What page do**
 14 **you want me to look at here?**
 15 Q. Go to two pages from the end.
 16 **A. Of the Letter of Intent?**
 17 Q. Yeah.
 18 **MS. BADALAMENTI:** You're in Exhibit 2
 19 now? Because Exhibit 1 doesn't have this
 20 document.
 21 **MR. WATSON:** Right.
 22 **BY MR. WATSON:**
 23 Q. There's a list of interceptors.
 24 **A. It says Oakland-Macomb Interceptor System at the**
 25 **top, Exhibit 1?**

Page 19

1 Q. Yes. Is the system that collapsed -- I always
 2 think of it was 15 Mile and Hayes. Is that part
 3 of these?
 4 **A. What area were you saying, again?**
 5 Q. Well, what I'm thinking about is the interceptor
 6 that collapsed in August 2004.
 7 **A. Is it listed here?**
 8 Q. Yes.
 9 **A. No.**
 10 Q. And what do you call the one that's listed -- the
 11 one that collapsed, what do you refer to that one
 12 as?
 13 **MS. BADALAMENTI:** The one that's not
 14 listed?
 15 **BY MR. WATSON:**
 16 Q. You say it's not listed.
 17 **A. What do we call it?**
 18 Q. Yeah.
 19 **A. It would be the interceptor -- the Macomb**
 20 **interceptor.**
 21 Q. Okay. Let's go back to 1 -- Exhibit 1, and I'll
 22 ask you -- let's see. Is the Macomb interceptor
 23 the one referenced in 1-A-ii?
 24 **MS. BADALAMENTI:** What page are you on?
 25 **MR. WATSON:** It would be 1685.

Page 20

1 **MR. SHAHID:** On the top.
 2 **MR. WATSON:** At the top.
 3 **MS. BADALAMENTI:** We have different
 4 page IDs. What I'm looking at page 8431, but I
 5 can see where you're at.
 6 **MR. SHAHID:** Ours says 8431.
 7 **MS. BADALAMENTI:** So you're at sub 1-
 8 A-ii.
 9 **BY MR. WATSON:**
 10 Q. 1-A-ii: "All disputes related to the allocation
 11 of repair costs related to the August 4, 2004
 12 collapse and the Romeo Arm of the Macomb
 13 Interceptors," I take it that's the one that
 14 collapsed?
 15 **A. Well, it's not the Romeo arm.**
 16 Q. Wasn't it 15 Mile and Hayes? Isn't that where
 17 the collapse occurred?
 18 **A. Yes, in that vicinity, but it's not the Romeo arm.**
 19 Q. What do you call it?
 20 **A. It would just be the Macomb Interceptor. Romeo**
 21 **arm extends -- goes up toward Romeo.**
 22 Q. Does the Romeo arm include the Macomb
 23 Interceptor?
 24 **A. It's hard to say. I can't really answer how our**
 25 **office designates what area, but it would have to**

Page 21

1 go up to Garfield and then up Garfield, and -- but
 2 I guess, you know, this could be considered the
 3 Romeo arm. I don't know. You see -- I mean,
 4 excuse me. One thing real quick. This goes back
 5 to the 70s, how they used to designate these
 6 names, so you know.
 7 Q. Are you aware of any other 2004 collapse other
 8 than the Macomb Interceptor?
 9 A. No.
 10 Q. Let's look at v. It mentions Infrastructure
 11 Management Group, "All disputes related to the
 12 continuing oversight of contracts exceeding
 13 \$500,000 by the Infrastructure Management Group."
 14 Are you familiar with the Infrastructure
 15 Management Group?
 16 A. No.
 17 Q. Can you tell us what that is?
 18 A. No.
 19 Q. Do you know if they looked at claims over
 20 \$500,000 or contracts over \$500,000?
 21 A. No.
 22 Q. Let's turn to page ID 8433 B, which is entitled
 23 2004 Collapse Claims, 2006 Interceptor Repairs,
 24 Interceptor Interest Rate. Do you see that?
 25 A. Yes.

Page 22

1 Q. And here the first sentence reads: "The parties,
 2 in complete satisfaction of the 2004 collapse
 3 claims, Macomb's claims with regard to the 2006
 4 repairs to the Macomb Interceptors, and the
 5 Interceptor interest rate claims, agree to
 6 principal and interest rate adjustments on
 7 charges by DWSD to Macomb in the aggregate amount
 8 of \$17,050,000." Do you see that language?
 9 A. Yes.
 10 Q. And what was that \$17,050,000 for? Was that just
 11 an accommodation to reduce the purchase price?
 12 What was your understanding of why that was the
 13 adjustment?
 14 A. That was the global settlement for all the issues
 15 we had with Detroit.
 16 Q. Okay. So what I'm understanding is there were
 17 negotiations going on for Macomb to purchase the
 18 system, and the parties were going back and forth
 19 in regard to the amount of the price?
 20 A. I'm sure there was negotiations going on, yes.
 21 Q. And Detroit agreed to reduce the cost by this 17
 22 million?
 23 A. The global settlement.
 24 Q. Through the global settlement the cost was
 25 reduced by 17 -- over 17 million?

Page 23

1 A. Yes.
 2 Q. Was the broad parameter of the sale that Macomb
 3 would purchase the system by assuming the system
 4 debt?
 5 A. Yes.
 6 Q. And were you involved in that, say, broad
 7 agreement?
 8 MS. BADALAMENTI: Agreement to do what?
 9 BY MR. WATSON:
 10 Q. Purchase the system for the system debt. Let me
 11 explain what I'm getting at.
 12 A. Yeah.
 13 Q. See, as I understand it, there was some type of
 14 broad agreement in principle between Detroit and
 15 Macomb, all right, that Macomb will purchase the
 16 system by assuming the system debt.
 17 A. Um-hmm.
 18 Q. And that that was a certain amount at that time.
 19 A. Yes.
 20 Q. And I'm wondering who reached that broad
 21 agreement to purchase the system for system debt?
 22 I was thinking it was you.
 23 A. Well, we paid more than that.
 24 Q. Who all was involved in reaching that agreement?
 25 Do you know?

Page 24

1 A. Well, I probably signed the papers in the end, but
 2 I wasn't in the negotiating room with anybody.
 3 Q. Would they have had to run it by you, whoever was
 4 on your team?
 5 A. Yes.
 6 Q. And you're thinking the attorneys, Misterovich
 7 and the attorney for Bodman would have been at
 8 least two of the folks?
 9 A. Yes.
 10 Q. Do you recall that the system debt at one point
 11 was something like, according to Detroit,
 12 \$116 million?
 13 A. Say that again.
 14 Q. Do you recall that the system debt at one point,
 15 according to Detroit, was something like
 16 \$116 million?
 17 A. I do not.
 18 Q. Do you recall what the system eventually was
 19 purchased for?
 20 A. I believe it was just under \$90 million.
 21 Q. And that 90 million was after the 17 million was
 22 deducted that we're looking at here?
 23 A. That was a credit given.
 24 Q. And were there other credits given?
 25 A. I'm not sure.

Page 25

1 Q. Let's go to page 8436. I'm looking at paragraph
 2 ii. And it talks about if the parties don't
 3 reach agreement within a certain time, either
 4 party could declare provisions of this agreement
 5 void and without effect. Do you see that
 6 language?
 7 **A. Yes.**
 8 Q. Are you aware of any provisions of this agreement
 9 ever being declared void or no effect?
 10 **A. I'm not aware of that.**
 11 Q. Look at paragraph B, which reads in part "This
 12 agreement, and the exhibits, contains the entire
 13 agreement between the parties with regard to the
 14 matters addressed in this agreement." Do you see
 15 that language?
 16 **A. Yes.**
 17 Q. Was that your understanding, that this was a full
 18 agreement, a comprehensive settlement between
 19 Detroit, Macomb and other parties?
 20 **A. That's what my attorney said.**
 21 Q. Resolved all disputes?
 22 **A. At that point.**
 23 Q. Let's go to the next page. I see a signature.
 24 It appears to be Pamela Turner. Are you familiar
 25 or do you know Pamela Turner?

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1 **A. At that time I did.**
 2 Q. And at the date this agreement was made, May 12,
 3 2009, was she the interim director of DWSD?
 4 **A. She signed it as being the interim director.**
 5 Q. So you assume she was?
 6 **A. Yes.**
 7 Q. Let's skip one page and go to -- it looks like
 8 the third page 7, 8439. It appears to be a
 9 signature of John McCulloch. Are you familiar
 10 with him?
 11 **A. Yes.**
 12 Q. And he was the commissioner for -- Water
 13 Resources Commissioner for Oakland County?
 14 **A. Yes.**
 15 Q. And going to the next page 7, there appears to be
 16 a signature -- I can't read it. It says
 17 "Assistant County Executive, County of Wayne."
 18 Do you know who that would be?
 19 **A. Not really.**
 20 Q. Thumbing through the agreement, and looking at
 21 one of the attachments -- it's page 8446, Exhibit
 22 C to the agreement, in fact, page 8447. At the
 23 top of the page it says "Exhibit C, List of
 24 Matters." Page 8447, Exhibit C lists matters
 25 resolved?

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1 **A. Um-hmm.**
 2 Q. And going to the next page, there's a 6,
 3 Interceptor Interest Rate. Were there interest
 4 rate disputes pending prior to this settlement
 5 agreement?
 6 **A. I believe so.**
 7 Q. Were all those interest rate disputes resolved?
 8 **A. I don't know if all were resolved, but the ones**
 9 **that are shown here obviously were resolved.**
 10 Q. And then going to Exhibit D, the Letter of
 11 Intent --
 12 **MS. BADALAMENTI:** What page?
 13 **MR. WATSON:** 8451.
 14 **BY MR. WATSON:**
 15 Q. I'm looking at the top of the page -- well, the
 16 next page, 8452, paragraph 3, which reads in part
 17 "The consideration...for the acquisition of the
 18 property would be an amount equal to the
 19 outstanding debt (including accrued interest)
 20 owed by the city that is allocated to the
 21 property," and then it also mentions adjusted by
 22 the amount of 17,050,000 and such other
 23 adjustments agreed upon by the parties. Do you
 24 see that language?
 25 **A. Yes.**

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1 **MS. BADALAMENTI:** I don't think that's
 2 a complete quote of the language, but go ahead.
 3 **BY MR. WATSON:**
 4 Q. No, it's not a total quote. I'm trying to save a
 5 little time.
 6 To your understanding, was that summary
 7 of the expected deal accurate?
 8 **A. A credit?**
 9 Q. Well, the expected deal was Macomb would assume
 10 the debt.
 11 **A. Yes.**
 12 Q. The amount would be reduced by over 17 million
 13 plus any further amounts that the parties could
 14 agree upon.
 15 **A. On top of the 17 million.**
 16 Q. Right.
 17 **A. Yes.**
 18 Q. Okay. Now, this agreement was made, according to
 19 the language on the first page, May 12, 2009.
 20 And we'll get into the acquisition agreement, but
 21 that was signed in 2010, wasn't it?
 22 **A. What was signed in 2010?**
 23 Q. The acquisition agreement, the actual sale.
 24 **A. Yes, before the indictment and the revelation that**
 25 **there was some hanky-panky going on with the sewer**

1 collapse.
 2 Q. So this happened before any of that?
 3 A. **Right, before they revealed to us what was going**
 4 **on.**
 5 Q. What was taking place between this May 2009 and
 6 -- I think the acquisition agreement was
 7 September 2010. What was going on during that
 8 period?
 9 A. **September 2010 to --**
 10 Q. From when this agreement was signed, May 2009 to
 11 September 2010, when the acquisition agreement
 12 was signed.
 13 MS. BADALAMENTI: I'm going to object
 14 to this. The Letter of Intent that's here does
 15 not appear to be signed, but subject to that
 16 objection, you can go ahead and answer.
 17 BY MR. WATSON:
 18 Q. Do you know what was going on?
 19 A. **No, I don't know.**
 20 Q. Were there negotiations occurring?
 21 A. **I have no idea.**
 22 Q. Who was -- you said the attorney for Bodman and
 23 Misterovich were the principal negotiators for
 24 Macomb?
 25 A. **Yes.**

1 Q. So wouldn't Mercado have been gone before May 12,
 2 2009?
 3 MS. BADALAMENTI: Been gone from what,
 4 his position or the negotiations?
 5 MR. WATSON: Both.
 6 THE WITNESS: I'm not sure.
 7 BY MR. WATSON:
 8 Q. Okay. So you're not certain when Mercado left?
 9 A. **Right.**
 10 Q. You say through the years you talked to him.
 11 What was the discussion about?
 12 A. **About basically on the sewer collapse, about the**
 13 **charges.**
 14 Q. What did he say about the charges? What did you
 15 say about the charges?
 16 A. **He said everything was fair and accurate, and I**
 17 **didn't think they were. Who was I to question?**
 18 Q. By everything was fair and accurate, what did you
 19 take that to mean?
 20 A. **That Detroit was looking out for the interests of**
 21 **Macomb County, that we weren't being overcharged.**
 22 Q. For the system?
 23 A. **For the repair.**
 24 Q. How did the repair pertain to the purchase price?
 25 A. **It was just one global settlement, you know. I**

1 Q. Paragraph 5 on that same page, Access and
 2 Investigation, it talks about Detroit should
 3 afford basically the other parties to this
 4 agreement the opportunity to secure documents or
 5 look at anything they wanted to. Was that your
 6 understanding, that prior to actually signing the
 7 agreement, Macomb had the right to get documents
 8 from Detroit, to inspect things if it wanted to?
 9 A. **That's what that paragraph says.**
 10 Q. And in reality, is that what the situation was,
 11 that you would have -- Macomb could have secured
 12 any documents it wanted or inspected the system
 13 if it wanted?
 14 A. **The paragraph says we could.**
 15 Q. Did Macomb do that?
 16 A. **I cannot answer that, but I did talk to Victor**
 17 **Mercado. He said everything is proper.**
 18 Q. When did you talk to Mr. Mercado?
 19 A. **Over the years, since he was the director.**
 20 Q. Do you know when he left?
 21 A. **Well, I believe he left when the indictments came**
 22 **down, basically. 2000 -- end of 2010.**
 23 Q. Well, wasn't Pam Turner the interim director when
 24 this deal was signed?
 25 A. **Yes.**

1 **can't tell you how exactly the 17 million**
 2 **pertained to.**
 3 Q. Do you know why Detroit reduced the amount 17
 4 million?
 5 MS. BADALAMENTI: Other than what's
 6 stated in the agreement?
 7 MR. WATSON: Yeah.
 8 THE WITNESS: No. I mean --
 9 BY MR. WATSON:
 10 Q. Did you and Mercado talk about Detroit reducing
 11 the amount?
 12 A. **Oh, yes.**
 13 Q. What did -- you wanted, I take it, further
 14 reduction?
 15 A. **Yes.**
 16 Q. And I would take it Mercado didn't want to
 17 reduce?
 18 A. **I talked to Mercado about reducing the cost of the**
 19 **sewer collapse repair bill. The global settlement**
 20 **took in a lot of other issues, and that 17 million**
 21 **doesn't specify how much money goes to which of**
 22 **those issues.**
 23 Q. Who negotiated the 17 million? Do you know?
 24 A. **On behalf of which party?**
 25 Q. Well, Macomb.

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1 **A. It would have been, you know, Mr. Misterovich and**
 2 **Mr. -- or a representative from Bodman.**
 3 Q. Was Hupp the main Bodman attorney? Do you know?
 4 **A. Yes.**
 5 Q. And who was negotiating for Detroit?
 6 **A. I don't know.**
 7 Q. And you weren't the main negotiator for Macomb?
 8 **A. I didn't sit in on negotiations.**
 9 Q. Do you know if Mercado sat in on negotiations?
 10 **A. I'm not sure.**
 11 Q. Now, how many discussions over the years do you
 12 think you had with Mercado about the cost of the
 13 repairs?
 14 **A. I don't know.**
 15 Q. And when he -- you say he told you the costs were
 16 fair and accurate?
 17 **A. That's what he said.**
 18 Q. And by cost, we're talking about millions of
 19 dollars, I take it?
 20 **A. Yes.**
 21 Q. Were the statements by Mercado ever reduced to
 22 writing at all?
 23 **A. I'm not aware.**
 24 Q. Okay. Did you ever think that, gee, maybe I
 25 better get this in writing?

Page 34

1 **A. I thought he was a man of his word.**
 2 Q. And did he tell you this, what you're saying, on
 3 more than one occasion?
 4 **A. What was that?**
 5 Q. Did he tell you this on more than one occasion?
 6 **A. Tell me what?**
 7 Q. That the costs were fair and accurate.
 8 **A. Yes, he did.**
 9 Q. And was anyone ever there when he told you that
 10 or was it just the two of you?
 11 **A. Maybe Mr. Misterovich might have been there.**
 12 Q. Do you know where that particular discussion took
 13 place?
 14 **A. No. There's many places we've talked with**
 15 **Mr. Mercado, so I wouldn't remember which.**
 16 Q. Do you know approximately when that discussion
 17 when Misterovich was there took place?
 18 **A. Before 2010.**
 19 Q. Was it before this settlement agreement? Do you
 20 know?
 21 **A. Yeah. Yes.**
 22 Q. You weren't shy about asking Detroit for
 23 documents or information if you felt you needed
 24 it, were you?
 25 **A. That's up to my attorneys.**

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1 **MARKED FOR IDENTIFICATION:**
 2 DEPOSITION EXHIBIT 3
 3 11:00 a.m.
 4 **BY MR. WATSON:**
 5 Q. Let me hand you what's been marked Exhibit No. 3,
 6 Mr. Marrocco. My question is: Have you seen the
 7 document attached to this fax before?
 8 **A. Have I seen this before?**
 9 Q. Yes.
 10 **A. I don't remember, but I see it now.**
 11 Q. Okay. Does that appear to be your signature on
 12 the document?
 13 **A. Yes, it does.**
 14 Q. And the fax, the first page, seems to be dated
 15 11/17/04.
 16 **A. Um-hmm.**
 17 Q. And it faxes to Victor Mercado a two-page letter
 18 from you dated November 16, 2004; is that
 19 correct?
 20 **A. Yes.**
 21 Q. And through the letter you request 15 categories
 22 of documents relating to the 15 Mile Road
 23 interceptor, correct?
 24 **A. Yes.**
 25 Q. Do you know if these documents were furnished?

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1 Did you receive the documents?
 2 **A. I have no idea.**
 3 Q. Over the years is it accurate to say that when
 4 Macomb requested documents from Detroit, Detroit
 5 would generally get Macomb the documents?
 6 **A. I have no idea.**
 7 Q. You had a relationship with Mr. Mercado, did you
 8 not, that if anyone who reported to you said we
 9 need certain information from Detroit, we're
 10 having a rough time getting it, you could pick up
 11 the phone and call Mercado directly --
 12 **A. Yes.**
 13 Q. -- for the information?
 14 **A. Yes.**
 15 Q. Was he generally accommodating to you, if you
 16 asked him for something?
 17 **A. I'm sure he was.**
 18 Q. Do you recall anything you asked for in
 19 connection with the settlement agreement or the
 20 acquisition agreement? Any information you
 21 wanted prior to entering into those agreements
 22 that wasn't supplied by Detroit?
 23 **A. You have to ask my attorneys that, if they got the**
 24 **information they needed.**
 25 Q. You can't recall anything --

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1 A. No.
 2 Q. -- you asked for that wasn't supplied?
 3 A. No.
 4 Q. I want to go back to the settlement agreement,
 5 the Letter of Intent, which starts at page 8451.
 6 And go to page 8453.
 7 A. Okay.
 8 Q. Paragraph 6, Conditions reads in part, "The
 9 parties' obligations to consummate the
 10 transaction would be subject to the satisfaction
 11 of each of the following conditions at or prior
 12 to closing, any of which may be waived in whole
 13 or in part by the parties to the extent permitted
 14 by applicable law." Is that what it says?
 15 A. Yes.
 16 Q. And then looking at the next page -- I'm looking
 17 at iv. One of the conditions appears to be -- it
 18 reads "The satisfactory completion in the
 19 transferee's sole discretion of the transferee's
 20 due diligence investigations of the property,
 21 including, without limitation, with respect to
 22 all operational, financial, environmental
 23 engineering, legal and accounting matters." Do
 24 you see that language?
 25 A. Which item number would that be?

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1 Q. That was iv.
 2 A. Yes, I see it.
 3 Q. Was it your understanding that Macomb, prior to
 4 signing the deal, was entitled to satisfy itself
 5 that all operational, financial, environmental,
 6 engineering, legal and accounting matters were in
 7 order -- were in accord with what it wanted in
 8 regard to the deal?
 9 A. So your question --
 10 Q. Let me rephrase it. Could you satisfy yourself
 11 with regard to all these matters, get all the
 12 information you wanted? You were entitled to
 13 satisfy yourself in regard to all this before you
 14 signed the deal, weren't you?
 15 A. Yes, we were entitled to it.
 16 Q. And you didn't -- if you had any questions about
 17 any of these things, you didn't have to sign the
 18 deal?
 19 A. Well, had we known the information on the 15 Mile
 20 Road sewer collapse was inaccurate and was faulty,
 21 we probably would have raised an objection, but we
 22 take it that what they gave to us was true and
 23 accurate and fair.
 24 Q. What information did they give to you wasn't true
 25 and accurate and fair?

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1 A. That the sewer collapse cost \$55 million to
 2 repair.
 3 Q. And you don't think it cost that much?
 4 A. That's correct.
 5 Q. What do you base that on, your conclusion it
 6 didn't cost that much?
 7 A. I had an engineer give me an estimate what they
 8 thought it would cost to do that job.
 9 Q. Who was the engineer?
 10 A. Anderson, Eckstein & Westrick.
 11 Q. What did they think it would cost to do the job?
 12 A. They said approximately \$28 million.
 13 Q. And did they speak to anyone at Detroit before
 14 arriving at their estimate?
 15 A. I can't answer that. I don't know.
 16 Q. Do you know whether or not they were aware that
 17 various unforeseen difficulties were encountered
 18 in repairing the system?
 19 A. Well, they were not aware that someone was getting
 20 paid for doing no work.
 21 Q. Well, we could get into that, but let's --
 22 A. That was brought out in federal court, and it's a
 23 fact.
 24 Q. Were they aware that unforeseen difficulties were
 25 encountered in effecting the repairs? Do you

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1 know?
 2 A. No, they didn't -- they just -- as an engineer,
 3 they did an estimate of what it would cost to do
 4 the job --
 5 Q. And --
 6 A. -- if it was competitively bid out.
 7 Q. And you said that people were paid for not doing
 8 work?
 9 A. Well, that's what they said in federal court.
 10 Q. Was that in regard to the interceptor collapse
 11 repairs or was that in regard to other contracts?
 12 A. The interceptor collapse repair.
 13 Q. And the interceptor collapse repairs were part of
 14 contract, I believe, CS-1368. Are you aware of
 15 that?
 16 A. I have no idea the numbers.
 17 Q. Do you have any other reason to believe that
 18 folks were paid or contractors were paid for work
 19 that wasn't done other than the federal court
 20 information?
 21 A. I think that's pretty strong evidence.
 22 Q. So the answer to my question is, yes, that's all
 23 the information you got on this?
 24 A. No, I have my engineer's estimate.
 25 Q. So you have two things, engineer's estimate and

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1 the federal court?
 2 **A. Yes.**
 3 Q. Anything else?
 4 **A. You know, I could say, just using my own**
 5 **reasoning, but I'm not going to say that. There**
 6 **was an engineer that was qualified who's done many**
 7 **projects, and they understand the cost.**
 8 Q. When did you retain this engineer?
 9 **A. I approached them right -- basically after the**
 10 **indictment came out, so that had to be in the**
 11 **beginning of '11, maybe -- 2011.**
 12 Q. What did you ask them to do?
 13 **A. I just asked him -- I got a copy of the work that**
 14 **had been done and I asked him what his estimate to**
 15 **do this job would cost.**
 16 Q. Where did you find this engineer?
 17 **A. He's an engineer that this office has used before.**
 18 Q. How many times have you used them?
 19 **A. Too numerous. I can't even give you a number.**
 20 Q. Is he local to Macomb County or local to
 21 Michigan? Where is he located?
 22 **A. Local to Michigan. He used to be down in Florida**
 23 **also.**
 24 Q. How do you know the guy?
 25 **A. Just through his professional credentials and he's**

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1 **done work here. He's represented private business**
 2 **people who have submitted prints and drawings here**
 3 **for approval.**
 4 Q. Did you have any dealings with him prior to your
 5 employment with Macomb County?
 6 **A. Yes.**
 7 Q. And what dealings were those?
 8 **A. We hired that company -- my father did, back in,**
 9 **I'm going to say, late -- early or mid-70s.**
 10 Q. To do what?
 11 **A. To do engineering for a subdivision. But let me**
 12 **just expound. That was before -- that was when**
 13 **Anderson, Eckstein & Westrick were principals at**
 14 **the company. At this point in 2011, they were all**
 15 **gone and the people who own the company are not**
 16 **the same principals.**
 17 Q. Who's the key guy you use now?
 18 **A. I think Roy Rose is their president.**
 19 Q. Do you know what information this person utilized
 20 in arriving at his opinion?
 21 **A. I think just his credentials and experience, being**
 22 **a professional engineer.**
 23 Q. Did Macomb supply him with any information?
 24 **A. I might have just gave him maybe some information**
 25 **that Detroit gave me possibly, how much sewer was**

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1 **being replaced and --**
 2 Q. So the information you gave him were documents
 3 from Detroit?
 4 **A. I believe so. I'm not quite sure anymore.**
 5 **MS. BADALAMENTI:** Is this a good time
 6 to take a break?
 7 **MR. WATSON:** Yeah, it is.
 8 (Off the record at 11:14 a.m.)
 9 (Back on the record at 11:26 a.m.)
 10 **MARKED FOR IDENTIFICATION:**
 11 **DEPOSITION EXHIBIT 4**
 12 11:26 a.m.
 13 **BY MR. WATSON:**
 14 Q. Mr. Marrocco, you've been handed what's been
 15 marked Exhibit 4, which is the debtor's witness
 16 list for the July 17, 2014 hearing. I give you
 17 that because in our witness list we listed as No.
 18 5 and No. 6 30(b)(6) corporate representatives, 5
 19 to testify on various counts of the complaint,
 20 and 6 to testify in regard to the acquisition
 21 agreement. And this question is probably for
 22 your counsel and you. Are you being designated
 23 as the 30(b)(6) representative for either of
 24 those two areas?
 25 **A. I have no idea.**

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1 **MS. BADALAMENTI:** Good answer.
 2 **MR. WATSON:** Is there going to be a
 3 30(b)(6) rep, though? If it's he, I need to know
 4 that now so I can --
 5 **MS. BADALAMENTI:** We've had those
 6 discussions with you. We've designated our
 7 30(b)(6) representative. I think we told you for
 8 6 it would be Greg Hupp and for 5 it would be
 9 either Greg Hupp or Mr. Misterovich. I think for
 10 5 it was Mr. Misterovich. And you know
 11 Mr. Misterovich had a very serious surgery about a
 12 week ago. And we have tried our best to get you
 13 information from him. He did come in after hours
 14 despite his condition to get you documents you
 15 requested, and he has been made available for
 16 deposition on Monday, the 14th, despite his
 17 doctor's recommendations that he doesn't do so.
 18 We've more than accommodated this request.
 19 **BY MR. WATSON:**
 20 Q. Mr. Marrocco, we spent some time before the break
 21 discussing your conversations with Mr. Mercado in
 22 which he said everything was fair and accurate.
 23 I want to make sure that we've gotten your full
 24 recollection as to when the conversations took
 25 place, what was discussed in regard to this "fair

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1 and accurate" statement, if anything else was
 2 discussed in regard to that, who might have been
 3 present, where it took place, when. Anything
 4 else that you recall in regard to these Mercado
 5 conversations?
 6 **MS. BADALAMENTI:** That's about six
 7 questions in one. Why don't you ask him if he
 8 recalls any more information about the
 9 conversations with respect to one of those
 10 parameters so that he can actually answer you.
 11 **BY MR. WATSON:**
 12 Q. Well, I can go through each one. Do you recall
 13 anything else about the conversations with
 14 Mercado in regard to when they took place other
 15 than what you've said?
 16 **A. Well, if you're talking about the sewer**
 17 **collapse --**
 18 Q. The sewer collapse and you said Mr. Mercado said
 19 the repair --
 20 **A. That's what I mean. You're talking about the**
 21 **sewer collapse? Because I had talked to**
 22 **Mr. Mercado before the sewer collapse ever**
 23 **happened. Because he became director -- I don't**
 24 **even know what year it was.**
 25 Q. I'm specifically talking about your testimony

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1 regarding Mercado's statement pertaining to the
 2 sewer collapse repairs in which you say Mercado
 3 said the repair costs were fair and accurate.
 4 **A. That's correct.**
 5 Q. So can you recall anything else about when those
 6 conversations took place?
 7 **A. Well, let's see now. August 2004, about**
 8 **mid-August -- end of August is when the collapse,**
 9 **I believe, occurred, and I'm going to say probably**
 10 **six weeks after that maybe I was questioning, you**
 11 **know, why so much equipment was on the job site,**
 12 **and then, again, in the spring of 2005.**
 13 Q. Where did the August 2004 conversation take
 14 place?
 15 **A. I'm not sure on that, where it was, but I remember**
 16 **2005 very accurately. We were all on the street**
 17 **where the collapse was, and I told him, you've got**
 18 **all this equipment here and --**
 19 Q. In spring 2005?
 20 **A. Yeah. And I said, I don't want these contractors**
 21 **charging for this equipment that's parked here.**
 22 Q. And what did he say?
 23 **A. He said, no, no, they're not going to. They're**
 24 **not. They don't use it, they're not going to get**
 25 **paid.**

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1 Q. Anything else you recall from that conversation?
 2 **A. You know, to be real specific, no, but in general,**
 3 **just the fact that I thought the job was taking a**
 4 **little bit long to get completed, and I thought it**
 5 **was at too high a cost, and I expected that the**
 6 **road would be paved, and he said, no, it's -- the**
 7 **road won't be paved until next spring. Well, why**
 8 **not? Well, you now, dah, dah, dah. To them it**
 9 **kind of benefitted them that they dragged the job**
 10 **on. It's time and material -- time and material,**
 11 **you know. If it was competitively bid out, the**
 12 **contractor would want to get done as soon as**
 13 **possible to make more money. These guys, the**
 14 **longer they're there, the more they're going to**
 15 **make.**
 16 Q. Do you know how long the job took?
 17 **A. Gee, I don't remember anymore. From the time the**
 18 **sewer collapse happened, oh, probably close to two**
 19 **years, I guess.**
 20 Q. For the August 2004 conversation -- I didn't ask
 21 you -- was anybody else there or was it just you
 22 and Mr. Mercado?
 23 **A. When is this?**
 24 Q. When -- the August 2004 collapse -- well, no, you
 25 said the collapse occurred in August 2004.

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1 Probably about six weeks after that you had a
 2 conversation with Mercado and pointed out you've
 3 got all this equipment on the job. Is all that
 4 necessary? And he told you it was?
 5 **A. Yes.**
 6 Q. Was anyone else there for that conversation?
 7 **A. Might have been people around, but I don't**
 8 **remember who they were.**
 9 Q. Did you discuss anything else in that
 10 conversation?
 11 **A. No, I think that's all Macomb County cared about,**
 12 **that they get the sewer working and it's done at a**
 13 **reasonably fair price.**
 14 Q. How long did you think the job should have taken?
 15 **A. I would say that that job should have been done**
 16 **within a year at most.**
 17 Q. Wasn't it completed within a year?
 18 **A. No, it wasn't. We were getting bills in '06.**
 19 **That's two years out.**
 20 Q. Weren't there amendments to the contract that
 21 didn't have anything to do with the sewer repair,
 22 thought?
 23 **MS. BADALAMENTI:** I'm going to object
 24 to foundation.
 25 **BY MR. WATSON:**

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1 Q. If you know.
 2 **A. I don't know.**
 3 Q. Any other conversations with Mercado in which he
 4 made representations that the repair costs were
 5 fair and accurate or something to that effect?
 6 **A. I'm sure there were along the way.**
 7 Q. Can you recall the nature of those?
 8 **A. It's a long time ago. I have a lot of other**
 9 **things that this office does that I can't remember**
 10 **just that incident.**
 11 Q. Did you have such conversations with anyone else
 12 at DWSD?
 13 **A. Give me a time frame.**
 14 Q. Well, any time after the collapse. From the time
 15 of the collapse to, I guess, up to the time you
 16 purchased.
 17 **A. Anybody else from DWSD? I think Pam Turner was in**
 18 **charge at that time, so --**
 19 Q. You didn't have any discussions about this with
 20 her?
 21 **A. No.**
 22 Q. What about with Latimer -- Darryl Latimer? Ever
 23 talk to that guy?
 24 **A. No.**
 25 Q. Do you recall that there was a major sewer

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1 collapse way back in 1977?
 2 **A. Yes.**
 3 Q. In the same area?
 4 **A. Yes.**
 5 Q. Do you know how long that took to repair?
 6 **A. No.**
 7 **MARKED FOR IDENTIFICATION:**
 8 **DEPOSITION EXHIBIT 5**
 9 11:35 a.m.
 10 **BY MR. WATSON:**
 11 Q. Mr. Marrocco, I'll hand you what's been marked as
 12 Exhibit 5. And at the top it's entitled
 13 Acquisition Agreement; is that correct?
 14 **A. Yes.**
 15 Q. Are you familiar with this document?
 16 **A. Not really.**
 17 Q. Will you go to the last page. At the bottom it's
 18 25 of 25.
 19 **A. Yes.**
 20 Q. It appears to be signed by Darryl Latimer and
 21 William Misterovich. Do you see that?
 22 **A. Yes.**
 23 Q. And Misterovich is your chief deputy?
 24 **A. Yes.**
 25 Q. Did he have authority to sign this document?

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1 **A. I would say he did.**
 2 Q. Going to the first page, it indicates the
 3 acquisition agreement is made the 2nd day of
 4 September 2010.
 5 **A. Um-hmm. Yes.**
 6 Q. Do you recall that being the approximate period
 7 when the sale of the Macomb Interceptor system
 8 from Detroit to Macomb was effected?
 9 **A. As to the other document we were looking at**
 10 **before?**
 11 Q. Well, no, just -- was the sale completed on or
 12 about September 2nd, 2010, if you recall?
 13 **A. Just what this document says. And my chief deputy**
 14 **signed this. I guess that's what it is. I can't**
 15 **say other than that.**
 16 Q. All right. Looking at the second page, it has a
 17 paragraph 1.5, "Macomb's County's Knowledge'
 18 shall mean the actual knowledge of the Macomb
 19 County Public Works Commissioner." That was you
 20 at the time, right?
 21 **A. Yes.**
 22 Q. And legal counsel, and you told me about
 23 Misterovich and Bodman --
 24 **A. Yes.**
 25 Q. -- attorneys being legal counsel. It says "legal

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1 counsel assigned." That would probably be
 2 Misterovich. "Or retained," that would be Bodman
 3 folks, right?
 4 **A. Okay.**
 5 Q. Then I'm looking at paragraph 1.10. It says
 6 "'Detroit's knowledge' shall mean the knowledge
 7 of its director." Do you know who the director
 8 was September 2nd, 2010?
 9 **A. I think you said it was Pam Turner at that time?**
 10 Q. 2009 it was Turner. I'm thinking 2010 she had
 11 gone and Latimer was serving as interim, but --
 12 **A. I had never heard of Darryl Latimer ever being the**
 13 **director.**
 14 Q. Okay.
 15 **A. So I think it had to be Pam Turner.**
 16 Q. Okay. All right. So your understanding is that
 17 would be Turner. "...its assistant corporate
 18 counsel assigned to DWSD matters," do you know
 19 who that was?
 20 **A. I have no idea.**
 21 Q. "...its assistant chief of engineering," do you
 22 know who that was?
 23 **A. I have no idea.**
 24 Q. Do you know Shukla -- Ramesh Shukla?
 25 **A. Yeah, I know who Shukla is.**

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1 Q. Have you had dealings with him over the years?
 2 Brief dealings, maybe?
 3 **A. Minor dealings.**
 4 Q. Any problem with Shukla at all?
 5 **A. No, a very nice man.**
 6 Q. You haven't seen or heard anything that leads to
 7 you believe he was dishonest or would commit
 8 fraudulent acts or anything like that, have you?
 9 **A. No, I don't know him well enough.**
 10 Q. Okay. Then 1.13 says "'Global Settlement
 11 Agreement' means the settlement agreement between
 12 Detroit and Macomb, Oakland and Wayne counties
 13 executed by the parties to that agreement" -- I'm
 14 skipping some language -- "May 12, 2009." That's
 15 the agreement we just covered, isn't it, the one
 16 entitled Settlement Agreement?
 17 **A. I believe so.**
 18 Q. Okay. Turning to page 6 of 25, I'm looking at
 19 2.5. It says "Macomb System." Did you read this
 20 document, by the way? Have you ever really --
 21 **A. This document?**
 22 Q. Have you ever read this thing?
 23 **A. No. Mr. Misterovich signed it.**
 24 Q. Did you authorize him to sign it or did he say it
 25 seems okay and -- or the attorney said it's okay?

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1 **A. I would have no idea. It's a long time ago.**
 2 Q. All right. All right. Was it your understanding
 3 that the system was sold as is?
 4 **A. Yes.**
 5 Q. Okay. I'm turning to page 11 of 25. It talks
 6 about litigation. Were you aware of any
 7 litigation impacting the system?
 8 **A. Which one? Which number?**
 9 Q. 3.7.
 10 **A. Okay. Was I aware of what?**
 11 Q. Any litigation that could impact the system.
 12 **MS. BADALAMENTI:** It's an ambiguous
 13 term. What is the term "litigation" being defined
 14 as here? It calls for a legal conclusion, unless
 15 you want to specify.
 16 **BY MR. WATSON:**
 17 Q. Are you aware of any major litigation or any
 18 litigation Detroit was involved in regarding the
 19 Macomb Interceptor system?
 20 **MS. BADALAMENTI:** Same objections.
 21 It's unclear whether this paragraph includes
 22 criminal, civil, claims not brought. It's
 23 unclear.
 24 **THE WITNESS:** You're talking at that
 25 time, right, September of 2010?

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1 **BY MR. WATSON:**
 2 Q. Yeah. Do you know of any suits, whether criminal
 3 or civil, involving that system?
 4 **A. I have no idea what Detroit does.**
 5 Q. Then 3.8 is "Disclosure of System Debt. Do you
 6 see that?
 7 **A. Um-hmm.**
 8 Q. And then it starts off "Schedule 3.8 sets forth
 9 all system debt." Do you see that language?
 10 **A. Just a second. Which part of that 3.8 were you**
 11 **referring to?**
 12 Q. Under paragraph 3.8 it says "Disclosure of System
 13 Debt. Schedule 3.8 sets forth all system debt."
 14 And my question is: Do you see that language?
 15 **A. Yes, I see that.**
 16 **MARKED FOR IDENTIFICATION:**
 17 DEPOSITION EXHIBIT 6
 18 11:43 a.m.
 19 **BY MR. WATSON:**
 20 Q. Okay. Let me hand you what's been marked as
 21 Marrocco Exhibit 6. And I'll ask, are you
 22 familiar with that document? Have you seen that
 23 before?
 24 **A. Yes, I've seen this.**
 25 Q. Is that the schedule, as far as you know, that

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1 delineates the various debt on the system?
 2 **A. That's what it says at the top of the page, system**
 3 **debt.**
 4 Q. Okay. And I'm looking at, under A, Projects
 5 Covered By Global Settlement. Do you see that?
 6 **A. On this page you gave me?**
 7 Q. Yes.
 8 **A. Under A?**
 9 Q. Right. A. Projects Covered By Global
 10 Settlement.
 11 **A. Projects Covered By Global Settlement, okay.**
 12 Q. One of the projects is CS-1368 2004 repairs,
 13 correct?
 14 **A. Yes.**
 15 Q. And the number attributed to that is the 54
 16 million plus number, right?
 17 **A. Yes. Um-hmm.**
 18 Q. And that's where the dispute is primarily?
 19 **A. Yes.**
 20 Q. Okay. But there are a number of other projects
 21 listed, correct?
 22 **A. Yes.**
 23 Q. And you're not disputing these other ones, are
 24 you?
 25 **A. Not the lawsuit that we filed against Detroit.**

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1 Q. Are you aware of any claims in regard to any
 2 other claims against Detroit on any of these
 3 other matters?
 4 **A. I'm not sure.**
 5 Q. Okay. And then I'm looking down three-fourths of
 6 the way down where it says "Global Settlement."
 7 We see that 17,050,000?
 8 **A. Yes. Um-hmm.**
 9 Q. That was a reduction on the price, right?
 10 **A. On the global settlement.**
 11 Q. Right.
 12 **A. On everything.**
 13 Q. Okay.
 14 **A. But it doesn't specify how much of the 17 million**
 15 **is applied to one particular project or the other.**
 16 Q. Correct. Right. But the amount was reduced by
 17 17 million?
 18 **A. Yes, according to this.**
 19 Q. And there are various other items, additions,
 20 subtractions, so forth, correct?
 21 **A. Correct.**
 22 Q. Now, you indicated you weren't the principal
 23 negotiator of all this stuff?
 24 **A. Correct.**
 25 Q. You had folks doing it for you, and Detroit had a

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1 team doing it for it, correct?
 2 **A. Yes. Um-hmm.**
 3 Q. And this was going back and forth for -- was it
 4 years that it took before you could reach this?
 5 **A. Yeah, I'm sure it did.**
 6 Q. Why do you think it took so long?
 7 **A. Because there's more than one person in a room --**
 8 **many minds, many people. The mayor never was at**
 9 **any of them, either, and he just sent his minions**
 10 **there to negotiate.**
 11 Q. You had sophisticated counsel on each side?
 12 **A. Yes.**
 13 Q. And at least one high-ranking official on each
 14 side?
 15 **A. I can't speak for the other side.**
 16 Q. Okay. But Misterovich is a pretty high-ranking
 17 official?
 18 **A. On my side.**
 19 Q. He's right under you, right?
 20 **A. That's correct.**
 21 Q. And you're the top guy in this public works area
 22 in Macomb County?
 23 **A. I am.**
 24 Q. We were going through the acquisition agreement.
 25 Let's go to page 17 of 25.

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1 **A. Okay.**
 2 Q. Paragraph 8.9 "Resolution of all Certain
 3 Disputes," that's odd language, but that's what
 4 it says, correct?
 5 **A. Yes.**
 6 Q. It says "Macomb County and Detroit shall have
 7 executed an agreement acknowledging that all
 8 pending disputes between such parties with
 9 respect to rates and all other matters have been
 10 resolved." Do you see that?
 11 **A. Yes.**
 12 Q. Do you know if in conjunction with this
 13 acquisition agreement such additional agreement
 14 was executed?
 15 **A. At the time this was?**
 16 Q. Yeah.
 17 **A. I have no idea if there was another agreement.**
 18 **MARKED FOR IDENTIFICATION:**
 19 **DEPOSITION EXHIBIT 7**
 20 11:48 a.m.
 21 **BY MR. WATSON:**
 22 Q. Let me hand you, Mr. Marrocco, what's been
 23 labeled Exhibit No. 7 --
 24 **A. Um-hmm.**
 25 Q. -- which says at the top "Macomb Interceptor

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1 Acquisition Settlement and Release of Certain
 2 Rate Disputes," correct?
 3 **A. Yes.**
 4 Q. And then on the last page there appears to be the
 5 signature of Misterovich and Latimer again?
 6 **A. There appears to be.**
 7 Q. And they're the same two guys who signed the
 8 acquisition agreement, correct?
 9 **A. Yes, they are.**
 10 Q. And then the first paragraph of the document
 11 references a date, September 2nd, 2010, does it
 12 not?
 13 **A. Yes.**
 14 Q. And that's the date of the acquisition agreement,
 15 isn't it?
 16 **A. Yes.**
 17 Q. Okay. I'm looking at -- well, first, let me ask
 18 this: Have you seen this before?
 19 **A. I don't -- I don't think I have.**
 20 Q. Looking at paragraph 1 on the first page --
 21 **MS. BADALAMENTI:** Let's give him a
 22 chance to review the beginning before you get to
 23 paragraph 1. He's just told you he hasn't seen
 24 it.
 25 **BY MR. WATSON:**

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1 Q. Take whatever time you need.
 2 **A. Okay. I've looked at it. I just read the**
 3 **beginning page.**
 4 Q. Are you ready?
 5 **A. I'm ready.**
 6 Q. Okay. Page 1 of 7, where it says "1. Waiver and
 7 Release of Claims" reads "Detroit and Macomb
 8 County waive and release any claims with regard
 9 to the following matters," and then it says "a.
 10 The cost of all projects and contracts shown on
 11 Schedule 3.8 of the MID agreement and the
 12 calculation of all credits, charges and
 13 adjustments set forth in that schedule." Do you
 14 see that language?
 15 **A. Um-hmm. Yes.**
 16 Q. Was that your understanding of the agreement
 17 between Macomb and Detroit, that all these claims
 18 would be released?
 19 **A. I didn't sign this agreement.**
 20 Q. So you don't know?
 21 **A. Well, I can't speak on behalf of Mr. Misterovich.**
 22 **I don't know when this -- when was this thing**
 23 **signed, anyways? I don't see a date.**
 24 Q. Looking at page 3 of 7, it talks about waiving
 25 and releasing.

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1 **MS. BADALAMENTI:** Where are you?
 2 **MR. WATSON:** Paragraph F.
 3 **BY MR. WATSON:**
 4 Q. Let me just read the pertinent part: "Except as
 5 provided in Section below and rights arising
 6 under this agreement, Macomb County waives and
 7 releases its claims against Detroit and Detroit
 8 waives and releases its claims against Macomb
 9 County with regard to all other known or unknown
 10 claims or disputes with regard to rates charged
 11 to the MCWDD as a separate user class for all
 12 rate years up to and including the FY20009/10."
 13 Do you see that language?
 14 **A. Yes.**
 15 Q. Let me ask it this way: Does that fit with your
 16 understanding of an agreement reached between
 17 Macomb and Detroit?
 18 **A. That's what it says.**
 19 Q. I'm looking at page 6 of 7, Adjustment to Resolve
 20 Disputes, paragraph 5. And that talks about a
 21 \$3 million adjustment to resolve disputes, almost
 22 2.2 -- well, 2.179 million applied to the OMI
 23 purchase price and 870,000 to the Macomb
 24 Interceptor purchase price. That's an accurate
 25 kind of summary of what that says, correct, that

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1 paragraph?
 2 **A. That's an accurate summary? I don't know.**
 3 **MS. BADALAMENTI:** I mean, those are
 4 defined terms in the agreement and you're not
 5 referencing them. You're just referencing the
 6 paragraph where they're used.
 7 **THE WITNESS:** I don't know if those
 8 numbers are true or not, so --
 9 **BY MR. WATSON:**
 10 Q. Okay. But let me ask it this way: Were you
 11 aware of a \$3 million adjustment to the purchase
 12 price in regard to the OMI agreement and in
 13 regard to the Macomb Interceptor purchase price?
 14 **A. I can't remember all that.**
 15 Q. But it is true that Detroit at some point agreed
 16 to reduce the purchase price, sort of clinch the
 17 deal? Do you recall that?
 18 **A. When was this?**
 19 **MS. BADALAMENTI:** Hold on. I'm going
 20 to object to that question. That's an overbroad
 21 question and it's certainly not what's being
 22 referred to in this agreement. If you have a
 23 question about a time frame that's unrelated to
 24 this question, I think you need to clarify.
 25 **BY MR. WATSON:**

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1 Q. I don't think it's overbroad, but let me break it
 2 down this way: Do you recall an OMI agreement
 3 reached between Detroit, Macomb, Oakland
 4 counties? Yes.
 5 **A. An agreement?**
 6 Q. Yes.
 7 **A. Yes.**
 8 Q. And that agreement was reached in 2009?
 9 **A. Exact date, I don't remember.**
 10 Q. Okay. But that agreement was reached before the
 11 acquisition agreement?
 12 **MS. BADALAMENTI:** With Macomb?
 13 **BY MR. WATSON:**
 14 Q. Do you recall that?
 15 **A. No.**
 16 Q. Okay. Do you recall that Detroit, to speed the
 17 negotiations along and try to get the deal
 18 concluded, agreed to reduce the purchase price on
 19 both the OMI system and the Macomb Interceptor
 20 system? Do you --
 21 **A. There was something --**
 22 Q. -- remember that all?
 23 **A. All I know, there was a \$17 million global**
 24 **settlement credit.**
 25 Q. Okay.

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1 **A. How that was broken out, I don't know.**
 2 Q. Do you recall there were other reductions in the
 3 purchase price on top of the 17 million?
 4 **A. I know there's -- and I'm not sure whether this**
 5 **happened before, after, whenever, but there was**
 6 **\$7 million that Detroit received back from**
 7 **contractors on the job, which they've never sent**
 8 **to Macomb County.**
 9 Q. 7 million?
 10 **A. Yeah.**
 11 Q. On what job?
 12 **A. On the collapse -- sewer collapse.**
 13 Q. That Detroit -- are you referring to the
 14 settlement Detroit had with Inland?
 15 **A. I believe so, yeah.**
 16 Q. And your position is Macomb should have gotten
 17 that money or some of that money?
 18 **A. Well, we paid it. We paid it to Inland. Why is**
 19 **Inland giving it to Detroit?**
 20 Q. Well, didn't Inland -- Detroit pay Inland and
 21 then --
 22 **A. No.**
 23 Q. -- the system was sold and you paid Detroit?
 24 **A. Absolutely wrong. Macomb County paid Detroit, who**
 25 **paid Inland. Inland refunded 7 million back to**

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1 **Detroit, and that money was never sent to Macomb**
 2 **County.**
 3 Q. Do you know what Detroit --
 4 **A. And then you want to ask me why things aren't fair**
 5 **and square here, right?**
 6 Q. Do you know what claims Detroit asserted in that
 7 lawsuit against Inland?
 8 **A. I don't know.**
 9 Q. Are you familiar that eventually Macomb County
 10 sued Detroit in Macomb Circuit Court?
 11 **A. Yes.**
 12 Q. Did you authorize that suit?
 13 **A. Yes, I did.**
 14 Q. Why?
 15 **A. Because I believe Macomb County rate payors were**
 16 **overcharged for the sewer collapse repair bill.**
 17 Q. And have you told us in this deposition all the
 18 reasons why you believe Macomb was overcharged?
 19 Any other statements? Facts?
 20 **A. I have an engineer's estimate what it would cost**
 21 **to do it. I have statements from federal court**
 22 **that admit to overcharging. I think those are two**
 23 **pretty good reasons.**
 24 Q. Is there anything else you have?
 25 **A. I think those are pretty good. Some people went**

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1 **to jail. Maybe they shouldn't have gone to jail.**
 2 **Maybe they weren't lying, huh?**
 3 **MR. WATSON:** Let me take a short break
 4 and we'll come back.
 5 (Off the record at 11:59 a.m.)
 6 **MARKED FOR IDENTIFICATION:**
 7 **DEPOSITION EXHIBIT 8**
 8 12:12 a.m.
 9 (Back on the record at 12:12 p.m.)
 10 **BY MR. WATSON:**
 11 Q. Mr. Marrocco, you've been handed what's been
 12 marked as Exhibit 8 --
 13 **A. Yes.**
 14 Q. -- which appears to be the Summons and Complaint
 15 filed by Macomb Interceptor Drainage District
 16 against City of Detroit in Macomb Circuit Court,
 17 correct?
 18 **A. Yes.**
 19 Q. Did you see this Complaint prior to the time it
 20 was filed?
 21 **A. I'm sure I did, but I can't be --**
 22 Q. And you did authorize this suit?
 23 **A. Yes, I did.**
 24 Q. Going to page 3, under General and Factual
 25 Background, it reads "The primary cause of this

Page 68

1 action is a breach of contract/fraudulent
 2 inducement to contract by Detroit relating to the
 3 sale of assets, including, but not limited to,
 4 the Macomb Interceptor System." Do you see that
 5 language?
 6 **A. Yes, I do.**
 7 Q. Is that your understanding, that that's the
 8 primary claim, is breach of contract/fraudulent
 9 inducement?
 10 **A. That's what my attorney put there. I guess it's**
 11 **legalese.**
 12 Q. Now, with the fraud claim, is it your
 13 understanding that Macomb takes the position that
 14 Detroit, prior to the sale, should have disclosed
 15 certain information that it had?
 16 **A. Yes.**
 17 Q. So it's the actions of Detroit before the sale
 18 that you're focused on?
 19 **A. Yes.**
 20 Q. In looking at paragraph -- look at paragraph 14.
 21 **A. Um-hmm.**
 22 Q. It talks about the superseding indictment in
 23 Ferguson and Inland Waters entering into side
 24 agreements. Do you see that paragraph?
 25 **A. I see 14, yes.**

1 Q. Did you ever meet Bobby Ferguson?
 2 A. **Never.**
 3 Q. Has he ever done any work for Macomb County?
 4 A. **Not to my knowledge.**
 5 Q. Have you ever testified before the grand jury?
 6 A. **Never.**
 7 Q. Do you know if any Macomb County employees were
 8 interviewed in regard to the grand jury
 9 investigation, interviewed by the FBI or
 10 testified before the grand jury?
 11 A. **Regarding what?**
 12 Q. The 15 Mile Road sewer collapse.
 13 A. **So regarding that again, what's the question?**
 14 Q. Any Macomb County employees or attorneys testify
 15 before the grand jury or get interviewed by the
 16 FBI in regard to the matter?
 17 A. **No, I'm not aware of anybody.**
 18 Q. Do you have any personal knowledge of the
 19 dealings between Inland and Ferguson?
 20 A. **Only what I read.**
 21 Q. Have you ever done business -- Macomb done
 22 business with Inland?
 23 A. **Just recently.**
 24 Q. When did you do business with Inland?
 25 A. **It was in conjunction with Oakland County under**

1 **so the sewage could flow. At that point, the**
 2 **emergency was over.**
 3 Q. Do you know whether or not the bypass was
 4 something that was unstable and had to be
 5 monitored constantly?
 6 A. **Of course it would have to be. It's a temporary**
 7 **fix.**
 8 Q. Do you know whether or not the sinkhole was
 9 expanding?
 10 A. **I have no idea if it were or not.**
 11 Q. Did you consider it to be an emergency -- let me
 12 rephrase it.
 13 Did you believe that DWSD had to take
 14 actions to prevent houses from falling into the
 15 sinkhole immediately?
 16 A. **So start your question again.**
 17 Q. Okay. I'm trying to find out what was and was
 18 not an emergency. Was it an emergency to prevent
 19 homes from falling into the sinkhole? Should
 20 that action have been taken on an emergency
 21 basis, in your opinion?
 22 A. **Of course, if homes would have fallen into the**
 23 **sinkhole, but there's no proof of that. The homes**
 24 **were far enough away from the sinkhole.**
 25 Q. In regard to air pollution or water or polluting

1 **the OMID drain district we formed with them, and**
 2 **they were awarded a contract this past year to do**
 3 **some repair work on the interceptor.**
 4 Q. Okay. Looking at paragraph 16, it talks about
 5 "in or about the spring of 2003, the DWSD and
 6 Inland agreed to set fixed unit prices for
 7 subcontractor work on CS-1368." Do you see that?
 8 A. **Yes.**
 9 Q. That's something you don't have any personal
 10 knowledge of, I take it?
 11 A. **I have no idea what CS-1368 is.**
 12 Q. Okay. As far as the various factual allegations,
 13 what D'Agostini did and Ferguson did and Inland
 14 did and Detroit did, is it fair to say you don't
 15 have personal knowledge of any of that stuff?
 16 A. **Only what I read.**
 17 Q. Okay. Did you consider the 15 Mile Road sewer
 18 collapse an emergency?
 19 A. **The only emergency was to restore the flow of the**
 20 **sewage.**
 21 Q. Do you know how long it took to restore that
 22 flow?
 23 A. **Exactly, I can't tell you, but it was a short**
 24 **period of time. I think it was Mersino -- the**
 25 **contractor went out there and put a bypass line in**

1 the water or backing up in basements, should
 2 actions have been taken to address those
 3 situations on an emergency basis?
 4 A. **There was none of that.**
 5 Q. Could that have happened if the repairs weren't
 6 effected quickly enough, though?
 7 A. **No, they had the emergency bypass and that was the**
 8 **main concern. Road was down. Road got**
 9 **barricaded, detour down to 14 Mile or detour up to**
 10 **16 Mile, that didn't create nothing. Like I say,**
 11 **once the sewage was flowing again, there was no**
 12 **emergency.**
 13 Q. Did you ever go out to the project?
 14 A. **Yes, I did.**
 15 Q. How many times did you go out there?
 16 A. **From the day of the sinkhole until it was final,**
 17 **opened up the road?**
 18 Q. Yeah.
 19 A. **Oh, my God, so many times I couldn't count, but I**
 20 **can tell you I was there the first day it was**
 21 **down. I was there.**
 22 Q. Was it a huge project?
 23 A. **Of course it was a huge project. I'm not saying**
 24 **it wasn't.**
 25 Q. Did Macomb have a representative assigned to

1 monitor the progress on that project?
 2 **A. Yes.**
 3 Q. Who was that?
 4 **A. I believe it was Tom Stockel.**
 5 Q. Are you familiar with a Mr. Penrod? Was he there
 6 as well?
 7 **A. Don Penrod, sure, he might have been there, but I**
 8 **think Stockel might have been more on top of it.**
 9 **Penrod would have been his supervisor.**
 10 Q. What were they supposed to be doing out there,
 11 drinking coffee?
 12 **A. Just keeping an eye on the project, I guess, make**
 13 **sure it was moving along. I'm not sure. You kind**
 14 **of do that. City of Sterling Heights had someone**
 15 **there, too, an inspector, so --**
 16 Q. Did you expect them to look at documents to the
 17 extent there are contracts with contractors to
 18 fix things? Was part of their job to look at
 19 those agreements?
 20 **A. It was the City of Detroit's project. We had no**
 21 **say in what went on over there.**
 22 Q. Could they, to your knowledge, ask to see
 23 anything they wanted to see?
 24 **A. Could they ask?**
 25 Q. Yeah.

1 Ferguson and Miller." And you based that on the
 2 indictment?
 3 **MS. BADALAMENTI:** The paragraph
 4 expressly bases it on the indictment.
 5 **BY MR. WATSON:**
 6 Q. Do you have any additional knowledge in that
 7 regard? Anything outside of the indictment?
 8 **A. Myself?**
 9 Q. Yeah.
 10 **A. No.**
 11 Q. And then paragraph 35 starts off "The scheme
 12 resulted in excessive overcharges on the
 13 project." Do you see that?
 14 **A. Yes.**
 15 Q. And are you basing that on the indictment as
 16 well?
 17 **A. Not just the indictment. I'm also basing that on**
 18 **the engineer's estimate that we had prepared.**
 19 Q. Anything else?
 20 **A. I think that's sufficient.**
 21 Q. Anything else, though, whether or not it's
 22 sufficient? Is that all you can recall as we sit
 23 here today?
 24 **A. I had our engineer do an estimate, and I've also**
 25 **seen what the indictment says. Is there anything**

1 **A. I don't know. But, again, the City of Detroit.**
 2 Q. Are you aware of Detroit ever denying any Macomb
 3 request as far as inspecting areas, viewing
 4 documents, attending meetings?
 5 **A. I'm not aware of that. No one ever made mention**
 6 **to me about it. It could have happened, but I'm**
 7 **not sure.**
 8 Q. Were the Macomb and Sterling Heights
 9 representatives allowed to go to the daily
 10 meetings?
 11 **A. I have no idea.**
 12 Q. Did you ever go to any of the daily meetings?
 13 **A. No, I never went to a daily meeting.**
 14 Q. When you were out there, was Mercado out there a
 15 lot as well?
 16 **A. On occasion. I seen him a couple times.**
 17 Q. Was Shukla the top guy on the scene day to day?
 18 **A. During the day there? No, I don't think I seen**
 19 **Shukla there.**
 20 Q. I'm looking at paragraph 33. Just to confirm,
 21 the last sentence reads "In return for these
 22 unlawful and excessive contract awards, profits,
 23 fees, expenses, and costs, the contractors and
 24 subcontractors made unlawful payments and/or
 25 provided unlawful gratuities to Kilpatrick,

1 **else? I mean, how else would you know? There was**
 2 **an admission in court. They admitted in court**
 3 **what they did.**
 4 Q. Looking at paragraph 40, it starts off "The
 5 grossly inflated project total became the
 6 plaintiff's direct responsibility for order of
 7 Judge Feikens dated December 18, 2008." Do you
 8 see that?
 9 **A. Yes.**
 10 Q. Do you understand what that means? I'm not
 11 sure -- I'm not familiar with Judge Feikens'
 12 order, December 18, 2008. Are you familiar with
 13 that at all?
 14 **A. No. I don't remember what he ordered on that**
 15 **date.**
 16 Q. And the -- pursuant to the settlement agreement
 17 or really the acquisition agreement, Macomb was
 18 obligated to pay Detroit, wasn't it, once you
 19 signed that acquisition agreement?
 20 **A. Okay. Now I understand what this December 18th**
 21 **might be. That may be when we -- I don't know --**
 22 **sued Detroit over -- we went to Feikens and said,**
 23 **hey, this is not Macomb County's bill to pay in**
 24 **total. It should be part of the system. And**
 25 **Feikens ruled against us and said no, Macomb has**

1 **to pay the total of the sewer collapse.**
2 Q. Oh, okay. Thank you. That's what that's about.
3 Okay. Paragraph 41 says "At the time
4 of this ruling, the scheme and its production of
5 grossly inflated overcharges was concealed from
6 Judge Feikens and MIDD." Do you see that
7 language?
8 **A. Yes.**
9 Q. And we've already talked about why you believe it
10 was concealed, what you base the conclusion of
11 fraud and concealment on, haven't we? The
12 Mercado conversations? What I'm trying to say,
13 is there anything else you base this allegation
14 on other than what we've already covered in your
15 deposition?
16 **A. Which allegation?**
17 Q. The allegation that the scheme and its production
18 of grossly inflated overcharges was concealed
19 from Judge Feikens and MIDD.
20 **A. Yes.**
21 Q. And is there anything else you base that on other
22 than what you've testified to today?
23 **A. No. That's it, I think.**
24 Q. Okay.
25 **A. Do you want me to make up something for you?**

1 objectionable question, but you can go ahead.
2 **BY MR. WATSON:**
3 Q. The articles you read, what were they focused on?
4 **A. What were they focused on?**
5 Q. Yeah. You said you read articles about the
6 indictment.
7 **A. They were focused on criminal enterprise that they**
8 **had going on, and how they overcharged for the**
9 **sewer collapse.**
10 Q. So you've seen articles about overcharging for
11 the sewer collapse?
12 **A. Um-hmm.**
13 Q. Do you recall what publication these articles
14 were in?
15 **A. Local papers.**
16 Q. Macomb or --
17 **A. Daily.**
18 Q. -- Detroit?
19 **A. Detroit. I think I also read some of the**
20 **transcripts.**
21 Q. Trial transcript?
22 **A. Yes.**
23 Q. Did you ever see anything about favoritism in any
24 of the articles?
25 **A. Criminal activity, I did.**

1 Q. No, I absolutely don't.
2 I take it you disagree with Judge
3 Cleland's deposition that the tort claims belong
4 to Detroit?
5 **A. Of course, anything that's ruled against us, I'm**
6 **against. If it was in my favor, I'd like it.**
7 Q. In regard to the Ferguson indictment, you
8 mentioned a few times what you read in the paper,
9 indictment, Ferguson, Miller, Mercado,
10 Kilpatrick. Weren't the articles in the paper
11 primarily focused on favoritism shown to Ferguson
12 by Kilpatrick?
13 **A. Is that what they focused on?**
14 Q. Yeah.
15 **MS. BADALAMENTI:** What time frame are
16 you referring to?
17 **BY MR. WATSON:**
18 Q. I'm referring to 2010 -- December 2010 and years
19 thereafter when they talked about the
20 indictments. Weren't they primarily focused on
21 Ferguson being unfairly favored in getting all
22 these contracts and --
23 **MS. BADALAMENTI:** I'm going to object
24 to foundation. He doesn't know what articles
25 you're talking about. It's an overbroad and

1 Q. Don't recall favoritism?
2 **A. No, I don't. There's a lot of words in the**
3 **English language to specify one or the other. I**
4 **don't know, but --**
5 Q. Look at paragraph 83. It reads "Defendant
6 knowingly and intentionally made
7 misrepresentations leading up to and in the
8 Macomb acquisition agreement." Do you see that
9 language?
10 **A. Not yet. Paragraph 83?**
11 Q. Yeah.
12 **A. Okay. I'm on it now.**
13 Q. And by defendant, defendant is?
14 **A. Detroit?**
15 Q. Detroit. The individuals you're aware of -- or
16 individual who made these misrepresentations is
17 Mercado? Is that to you personally are aware of?
18 **MS. BADALAMENTI:** I'm going to object.
19 It calls for a legal conclusion, Mr. Marrocco
20 didn't draft this document. He doesn't know what
21 the paragraph is referring to. He couldn't
22 possibly answer that question. But you can go
23 ahead. Do the best you can.
24 **BY MR. WATSON:**
25 Q. Well, who from your personal knowledge, not what

1 you read in the papers or -- just what you know,
 2 who made the misrepresentations? Anyone other
 3 than Mercado and the misrepresentations that have
 4 been fully discussed?
 5 **A. As far as the purchase price for the system? Is
 6 that what you're talking about?**
 7 Q. Yeah, the purchase --
 8 **A. I don't think there was a full disclosure, whether
 9 it's Mercado or the legal department of Detroit.**
 10 Q. Did you speak to anyone in the legal department?
 11 **A. No. There's so many people. I ain't going to set
 12 there and speak to everybody. You just expect in
 13 a business relationship, you bring forward
 14 everything you have, all the information you have.**
 15 Q. The one you personally spoke to was Mercado?
 16 **A. Yes.**
 17 Q. And we fully covered those conversations, haven't
 18 we?
 19 **A. Yes. I spoke to him more than the occasions we
 20 talked about. We talked -- he came to my office
 21 one day and I spoke to him in my office.**
 22 Q. We haven't talked about that one, have we?
 23 **A. No.**
 24 Q. What was discussed?
 25 **A. I told you about on the project site. I said a**

1 the best you're able.
 2 **BY MR. WATSON:**
 3 Q. Do you want to rescind the deal?
 4 **A. If I can get a cheaper price than the \$90 million,
 5 I guess I would. I think, you know, there's more
 6 evidence out there now.**
 7 Q. While the project was going on and Macomb had at
 8 least one representative on the project, are you
 9 aware of any complaint Macomb ever registered
 10 about the project and the cost other than the
 11 testimony you've given?
 12 **A. Anybody we had out on the job --**
 13 Q. Yeah.
 14 **A. -- was not there -- was not there to contain cost.**
 15 Q. Did they ever complain about the costs, to your
 16 knowledge?
 17 **A. They would not -- that was -- they're not
 18 experienced in that, and that was not their job.**
 19 Q. Do you know of anyone complaining about the costs
 20 other than what you testified to when you
 21 complained to Mercado?
 22 **A. Oh, I think I'm the person who should complain
 23 about the cost.**
 24 Q. Are you aware of anyone else complaining?
 25 **A. I don't think I should have to be aware.**

1 **few times over there, but also the time he came to
 2 my office.**
 3 Q. What was discussed then?
 4 **A. Well, that he was going to give credit back or
 5 something on jobs.**
 6 Q. Anything else you recall?
 7 **A. No. That was the main -- main point of it, but
 8 then that never materialized, so --**
 9 Q. Any other time you talked to him where he made
 10 some type of misrepresentation?
 11 **A. Yeah, in his office down in Detroit. I talked to
 12 him in his office.**
 13 Q. What did he say then?
 14 **A. Basically the same thing all the time, we'll make
 15 adjustments, we'll make adjustments, or
 16 everything's fair. If there's anything wrong,
 17 we'll give you an adjustment back, this and that.**
 18 Q. Is Macomb County willing to give the system back
 19 to Detroit if Detroit refunds the purchase price?
 20 Do you want to rescind this whole deal?
 21 **MS. BADALAMENTI:** I'm going to object
 22 again. You're talking about something that's been
 23 pled, a legal term of rescision as a remedy, and
 24 he's not a lawyer. He's not in a position to
 25 answer that question. But you can go ahead, to

1 Q. Well, whether or not you --
 2 **A. The buck stops here. I made the decision. And
 3 they overcharged.**
 4 Q. Okay. Did Misterovich ever complain, to your
 5 knowledge?
 6 **A. Misterovich is an attorney.**
 7 Q. What does that mean?
 8 **A. He's not a contractor. He's not in the
 9 construction industry.**
 10 Q. Can you answer my question? Other than what
 11 you've testified to, are you aware of any other
 12 complaints about the costs?
 13 **A. You know, I probably had rumblings. If you want
 14 me to specify the name of a person, I can't do
 15 that, but just there were rumblings. There were
 16 rumblings.**
 17 **MR. WATSON:** All right. That's all
 18 I've got.
 19 **EXAMINATION**
 20 **BY MS. BADALAMENTI:**
 21 Q. I just have a couple of questions.
 22 Commissioner, if you had known about
 23 these overcharges, would Macomb have entered into
 24 the acquisition agreement on these terms?
 25 **A. Absolutely not. We would have wanted more than**

1 that 17 million -- 17 million? We would have
2 asked for more than \$17 million credit.

3 Q. If the -- if you had known that there was an
4 ongoing criminal investigation by the FBI that
5 preceded the acquisition agreement, that had that
6 information been disclosed to you by Detroit
7 prior to September 2nd, 2010, would you have
8 entered into the acquisition agreement?

9 A. No. That's for sure not.

10 MS. BADALAMENTI: No further questions.

11 MR. WATSON: Nothing further.

12 (The deposition was concluded at 12:37 p.m.
13 Signature of the witness was not requested by
14 counsel for the respective parties hereto.)

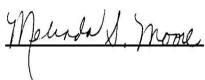
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CERTIFICATE OF NOTARY

1 STATE OF MICHIGAN)
2)
3) SS
4 COUNTY OF MACOMB)
5)

6 I, MELINDA S. MOORE, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing
9 questions and answers were recorded by me
10 stenographically and reduced to computer
11 transcription; that this is a true, full and
12 correct transcript of my stenographic notes so
13 taken; and that I am not related to, nor of
14 counsel to, either party nor interested in the
15 event of this cause.

16
17
18
19



20
21
22 MELINDA S. MOORE, CSR-2258
23 Notary Public,
24 Macomb County, Michigan
25 My Commission expires: September 6, 2016

In The Matter Of:
In re: City of Detroit, Michigan

Lyle E. Winn, PE
July 10, 2014



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:) Case No. 13-53845
CITY OF DETROIT, MICHIGAN)
) Chapter 9
Debtor)
) Hon. Steven W. Rhodes

The Deposition of LYLE E. WINN, PE,
Taken at 51301 Schoenherr Road,
Shelby Township, Michigan,
Commencing at 2:08 p.m.,
Thursday, July 10, 2014,
Before Melinda S. Moore, CSR-2258.

Page 2

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Page 5

1 Shelby Township, Michigan
 2 Thursday, July 10, 2014
 3 2:08 p.m.
 4 LYLE E. WINN, PE,
 5 was thereupon called as a witness herein, and
 6 after having first been duly sworn to testify to
 7 the truth, the whole truth and nothing but the
 8 truth, was examined and testified as follows:
 9 **EXAMINATION**
 10 **BY MS. HATHAWAY:**
 11 Q. Mr. Winn, my name is Irene Hathaway. I represent
 12 the City of Detroit and DWSD. I'm going to ask
 13 you some questions about the issue we're here
 14 about, which I know you know what it is.
 15 If at any time you don't understand any
 16 of any questions, if they're not perfectly clear,
 17 please do not answer it but rather ask me to
 18 repeat or rephrase the question. Okay?
 19 A. Okay.
 20 Q. Have you been deposed before?
 21 A. Yes.
 22 Q. How many times?
 23 A. **More than half a dozen times.**
 24 Q. All right. So you know the ground rules. You
 25 have to give verbal responses.

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1 A. Yes.
 2 Q. And even though I will try to be succinct,
 3 sometimes my questions ramble on a little bit.
 4 Let me finish before you answer so that our court
 5 reporter can take down what we both say. Fair
 6 enough?
 7 A. Fair enough.
 8 Q. Tell me about your educational background.
 9 A. **I have a bachelor's of science in civil**
 10 **engineering from Michigan Tech University,**
 11 **graduated in 1982.**
 12 Q. Anything else?
 13 A. No.
 14 Q. Do you have any professional licenses?
 15 A. **I am a licensed professional engineer in the State**
 16 **of Michigan.**
 17 Q. Anywhere else?
 18 A. No.
 19 Q. Any honors, awards I should be aware of?
 20 A. No.
 21 Q. Tell me about your employment background.
 22 A. **I've been here with this firm, Anderson, Eckstein**
 23 **& Westrick for 26 years; prior to that, a smaller**
 24 **civil engineering firm in Mt. Clemens called**
 25 **Lehner Associates, L-e-h-n-e-r. I think that was**

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1 **about two years. Prior to that I was in Chicago**
 2 **with two separate firms from 1982 through '88 --**
 3 **'86, I believe.**
 4 Q. And what were the names of those firms?
 5 A. **Sargent & Lundy, and Chicago Bridge & Iron.**
 6 Q. Do you have any particular areas at which you
 7 limit your engineering practice?
 8 A. **Civil engineering.**
 9 Q. Do you do forensic work?
 10 A. **I do not.**
 11 Q. Define for me civil engineering.
 12 A. **Civil engineering essentially centers around the**
 13 **design of projects that involve the public,**
 14 **whether it be roads, sewers, bridges, soil**
 15 **engineering, structural engineering, along that**
 16 **line.**
 17 Q. How much work do you or your company do for
 18 Macomb County?
 19 A. **I don't know the exact amount of what we do for**
 20 **them.**
 21 Q. Can you give me an estimate?
 22 A. **Dollar-wise, I really don't know.**
 23 Q. How many projects do you currently have going for
 24 either Macomb or the -- anything related to
 25 Macomb sewers?

Page 8

1 A. **I would estimate about six, I think, but I'm not**
 2 **involved with all of them.**
 3 Q. Which ones are you involved with?
 4 A. **This deposition is the one I am directly involved**
 5 **with currently.**
 6 Q. How long has this company done work for Macomb?
 7 A. **I believe it's in excess of 30 years, maybe for**
 8 **our entire corporate history.**
 9 Q. And what type of work have you done for Macomb?
 10 A. **We have been involved with design of drainage**
 11 **projects, low plane studies, sewer projects. We**
 12 **also represent developers in submitting their**
 13 **projects to the county for approvals.**
 14 Q. What type of sewer projects have you been
 15 involved with for Macomb?
 16 A. **Sanitary sewer and storm sewer.**
 17 Q. Do you do any sewer-related work for any other
 18 municipalities?
 19 A. Yes.
 20 Q. Which ones?
 21 A. **I personally am working on St. Clair Shores**
 22 **projects.**
 23 Q. What are you doing for St. Clair Shores?
 24 A. **They are sewer rehab projects.**
 25 Q. And what do you do for St. Clair Shores in regard

Page 9

1 to their sewer rehab project?

2 **A. We assist them in the design of rehabilitating any**

3 **failing sewers and produce specifications and bid**

4 **documents to -- for them to obtain bids from**

5 **contractors.**

6 Q. Do you yourself manage any construction projects?

7 **A. Yes.**

8 Q. What kind of projects?

9 **A. Sewer projects, road projects, water main**

10 **construction projects.**

11 Q. What sewer projects do you manage?

12 **A. Currently I don't have a sewer project that I'm**

13 **managing.**

14 Q. Which ones have you managed?

15 **A. Over the years I've managed dozens in various**

16 **communities.**

17 Q. What type of sewer projects?

18 **A. Sanitary sewer and storm sewer projects.**

19 Q. Initial build, rebuild, rehab?

20 **A. Mostly initial build.**

21 Q. Have you ever been involved with rehabilitation

22 of sewer systems?

23 **A. Yes.**

24 Q. Where?

25 **A. St. Clair Shores predominantly and some in Shelby**

Page 10

1 **Township.**

2 Q. Have you ever been involved with the design of a

3 sewer interceptor?

4 **A. Yes.**

5 Q. Could you define for me what a sewer interceptor

6 is.

7 **A. A sewer interceptor is a major trunk line which**

8 **collects all the sewage from laterals -- laterals**

9 **being sewers from subdivisions -- from local**

10 **sources that collect into one major line. The**

11 **major line is the large trunk sewer.**

12 Q. And where have you been involved with an

13 interceptor?

14 **A. In Shelby Township.**

15 Q. And tell me about that interceptor.

16 **A. They have several interceptors that carry the**

17 **sewage flows from the township to their outlet. I**

18 **think they have three different outlets.**

19 Q. How do those interceptors compare in size to the

20 interceptor involved in this case?

21 **A. Significantly smaller.**

22 Q. Can you be more specific?

23 **A. Sizes I worked on in Shelby Township, I think the**

24 **largest pipe was 42 inches in diameter.**

25 Q. And here how big was the pipe?

Page 11

1 **A. 11-foot diameter.**

2 Q. Were you actually involved in any way with the

3 emergency repairs or the permanent repairs on the

4 Macomb Interceptor?

5 **A. No.**

6 Q. Were you present at any time onsite when the

7 repairs were being done?

8 **A. Yes.**

9 Q. When?

10 **A. I don't recall exactly. It was a one-day visit**

11 **with Shelby Township officials to see the project**

12 **site and what was occurring.**

13 Q. What stage was the project in at that time?

14 **A. I believe they were still in their initial**

15 **emergency stage.**

16 Q. Was it before the bypass was put in?

17 **A. No, I think the bypass was either installed or**

18 **about -- there was a lot of pipe on the ground, if**

19 **I remember, so it would have been -- the bypass**

20 **pumping would have been close to being started if**

21 **not just started up.**

22 Q. When you were there, did the project infringe on

23 any homeowners' property?

24 **A. Yes.**

25 Q. How many houses?

Page 12

1 **A. I don't know.**

2 Q. How did it infringe?

3 **A. I believe it was the settlement of the soils.**

4 Q. Basically if I can use non-technical language, a

5 sinkhole developed which threatened the safety of

6 a number of homes?

7 **A. A sinkhole developed, yes.**

8 Q. It was a big sinkhole?

9 **A. Yes, it was.**

10 Q. And it did threaten homes?

11 **A. Yes.**

12 Q. How did it threaten homes?

13 **A. The settlement of soils would weaken the -- could**

14 **weaken the foundation or undermine the foundation**

15 **if it got that close to a house.**

16 Q. Do you think that that was a real risk in this

17 case?

18 **A. Yes.**

19 Q. Why?

20 **A. With any project you don't want to damage a**

21 **person's property, and you need to protect it from**

22 **further damage if it's already occurring.**

23 Q. Was the sinkhole itself close enough to the

24 property -- the homes to make it -- that the

25 homes were in danger?

Page 13

1 **A. When I was at the site, we weren't allowed to go**
 2 **that close to the actual occurrence, so I couldn't**
 3 **tell you how close it really was.**
 4 Q. I guess I should have said that. If you don't
 5 know, you can saying "I don't know" and I'll move
 6 on, okay?
 7 Did the construction site have an
 8 impact on any businesses in that area when you
 9 were there?
 10 **A. I don't recall.**
 11 Q. Do you know from any source whether businesses
 12 were impacted -- I hate to use "impact" as a
 13 verb. Let me rephrase that.
 14 Do you know whether there was any
 15 impact upon any businesses in that area?
 16 **A. I don't know.**
 17 Q. Were you familiar with another sewer collapse
 18 that occurred in Macomb some years before the
 19 2004 collapse?
 20 **A. Yes.**
 21 Q. How would you compare that collapse size-wise to
 22 the 2004 collapse?
 23 **A. I don't know. I was in college at the time it**
 24 **occurred. I think it was also on 15 Mile Road. I**
 25 **never saw it.**

Page 14

1 Q. Do you know how long it took to repair the
 2 earlier collapse?
 3 **A. No, I don't.**
 4 Q. Do you know how long it took to repair the 2004
 5 collapse?
 6 **A. I only have general parameters. I don't know**
 7 **any -- I know when it started and I don't know**
 8 **exactly when it finished.**
 9 Q. When did it start?
 10 **A. In August of '04.**
 11 Q. And when do you think it ended?
 12 **A. I know that the road was put into service in June**
 13 **of '05, but there was nothing in the records I've**
 14 **seen that pinpointed a date.**
 15 Q. So what have you reviewed in regard to the
 16 interceptor and the collapse?
 17 **A. The documents I provided -- that we were provided**
 18 **included some estimates from Detroit, pay**
 19 **estimates.**
 20 Q. I'm sorry, some estimates?
 21 **A. Pay estimates.**
 22 Q. Pay estimates of what?
 23 **A. Payments to contractors, pay estimates for the**
 24 **work. We reviewed construction plans that were**
 25 **prepared by NTH. We had documents regarding**

Page 15

1 **budget estimates that were prepared by Inland**
 2 **Water, the final estimate prepared by Inland**
 3 **Water, and some of the amendments that have been**
 4 **issued to award the work -- the construction**
 5 **portion of the work to Inland Water.**
 6 Q. What else?
 7 **A. There were a number of daily inspection reports**
 8 **from -- one set from Neyer, Tiseo -- NTH, and**
 9 **another set from DWSD.**
 10 Q. What else?
 11 **A. And there was some additional grout testing**
 12 **reports I saw.**
 13 Q. What else?
 14 **A. Photos.**
 15 Q. What else?
 16 **A. That's all I can recall right now.**
 17 Q. Do you have all of those materials with you?
 18 **A. I do.**
 19 Q. Did you prepare a report in this case?
 20 **A. I did not prepare a written report, no.**
 21 Q. Why not?
 22 **A. We prepared a cost estimate is what we were asked**
 23 **to prepare.**
 24 Q. We received some materials that we couldn't open.
 25 Do you know what those are?

Page 16

1 **A. I don't. I thought those were related to another**
 2 **project.**
 3 **MS. HATHAWAY:** Counsel, do you want to
 4 put on the record what you sent and what we were
 5 supposed to --
 6 **MR. MORRIS:** We produced all the
 7 documents that were given to us and there was what
 8 was on a CD dated, I believe, July 7th, a
 9 duplicate that was provided on July 8th, that had
 10 roughly, I believe it was, 121 PDF files of a
 11 blueprint as well as what is called a Microsoft
 12 Access file. My understanding is that the
 13 Microsoft Access file only works in connection
 14 with an engineering software with blueprints.
 15 Those files could not be converted to PDF, but you
 16 were given the actual file of the data.
 17 **MS. HATHAWAY:** Which is completely
 18 useless.
 19 **MR. MORRIS:** Which we can provide at a
 20 cost because we just figured out a way to actually
 21 provide those.
 22 **MR. SHAHID:** The PDF of the blueprint
 23 we haven't gotten.
 24 **MR. MORRIS:** Yes, those were Bates
 25 stamped. I don't have the actual Bates stamp

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1 numbers off the top my head.
 2 **MS. HATHAWAY:** When were they produced?
 3 Because as of yesterday we didn't have them.
 4 **MR. MORRIS:** They were produced
 5 July 8th. That record was produced. It was, I
 6 want to say, MIDD documents somewhere in the
 7 29,000 range, but those documents were definitely
 8 produced.
 9 **MR. SHAHID:** Those are blueprints?
 10 **MR. MORRIS:** Yes, it's like a blueprint
 11 or -- I don't know what the actual technical word
 12 for that is, what the actual -- the Access
 13 document is a GIS.
 14 **THE WITNESS:** Yes.
 15 **MR. MORRIS:** It's a GIS.
 16 **MS. HATHAWAY:** Let's go off the record.
 17 (Off the record at 2:23 p.m.)
 18 (Back on the record at 2:25 p.m.)
 19 **MS. HATHAWAY:** All right. We have
 20 looked at the documents that you referenced that
 21 you said were produced by AEW, which --
 22 **MR. SHAHID:** 252 52 documents.
 23 **MS. HATHAWAY:** 252 documents. What are
 24 they?
 25 **MR. MORRIS:** They are the geothermal

Page 18

1 plans, and I'm not 100 percent certain.
 2 **MS. HATHAWAY:** For what?
 3 **MR. MORRIS:** Again, I did not review
 4 these documents. I put them on a Bates stamp and
 5 put them as part of the file.
 6 **MS. HATHAWAY:** Do they have anything to
 7 do with this case?
 8 **MR. ADDIS:** Do you know?
 9 **THE WITNESS:** I have no idea.
 10 **MR. SHAHID:** Do you want to look at
 11 them. They're right here.
 12 **THE WITNESS:** I can't tell from -- from
 13 what ---
 14 **BY MS. HATHAWAY:**
 15 Q. Suffice that the documents that we're looking at
 16 have nothing to do with your opinions.
 17 **A. No. Yes, you're correct.**
 18 Q. All right. Sorry. Bad question.
 19 **MR. SHAHID:** Just for the record, what
 20 was just discussed is that these documents did
 21 come from a CD from AEW to Ms. Badalamenti's firm.
 22 **THE WITNESS:** Yes.
 23 **MR. SHAHID:** Which they then provided
 24 to Miller Canfield as part of their production in
 25 this matter.

Page 19

1 **MR. MORRIS:** That is correct. And then
 2 the raw data version is Bates stamped MIDD 22074-
 3 1.
 4 **BY MS. HATHAWAY:**
 5 Q. Could you please retrieve the pay estimates, the
 6 construction plan from NTH, the Inland budget and
 7 amendments. Right now we'll leave out the daily
 8 inspection reports and grout testing. Could you
 9 get those out of your box since I understand
 10 there's privileged stuff there and I won't go
 11 through it.
 12 What is that you just put on the table?
 13 **A. Construction plans prepared by NTH. And I forget
 14 what else you asked for.**
 15 Q. Basically I want the estimates that you have from
 16 anybody and the budgets. That's what I'm looking
 17 for. While you're doing that, let's mark this
 18 one.
 19 **MARKED FOR IDENTIFICATION:**
 20 DEPOSITION EXHIBIT 1
 21 2:28 p.m.
 22 **BY MS. HATHAWAY:**
 23 Q. All right. Tell me what Exhibit 1 is, just for
 24 the record, so we're clear for the record.
 25 **A. Exhibit 1 is the construction plans prepared by**

Page 20

1 **Neyer & Tiseo.**
 2 Q. NTH?
 3 **A. NTH.**
 4 Q. When did you get these?
 5 **A. I don't know exactly when we got them. They were
 6 in the file when I became involved.**
 7 Q. I guess I should back up. When did you get
 8 involved in this case?
 9 **A. I got involved in this case in 2011.**
 10 Q. How did you get involved?
 11 **A. I became the custodian of the documents when the
 12 person that was working left the employment of
 13 this firm.**
 14 Q. Forgive me. Maybe I jumped ahead. Why did you
 15 have documents in the first place on this
 16 project?
 17 **A. We were requested by Mr. Marrocco's office to
 18 prepare an engineer's opinion of cost relating to
 19 the project that we're talking about.**
 20 Q. And when were you asked to do that?
 21 **A. It was, I believe, in February/March 2011.**
 22 Q. That was long after the project was completed,
 23 correct?
 24 **A. Yes.**
 25 Q. Were you asked to do anything else other than to

1 prepare an estimate of cost of the project?
2 **A. No.**
3 Q. I take it you know what the project cost was when
4 you were looking at it, correct?
5 **A. We discovered it during -- documents were provided**
6 **by Mr. Marrocco's office, yes.**
7 Q. Who was the person who had the documents before
8 you did?
9 **A. Nancy Shirkey.**
10 Q. Do you want to spell the last name for me,
11 please.
12 **A. S-h-i-r-k-e-y.**
13 Q. And Ms. Shirkey was what?
14 **A. She was an engineer with our firm.**
15 Q. And she left?
16 **A. She did.**
17 Q. Where is she now?
18 **A. I don't know.**
19 Q. How much work did she do on the project before
20 she left?
21 **A. She did all the work on the project before she**
22 **left.**
23 Q. Did you do any work on this project?
24 **A. Not until she gave it to me.**
25 Q. So when you first received the project, what had

1 Q. Sure.
2 **A. Yes, there are different dates on the plans.**
3 Q. Are they before or after 2005?
4 **A. Some are before.**
5 Q. What else -- I asked you for the comments
6 regarding the Inland budget and amendment.
7 **A. Here's the Inland budget I was working with.**
8 **MS. HATHAWAY:** Can we mark that,
9 please.
10 **MR. ADDIS:** For the record -- and I'm
11 not making any big deal about it -- this is a
12 duces tecum dep, and I think these have been
13 produced before, but we can go ahead with them.
14 **MARKED FOR IDENTIFICATION:**
15 **DEPOSITION EXHIBIT 2**
16 2:33 p.m.
17 **MS. HATHAWAY:** I was just trying to --
18 **MR. ADDIS:** That's what I said. We're
19 trying to get through with his opinion. We're
20 going to go ahead with it.
21 **MS. HATHAWAY:** I don't think this -- we
22 only had two days to review thousands of pages of
23 documents.
24 **MR. ADDIS:** I get it. It's on the
25 record, but we're going to go ahead.

1 been done?
2 **A. The estimates had already been prepared for and**
3 **supplied to Mr. Marrocco's office.**
4 Q. So what did you do?
5 **A. I became the custodian of those documents. I also**
6 **reviewed all those documents to confirm, you know,**
7 **the results that Nancy had prepared.**
8 Q. Do you know why Macomb isn't relying on the
9 person who actually did the work here, and it's
10 you, if you know?
11 **A. No, I don't.**
12 Q. Would you agree with me the person who did the
13 work is probably in a better position to testify
14 about what she did than you are?
15 **A. I can't say that she is.**
16 Q. Do you know if she's still in the area?
17 **A. I don't believe she is.**
18 Q. Did she leave on good terms?
19 **A. Yes.**
20 Q. All right. Let's go back to the last question.
21 You've given me these NTH plans that are dated
22 August 5th of 2005, correct?
23 **A. On the first sheet, yes.**
24 Q. Are other sheets dated differently?
25 **A. Do you want me to look at them?**

1 **BY MS. HATHAWAY:**
2 Q. The next document, what's that?
3 **A. This is the final estimate summary from Inland**
4 **Waters.**
5 Q. All right.
6 **MS. HATHAWAY:** Can we mark that
7 Exhibit 3, please.
8 **MARKED FOR IDENTIFICATION:**
9 **DEPOSITION EXHIBIT 3**
10 2:33 p.m.
11 **BY MS. HATHAWAY:**
12 Q. Do you have any other estimates from any other
13 entity regarding costs for this project?
14 **A. Regarding -- can I clarify, proposed cost or**
15 **applications for payment?**
16 Q. I guess both.
17 **A. I think what you have is all I have as proposed**
18 **costs from anyone that worked on the project.**
19 Q. All right. In regard to what you have reviewed,
20 then, did you, in reviewing the pay estimates and
21 any other documents, did you discover any
22 fraudulent activity?
23 **A. I was --**
24 **MR. ADDIS:** I'm going to object to the
25 question on the grounds "fraudulent activity"

1 calls for a legal conclusion. I think I know
 2 where you're going and I know we have limited
 3 time, but would you think maybe "questionable
 4 activity" might be better than asking him to
 5 acknowledge fraud?
 6 **MS. HATHAWAY:** Let's try my fraud
 7 question first.
 8 **MR. ADDIS:** Okay. If he wants to
 9 answer it.
 10 **THE WITNESS:** No.
 11 **BY MS. HATHAWAY:**
 12 Q. In order -- we received from you -- and actually
 13 there were multiple copies. I've pulled out some
 14 of the copies.
 15 **MR. ADDIS:** Let's mark this 4.
 16 **MARKED FOR IDENTIFICATION:**
 17 DEPOSITION EXHIBIT 4
 18 2:35 p.m.
 19 **BY MS. HATHAWAY:**
 20 Q. This is what we were supplied. There seems to be
 21 multiple copies of it. Actually there was one on
 22 top of it that I scribbled on so I didn't bring
 23 that. What is this packet that I've just
 24 provided you?
 25 **A. This packet is the cost estimate we prepared and**

1 **A. I don't recall exactly. There were some trade**
 2 **magazine articles, I believe.**
 3 Q. Did you read Mr. Shukla's article?
 4 **A. I don't know which one that is.**
 5 Q. Do you know what trade publications you did read?
 6 **A. Not off the top of my head I don't.**
 7 Q. How would you characterize this particular sewer
 8 collapse? Was it a small one? Medium size?
 9 **A. I would classify it as a significant event.**
 10 Q. Have you ever been involved with an event -- a
 11 sewer collapse of this magnitude yourself in
 12 regard to actual work that you did on a project?
 13 **A. Not of this magnitude, no.**
 14 Q. Is it your opinion that the project could have
 15 been done cheaper if it had been not done as an
 16 emergency but as a design build?
 17 **A. I don't think we rendered that as an opinion, but**
 18 **certainly it is an opportunity to get a better**
 19 **cost on a project, yes.**
 20 Q. Do you have an opinion as to whether repairing
 21 this project quickly was necessary?
 22 **A. No.**
 23 Q. If -- are you aware of lawsuits that were filed
 24 against various entities by businesses claiming
 25 that this event had -- was interfering with their

1 **some backup documentation regarding each of the**
 2 **work items that are shown on the first page of the**
 3 **estimate.**
 4 Q. All right. Did you talk to anybody or do you
 5 know if your predecessor did about what was
 6 discovered during the course of the project?
 7 **A. Yes. Nancy would have discussed this with Mr. Roy**
 8 **Rose.**
 9 Q. I'm sorry, with who?
 10 **A. Roy Rose.**
 11 Q. And who's Roy Rose?
 12 **A. Roy Rose is the president of the company, and he**
 13 **was checking her work as she was proceeding, so**
 14 **they would have conversed on it.**
 15 Q. My question was: Did you or she at any time
 16 speak to anyone who had specific independent
 17 knowledge of the project?
 18 **A. Not that I'm aware.**
 19 Q. You didn't?
 20 **A. I didn't. I don't know about Nancy.**
 21 Q. Did you review any articles, reports, anything
 22 like that about the difficulties that were
 23 encountered in the course of the project?
 24 **A. I've seen articles about the project, yes.**
 25 Q. What articles have you seen?

1 livelihood?
 2 **A. No, I'm not aware of that.**
 3 Q. Are you aware of any litigation at all
 4 involving --
 5 **MR. ADDIS:** What period of time?
 6 **MS. HATHAWAY:** Let me finish my
 7 question.
 8 **BY MS. HATHAWAY:**
 9 Q. -- involving homeowners or business people whose
 10 use of their home or business were affected?
 11 **A. No, I'm not aware of those.**
 12 Q. All right. Let's go through what has been marked
 13 as Exhibit 4. What is this first page?
 14 **A. This first page is the cost estimate we prepared**
 15 **for the repair project.**
 16 Q. By saying "we," you mean Nancy?
 17 **A. "We" as in the company.**
 18 Q. Okay. You didn't do it?
 19 **A. I did not do it.**
 20 Q. Okay. The first item is Emergency Work Estimate
 21 (Rounded through September 30, 2004). Then
 22 there's a number of 11,600,000, more or less.
 23 **A. Yes.**
 24 Q. How was that arrived at?
 25 **A. That was -- specifically to that date, it ties to**

1 the budget estimate prepared by Inland Waters that
 2 had that same date. It was a date that was
 3 determined to be where the initial emergency was
 4 abated, if you will, stabilized, and then
 5 following that would have been the repair efforts.
 6 Q. You say the initial emergency was abated. What
 7 had been done up through September 30th of 2004
 8 on this project?
 9 A. Based on what I've reviewed, it appears that the
 10 main object was to -- there were several. There
 11 was to provide bypass pumping of the sewage flows
 12 that were coming to that location, so in order to
 13 maintain sewage flows, and secondly to stabilize
 14 the soils around the sinkhole.
 15 Q. And what did they have to do to accomplish those
 16 goals?
 17 A. To accomplish the bypass pumping they had to --
 18 Q. Well, to abate the emergency is my question.
 19 A. Okay. They had to install a pumping system, pipes
 20 that transport what they were pumping to an
 21 outlet, provide bulkheads on the existing sewer
 22 lines so that they could -- they didn't have
 23 sewage flowing into the sinkhole area where the
 24 work was going to occur. And they had to install
 25 steel sheeting to stabilize the soils that were

1 A. Yes.
 2 Q. All right. And that is what we've marked as
 3 Exhibit 2?
 4 A. Can I see Exhibit 2?
 5 Q. Sure.
 6 A. May I see Exhibit 3?
 7 Q. Yes, sir.
 8 A. It is close to the number presented in Exhibit 3,
 9 with the total to date at the bottom column of
 10 September on that estimate.
 11 Q. I'm sorry, on the September 30th Inland estimate?
 12 A. No, the final estimate summary.
 13 Q. Okay. So what is the final estimate summary? I
 14 mean, literally what is it?
 15 A. It appears to me that the final estimate summary
 16 is a recording of month-by-month payments that
 17 were made to each of the contractors and
 18 subcontractors on the project.
 19 Q. So the other work items that are listed here for
 20 mobilization down through City of Sterling
 21 Heights, what are those entries?
 22 A. You're referring to the estimate we prepared?
 23 Q. Yes.
 24 A. Okay. Those are items of work that we determined
 25 would be necessary to make the repair effort after

1 around the sinkhole.
 2 Q. What about pressure grouting?
 3 A. I saw references to pressure grouting. I don't
 4 know where all it was applied in all cases.
 5 Q. What is pressure grouting?
 6 A. Pressure grouting is essentially pumping called a
 7 grout material. It's sometimes cementitious or
 8 other materials to solidify the soils and stop
 9 flow -- water flow going through the soils.
 10 Q. Have you ever used pressure grouting?
 11 A. Yes.
 12 Q. Do you know how much of it was necessary here in
 13 order to stabilize the soils?
 14 A. I do not.
 15 Q. Do you know if Ms. Shirkey knew when she was
 16 doing her work?
 17 A. I do not.
 18 Q. All right. So what does this 11,600,000 -- where
 19 did that come from?
 20 A. I believe that was a summary of the work from the
 21 final estimate summary of the first two months,
 22 August and September.
 23 Q. So that was a number that she got from --
 24 A. The documents that were provided.
 25 Q. -- an estimate from Inland?

1 the emergency was stabilized.
 2 Q. And how did you determine that?
 3 A. The actual components of the work?
 4 Q. Um-hmm.
 5 A. Looking at the engineering plans prepared by NTH,
 6 we were able to quantify much of the work. We
 7 also looked at the budgets that Inland had put
 8 together to identify other items that were
 9 incorporated into their budget, such as security,
 10 ventilation, and tried to reflect those in our
 11 estimate as well.
 12 Q. All right. Let's go the next page. I think it's
 13 Bates stamped 913.
 14 A. Yes.
 15 Q. What is this?
 16 A. This is our thought process and detail of how we
 17 developed our bypass pumping cost.
 18 Q. Okay. Explain it to me.
 19 A. At the top of the page we identified for the
 20 months of October through March 31st invoices that
 21 were paid for the various months that were
 22 associated with the bypass pumping, and these came
 23 off of the actual invoices paid by Detroit Water
 24 and Sewerage Department.
 25 Q. What is the column headed FEI?

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1 **A. That is a number that was shown on Detroit Water**
2 **and Sewer Department invoices for Ferguson**
3 **Environmental.**
4 Q. Was that in addition to the other bypass charges
5 listed in the left-hand column or is that part of
6 that?
7 **A. It was part of the left-hand column.**
8 Q. All right. So the right-hand column looks to me
9 to be column 1 less column 2?
10 **A. Yes.**
11 Q. And so the total that is listed there of just
12 over \$9 million does not include the Ferguson
13 invoices, or it does?
14 **A. The 9.25 million?**
15 Q. Yeah.
16 **A. That is without the Ferguson invoices.**
17 Q. All right. So you have then taken that and
18 determined what it would be per month. How many
19 months did you divide it by?
20 **A. Six.**
21 Q. And tell me what the bypass -- these other dates,
22 "Bypass pumping system online by end of
23 September," what are those?
24 **A. You're referring to the dates above that bold**
25 **line?**

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1 Q. Yes.
2 **A. Okay. It was notations of work that occurred when**
3 **they were attempting to install the bulkheads or**
4 **the temporary bulkheads so that bypass pumping**
5 **could be installed. It is information that Nancy**
6 **had noted from the various daily inspection**
7 **reports.**
8 Q. All right. And then under Reality Check, explain
9 to me those entries.
10 **A. Those entries are referring to information that**
11 **was on the Inland Waters budget. They had**
12 **predicted and budgeted certain amounts for pump**
13 **rentals, generators, electrical service. And**
14 **those were associated with their budget for bypass**
15 **pumping.**
16 Q. Was that the original budget or the --
17 **A. They were listed on the September 30th budget**
18 **estimate.**
19 Q. So that was Exhibit 2?
20 **A. Yes.**
21 Q. All right. That was before the work was done?
22 **A. Yes.**
23 Q. Okay. All right. So basically under the dark
24 line she took the information from the Inland
25 budget and shows that essentially the budget was

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1 exceeded?
2 **A. Yes.**
3 Q. By how much?
4 **A. On a monthly basis, it was exceeded by**
5 **approximately 1.15 million.**
6 Q. And tell me how you calculated that.
7 **A. 1.54 minus the 383, it's going to get you to**
8 **1.2 -- 1.1 something.**
9 Q. Did she attempt to determine what the charges
10 were that were greater than budget for the bypass
11 pumping? I mean, she has down here, for example,
12 pump rental, stand-by generator, stand-by pump
13 rental, bypass pumping maintenance, electrical
14 services, Clinton-Fraser bypass. Did you or she
15 attempt to determine where the increase in costs
16 were that are shown above the black line?
17 **A. From the documents we've been provided, we're not**
18 **able to make that connection between the two.**
19 Q. Why not?
20 **A. In one respect there's the budget amount that**
21 **itemizes the amount of different types of work and**
22 **not who's performing it. In the final estimate,**
23 **there is only a summary of the amounts provided to**
24 **each subcontractor but not what they did. In the**
25 **documents we have in between, there's not enough**

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1 **information that we could tie it together.**
2 Q. Did you get the entire CD of the what, 25 boxes
3 of documents that DWSD had supplied to Macomb?
4 **A. I don't know that we have all those documents.**
5 Q. So you didn't have any individual billings from
6 contractors or anything like that showing what
7 the increased charges were for?
8 **A. Correct.**
9 Q. So essentially all this says is there was a
10 budget for these things that are below the line,
11 and it cost more than the budget?
12 **A. Yes.**
13 Q. Do you know why it cost more than the budget?
14 **A. I do not.**
15 Q. All right. Let's turn to the next page,
16 Dewatering. All right. What is this page, page
17 914?
18 **A. This is a breakdown of our information relating to**
19 **the dewatering item in our estimate.**
20 Q. All right. So where did the -- it says October
21 through March by month and then there's three
22 columns. Where did you get that information?
23 Were these actual bills from the dewatering
24 company?
25 **A. If you'll allow me to check something. Yes, they**

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1 were line items from the final estimate summary
 2 labeled Exhibit 3 for those months for Mersino
 3 Contracting.
 4 Q. Do you have any reason to believe or testify that
 5 that work was not performed by Mersino that was
 6 billed for and paid?
 7 A. **I have no reason to believe the work was not**
 8 **performed by Mersino.**
 9 Q. All right. The second column there, is that a
 10 deduction from the amount that was paid? For
 11 example, November they billed 444,000 and there
 12 is an 88,000 and change deduction. What's that?
 13 A. **The answer to your first question, yes, it is a**
 14 **deduction. I believe it is similar, and although**
 15 **I can't say for certain looking at this, that it**
 16 **was related to FEI for the bypass pumping.**
 17 Q. Do you know if FEI did bypass pumping?
 18 A. **I don't believe they did.**
 19 Q. Do you know did they bill for it?
 20 A. **I can't say for certain.**
 21 Q. All right. Do you have any reason to question
 22 the amount that was billed for dewatering?
 23 A. **Well, it appeared high to us for the amount on a**
 24 **monthly basis.**
 25 Q. It was higher than the budget?

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1 A. **It was definitely higher than the budget. Quite**
 2 **frankly, a lot of the budget items we thought were**
 3 **appropriate, and where appropriate, we relied**
 4 **on -- we used those in our estimate.**
 5 Q. Do you know why -- strike that.
 6 So there's a budget and then there's
 7 bills, and in Mersino's bills there was detail
 8 about why the charges were made, what they were
 9 for. Did you look at those?
 10 A. **I've seen no detailed billings.**
 11 Q. So you don't know why the Mersino billings were
 12 as they are?
 13 A. **Correct.**
 14 Q. And you don't know why whatever is in the second
 15 column is why it is?
 16 A. **If you give me a second to check some information.**
 17 Q. Sure. For the record, what are you looking at?
 18 A. **I'm looking at a couple of documents from --**
 19 **invoice summary from Detroit. Sitting here, I**
 20 **can't identify right now.**
 21 Q. What that second column is?
 22 A. **Right.**
 23 Q. Do you know what the original budget was based on
 24 in regard to dewatering?
 25 A. **No, I don't remember.**

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1 Q. Do you know if there was a change in what they
 2 found when they were actually doing the project
 3 that increased the need for dewatering?
 4 A. **No, I don't.**
 5 Q. Do you know what the water table was there?
 6 A. **No, I don't.**
 7 Q. Do you know what the water table was expected to
 8 be?
 9 A. **No.**
 10 Q. Do you know if they had trouble with the water
 11 table?
 12 A. **No, I don't.**
 13 Q. All right. So here we have Reality Check.
 14 Explain that to me. Again, this was not
 15 something you did?
 16 A. **Correct. This is information that was pulled from**
 17 **the information from Inland Waters, their**
 18 **budgeting for certain amount of wells over certain**
 19 **period of time, and using that information, we**
 20 **calculated what a per-month charge would have been**
 21 **based on the budget.**
 22 Q. Does this include the cost for actually digging
 23 the wells, drilling the wells, and --
 24 A. **Yes.**
 25 Q. All right. Next page, Monitoring, this assumes

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1 there would be one graduate engineer onsite
 2 24 hours day for 9 months?
 3 A. **Yes.**
 4 Q. Is there any premium generally paid for shifts
 5 other than daytime?
 6 A. **Our office does not separate between shifts or do**
 7 **the overtime.**
 8 Q. Do others?
 9 A. **They might. I don't know.**
 10 Q. I don't see any discussion here of what the
 11 Inland budget was. Why is that?
 12 A. **There was not -- I don't believe there was a**
 13 **budget item for that. We do know that monitoring**
 14 **was taking place, and we recognized that, and it's**
 15 **appropriate to make sure those pumps keep running.**
 16 Q. All right. Next page, Ventilation. I take it
 17 that that is something that you didn't have in
 18 the Inland budget as well but you felt was
 19 appropriate?
 20 A. **It is.**
 21 Q. All right. Do you have any criticism of the
 22 ventilation costs that were incurred in this
 23 case?
 24 A. **No.**
 25 Q. Do you have any criticism of the monitoring cost

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1 that was incurred in this case?
 2 **A. No.**
 3 Q. All right. Security, do you know how many
 4 security personnel were onsite at this location?
 5 **A. I do not.**
 6 Q. This document on page 917 has some numbers for
 7 what invoices were paid to J. Mack Security; is
 8 that correct?
 9 **A. That is correct.**
 10 Q. Do you know whether there are extra charges for
 11 security guards for different shifts?
 12 **A. I do not.**
 13 Q. Do you know how many security guards were needed
 14 to secure this site?
 15 **A. I do not.**
 16 Q. Do you have an opinion?
 17 **A. All I can tell you, my reference is I've worked in**
 18 **Macomb county a number of years and I've yet to**
 19 **see a project -- a public works project have a**
 20 **security guard other than this project.**
 21 Q. This was a pretty big project, though?
 22 **A. Yes.**
 23 Q. So are you critical of they having security
 24 onsite?
 25 **A. We weren't questioning whether security was**

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1 **required because it was provided. We also**
 2 **included it in our estimate.**
 3 Q. All right. Next page, Maintenance -- Traffic
 4 Maintenance and Control, page 918. Explain this
 5 to me.
 6 **A. Obviously with a sinkhole developing in a roadway**
 7 **you had to protect the roadway from the public for**
 8 **vehicles. In order to do that here, the roads had**
 9 **to be closed with barricades. There were, I**
 10 **believe, some local homes that fronted that area**
 11 **with driveways, that there were temporary roads**
 12 **that connected their driveways to get around the**
 13 **area.**
 14 Q. Do you know how many?
 15 **A. I want to say three or four. I'm not sure**
 16 **exactly.**
 17 Q. Okay.
 18 **A. So in order to barricade the roads, keep the**
 19 **traffic out, we include that in our estimate. We**
 20 **included the construction of a temporary road for**
 21 **those few homes that needed access out to the**
 22 **public road.**
 23 Q. Do you have any criticism of the charges that
 24 were incurred for traffic maintenance and
 25 control?

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1 **A. I don't know the totals that were incurred based**
 2 **on the information we have, but based on the**
 3 **budget, our number was, I think, slightly higher**
 4 **than Inland's, and we used our number.**
 5 Q. Next page, 919, Bulkhead Sewers, can you explain
 6 this to me.
 7 **A. In order to do the repair work, the temporary**
 8 **bulkheads had to be -- essentially a more**
 9 **permanent, longer-term bulkhead had to be put in**
 10 **to allow the repair work to occur.**
 11 Q. What's a bulkhead?
 12 **A. A bulkhead is installed at the end of the pipe to**
 13 **prevent the flows from coming through.**
 14 Q. Okay.
 15 **A. So there was one needed at each end of the work**
 16 **area, and this document here, although it says**
 17 **\$50,000 each for them, it really is \$250,000 each.**
 18 **It was a typo, but the 250 is what is actually in**
 19 **our estimate; so it's reflected properly in the**
 20 **estimate.**
 21 Q. So that should be \$250,000 for the 11-inch (sic)?
 22 **A. Yes. And then Inland Waters did not have the**
 23 **8-foot diameter bulkhead for the Clinton-Fraser**
 24 **connection, so we included that. And that was a**
 25 **temporary bulkhead.**

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1 Q. All right. So each bulkhead -- each 11-inch
 2 (sic) bulkhead cost \$250,000?
 3 **A. 11-foot diameter.**
 4 Q. I'm sorry.
 5 **A. Yes. 250,000 each.**
 6 Q. All right. And how much for the 8-inch (sic)?
 7 **A. \$25,000.**
 8 Q. Each?
 9 **A. There was only one.**
 10 Q. Okay. Do you have any criticism of the amount
 11 that was actually expended for the bulkheads?
 12 **A. No. I think we were -- once again, I don't know**
 13 **what the final expenditure, but based on the**
 14 **budget, we were comparable and we actually**
 15 **included the 8-foot diameter that was not in their**
 16 **budget.**
 17 Q. All right. Next page, 920, Temporary Earth
 18 Retention System, can you explain this page to
 19 me.
 20 **A. The temporary earth retention system is a means of**
 21 **shoring the soils around the work area. In this**
 22 **case, it was done by drilling 3-foot diameter**
 23 **holes down to the depth of the sewer, filling them**
 24 **with concrete, and on a staggering offset, another**
 25 **36 inch with an H pile, which is steel I-beam in**

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1 **it. So that as they excavated down, they could**
 2 **brace the materials -- the soil materials back to**
 3 **create a safe excavation.**
 4 Q. Do you have any criticism of the amount DWSD
 5 spent on this part of the project?
 6 **A. When we compare it to the budget again -- and I**
 7 **don't know what the final expenditures were, but**
 8 **based on the budget, I believe our number was**
 9 **slightly less by maybe a 100,000. So we're very**
 10 **similar.**
 11 Q. All right. Next page, 921, Reconstruct Access
 12 Shaft, explain this to me.
 13 **A. Yes. There is, according to the construction**
 14 **plans, one of the access shafts to the sewer line**
 15 **-- equates to a manhole -- had to be reconstructed**
 16 **before the project was done so they could maintain**
 17 **access to the sewer.**
 18 Q. Do you have any criticisms of the amount that was
 19 spent on reconstructing the access shaft?
 20 **A. Once again, I don't know what the final amount was**
 21 **spent on it, but our budget amount -- our estimate**
 22 **is similar to the budget amount.**
 23 Q. All right. Page 922, Remove/Replace Pipe, what
 24 is this?
 25 **A. This is the pipe removing -- the damaged 11-foot**

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1 **diameter pipe and replacing it with a new pipe.**
 2 Q. Was the pipe here actually removed, the damaged
 3 pipe?
 4 **A. I believe all of it or most of it was removed,**
 5 **yes.**
 6 Q. All right. So this is your estimate of what it
 7 should have cost?
 8 **A. Yes.**
 9 Q. Based on what you and your former associate knew
 10 about the project?
 11 **A. Yes.**
 12 Q. Do you have any criticism of the amount that was
 13 spent to remove and replace pipe?
 14 **A. Once again, I don't know the final expenditure,**
 15 **but we did agree with many of the prices that were**
 16 **budgeted and incorporated them where appropriate.**
 17 Q. All right. Next page, 923, Bulkhead Removal, is
 18 this your estimate for the cost or your
 19 associate's estimate for the cost of bulkhead
 20 removal?
 21 **A. It is, yes.**
 22 Q. And how was this arrived at?
 23 **A. This is arrived at by the physical labor, looking**
 24 **at the number of days the personnel actually took**
 25 **to remove the bulkheads, keeping in mind that they**

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1 **had to be removed by certified divers because they**
 2 **were submerged in the sewage flows that were**
 3 **coming through the pipe. So they manually had to**
 4 **go in and take out parts of the bulkhead and get**
 5 **it out of there.**
 6 Q. I don't see any provision in here for any safety
 7 personnel, stand-by, anything like that. Isn't
 8 that necessary when you have divers in this sort
 9 of situation?
 10 **A. We note the use of three-man crew. Essentially**
 11 **you have your diver in the hole and two-man safety**
 12 **crew.**
 13 Q. So you only have one diver, you're saying?
 14 **A. Yes. They have to work in shifts.**
 15 Q. Do you have any criticism of the bulkhead removal
 16 costs that were incurred by DWSD?
 17 **A. I don't know the final cost, but --**
 18 Q. All right. Next page, 924, Sewer TV & Cleaning,
 19 it says it's from Inland Waters "Speedy Effort
 20 Fixes Macomb Interceptor Giant Sinkhole." What's
 21 that?
 22 **A. I believe that was a publication from Inland**
 23 **Waters on a technique they used to clean out the**
 24 **sewer after the project was done.**
 25 Q. Have you read it?

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1 **A. I remember skimming through it, but I don't**
 2 **remember the details.**
 3 Q. Is that --
 4 **A. Looks familiar, yes.**
 5 Q. Okay. Have you ever been involved in a project
 6 of sewer TV and cleaning like this one?
 7 **A. No.**
 8 Q. Do you know if your associate who wrote this had
 9 been?
 10 **A. I don't know.**
 11 Q. All right. So the information in the top half is
 12 from the article, and then Reality Check.
 13 Explain what's below in the Reality Check.
 14 **A. Well, basically the information we pulled together**
 15 **was the budget accounted for 2500 lineal feet of**
 16 **pipe to be cleaned, and in going through the**
 17 **information, it was referenced as over 5,000 feet**
 18 **that were actually cleaned; so there was a large**
 19 **discrepancy in the amount of footage. But based**
 20 **on the budget, there was over \$200 a foot to clean**
 21 **the pipe, and we believe it's more appropriate at**
 22 **\$150 a foot was the right number. That's the**
 23 **discrepancy. And we calculated a rough volume of**
 24 **dirt that would come out of there.**
 25 Q. Do you know why the amount of pipe that was

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1 cleaned was more than double the original
 2 estimate?
 3 **A. I do not know.**
 4 Q. Do you know if that was appropriate or not
 5 appropriate?
 6 **A. I don't know.**
 7 Q. Then on what did you base your opinion that it
 8 should have cost \$150 a linear foot to clean it
 9 as opposed to \$212 a linear foot that Inland
 10 charged?
 11 **A. I remember Nancy mentioning to me she had**
 12 **checked -- I'll call them bid tabulations on**
 13 **similar projects, what it cost to clean similar**
 14 **pipes. May not have been quite this large, but to**
 15 **get an idea of the volume and cost per foot to**
 16 **clean out some of those pipes.**
 17 Q. That was just based on --
 18 **A. Based on research.**
 19 Q. How many projects did you look at?
 20 **A. I don't know.**
 21 Q. What size were the pipes?
 22 **A. I don't know.**
 23 Q. Or the condition of those pipes?
 24 **A. I don't know.**
 25 Q. What was in those pipes?

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1 **A. I don't know.**
 2 Q. What was in the pipes that were cleaned here?
 3 **A. I don't know.**
 4 **(Off the record at 3:11 p.m.)**
 5 **(Back on the record at 3:11 p.m.)**
 6 **BY MS. HATHAWAY:**
 7 Q. Do you know how much dirt was taken out of the
 8 pipes involved here?
 9 **A. I don't know.**
 10 Q. Do you know how difficult it was to clean these
 11 pipes?
 12 **A. No.**
 13 Q. All right. Next page, 925, Pavement Restoration,
 14 what is this?
 15 **A. This plan or this sheet and the next sheet is our**
 16 **summary of the work items from the NTH plans on**
 17 **the amount of concrete roadway that had to be**
 18 **replaced, the stone base underneath the pavement,**
 19 **the sidewalks, driveways when they repaired the**
 20 **surface when they were done with the work.**
 21 Q. Did Ferguson have anything to do with the
 22 pavement restoration?
 23 **A. I don't know.**
 24 Q. Do you actually know what work was done for the
 25 pavement restoration?

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1 **A. I can only go off what the plans showed.**
 2 Q. But you don't know what was actually done?
 3 **A. No, I don't have any direct knowledge.**
 4 Q. Was it concrete or asphalt that was used?
 5 **A. Concrete.**
 6 Q. Which is more expensive, concrete or asphalt?
 7 **A. That can depend on how thick the asphalt is.**
 8 Q. All right. So on page 925, this is all from NTH
 9 and 926 is from the NTH documents?
 10 **A. They are calculated quantities based on their**
 11 **plans, yes.**
 12 Q. Do you know how much was actually spent?
 13 **A. I do not.**
 14 Q. Do you have criticisms of the amount that was
 15 actually spent?
 16 **A. No. And I believe our budget -- our estimate was**
 17 **actually higher than the budget prepared by**
 18 **Inland.**
 19 Q. Next page, 927, Utility Restoration, tell me
 20 about this.
 21 **A. A number of utility companies -- utilities were**
 22 **damaged and relocated during the project. We**
 23 **listed them here and these are numbers taken**
 24 **directly off of, I believe, the final estimate.**
 25 Q. All right. Do you have any criticisms of those

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1 amounts?
 2 **A. No. They were direct expenses from the utility**
 3 **companies.**
 4 Q. All right. And below the \$821,000 item there,
 5 what's below that?
 6 **A. That is estimated quantities and a cost estimate**
 7 **for the other public utilities such as water,**
 8 **storm sewer and sanitary sewer, the local sewer**
 9 **system.**
 10 Q. Do you have any criticism of what was actually
 11 spent on the utility restoration?
 12 **A. I don't know what was actually spent, so, no.**
 13 Q. All right. Next page, 928, Landscape
 14 Restoration, I take it this is your colleague's
 15 estimate for landscape, what it would the cost in
 16 her opinion?
 17 **A. Yes.**
 18 Q. Do you know whether the landscape restoration
 19 amount that she has down here is -- how that
 20 compares to what amount of work was actually
 21 done?
 22 **A. I do not know.**
 23 Q. Do you know how much was actually paid to restore
 24 the landscaping?
 25 **A. I do not.**

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1 Q. Do you have any criticism of the amount that DWSD
 2 paid to restore the landscaping?
 3 **A. No. I don't know what they paid.**
 4 Q. All right. Page 929, Soil Erosion, again, is
 5 this your colleague's estimate of the cost to
 6 control and repair soil erosion?
 7 **A. Yes.**
 8 Q. Do you know how she arrived at these numbers?
 9 **A. There was some quantities that we identified on**
 10 **the plans as -- for the silt fencing and inlet**
 11 **filters, and dust control and street sweeping were**
 12 **common elements to be done.**
 13 Q. Do you know how much was actually spent on these?
 14 **A. I do not.**
 15 Q. Do you have any criticism of the amount that was
 16 spent?
 17 **A. Once again, I do not know what they spent.**
 18 Q. Next page, 930, Public Agencies. It says "Assume
 19 these costs would have been incurred regardless."
 20 What does that mean?
 21 **A. Essentially means we did not have to estimate it.**
 22 **These are actual costs that were billed from these**
 23 **communities to the project.**
 24 Q. Do you have any criticism of those charges?
 25 **A. No.**

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1 Q. Do you know what DWSD actually paid?
 2 **A. No.**
 3 Q. All right. Is that the last -- is the next page
 4 here a duplicate of everything we've already been
 5 looking at?
 6 **A. It appears to be, yes.**
 7 Q. Why don't you just take a minute to be sure that
 8 the rest of the stuff is, in fact, a duplicate.
 9 **A. It appears the only difference is the MIDD**
 10 **numbers on the bottom.**
 11 Q. The what numbers?
 12 **A. The MIDD numbers.**
 13 Q. What are those?
 14 **A. The document reference numbers.**
 15 Q. Okay. All right. Sorry. The Bates stamp
 16 numbers, that's what we call them.
 17 **A. Okay.**
 18 Q. All right. So sitting here today, to you have an
 19 opinion as to whether DWSD overpaid for the sewer
 20 interceptor project?
 21 **A. Based on the cost estimate we put together, there**
 22 **certainly is discrepancy in what was paid and**
 23 **versus what our estimate shows.**
 24 Q. And how do you know what was paid in total if you
 25 don't know what was paid for individual amounts?

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1 **A. The amount paid in total, we had seen in the**
 2 **agreement when the county purchased the sewer**
 3 **system from DWSD. There's a line item in there**
 4 **for that.**
 5 Q. All right. And you don't know how that was
 6 broken up or what the additional charges were --
 7 **A. I do not.**
 8 Q. -- that were in that payment amount?
 9 **A. Correct.**
 10 Q. Do you have an opinion as to whether -- strike
 11 that.
 12 Let's back up. Was there a change
 13 found in the ground conditions of the area at any
 14 time after the original estimate was prepared?
 15 **A. I don't have any knowledge of that.**
 16 Q. Do you know what the ground conditions were?
 17 **A. No.**
 18 Q. Was it clay? Was it sand? Was it silt?
 19 **A. I don't know.**
 20 Q. Does that make a difference in determining cost
 21 to repair?
 22 **A. It can in some instances, but since they were**
 23 **sheeting and shoring the entire trench, they were**
 24 **not sloping the material, you know, to prevent**
 25 **cave-ins, the sheeting and shoring took care of**

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1 **that situation.**
 2 Q. Did they have difficulty with the sheeting and
 3 shoring because of the conditions they found?
 4 **A. I don't know.**
 5 Q. Do you know what the groundwater pressure head
 6 within the aquifer was?
 7 **A. No.**
 8 Q. Do you know what the typical sewage flow through
 9 those -- through that interceptor was?
 10 **A. No, I don't.**
 11 Q. Do you know if it varied in wet weather or dry
 12 weather?
 13 **A. A sewer this size does vary in wet weather and dry**
 14 **weather. I do know that.**
 15 Q. Do you know how much?
 16 **A. I do not.**
 17 Q. Have you ever worked with Inland Waters?
 18 **A. Yes.**
 19 Q. Who have you worked with there?
 20 **A. I say "we" as the company has. I do not know the**
 21 **individuals.**
 22 Q. Has your company had good results from Inland?
 23 **A. As far as I know.**
 24 Q. You haven't had any problems that you're aware
 25 of?

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1 A. No.

2 Q. You agree that there was an emergency and

3 emergency bypass needed to be created, correct?

4 A. **At the onset of the project, yes.**

5 Q. Do you know what the dewatering company did prior

6 to the bypass being put in?

7 A. **No, I don't.**

8 Q. What do you think they did? What would they

9 normally do if you were trying to create a bypass

10 in the situation?

11 A. **Well, quite frankly, we viewed everything that**

12 **occurred prior to September 30th as we were not**

13 **disputing that; so we did not question or even**

14 **evaluate what they were doing at that point. We**

15 **took it as it was a true emergency, these are the**

16 **expenses, and we just took it at face value.**

17 Q. Why was it an emergency? What were the risks

18 associated with it?

19 A. **The main emergency is the fact that the sewage**

20 **flows will back up and flood basements upstream**

21 **from that.**

22 Q. And that's a real health risk?

23 A. **That's a significant health risk.**

24 Q. All right. Do you know how many dewatering wells

25 were eventually used?

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1 A. **I don't know exactly, but I recall somewhere**

2 **around 12 were planned.**

3 Q. Do you know if more than that were done?

4 A. **I do not.**

5 Q. Do you know what the initial dewatering plan was,

6 how many dewatering wells and the size and

7 diameter was planned to be?

8 A. **I don't know the size. I recall seeing**

9 **information they were to be 100-foot deep each.**

10 **And I recall somewhere around 12 or 13 wells were**

11 **planned.**

12 Q. Do you have any criticism if there were, in fact,

13 13 dewatering wells used?

14 A. **No.**

15 Q. Do you have any indication from any source that

16 the dewatering company in any way was involved

17 with any misconduct in this case?

18 A. **I have no knowledge of that right now.**

19 Q. All right. What did they use for short-term

20 stabilization of the sinkhole adjacent to the

21 residences?

22 A. **Based on what I saw in the NTH plans, I believe**

23 **they installed steel sheeting.**

24 Q. Do you think that was appropriate?

25 A. **I have no reason to question it.**

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1 Q. Do you know -- have you ever been involved in jet

2 grouting?

3 A. **No.**

4 Q. Do you know what jet grouting was used here?

5 A. **No.**

6 Q. Do you know how big the sheet pile wall was?

7 A. **Well, looking at the plans, I couldn't tell you.**

8 Q. All right. Were there problems with vibration

9 from the installation of the sheet piles?

10 A. **I have no idea.**

11 Q. Is that a risk?

12 A. **No idea.**

13 Q. Can it cause damage?

14 A. **Vibration can cause damage, yes.**

15 Q. Could this kind of damage cause -- could this

16 kind of vibration cause damage to the sewer or

17 adjacent properties?

18 A. **I don't know.**

19 Q. Do you know how it's abated?

20 A. **No.**

21 Q. Do you know how it was abated here?

22 A. **I don't know that it occurred here.**

23 Q. Are you familiar with the two jet grout walls

24 that were constructed by LDS?

25 A. **I only remember seeing reference to jet grouting,**

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1 **but the particulars, I don't know.**

2 Q. Was that taken into account in your estimate?

3 A. **I believe it was, yes.**

4 Q. The jet grouting?

5 A. **I remember seeing an item. I believe we relied on**

6 **-- we had no reason to object to the budget that**

7 **Inland had put together for that.**

8 Q. Was compaction grouting done?

9 A. **I don't know.**

10 Q. What is compaction grouting?

11 A. **I'm not familiar with that.**

12 Q. Do you know what it cost here?

13 A. **No.**

14 Q. Do you know if there were alternatives considered

15 for how a permanent repair would be done?

16 A. **I do not know.**

17 Q. Were there alternatives here to how a permanent

18 repair could be done?

19 A. **I don't know.**

20 Q. Why don't you know?

21 A. **That would have occurred during the design phase**

22 **and we're not involved with that at all.**

23 Q. So you can't -- you can't criticize any of the

24 decisions that were made in regard to the

25 permanent repair as to what decisions were made

Page 61

1 how to do it?
 2 **A. We didn't question the design at all. That was**
 3 **outside the scope of our services.**
 4 Q. Do you know if it was more expeditious and cost
 5 effective to construct a recovery shaft
 6 encompassing the physical limits of the damaged
 7 section of the sewer, and then remove the damaged
 8 sewer, install new piping and backfill the shaft?
 9 **A. I have no idea.**
 10 Q. Were there other alternatives that would have
 11 been cheaper?
 12 **A. I have no idea.**
 13 Q. Do you know if that was a reasonable way to go
 14 about it?
 15 **A. I don't know.**
 16 Q. All right. As part of the permanent repair were
 17 bulkheads used?
 18 **A. Yes.**
 19 Q. Do you have any criticism of the cost of the
 20 bulkheads as part of the permanent repair?
 21 **A. I don't know what the final amount was paid for**
 22 **the bulkheads, so I don't have a criticism on it.**
 23 Q. Do you know what activities were needed in regard
 24 to installation of the bulkhead?
 25 **A. Generally, yes.**

Page 62

1 Q. Explain them to me.
 2 **A. Once again, the bulkheads had to be installed by**
 3 **divers and various shifts with safety personnel.**
 4 **They were -- longer-term bulkheads, I believe**
 5 **we're talking about, were made of steel, had to**
 6 **be, you know, assembled in the sewer to create**
 7 **that bulkhead.**
 8 Q. How easy is it to get sufficient divers to do
 9 work like this?
 10 **A. I don't know.**
 11 Q. Do you know if there's any difficulty securing
 12 divers in this case?
 13 **A. I don't know.**
 14 Q. Have you ever used divers to do work like this?
 15 **A. I've not used a diver before.**
 16 Q. All right. Are you aware of how the bulkheads
 17 were actually constructed?
 18 **A. No.**
 19 Q. Do you know if they were built onsite or
 20 prefabricated?
 21 **A. Not certain, no.**
 22 Q. Do you know where they were installed?
 23 **A. Generally one was installed upstream of the break**
 24 **and one was installed downstream of the break.**
 25 Q. Do you know what pressure they were designed to

Page 63

1 hold back?
 2 **A. I do not.**
 3 Q. Does the amount of pressure they're designed to
 4 hold back affect the cost?
 5 **A. Certainly affects the design.**
 6 Q. Does it affect the cost?
 7 **A. It may.**
 8 Q. Do you know what was needed to prepare the sewer
 9 for construction of the steel bulkhead?
 10 **A. I'm not sure I follow that.**
 11 Q. Well, are you aware that they used temporary dams
 12 and put sandbags?
 13 **A. Yes.**
 14 Q. What was that designed to do?
 15 **A. If I understand it correctly, those were designed**
 16 **or installed to help relieve or reduce the**
 17 **pressure that the divers had to work against and**
 18 **allow some temporary bypass pumping to pull the**
 19 **water out and help relieve the pressure for the**
 20 **divers.**
 21 Q. Was that successful?
 22 **A. Based on documents I reviewed, initially it was**
 23 **not successful, and they had to alter their**
 24 **methods to create that.**
 25 Q. Would that have increased the cost of the project

Page 64

1 if things had to be done more than once or
 2 different ways tried?
 3 **A. It would, yes.**
 4 Q. What did they use as an alternative to the
 5 sandbags?
 6 **A. I believe they used some fabric baskets over --**
 7 **that contained cement bags in it.**
 8 Q. Do you know if there were various bladders and
 9 commercially available metal and rubber sealing
 10 plates that could have been used?
 11 **A. I don't know.**
 12 Q. Do you know if they used grout-filled geobags?
 13 **A. I don't know.**
 14 Q. Would that have been appropriate?
 15 **A. I do not know.**
 16 Q. Do you know -- assume for a moment they did. Do
 17 you know how big they were?
 18 **A. No.**
 19 Q. Do you know how much they cost?
 20 **A. No.**
 21 Q. Do you know when the steel bulkhead was
 22 completed?
 23 **A. No, I don't recall.**
 24 Q. Do you know if the divers had to be supported by
 25 laborers --

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1 **A. I don't.**
 2 Q. -- to keep the area dry?
 3 **A. I don't know.**
 4 Q. Did you include that cost in your cost estimate?
 5 **A. I don't know.**
 6 Q. Did any concrete have to be removed from the
 7 sinkhole?
 8 **A. I didn't see any reports of that, but I would**
 9 **imagine the concrete pipe itself could be taken**
 10 **out.**
 11 Q. Did you have an estimate for what it would cost
 12 to remove that?
 13 **A. That was included in our pipe replacement, yes.**
 14 Q. All right. Was there an issue -- what's precut
 15 elevation?
 16 **A. Precut elevation?**
 17 Q. Um-hmm.
 18 **A. I'm not certain. I've never used that**
 19 **terminology.**
 20 Q. All right. Was there a problem with a potential
 21 collapse of the new sewer system during the
 22 installation of the recovery shaft walls?
 23 **A. I don't know.**
 24 Q. Do you know what they had to do to mitigate a
 25 risk of that?

Page 66

1 **A. I do not.**
 2 Q. Do you know if they had to insert probes into
 3 the -- perpendicular to the sewer for any
 4 purpose?
 5 **A. I don't know.**
 6 Q. Would you be critical if they used probes?
 7 **A. I have no reason to question what they were doing**
 8 **on that.**
 9 Q. Do you know what it would cost to do that?
 10 **A. No.**
 11 Q. Is that in your cost estimate?
 12 **A. No.**
 13 Q. During the preparation of the recovery shaft, was
 14 a shaft constructed around the manhole cover or
 15 the manhole? Are you aware of that?
 16 **A. No.**
 17 Q. Would there be a cost associated with preparing
 18 an 18-foot diameter shaft?
 19 **A. Certainly there would be.**
 20 Q. Was that contained in your cost estimate?
 21 **A. If I'm not mistaken, that access shaft was part of**
 22 **the earlier emergency work.**
 23 Q. No.
 24 **A. No? Then I'm not certain what you're talking**
 25 **about.**

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1 Q. This was a shaft that was to facilitate the
 2 installation of the west segment steel bulkhead
 3 and improve increased access. Was that no?
 4 **A. I'm not aware of that.**
 5 Q. All right. Would you have a criticism of using
 6 such an approach?
 7 **A. No.**
 8 Q. Do you know what the cost of that approach would
 9 be?
 10 **A. I do not.**
 11 Q. Do you know if it was necessary?
 12 **A. I don't.**
 13 Q. Do you know when the west segments of the
 14 bulkhead was completed?
 15 **A. I don't.**
 16 Q. Do you know that they worked for 24 hours a day
 17 for an extended period of time?
 18 **A. Based on some of the daily reports I saw, they had**
 19 **some nightshifts and dayshifts.**
 20 Q. Do you know what the subsurface conditions that
 21 were found proximate to the adjacent homes was?
 22 **A. No, I don't.**
 23 Q. The longer the sinkhole remained open, was there
 24 more risk of damage to adjacent properties?
 25 **A. Before or after it was stabilized?**

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1 Q. After it was stabilized.
 2 **A. After it was stabilized, the risk is reduced**
 3 **significantly.**
 4 Q. Is it still a risk?
 5 **A. I don't know.**
 6 Q. You don't know?
 7 **A. I don't know.**
 8 Q. Do you know that a drilled-pier concrete wall was
 9 used in the project?
 10 **A. Yes.**
 11 Q. What was it used for?
 12 **A. It was included in our estimate as a temporary**
 13 **earth-retaining system.**
 14 Q. The design of the wall as built, was it the same
 15 as the design that was assumed in the initial
 16 estimate -- cost estimate?
 17 **A. I don't know.**
 18 Q. How many concrete piers were assumed to be needed
 19 in the original estimate?
 20 **A. I don't know what they included in their original**
 21 **estimate.**
 22 Q. What did you include in your original estimate?
 23 **A. I believe we counted 230 of those piers on the**
 24 **plan.**
 25 Q. All right. Was there an internal bracing system

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1 also used?
 2 **A. Yes.**
 3 Q. Do you have any criticism of the internal bracing
 4 system that was used?
 5 **A. No.**
 6 Q. Do you know what the cost of that was?
 7 **A. I don't know the actual cost of that.**
 8 Q. All right. Were there problems with the tips of
 9 the piers because the wall crossed the existing
 10 sewer line?
 11 **A. I have no knowledge of that.**
 12 Q. Do you know when the excavation of the recovery
 13 shaft and the installation of the interior
 14 bracing was started?
 15 **A. No, I don't.**
 16 Q. How long would you expect that task to take?
 17 **A. I don't know.**
 18 Q. Was there a need for excavation -- I'm sorry, was
 19 there a need during excavation for additional
 20 bracing?
 21 **A. I'm not aware of it.**
 22 Q. It's possible?
 23 **A. Could be.**
 24 Q. You wouldn't be critical if there was?
 25 **A. No.**

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1 Q. If that had been added?
 2 **A. Correct.**
 3 Q. On the east end of the shaft the tunnel was about
 4 4 feet below the bottom of the excavation. Are
 5 you familiar with that?
 6 **A. No.**
 7 Q. Were you aware that it was determined that they
 8 couldn't remove the tunnel liner there without
 9 causing a problem with stability of the
 10 excavation support system?
 11 **A. No. None of this was reflected in the documents
 12 we've reviewed so far.**
 13 Q. Okay. That would be an extra cost if that was
 14 the case?
 15 **A. If it occurred, yes.**
 16 Q. Was a mud mat used here?
 17 **A. I don't recall seeing a mud mat on the plans, but
 18 they did provide a poured-concrete base to support
 19 the pipe, which would be similar to a mud mat.**
 20 Q. Do you know if a mud mat was used here?
 21 **A. I don't recall seeing that terminology, but they
 22 did something that would be very similar to a mud
 23 mat.**
 24 Q. All right. After either a mud mat or the
 25 technology that you talked about, did your plan

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1 assume that there would need to be grouting of
 2 underlying soils?
 3 **A. I believe that was called for on the NTH plans. I
 4 know it was reflected in the budget from Inland
 5 Waters, some grouting.**
 6 Q. Do you know how many -- there were a series of
 7 borings drilled. Do you know how many?
 8 **A. No.**
 9 Q. Do you know how many were on the plan?
 10 **A. No.**
 11 Q. Do you know how large the replacement sewer line
 12 was designed to be?
 13 **A. I recall a little over 200 feet -- 220 feet or so.**
 14 Q. Did the pipe have to be coated with anything to
 15 improve the strength of the pipe and its
 16 resistance to chemicals?
 17 **A. I was not aware of that.**
 18 Q. Was it reflected in the budget?
 19 **A. I didn't see it anywhere.**
 20 Q. Do you know if it was done?
 21 **A. No, I do not.**
 22 Q. Do you know if in connection with the
 23 installation of the replacement pipe reinforced
 24 concrete closure elevation systems were needed?
 25 **A. Can you repeat that.**

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1 Q. Sure.
 2 **A. I lost track there.**
 3 Q. Do you know if in conjunction with the
 4 installation of the replacement pipe reinforced
 5 concrete enclosure sections were needed?
 6 **A. No. I'm not aware of it.**
 7 Q. Was that in your budget?
 8 **A. I'm not sure.**
 9 Q. What are hydrofill water stops?
 10 **A. Say that again.**
 11 Q. Hydrofill.
 12 **A. I don't know exactly.**
 13 Q. Do you know if they were used on this project?
 14 **A. I do not know.**
 15 Q. Do you know if they were necessary?
 16 **A. I don't know.**
 17 Q. Do you know if they were included in your budget?
 18 **A. They were not.**
 19 Q. Was special concrete needed for the closure to
 20 reduce the permeability of the concrete and
 21 improve the resistance to hydrosulfide gas?
 22 **A. I don't know if it was used.**
 23 Q. Do you know if it was necessary?
 24 **A. I do not.**
 25 Q. Was that noted -- was that assumed in your

1 budget?
 2 **A. We did not mention that.**
 3 Q. I'm sorry?
 4 **A. We did not mention that in our budget.**
 5 Q. How was the pipe supported?
 6 **A. I don't know.**
 7 Q. Did your budget call for the pipe to be
 8 supported?
 9 **A. Only thing I noted on that is the NTH plans did**
 10 **call for some pipe support. I don't recall**
 11 **exactly what it was.**
 12 Q. Did you figure a cost in for that pipe support?
 13 **A. Pipe support was reflected in the concrete that**
 14 **was surrounding the pipe to support it.**
 15 Q. Did it have to be reinforced concrete or just
 16 concrete?
 17 **A. Reinforced.**
 18 Q. Where was that cost in your budget?
 19 **A. That is in the concrete numbers used for the pipe**
 20 **installation.**
 21 Q. Were steel beams needed to install the pipe
 22 sections?
 23 **A. I don't know.**
 24 Q. Would there be a cost associated with that?
 25 **A. If they were used, yes.**

1 Q. After a pipe is installed, from the top of the
 2 concrete cradle to about 18 inches above the
 3 crown pipe, it was filled with something. Do you
 4 know what that was?
 5 **A. I recall some fly ash fill, I believe it was**
 6 **called.**
 7 Q. And do you know what the purpose of that was?
 8 **A. It's a little more solid than just sand backfill,**
 9 **gives a little more strength and support to the**
 10 **pipe.**
 11 Q. Was that considered in your cost estimate?
 12 **A. Yes, it was.**
 13 Q. What elevation was this project at? Do you know?
 14 **A. Ground elevation?**
 15 Q. Yes.
 16 **A. The pipe elevation or the above ground?**
 17 Q. The pipe.
 18 **A. I don't know the actual elevation number, but it**
 19 **was somewhere in the vicinity of 60 feet below**
 20 **ground.**
 21 Q. Do you know what the water table is there?
 22 **A. I do not.**
 23 Q. What needed to be done after the pipe was in
 24 place and the fill material is in place?
 25 **A. You need to -- after the pipe and fill was in**

1 **place, you needed to essentially construct the**
 2 **local utilities, and then pave the road and**
 3 **restore the project area.**
 4 Q. At what point was the sewer cleaning necessary?
 5 **A. I don't know. I don't know.**
 6 Q. Within the 8-foot -- there was a section of
 7 8-foot pipe. Are you aware of that?
 8 **A. I know there was an 8-foot sewer that serves**
 9 **Fraser and Clinton, I think.**
 10 Q. Do you know how that was cleaned?
 11 **A. I do not.**
 12 Q. Do you know if they were able to clean the rest
 13 of the sewer -- the 11-foot diameter using the
 14 same technique, or was there a problem that they
 15 had to use a special technique to do the
 16 cleaning?
 17 **A. I know that they cleaned the 11-foot diameter**
 18 **pipe. I don't know if any special problems**
 19 **occurred.**
 20 Q. If there were significant deposits of sludge and
 21 soils between the 18-foot diameter shaft and the
 22 corridor interceptor, could those materials --
 23 did you assume those materials could be removed
 24 by standard pipe cleaning methods?
 25 **A. Yes.**

1 Q. If that wasn't the case and other methods for
 2 cleaning had to be used, could that account for
 3 the increase in the cost of cleaning this pipe as
 4 compared to what your associate found in regard
 5 to some other projects?
 6 **A. I don't know. It would depend on the methods**
 7 **maybe.**
 8 Q. Well, could they use cables and brackets?
 9 **A. I'm not sure.**
 10 Q. Could they use track wheel or skid steer
 11 machines?
 12 **A. I expect so, yes. They're small enough.**
 13 Q. If that wasn't the case, what were the
 14 alternatives for cleaning the pipe?
 15 **A. Hand-digging, hauling it out in buckets.**
 16 Q. Are you aware of a procedure using a portable dam
 17 with an underflow?
 18 **A. I've heard of it. I've never seen it used.**
 19 Q. Is that a patented process?
 20 **A. I have no idea.**
 21 Q. Do you know what that procedure costs compared to
 22 standard pipe cleaning?
 23 **A. I do not.**
 24 Q. Would you have criticism of DWSD if they had used
 25 that patented process rather than having people

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1 go down using hand by bucket?

2 **A. I have no opinion on that one.**

3 Q. Do you know how much material was removed from

4 the 11-inch diameter -- the 11-foot -- I keep

5 saying 11-inch. I guess I can't believe it's

6 that big -- 11-foot diameter pipe?

7 **A. I don't know how much was removed.**

8 Q. Would that make a difference in the cost?

9 **A. Yes.**

10 Q. And that wasn't in your budget?

11 **A. We had cleaning in our budget, yes.**

12 Q. But not that special cleaning that we just

13 discussed?

14 **A. Correct.**

15 **MS. HATHAWAY:** Could I just take a

16 minute, please.

17 (Off the record at 3:50 p.m.)

18 (Back on the record at 3:57 p.m.)

19 **BY MS. HATHAWAY:**

20 Q. Did you have any conversations with anyone on

21 behalf of Macomb other than counsel in regard to

22 giving you -- you particularly your instructions

23 and what they wanted you to do in this case?

24 **A. I did not, no.**

25 Q. You didn't talk to Victor (sic) Marrocco at all?

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1 **MR. ADDIS:** Anthony.

2 (Off the record at 3:57 p.m.)

3 (Back on the record at 3:58 p.m.)

4 **BY MS. HATHAWAY:**

5 Q. Mr. Marrocco, did you ever talk to Mr. Marrocco

6 about anything associated with this assignment?

7 **A. I have not.**

8 **MS. HATHAWAY:** All right. I'm done.

9 Thank you very much.

10 **THE WITNESS:** Thank you.

11 **EXAMINATION**

12 **BY MR. ADDIS:**

13 Q. I don't normally do this, but I have just a few

14 clarifying questions.

15 **MS. HATHAWAY:** You know that means I'll

16 have clarifying questions.

17 **MR. ADDIS:** I know it will.

18 **BY MR. ADDIS:**

19 Q. You were just asked a question about contacts

20 with Mr. Marrocco.

21 **A. Yes.**

22 Q. Prior to this litigation did Mr. Marrocco ever

23 ask you to do anything on this case directly?

24 **A. Myself, no.**

25 Q. Okay. At some point in time, as you provided

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1 that here, AEW did a review of Inland's budget.

2 Is that correct or incorrect?

3 **A. That is correct.**

4 Q. In fact, is it correct or incorrect that Inland

5 had two budgets, first a preliminary one and then

6 a final one? Do I have that right?

7 **A. Yes.**

8 Q. And if I'm wrong, tell me, okay?

9 What were you asked to provide to

10 Macomb, AEW, and when were you asked to provide

11 it?

12 **A. We were asked to provide an engineer's opinion of**

13 **cost for the repair work, and that was in roughly**

14 **March, I believe, of '11 -- 2011.**

15 Q. Okay. And as you testified here today, in that

16 comparison, you were sometimes higher than Inland

17 on some portions and lower than Inland on others;

18 is that accurate or inaccurate?

19 **MS. HATHAWAY:** Objection, leading.

20 **BY MR. ADDIS:**

21 Q. You can say yes or no.

22 **A. Yes.**

23 **MS. HATHAWAY:** That means it's leading,

24 doesn't it?

25 **BY MR. ADDIS:**

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1 Q. Accurate or inaccurate?

2 **A. Accurate.**

3 Q. How did you become aware of the final price?

4 **A. We saw the final price in the agreement for the**

5 **purchase of the sewer system from Detroit by**

6 **Macomb County.**

7 Q. Okay. In the estimate that you provided to

8 Macomb, what was your final number, the budget?

9 **A. \$28,828,490.**

10 Q. And the final number that you finally located was

11 what, the final price paid?

12 **A. 54 million, and I don't know the change after**

13 **that.**

14 Q. Okay.

15 **MR. ADDIS:** I don't have anything more.

16 **RE-EXAMINATION**

17 **BY MS. HATHAWAY:**

18 Q. Your estimate was based on largely your review of

19 the Inland budget, correct?

20 **A. And the NTH plans.**

21 Q. All right. The Inland budget changed

22 significantly as they did the project.

23 **A. At some point it changed. All I have is the**

24 **beginning budget and the final summary.**

25 Q. All right. So Inland thought that it was going

1 to cost substantially less than it did until they
2 got in and saw the work that needed to be done,
3 right?

4 **A. I don't know why their cost changed.**

5 Q. And you don't know what happened in the project
6 different from what their preliminary budget was?

7 **A. That is correct.**

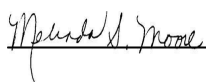
8 **MS. HATHAWAY:** I have no more
9 questions.

10 **MR. ADDIS:** We're done.

11 (The deposition was concluded at 4:01 p.m.
12 Signature of the witness was not requested by
13 counsel for the respective parties hereto.)
14
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25

1 **CERTIFICATE OF NOTARY**
2 **STATE OF MICHIGAN)**
3 **) SS**
4 **COUNTY OF MACOMB)**
5

6 I, MELINDA S. MOORE, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing
9 questions and answers were recorded by me
10 stenographically and reduced to computer
11 transcription; that this is a true, full and
12 correct transcript of my stenographic notes so
13 taken; and that I am not related to, nor of
14 counsel to, either party nor interested in the
15 event of this cause.
16
17
18
19
20
21



22 **MELINDA S. MOORE, CSR-2258**
23 **Notary Public,**
24 **Macomb County, Michigan**
25 **My Commission expires: September 6, 2016**

BUDGET - AS OF SEPTEMBER 30, 2004.

DESCRIPTION	QTY	UNIT	L	LABOR	M	MATERIAL	E	EQUIPMENT	S	SUB	TOTAL	ONP&BONDS	TOTAL
MOBILIZATION													
HWPC	5.00	DAYS	\$ 2,500.00	\$ 12,500.00	\$ 1,000.00	\$ 5,000.00	\$ 2,500.00	\$ 12,500.00	\$ 500.00	\$ 2,500.00	\$ 82,500.00	\$ 4,875.00	\$ 87,375.00
Mensite	5.00	DAYS											
Donner	18.00	DAYS											
Romfield	6.00	DAYS											
O'Leppin	2.00	DAYS											
Thompson	3.00	DAYS											
Mack	1.00	DAYS											
Rosenhieb	6.00	DAYS											
LDAS	1.00	LS											
General Conditions													
LDAS	12.00	MO											
STAGING	1.00	LS	\$ 30,000.00	\$ 30,000.00	\$ 20,000.00	\$ 20,000.00	\$ 10,000.00	\$ 30,000.00	\$ 40,000.00	\$ 400,000.00	\$ 480,000.00	\$ 48,000.00	\$ 528,000.00
GENERAL CONDITIONS													
PROJECT MANAGEMENT													
ENGINEER	52.00	WEEKS	\$ 9,000.00	\$ 468,000.00									
SUPERINTENDENT	104.00		\$ 4,000.00	\$ 416,000.00									
SECURITY	260.00												
TRAINERS	60.00	MO											
CLERICAL	156.00	WKS	\$ 400.00	\$ 62,400.00									
UTILITIES	1.00	LS											
PHONES	48.00	MO											
ELECTRICAL	60.00												
MECHANICAL	1.00	LS	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
PERMITS	1.00	LS											
Fence	10,000.00	LF											
DEWATERING													
INSTALLATION	1,800.00	LF	\$ 10.00	\$ 18,000.00	\$ 10.00	\$ 18,000.00	\$ 10.00	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00	\$ 18,000.00
PUMPS	240.00	EA	\$ 50.00	\$ 12,000.00	\$ 10.00	\$ 2,400.00	\$ 3,000.00	\$ 720,000.00	\$ 720,000.00	\$ 720,000.00	\$ 720,000.00	\$ 720,000.00	\$ 720,000.00
MAINTENANCE	365.00	DAYS	\$ 2,160.00	\$ 788,400.00									
BOILER BRISTING	8,000.00	SF	\$ 10.00	\$ 80,000.00	\$ 18.00	\$ 156,400.00	\$ 10.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 384,400.00	\$ 38,440.00	\$ 387,840.00
BY PASS PUMPING (TEMP)													
MENSING	30.00	DAYS	\$ 6,000.00	\$ 180,000.00	\$ 1,000.00	\$ 36,000.00	\$ 4,000.00	\$ 120,000.00	\$ 120,000.00	\$ 120,000.00	\$ 350,000.00	\$ 35,000.00	\$ 385,000.00
THOMPSON	10.00	DAYS	\$ 1,000.00	\$ 10,000.00	\$ 1,000.00	\$ 10,000.00	\$ 1,500.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 35,000.00	\$ 3,500.00	\$ 38,500.00
O'LEPPIN	10.00	DAYS	\$ 4,000.00	\$ 40,000.00	\$ 5,000.00	\$ 50,000.00	\$ 3,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 120,000.00	\$ 12,000.00	\$ 132,000.00
PIPING-12"	6,000.00	LF	\$ 3.00	\$ 18,000.00	\$ 2.00	\$ 12,000.00	\$ 2.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 42,000.00	\$ 4,200.00	\$ 46,200.00
PIPING-36"	6,000.00	LF	\$ 5.00	\$ 30,000.00	\$ 6.00	\$ 36,000.00	\$ 5.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 42,000.00	\$ 4,200.00	\$ 46,200.00
MAINTENANCE	40.00	DAYS	\$ 2,800.00	\$ 112,000.00	\$ 500.00	\$ 20,000.00	\$ 1,500.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 180,000.00	\$ 18,000.00	\$ 198,000.00
Inland Waste Trucking and shaft cleaning	40.00	days	\$ 6,000.00	\$ 240,000.00	\$ 1,000.00	\$ 40,000.00	\$ 6,000.00	\$ 240,000.00	\$ 240,000.00	\$ 240,000.00	\$ 820,000.00	\$ 80,000.00	\$ 900,000.00
SUCTOR SHAFT #1													
SUCTOR SHAFT #2													

W. Wain
 EXHIBIT NO. 2
 7-10-14
 M. MOORE

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	CITY	UNIT	L	LABOR	M	MATERIAL	E	EQUIPMENT	S	SUB	TOTAL	OFFER BONDS	TOTAL
DISCHARGE SNAFT (TEMP)								\$ 30,000.00			\$ 30,000.00	\$ 3,000.00	\$ 33,000.00
DISCHARGE (PERMANENT)								\$ 700,000.00			\$ 700,000.00	\$ 70,000.00	\$ 770,000.00
BY-PASS PUMP (PERMANENT)													
2-30" X 3' PLUS 2-2" X 2'	12.00	MO	\$ 1,000.00	\$ 12,000.00	\$ 3,000.00	\$ 26,000.00	\$ 146,620.28	\$ 1,759,449.12			\$ 1,907,449.12	\$ 271,119.47	\$ 2,078,568.59
STAND-BY 6-2" PLUS 6-30" Dashed	12.00	MO	\$ 500.00	\$ 6,000.00	\$ 1,000.00	\$ 12,000.00	\$ 69,260.00	\$ 639,520.00			\$ 687,320.00	\$ 128,629.00	\$ 815,949.00
Start-by Pumps 1-1/2"	12.00	MO	\$ 1,000.00	\$ 12,000.00	\$ 600.00	\$ 7,500.00	\$ 4,480.00	\$ 101,780.00			\$ 120,960.00	\$ 18,144.00	\$ 139,104.00
Accessories	16.00	MO	\$ 3,000.00	\$ 48,000.00	\$ 4,000.00	\$ 60,000.00	\$ 3,000.00	\$ 48,000.00			\$ 178,000.00	\$ 28,400.00	\$ 206,400.00
PIPING	1.00	LS	\$ 50,000.00	\$ 500,000.00	\$ 10,000.00	\$ 100,000.00	\$ 30,000.00	\$ 30,000.00			\$ 268,000.00	\$ 28,800.00	\$ 296,800.00
CHAMBERS	8.00	EA	\$ 15,000.00	\$ 120,000.00	\$ 18,000.00	\$ 180,000.00	\$ 3,000.00	\$ 180,000.00			\$ 1,008,000.00	\$ 100,800.00	\$ 1,108,800.00
MAINTENANCE	600.00	DAYS	\$ 1,200.00	\$ 720,000.00	\$ 40,000.00	\$ 80,000.00	\$ 12,000.00	\$ 12,000.00			\$ 774,000.00	\$ 77,400.00	\$ 851,400.00
PIPING-16-30"	1.00	LS	\$ 15,000.00	\$ 150,000.00	\$ 30,000.00	\$ 300,000.00	\$ 5,000.00	\$ 5,000.00			\$ 1,040,000.00	\$ 104,000.00	\$ 1,144,000.00
VALVES-2-30"	2.00	EA	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00	\$ 8,000.00	\$ 500.00	\$ 1,000.00			\$ 11,400.00	\$ 1,140.00	\$ 12,540.00
VALVES-CHECK-2EA-30"	2.00	EA	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00	\$ 8,000.00	\$ 500.00	\$ 1,000.00			\$ 11,400.00	\$ 1,140.00	\$ 12,540.00
CHECK VALVES-2EA-30"	2.00	EA	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00	\$ 8,000.00	\$ 500.00	\$ 1,000.00			\$ 11,400.00	\$ 1,140.00	\$ 12,540.00
42" PIPE, TEES, REDUCERS, WEST END	1.00	LS	\$ 20,000.00	\$ 200,000.00	\$ 30,000.00	\$ 300,000.00	\$ 15,000.00	\$ 15,000.00			\$ 570,000.00	\$ 57,000.00	\$ 627,000.00
42" VALVE	3.00	EA	\$ 7,000.00	\$ 21,000.00	\$ 80,000.00	\$ 80,000.00	\$ 7,000.00	\$ 7,000.00			\$ 187,000.00	\$ 18,700.00	\$ 205,700.00
VALVES-1-24"	3.00	EA	\$ 3,000.00	\$ 9,000.00	\$ 30,000.00	\$ 30,000.00	\$ 3,000.00	\$ 3,000.00			\$ 78,000.00	\$ 7,800.00	\$ 85,800.00
ELECTRICAL SETUP	1.00	LS	\$ 5,000.00	\$ 5,000.00	\$ 8,000.00	\$ 8,000.00	\$ 3,000.00	\$ 3,000.00		\$ 150,000.00	\$ 166,000.00	\$ 16,600.00	\$ 182,600.00
EMERGENCY - 00"	1.00	LS	\$ 5,000.00	\$ 5,000.00	\$ 8,000.00	\$ 8,000.00	\$ 3,000.00	\$ 3,000.00		\$ 150,000.00	\$ 166,000.00	\$ 16,600.00	\$ 182,600.00
VALVES	2.00	EA	\$ 6,000.00	\$ 12,000.00	\$ 40,000.00	\$ 80,000.00	\$ 1,500.00	\$ 3,000.00			\$ 132,500.00	\$ 13,250.00	\$ 145,750.00
CHAMBERS	2.00	EA	\$ 6,000.00	\$ 12,000.00	\$ 40,000.00	\$ 80,000.00	\$ 1,500.00	\$ 3,000.00			\$ 132,500.00	\$ 13,250.00	\$ 145,750.00
ELECTRICAL WORK/ENERGY	12.00	MO	\$ 25,000.00	\$ 300,000.00	\$ 15,000.00	\$ 150,000.00	\$ 7,000.00	\$ 7,000.00			\$ 499,000.00	\$ 49,900.00	\$ 548,900.00
3" VALVES	5.00	EA	\$ 8,000.00	\$ 40,000.00	\$ 45,000.00	\$ 225,000.00	\$ 7,000.00	\$ 35,000.00			\$ 350,000.00	\$ 35,000.00	\$ 385,000.00
Diurnal Inspection/Watering	50.00	DAYS	\$ 100,000.00	\$ 5,000,000.00	\$ 100,000.00	\$ 500,000.00	\$ 50,000.00	\$ 100,000.00		\$ 5,000.00	\$ 5,700,000.00	\$ 570,000.00	\$ 6,270,000.00
BULK HEADS/ASST METALS	2.00	EA	\$ 100,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 50,000.00	\$ 100,000.00			\$ 1,000,000.00	\$ 100,000.00	\$ 1,100,000.00
TUNNEL SUPPORT	50.00	EA	\$ 1,000.00	\$ 50,000.00	\$ 210.00	\$ 10,940.00	\$ 1,000.00	\$ 50,000.00			\$ 52,150.00	\$ 5,215.00	\$ 57,365.00
SOIL STABILIZATION													
ANGLE	20.00	EA	\$ 25,000.00	\$ 500,000.00	\$ 3,000.00	\$ 30,000.00	\$ 3,000.00	\$ 120,000.00			\$ 281,000.00	\$ 28,100.00	\$ 309,100.00
LET GROUT	30.00	EA	\$ 25,000.00	\$ 500,000.00	\$ 3,000.00	\$ 30,000.00	\$ 3,000.00	\$ 120,000.00			\$ 281,000.00	\$ 28,100.00	\$ 309,100.00
CLINTON/RASHER BYPASS	12.00	MO	\$ 25,000.00	\$ 300,000.00	\$ 3,000.00	\$ 30,000.00	\$ 3,000.00	\$ 120,000.00			\$ 350,000.00	\$ 35,000.00	\$ 385,000.00
PIPE REPAIR													
VENTILATION	12.00	MO	\$ 5,000.00	\$ 60,000.00	\$ 3,000.00	\$ 30,000.00	\$ 10,000.00	\$ 120,000.00			\$ 218,000.00	\$ 21,800.00	\$ 239,800.00
SOLDER PILES W/VALVE	455.00	EA	\$ 3,500.00	\$ 15,975.00	\$ 4,500.00	\$ 15,975.00	\$ 3,500.00	\$ 12,600.00			\$ 48,975.00	\$ 4,897.50	\$ 53,872.50
SOLDER PILES (40' L)	455.00	EA	\$ 3,500.00	\$ 15,975.00	\$ 4,500.00	\$ 15,975.00	\$ 3,500.00	\$ 12,600.00			\$ 48,975.00	\$ 4,897.50	\$ 53,872.50
BRACINGS (BUY 1/2)	600.00	MO	\$ 0.50	\$ 300.00	\$ 0.50	\$ 300.00	\$ 0.26	\$ 150.00			\$ 1,050.00	\$ 105.00	\$ 1,155.00
EXCAVATION (TRENCHES/FEETING)	14,169.67	CY	\$ 20.00	\$ 283,393.33	\$ 14.00	\$ 196,333.33	\$ 10.00	\$ 141,696.67			\$ 623,393.33	\$ 62,339.33	\$ 685,732.66
BEDDING (CONCRETE)	416.67	CY	\$ 50.00	\$ 20,833.33	\$ 50.00	\$ 25,000.00	\$ 30.00	\$ 12,500.00			\$ 68,333.33	\$ 6,833.33	\$ 75,166.66
SLOPE EXCAVATION	14,755.56	CY	\$ 10.00	\$ 147,555.56	\$ 14.00	\$ 196,577.78	\$ 10.00	\$ 147,555.56			\$ 591,689.89	\$ 59,168.99	\$ 650,858.88
REMOVE OLD PIPE	300.00	LF	\$ 500.00	\$ 150,000.00	\$ 100.00	\$ 30,000.00	\$ 300.00	\$ 90,000.00			\$ 470,000.00	\$ 47,000.00	\$ 517,000.00
CONNECTIONS	2.00	EA	\$ 400.00	\$ 800.00	\$ 450.00	\$ 900.00	\$ 400.00	\$ 800.00			\$ 3,550.00	\$ 355.00	\$ 3,905.00
11 FEET PIPE	300.00	LF	\$ 5.00	\$ 1,500.00	\$ 14.00	\$ 420.00	\$ 4.00	\$ 120.00			\$ 1,674.00	\$ 167.40	\$ 1,841.40
BACKFILL	30,000.00	CY	\$ 10.00	\$ 300,000.00	\$ 40.00	\$ 114,000.00	\$ 4.00	\$ 120,000.00			\$ 448,000.00	\$ 44,800.00	\$ 492,800.00
Additional concrete bedding	2,850.00	CY	\$ 10.00	\$ 28,500.00	\$ 40.00	\$ 114,000.00	\$ 5.00	\$ 14,250.00			\$ 146,750.00	\$ 14,675.00	\$ 161,425.00

	QTY	UNIT	L	LABOR	M	MATERIAL	E	EQUIPMENT	\$	SUB	TOTAL	CHP& BONDS	TOTAL
EXCAVATION-MISC.	1.00	LS		\$		\$		\$	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 20,000.00	\$ 220,000.00
GATE STRUCTURE	1.00	EA		\$		\$		\$	\$ 1,800,000.00	\$ 1,800,000.00	\$ 1,800,000.00	\$ 180,000.00	\$ 1,980,000.00
EXTRA MANHOLES/CLOSURES	4.00	EA		\$		\$		\$	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
MASS EXCAVATION	3,000.00	CY	\$ 5.00	\$ 15,000.00	\$ 10.00	\$ 30,000.00	\$ 4.00	\$ 12,000.00		\$	\$ 57,000.00	\$ 5,700.00	\$ 62,700.00
CLEAN PIPE	2,500.00	LF	\$ 100.00	\$ 250,000.00	\$ 12.00	\$ 30,000.00	\$ 100.00	\$ 250,000.00		\$	\$ 532,000.00	\$ 53,200.00	\$ 585,200.00
UTILITY RELOCATIONS				\$		\$		\$	\$	\$	\$	\$	\$
ELEC. ABOVE	1.00	LS		\$		\$		\$	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 50,000.00	\$ 550,000.00
CABLE	1.00	LS		\$		\$		\$	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 10,000.00	\$ 110,000.00
TELEPHONE	1.00	LS		\$		\$		\$	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 20,000.00	\$ 220,000.00
SEWER	500.00	LF		\$		\$		\$	\$ 40.00	\$ 20,000.00	\$ 20,000.00	\$ 2,000.00	\$ 22,000.00
WATER	500.00	LF		\$		\$		\$	\$	\$	\$	\$	\$
RESTORATION				\$		\$		\$	\$	\$	\$	\$	\$
BRICK WALL	1.00	EA		\$		\$		\$	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 3,000.00	\$ 33,000.00
SHRUBS	1.00	LS		\$		\$		\$	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 4,000.00	\$ 44,000.00
SIDEWALK	30,000.00	SF		\$		\$		\$	\$ 4.00	\$ 120,000.00	\$ 120,000.00	\$ 12,000.00	\$ 132,000.00
PAVEMENT	10,000.00	SY		\$		\$		\$	\$ 80.00	\$ 800,000.00	\$ 800,000.00	\$ 80,000.00	\$ 880,000.00
SOD	10,000.00	SY		\$		\$		\$	\$ 6.00	\$ 60,000.00	\$ 60,000.00	\$ 6,000.00	\$ 66,000.00
CLEANUP	1.00	LS		\$		\$		\$	\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 60,000.00	\$ 660,000.00
ENGINEERING	1.00	ls		\$		\$		\$	\$ 2,300,000.00	\$ 2,300,000.00	\$ 2,300,000.00	\$ 230,000.00	\$ 2,530,000.00
ELECTRICAL	1.00	LS		\$		\$	\$ 150,000.00	\$ 150,000.00	\$ 250,000.00	\$ 250,000.00	\$ 400,000.00	\$ 40,000.00	\$ 440,000.00
TEMP ROADS	3.00	LS		\$		\$		\$	\$ 5,000.00	\$ 15,000.00	\$ 15,000.00	\$ 1,500.00	\$ 16,500.00
HARRISON TRIP PUMPING	12.00	MO		\$		\$		\$	\$ 3,000.00	\$ 36,000.00	\$ 36,000.00	\$ 3,600.00	\$ 39,600.00
BARRICADES	12.00	MO		\$		\$		\$	\$ 3,000.00	\$ 36,000.00	\$ 36,000.00	\$ 3,600.00	\$ 39,600.00
GATE @GARDENFIELD	1.00	LS	\$ 15,000.00	\$ 15,000.00	\$ 5,000.00	\$ 6,000.00	\$ 15,000.00	\$ 15,000.00	\$ 5,000.00	\$ 20,000.00	\$ 20,000.00	\$ 2,000.00	\$ 22,000.00
Starling Highway	\$	1.00	ls	\$ 7,354,522.22		\$ 4,573,404.51		\$ 8,518,085.34		\$ 8,518,085.34	\$ 30,405,018.08	\$ 3,297,353.02	\$ 33,702,371.70
TOTALS													\$ 53,702,371.70
CHARGE II													
CLEAN TO CORRIDOR													
GRADING													

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FINAL ESTIMATE SUMMARY

	Aug - Est 1	Sept - Est 2	Oct - Est 3	Nov - Est 4	Dec - Est 5	Jan - Est 6	Feb - Est 7	Mar - Est 8	Apr - Est 9	May - Est 10	June - Est 11	July - Est 12	August - Est 13	Totals
WPC Field Operations	\$10,576.73	\$27,856.28	\$58,826.84	\$63,416.88	\$64,373.58	\$88,884.02	\$71,065.07	\$100,058.95	\$41,773.99	\$33,998.77	\$21,684.50	\$824.33	\$0.00	\$564,326.04
Labor	\$222,271.90	\$128,612.28	\$136,471.08	\$138,829.80	\$111,214.64	\$88,688.60	\$85,971.69	\$80,357.61	\$81,458.55	\$80,079.01	\$21,134.47	\$0.00	\$0.00	\$1,155,089.41
Materials	\$22,814.40	\$37,785.85	\$52,502.60	\$34,480.38	\$9,497.98	\$18,826.83	\$6,008.12	\$8,882.13	\$10,785.44	\$11,077.93	\$41,082.10	\$2,669.34	\$0.00	\$254,422.88
Equipment	\$287,468.14	\$142,447.81	\$228,932.44	\$242,180.06	\$94,815.17	\$92,094.81	\$131,912.91	\$128,706.09	\$189,918.84	\$210,023.67	\$88,147.85	\$0.00	\$0.00	\$1,843,648.19
GL Bonds / Special Insurance	\$0.00	\$0.00	\$0.00	\$0.00	\$371,894.54	\$0.00	\$0.00	\$0.00	\$0.00	\$138,000.00	\$0.00	\$0.00	\$147,500.00	\$887,094.54
Subtotal	\$543,131.17	\$336,701.82	\$478,732.94	\$478,908.22	\$651,500.89	\$268,494.26	\$294,957.79	\$314,004.78	\$323,937.62	\$453,179.38	\$180,038.82	\$3,483.67	\$147,500.00	\$4,474,580.06
15% MU 1-4, 10% 5 ON	\$81,469.88	\$60,505.27	\$71,809.94	\$71,836.04	\$65,150.09	\$28,849.43	\$29,495.78	\$31,400.48	\$32,398.76	\$45,317.94	\$18,003.88	\$349.37	\$14,760.00	\$539,331.66
WPC Total	\$624,600.85	\$397,207.09	\$550,542.88	\$550,742.96	\$716,650.98	\$295,343.69	\$324,453.57	\$345,405.26	\$356,331.38	\$498,497.32	\$198,042.70	\$3,843.04	\$182,250.00	\$6,013,911.72
WPC NTH Consultants	\$307,850.49	\$423,584.60	\$347,217.86	\$383,760.71	\$263,740.57	\$256,154.51	\$283,625.89	\$208,148.06	\$150,547.40	\$123,579.28	\$88,002.66	\$0.00	\$0.00	\$2,784,111.93
Subs Rotor Electric	\$39,983.16	\$402,338.22	\$407,938.40	\$279,182.93	\$181,414.21	\$183,788.82	\$219,108.17	\$111,933.01	\$34,161.27	\$18,733.87	\$18,640.22	\$0.00	\$0.00	\$1,888,191.08
OLAughlin	\$374,722.52	\$389,814.18	\$392,036.18	\$146,227.14	\$115,975.06	\$139,148.28	\$187,090.15	\$169,381.39	\$49,385.59	\$43,277.26	\$35,158.58	\$0.00	\$0.00	\$2,042,158.29
SBC										\$200,000.00	\$32.01	\$0.00	\$96.38	\$200,064.37
Thompson Pump	\$117,625.85	\$780,550.55	\$917,688.17	\$700,308.35	\$715,338.53	\$786,514.83	\$699,309.29	\$444,162.35	\$26,925.91	\$0.00	\$0.00	\$0.00	\$0.00	\$5,188,422.25
J. Mack Security	\$28,500.00	\$57,960.00	\$77,280.00	\$75,840.00	\$74,860.00	\$77,280.00	\$96,800.00	\$77,280.00	\$77,280.00	\$87,480.00	\$12,780.00	\$0.00	\$0.00	\$743,160.00
Great Lakes Diving & Salvage								\$28,308.73		\$58,000.00	\$158,261.64	\$0.00	\$0.00	\$240,568.37
Riteway Fence	\$15,340.00	\$0.00	\$12,850.00	\$5,850.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$33,840.00
DTE Energy	\$0.00	\$108,611.27	\$4,462.10	\$27,995.08	\$393.09	\$3,534.66	\$74,106.87	\$489,021.28	\$21,219.48	\$193,750.09	\$5,184.33	\$0.00	\$108.10	\$818,384.95
Macomb County	\$0.00	\$2,392.50	\$343.87	\$5,684.80	\$165.00	\$405.83	\$214.12	\$642.50	\$0.00	\$1,449.91	\$202.99	\$0.00	\$0.00	\$11,441.52
Macomb County Public Works	\$0.00	\$0.00	\$0.00	\$9,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,200.00	\$15,500.00
WVOW Internet and Cable								\$30,523.50				\$0.00	\$0.00	\$30,523.50
Spartan Specialties	\$0.00	\$0.00	\$73,210.75	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$73,210.75
EQ Detroit	\$0.00	\$0.00	\$0.00	\$0.00	\$33,771.87	\$6,973.93	\$13,089.91	\$5,440.57	\$2,194.40	\$0.00	\$0.00	\$0.00	\$0.00	\$61,450.88
Consumers								\$7,040.00						\$7,040.00
Comcast								\$82,024.13						\$82,024.13
Fiber Link, Inc.														\$62,636.86
Great Lakes Aerial	\$0.00	\$4,092.40	\$0.00	\$0.00	\$1,417.40	\$1,004.00	\$454.30	\$0.00	\$1,564.60	\$1,020.80	\$0.00	\$0.00	\$0.00	\$9,553.50
Ferguson	\$0.00	\$94,874.12	\$181,788.78	\$41,023.85	\$287,819.51	\$160,738.11	\$121,805.32	\$109,468.01	\$922,623.12	\$589,128.97	\$0.00	\$0.00	\$0.00	\$2,479,365.91
Ferguson Adj for Overpayment														\$0.00
Ferguson Adj for Equipment														\$0.00
Marlin Control Services														\$0.00
Subtotal	\$884,022.02	\$2,254,158.15	\$2,414,628.11	\$1,636,172.87	\$1,674,914.44	\$1,805,511.75	\$1,695,385.02	\$1,739,369.53	\$1,285,881.77	\$1,204,370.18	\$298,188.29	\$0.00	\$69,038.34	\$16,771,646.41
8% MU 1-4, 5% 5 ON	\$70,721.76	\$181,132.49	\$193,170.09	\$130,893.83	\$83,745.72	\$74,991.11	\$79,249.23	\$84,302.54	\$55,279.13	\$56,935.00	\$14,428.72	\$0.00	\$11,319.75	\$1,036,168.31
WPC Total	\$954,743.78	\$2,445,288.64	\$2,607,798.20	\$1,767,066.70	\$1,758,660.16	\$1,880,502.86	\$1,774,634.25	\$1,823,672.07	\$1,341,160.90	\$1,261,305.18	\$312,627.01	\$0.00	\$80,358.09	\$17,807,814.81
LDS G/A Expenses	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Bonds with 3 yr Maintenance	\$0.00	\$0.00	\$0.00	\$0.00	\$151,120.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$151,120.00
Labor	\$481,168.53	\$651,208.44	\$132,708.41	\$385,397.74	\$575,497.52	\$748,294.82	\$985,825.12	\$990,008.00	\$266,378.67	\$144,509.17	\$93,897.22	\$0.00	\$0.00	\$5,324,388.61
Materials	\$392,360.70	\$433,758.32	\$292,384.94	\$242,063.27	\$187,057.08	\$387,090.91	\$586,038.04	\$233,893.17	\$120,686.71	\$4,489.32	\$98,131.51	\$0.00	\$0.00	\$2,937,751.91
Equipment	\$199,278.83	\$413,080.85	\$524,509.91	\$625,465.19	\$770,799.75	\$958,868.50	\$1,068,205.59	\$968,783.16	\$258,331.76	\$108,168.18	\$56,340.58	\$0.00	\$0.00	\$5,946,809.81

MIDD 470

Winn
EXHIBIT NO. 3
7-10-14
M. MOORE

A
↓

Previously Submitted																\$490,468.69	\$490,468.69
Sales Tax not previously billed																\$25,234.98	\$25,234.98
Credit for Crane Mats / Steel																-\$21,638.68	-\$21,638.68
Business Tax Credit																-\$168,079.00	-\$168,079.00
Subtotal	\$1,042,805.86	\$1,498,025.41	\$949,801.26	\$1,252,926.20	\$1,884,474.33	\$2,074,254.23	\$2,619,589.75	\$2,039,484.33	\$845,386.14	\$255,164.67	\$248,389.29	\$0.00	\$0.00	\$14,380,070.47			
15% MU 1-4, 10% 5 ON	\$168,420.88	\$224,703.81	\$142,440.19	\$187,938.93	\$168,447.43	\$207,426.42	\$261,956.88	\$208,948.43	\$64,589.51	\$25,516.47	\$24,836.93	\$0.00	\$0.00	\$1,673,174.98			
Subtotal	\$1,199,226.74	\$1,722,729.22	\$1,092,241.45	\$1,440,865.13	\$1,852,921.76	\$2,281,679.65	\$2,881,526.73	\$2,298,432.76	\$709,934.65	\$280,681.14	\$273,206.22	\$0.00	\$0.00	\$16,033,246.45			
Mobilization	\$20,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,000.00			
LDS Total	\$1,219,226.74	\$1,722,729.22	\$1,092,241.45	\$1,440,865.13	\$1,852,921.76	\$2,281,679.65	\$2,881,526.73	\$2,298,432.76	\$709,934.65	\$280,681.14	\$273,206.22	\$0.00	\$325,985.99	\$16,379,231.44			
DS																	
Mersino	\$797,510.68	\$613,073.34	\$652,723.68	\$444,208.71	\$446,985.03	\$371,704.87	\$364,200.66	\$638,922.67	\$0.00	\$0.00	\$0.00	\$0.00	\$173,476.38	\$4,503,204.00			
subs																	
Hayward Baker	\$131,300.00		\$155,003.80	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$53,540.00	\$339,843.90			
Denver Grouping	\$137,043.18	\$33,712.82	\$9.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$170,755.92			
E.C. Kornfeil	\$510,000.00		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$510,000.00			
Spartan Specialties	\$20,777.96	\$43,183.08	\$28,360.55	\$22,919.88	\$1,869.66	\$60,761.28	\$22,611.28	\$18,707.88	\$0.00	\$0.00	\$0.00	\$0.00	\$92.88	\$220,284.36			
Rohrschob & Sons	\$428,242.18	\$483,673.50	\$299,053.21	\$1,003,109.00	\$1,065,677.97	\$543,118.83	\$0.00	\$24,959.09	\$0.00	\$0.00	\$0.00	\$0.00	\$129,204.52	\$3,956,038.00			
Colasanti	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$76,673.00	\$117,778.31	\$2,208.00	\$0.00	\$0.00	\$0.00	\$0.00	-\$81.04	\$196,676.27			
Fill	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			
Seabrix Diving	\$0.00	\$98,775.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$98,775.00			
Great Lakes Diving	\$0.00	\$115,600.62	\$215,294.67	\$126,088.68	\$0.00	\$0.00	\$0.00	\$143,281.80	\$32,911.25	\$0.00	\$0.00	\$0.00	-\$1,417.03	\$631,749.95			
Solomon Diving	\$0.00	\$15,530.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$15,530.00			
Ballor Towing	\$19,117.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$19,117.00			
1% Business Tax													\$285,551.31	\$285,551.31			
Subtotal	\$2,042,390.90	\$1,383,548.36	\$1,951,436.01	\$1,586,334.21	\$1,515,532.66	\$1,052,257.66	\$504,588.25	\$828,059.42	\$32,911.25	\$0.00	\$285,551.31	\$0.00	\$354,815.69	\$10,947,425.72			
5% MU	\$102,119.55	\$69,177.42	\$67,571.80	\$78,816.71	\$75,776.63	\$47,671.86	\$22,888.88	\$39,594.29	\$1,645.66	\$0.00	\$0.00	\$0.00	\$0.00	\$506,160.69			
Subtotal	\$2,144,510.45	\$1,452,725.78	\$1,419,007.81	\$1,676,150.92	\$1,591,309.29	\$1,099,929.52	\$527,476.13	\$867,653.71	\$34,556.91	\$0.00	\$285,551.31	\$0.00	\$354,815.69	\$11,453,586.41			
Ferguson													-\$29,648.53	-\$29,648.53			
FEI													\$85,663.42	\$85,663.42			
FEI Dubay Landscaping													\$3,893.79	\$3,893.79			
subs																	
NPC																	
LDS & FEI incl Subcontractors	\$3,363,737.19	\$3,175,455.00	\$2,511,049.26	\$3,117,016.05	\$3,444,231.05	\$3,361,509.17	\$3,409,001.86	\$3,166,086.47	\$744,491.45	\$280,681.14	\$618,666.21	\$0.00	\$680,801.68	\$27,892,726.53			
subs																	
8% IWPC MU 1-4, 5% 5 ON	\$289,098.98	\$254,036.40	\$200,883.94	\$249,361.28	\$172,211.68	\$161,284.68	\$153,919.21	\$144,088.51	\$33,915.31	\$12,758.23	\$29,107.40	\$0.00	\$29,000.23	\$1,699,845.62			
Total	\$3,652,836.17	\$3,429,491.40	\$2,711,933.20	\$3,366,377.33	\$3,616,442.60	\$3,522,793.75	\$3,562,921.07	\$3,310,154.98	\$778,406.76	\$293,439.37	\$647,773.61	\$0.00	\$708,801.91	\$29,592,572.15			
Subtotal	\$5,212,180.80	\$6,261,987.13	\$6,870,272.28	\$5,684,168.99	\$6,091,753.74	\$5,508,640.30	\$5,862,007.99	\$5,479,232.31	\$2,475,899.04	\$2,063,241.87	\$1,158,443.32	\$5,528.89	\$952,410.00	\$51,483,374.56			
B&I 2.25% (Through Estimate 4)	\$88,946.56	\$116,472.96	\$109,187.07	\$105,725.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$428,332.45			
Sterling Heights Treasury							\$44,389.94			\$32,156.26		\$33,232.75	\$0.00				
TOTAL	\$5,308,127.36	\$6,378,460.09	\$5,979,459.35	\$5,789,912.85	\$6,091,753.74	\$5,508,640.30	\$5,706,397.73	\$5,479,232.31	\$2,475,899.04	\$2,063,241.87	\$1,158,443.32	\$38,761.64	\$952,410.00	\$52,953,895.88			
TOTAL TO DATE	\$ 5,308,127.36	\$ 11,687,587.45	\$ 17,667,046.80	\$ 23,456,959.85	\$ 28,548,713.39	\$ 35,057,353.69	\$ 40,763,751.42	\$ 46,242,983.73	\$ 48,718,882.78	\$ 50,804,280.92	\$ 51,962,724.24	\$ 52,001,485.88	\$ 52,953,895.88	\$ 52,953,895.88			

DWSD 000806

ANDERSON, ECKSTEIN & WESTRICK, INC. SHELBY TOWNSHIP, MICHIGAN ESTIMATE OF PROBABLE COST AEW JOB NUMBER 0211-0136	PROJECT:	FIFTEEN MILE ROAD INTERCEPTOR
	OWNER:	OFFICE OF MACOMB COUNTY PUBLIC WORKS
	PREPARED BY:	Nancy E. Shirkey, PE
	DATE:	March 18, 2011
	CHECKED BY:	Roy C. Rose, PE
	DATE:	March 18, 2011

WORK ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Emergency Work Estimate (Rounded Through September 30, 2004)				\$11,592,700.00
Mobilization (Assume 5%)	1	LS	\$677,400.00	\$677,400.00
Bonds and Insurance (Assume 2%)	1	LS	\$270,960.00	\$270,960.00
Bypass Pumping	9	Months	\$383,800.00	\$3,454,200.00
Dewatering	9	Months	\$65,500.00	\$589,500.00
Monitoring	9	Months	\$70,920.00	\$638,280.00
Ventilation	9	Months	\$18,000.00	\$162,000.00
Security	11	Months	\$28,800.00	\$316,800.00
Traffic Maintenance and Control	1	LS	\$66,600.00	\$66,600.00
Bulkhead 11' Diameter Sewer	2	Ea	\$250,000.00	\$500,000.00
Bulkhead 8' Diameter Sewer (Clinton-Fraser Connection)	1	Ea	\$25,000.00	\$25,000.00
Temporary Earth Retention System	1	LS	\$3,042,000.00	\$3,042,000.00
Reconstruct Access Shaft	1	LS	\$80,000.00	\$80,000.00
Remove and Replace Damaged Pipe	1	LS	\$1,513,400.00	\$1,513,400.00
Bulkhead Removal	1	LS	\$50,000.00	\$50,000.00
Sewer Cleaning and TV Inspection	1	LS	\$825,000.00	\$825,000.00
Pavement Restoration	1	LS	\$957,200.00	\$957,200.00
Utility Restoration - Utility Companies	1	LS	\$821,200.00	\$821,200.00
Utility Restoration - Public Works	1	LS	\$166,300.00	\$166,300.00
Landscape Restoration	1	LS	\$160,300.00	\$160,300.00
Final Cleanup (\$500/Sta)	28	Sta	\$500.00	\$14,000.00
Soil Erosion and Sedimentation Control	1	LS	\$31,850.00	\$31,850.00
City of Sterling Heights, Macomb County, OMCPW	1	LS	\$134,400.00	\$134,400.00
TOTAL ESTIMATED CONSTRUCTION COST				\$26,089,090.00
			Engineering (4%)	\$1,043,600.00
			Construction Staking, Settlement Checking and As-Builts (1%)	\$260,900.00
			Construction Observation (4%)	\$1,043,600.00
			Construction Contract Administration (1%)	\$260,900.00
			Construction Soils and Materials Testing (0.5%)	\$130,400.00
TOTAL ESTIMATED COST				\$28,828,490.00

Wern
EXHIBIT NO. 4
 7-10-14
 M. MOORE

BYPASS PUMPING

Total for bypass pumping from Oct 1 through March 31 per DWSD invoices

		-FEI	
October	\$3,226,976.60	\$67,142.87	\$3,159,833.73
November	\$2,343,437.93	\$4,102.39	\$2,339,335.54
December	\$1,421,361.73	\$28,781.96	\$1,392,579.77
January	\$1,129,339.43	\$31,141.49	\$1,098,197.94
February	\$779,940.39		\$779,940.39
March	\$488,028.28		\$488,028.28
	Total		\$9,257,915.65 /6
			\$1,542,985.94 Per month
			\$1,543,000.00

Bypass pumping system online by end of September

- 10/7 - Bladder installed in 8' bypass sewer; bladder failed to due pressure
- 10/10 & 10/11 - LDS placed sandbags in the 8' diameter bypass sewer
- 10/12 - Divers discovered some of the sandbags had been knocked down by the current and installed more
- 10/13 - Reset sandbags and installed concrete-filled geobags
- 10/14 - Divers began work on a bulkhead within the 11' diameter sewer, using flyash filled geobags
- 10/18 - Geobag bulkhead in 11' diameter sewer complete
- 10/19 - Installation of the steel bulkhead (in the same location as the geobag bulkhead begins)

REALITY CHECK - From Inland Waters Budget as of 9/30/04

Pump Rental = \$1,807,443.12 for 12 months =	\$150,620.26 /month	
Stand-by Generator = \$857,520 for 12 months =	\$71,460.00 /month	
Stand-by pump rental = \$120,960 for 12 months =	\$10,080.00 /month	
Bypass Pumping Maintenance = \$1,006,000 for 600 days =	\$1,676.67 /day	\$50,300.00 /month
Electrical Service = \$480,000 for 12 months =	\$40,000.00 /month	
Clinton-Fraser Bypass = \$456,000 for 12 months =	\$38,000.00 /month	
+ a fixed cost for the divers to place the bulkheads through the months of October and November @ \$5,000/day		
Assume work every day for six weeks (10/1 through 11/14) = 42 days = \$210,000		
\$210,000/9 months =	\$23,333.33	
Cost per month =	\$383,793.59 /month	
	\$383,800.00	

MIDDD 913

DEWATERING

Total for Mersino dewatering from Oct 1 through March 31 per DWSD invoices

		-Bypass pumping		
October	\$652,723.68	0	\$652,723.68	
November	\$444,206.71	88841.34	\$355,365.37	
December	\$446,985.03	44698.5	\$402,286.53	
January	\$371,704.87	0	\$371,704.87	
February	\$364,200.66	0	\$364,200.66	
March	\$638,992.67	0	\$638,992.67	
			\$2,785,273.78 /6	\$464,212.30 Per month
				\$464,200.00

REALITY CHECK - From Inland Waters Budget as of 9/30/04
 10/5/04 IDR lists 12 dewatering wells in service, Revision #4 (sheet 014) shows 12 wells approx. 100' deep each + 5 observation wells

Maintenance = \$786,400 for 12 months =

\$65,533.33 /month
 \$65,500.00

MIDDD 914

MONITORING

Assume 1 person can monitor the observation wells and force main

Assume 9 months
24 hours per day, average 30 days in a month = 720 hours

Assume a graduate engineer at \$98.50 /HR= \$70,920.00 /month

VENTILATION

From Inland Water Budget as of 9/30/04

Ventilation = \$216,000 for 12 months \$18,000.00 /month

SECURITY

Total for J. Mack Security from Oct 1 through May 31 per DWSD invoices

October	\$77,280.00	
November	\$75,840.00	
December	\$74,880.00	
January	\$77,280.00	
February	\$96,600.00	
March	\$77,280.00	
April	\$77,280.00	
May	\$87,840.00	
	\$644,280.00 /8	\$80,535.00 Per month
		\$80,500.00

For 11 months of security: \$885,500.00

Reality Check:

11 months of security @ 30 days/ month = 330 days
24 hours per day 7920 hours

\$885,500 equals \$111/hour

According to <http://www.securityguardservicesguide.com>, fees paid to regular trained guards can be as high as \$30/hr, and armed guards range as high as \$50/hr

Assume \$40/hr
For 30 days (1 month) = \$28,800.00

MIDDD 917

TRAFFIC MAINTENANCE AND CONTROL

15 Mile Road was opened to traffic on June 9, 2005

Temporary Pavement for access

Estimated area: 10550 SF
 1172.222 SY

Assume 4" asphalt on 6" base

Asphalt	257.8889 Ton	\$85.00	\$21,920.56
Base	1172.222 SY	\$10.00	<u>\$11,722.22</u>
			\$33,642.78

Per Inland Waters Budget as of 9/30/04:

Barricades = \$36,000 for 12 months = \$3,000.00 /month

After emergency work, roads were closed between October and June 9 (8 months)

For 11 months of closure: \$33,000.00

Lump Sum Temp. roads plus barricades = \$66,642.78
 \$66,600.00

BULKHEAD SEWERS

11' Diameter Sewer - Fabricate and place two 11' diameter steel bulkheads on the east and west ends of collapse

From Inland Waters budget dated 9/30/11:

11' Diameter Bulkhead = \$50,000/Ea

8' Diameter Sewer (Clinton-Fraser Connection)

Based on as-built plan, this sewer was bulkheaded using sandbags at the bottom of the 1st upstream manhole

Conservatively assume \$25,000 for this bulkhead

MIDDD 919

TEMPORARY EARTH RETENTION SYSTEM

Dimension of Recovery Shaft = 28 x 260
 Perimeter of Recovery Shaft = 576 Ft
 Depth of Recovery Shaft = 64 Ft

36" Concrete Piers
 Space 2.5' O.C. 230 Piers 64 feet long
 Area of one pier = 7.065 SF

Volume of one pier = 16.75 CY
 Volume of 230 piers = 3852.5

Support Ex. Tunnel	1 LS	\$110,000.00	\$110,000.00
Excavation	26813 CYD	\$20.00	\$536,260.00
36" Dia. Drilled Piers (Concrete)	3852.5 CYD	\$100.00	\$385,250.00
Steel for Soldier Pile (W18x76)	1118720 Lbs	\$1.25	\$1,398,400.00
Wales (W18x143)	297440 Lbs	\$1.25	\$371,800.00
Struts (W18x143)	192192 Lbs	\$1.25	<u>\$240,240.00</u>
			\$3,041,950.00
			<u>\$3,042,000.00</u>

Assumes no salvage on the steel bracing system

RECONSTRUCT ACCESS SHAFT

Construct the west bulkhead shaft around the existing sanitary manhole as shown on sheet 29

Construction procedure appears to be very similar to the intermediate manhole shafts on the NGI-1
Cost of intermediate shafts = Approx. \$80,000/Ea

REMOVE/REPLACE PIPE

Pipe Removal						Assume excavation was performed under "Temporary Earth Retention"
Remove Sewer Stabilize Soil	230 LF 1 LS	\$550.00 \$230,000.00 SUBTOTAL	\$126,500.00 \$230,000.00 \$356,500.00			From budget, adjusted to cut labor cost in half and remove material cost Taken from "Angle Grout" on Inland Waters 9/30/04 budget
Pipe Replacement						
2' Thick Concrete Base Slab	678 CYD	\$140.00	\$94,920.00			Unit price from Inland Waters budget dated 9/30/04
6.5' Thick Concrete Cradle	2199 CYD	\$80.00	\$175,920.00			
11' I.D. MDOT C-76 CI V RCP	230 LF	\$1,250.00	\$287,500.00			From Inland Waters budget dated 9/30/04
10.5' Thick Cement/Flyash Fill	3545 CYD	\$65.00	\$230,425.00			Unit price from Inland Waters budget dated 9/30/04
Class II Backfill (5' deep)	26813 CYD	\$10.00	\$268,130.00			
Connect Sewer to Existing	2 EA	\$50,000.00	\$100,000.00			From Inland Waters budget dated 9/30/04
		SUBTOTAL	\$1,156,895.00			
		TOTAL	\$1,513,395.00			
			\$1,513,400.00			

MIDDD 922

BULKHEAD REMOVAL

Covers removal and dismantling of 2 11' diameter steel bulkheads, as well as sandbags and geobags from the sewer

Bulkheads were removed between 3/6/05 and 3/13/05 (1 week, overnight shift, 6 divers per shift)

Assume 8 hour shift for two 3-man sewer crews (@ \$287.50/hour each)

7 days x 8 hours x 2 x 287.50 = 32200

Assume \$50,000 to be conservative

MIDDD 923

SEWER TV & CLEANING

From Inland Waters "Speedy Effort Fixes Macomb Interceptor Giant Sinkhole"

Length of Sewer Cleaned = 5,500 LF ("Over 5,000 LF")

From Inland Waters Budget as of 9/30/04:

Clean Pipe = \$532,000 for 2,500 LF = \$212.80 /LF

For 5,500 LF: \$1,170,400.00

REALITY CHECK:

Assume 4' of materials on average must be removed from 5500' of pipe.
 $2 \times 0.5' \times 6.5' \times 4' = 27 \text{ cft/lf} = 1 \text{ cyd/lf}$ (rough estimate)

Assume \$150.00 /LF

For 5,500 LF: \$825,000.00

PAVEMENT RESTORATION

Sheet 23 of Restoration Plan:

Pavement, Rem	461 SY	\$5.00	\$2,305.00
Aggregate Base, 8 inch	401 SY	\$7.00	\$2,807.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	201 SY	\$45.00	\$9,045.00
Conc Pavt, Misc, Nonreinf, 9 inch	200 SY	\$40.00	\$8,000.00
Driveway, Nonreinf Conc, 6 inch	42 SY	\$28.00	\$1,176.00
Sidewalk, Conc, 4 inch	80 SF	\$2.50	\$200.00
Sidewalk Ramp, ADA, 8 inch	80 SF	\$9.00	\$720.00
			<u>\$24,253.00</u> SUBTOTAL

Sheet 24 of Restoration Plan:

Pavement, Rem	3138 SY	\$5.00	\$15,691.11
Underdrain, Subgrade, 6 inch	800 LF	\$7.50	\$6,000.00
Aggregate Base, 8 inch	2967 SY	\$7.00	\$20,769.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	2667 SY	\$45.00	\$120,015.00
Conc Pavt, Misc, Nonreinf, 9 inch	122 SY	\$40.00	\$4,880.00
Driveway, Nonreinf Conc, 6 inch	177 SY	\$28.00	\$4,956.00
Sidewalk, Conc, 4 inch	1550 SF	\$2.50	\$3,875.00
			<u>\$176,186.11</u> SUBTOTAL

Sheet 25 of Restoration Plan:

Pavement, Rem	4599 SY	\$5.00	\$22,996.11
Underdrain, Subgrade, 6 inch	1160 LF	\$7.50	\$8,700.00
Aggregate Base, 8 inch	4194 SY	\$7.00	\$29,358.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	3936 SY	\$45.00	\$177,120.00
Driveway, Nonreinf Conc, 6 inch	431 SY	\$28.00	\$12,068.00
Curb and Gutter	60 LF	\$25.00	\$1,500.00
Sidewalk, Conc, 4 inch	1890 SF	\$2.50	\$4,725.00
Sidewalk Ramp, ADA, 8 inch	80 SF	\$9.00	\$720.00
			<u>\$256,467.11</u> SUBTOTAL

Sheet 26 of Restoration Plan:

Pavement, Rem	2522 SY	\$5.00	\$12,610.56
Aggregate Base, 8 inch	2591 SY	\$7.00	\$18,137.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	1917 SY	\$45.00	\$86,265.00
Conc Pavt, Misc, Nonreinf, 9 inch	574 SY	\$40.00	\$22,960.00
Curb and Gutter	850 LF	\$25.00	\$21,250.00
Sidewalk Ramp, ADA, 8 inch	280 SF	\$9.00	\$2,520.00
			<u>\$117,012.56</u> SUBTOTAL

Sheet 27 of Restoration Plan:

Pavement, Rem	3557 SY	\$5.00	\$17,785.00
Underdrain, Subgrade, 6 inch	800 LF	\$7.50	\$4,500.00
Aggregate Base, 8 inch	4683 SY	\$7.00	\$32,781.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	2697 SY	\$45.00	\$121,365.00
Conc Pavt, Misc, Nonreinf, 9 inch	446 SY	\$40.00	\$17,840.00
Driveway, Nonreinf Conc, 6 inch	340 SY	\$28.00	\$9,520.00
Curb and Gutter	20 LF	\$25.00	\$500.00
Sidewalk, Conc, 4 inch	325 SF	\$2.50	\$812.50
Sidewalk Ramp, ADA, 8 inch	160 SF	\$9.00	\$1,440.00
			<u>\$205,103.50</u> SUBTOTAL

MIDD 925

Sheet 28 of Restoration Plan:

Pavement, Rem	1620 SY	\$5.00	\$8,099.44
Underdrain, Subgrade, 6 inch	390 LF	\$7.50	\$2,925.00
Aggregate Base, 8 inch	1533 SY	\$7.00	\$10,731.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	1404 SY	\$45.00	\$63,180.00
Driveway, Nonreinf Conc, 6 inch	42 SY	\$28.00	\$1,176.00
Sidewalk, Conc, 4 inch	1525 SF	\$2.50	\$3,812.50
Sidewalk Ramp, ADA, 8 inch	40 SF	\$9.00	\$360.00
			<u>\$89,923.94</u> SUBTOTAL

Sheet 29 of Restoration Plan:

Pavement, Rem	1550 SY	\$5.00	\$7,749.44
Underdrain, Subgrade, 6 inch	484 LF	\$7.50	\$3,630.00
Aggregate Base, 8 inch	1465 SY	\$7.00	\$10,255.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	1411 SY	\$45.00	\$63,495.00
Sidewalk, Conc, 4 inch	1250 SF	\$2.50	\$3,125.00
			<u>\$88,254.44</u> SUBTOTAL

\$957,200.67 TOTAL ALL SHEETS
 \$957,200.00

UTILITY RESTORATION

Fiberlink, Inc.	\$62,635.86	8/2005
Comcast	\$82,024.13	3/2005
Consumers	\$7,040.00	3/2005
SBC	\$200,064.37	5/2005
WOW Internet and Cable	\$30,523.50	3/2005
DTE Energy	\$438,940.57	3/2005

Based on when the majority of other utility work was performed

Subtotal	\$821,228.43	Budget as of 9/30 was \$902,000
	\$821,200.00	

8" Diameter D.I. (CI 54) WM	280 LF	\$60.00	\$16,800.00
12" Diameter D.I. (CI 54) WM	147 LF	\$80.00	\$11,760.00
2" Copper Water Service	46 LF	\$20.00	\$920.00
Water Main Connection	4 EA	\$1,500.00	\$6,000.00
10" Diameter Truss	144 LF	\$150.00	\$21,600.00
12" Diameter Truss	375 LF	\$175.00	\$65,625.00
4' Diameter Sanitary Manhole	4 EA	\$3,500.00	\$14,000.00
Manhole Reconstruction	4 EA	\$2,500.00	\$10,000.00
Remove Storm Sewer	98 LF	\$10.00	\$980.00
12" Diameter CL IV RCP	135 LF	\$35.00	\$4,725.00
15" Diameter CL IV RCP	98 LF	\$40.00	\$3,920.00
2' Diameter Inlet	1 EA	\$800.00	\$800.00
3' Diameter Catch Basin	1 EA	\$1,000.00	\$1,000.00
4' Diameter Catch Basin	1 EA	\$1,200.00	\$1,200.00
Structure Adjust	4 EA	\$500.00	\$2,000.00
Repair Irrigation System	1 LS	\$5,000.00	\$5,000.00

Subtotal	\$166,330.00
	\$166,300.00
TOTAL	\$987,558.43
	\$987,600.00

MIDDD 927

LANDSCAPE RESTORATION

Estimated ROW area of disturbance: 5266 SY
 Assumes entire Hayes ROW from 15 Mile to Peggy Court (minus pavt) and temp pavt areas

Parking area	24533 SY		
Remove Gravel Parking	4089 CY	\$3.00	\$12,267.00
Remove Temp Pavement	1172 SY	\$4.00	\$4,688.00
3" Topsoil, all areas	29799 SY	\$2.00	\$59,598.00
Sod (ROW)	5266 SY	\$2.50	\$13,165.00
Seeding (Parking)	24533 SY	\$1.00	\$24,533.00
Villa Fontana Monument Signs	2 Ea	\$10,000.00	\$20,000.00
Trees	71 Ea	\$250.00	\$17,750.00
Flowers (by the gallon)	207 Ea	\$40.00	<u>\$8,280.00</u>
		TOTAL	\$160,281.00
			\$160,300.00

Soil Erosion

Curb & Gutter Inlet Filter	30 Ea	\$150.00	\$4,500.00
Silt Fence	1880 LF	\$1.25	\$2,350.00
Dust Control	1 LS	\$10,000.00	\$10,000.00
Street Sweeping	1 LS	\$15,000.00	\$15,000.00
			<u>\$31,850.00 Total</u>

MIDDD 929

PUBLIC AGENCIES

Assume these cost would have been incurred regardless

Macomb County:	\$343.87	Oct-04
	\$5,684.80	Nov-04
	\$165.00	Dec-04
	\$405.83	Jan-05
	\$214.12	Feb-05
	\$642.50	Mar-05
	\$1,449.91	May-05
	<u>\$202.99</u>	Apr-05
	\$9,109.02	

OMCPW:	\$9,300.00	Nov-04
	<u>\$6,200.00</u>	Aug-05
	\$15,500.00	

Sterling Heights:	\$44,389.84	Feb-05
	\$32,156.28	May-05
	<u>\$33,232.75</u>	Jul-05
	\$109,778.87	

Total:	\$134,387.89
	\$134,400.00

ANDERSON, ECKSTEIN & WESTRICK, INC.	PROJECT: FIFTEEN MILE ROAD INTERCEPTOR
SHELBY TOWNSHIP, MICHIGAN	OWNER: OFFICE OF MACOMB COUNTY PUBLIC WORKS
ESTIMATE OF PROBABLE COST	PREPARED BY: Nancy E. Shirkey, PE DATE: March 18, 2011
AEW JOB NUMBER 0211-0136	CHECKED BY: Roy C. Rose, PE DATE: March 18, 2011

WORK ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
Emergency Work Estimate (Rounded Through September 30, 2004)				\$11,592,700.00
Mobilization (Assume 5%)	1	LS	\$677,400.00	\$677,400.00
Bonds and Insurance (Assume 2%)	1	LS	\$270,960.00	\$270,960.00
Bypass Pumping	9	Months	\$383,800.00	\$3,454,200.00
Dewatering	9	Months	\$65,500.00	\$589,500.00
Monitoring	9	Months	\$70,920.00	\$638,280.00
Ventilation	9	Months	\$18,000.00	\$162,000.00
Security	11	Months	\$28,800.00	\$316,800.00
Traffic Maintenance and Control	1	LS	\$66,600.00	\$66,600.00
Bulkhead 11' Diameter Sewer	2	Ea	\$250,000.00	\$500,000.00
Bulkhead 8' Diameter Sewer (Clinton-Fraser Connection)	1	Ea	\$25,000.00	\$25,000.00
Temporary Earth Retention System	1	LS	\$3,042,000.00	\$3,042,000.00
Reconstruct Access Shaft	1	LS	\$80,000.00	\$80,000.00
Remove and Replace Damaged Pipe	1	LS	\$1,513,400.00	\$1,513,400.00
Bulkhead Removal	1	LS	\$50,000.00	\$50,000.00
Sewer Cleaning and TV Inspection	1	LS	\$825,000.00	\$825,000.00
Pavement Restoration	1	LS	\$957,200.00	\$957,200.00
Utility Restoration - Utility Companies	1	LS	\$821,200.00	\$821,200.00
Utility Restoration - Public Works	1	LS	\$166,300.00	\$166,300.00
Landscape Restoration	1	LS	\$160,300.00	\$160,300.00
Final Cleanup (\$500/Sta)	28	Sta	\$500.00	\$14,000.00
Soil Erosion and Sedimentation Control	1	LS	\$31,850.00	\$31,850.00
City of Sterling Heights, Macomb County, OMCPW	1	LS	\$134,400.00	\$134,400.00
TOTAL ESTIMATED CONSTRUCTION COST				\$26,069,090.00
Engineering (4%)				\$1,043,600.00
Construction Staking, Settlement Checking and As-Builts (1%)				\$260,900.00
Construction Observation (4%)				\$1,043,600.00
Construction Contract Administration (1%)				\$260,900.00
Construction Soils and Materials Testing (0.5%)				\$130,400.00
TOTAL ESTIMATED COST				\$28,828,490.00

BYPASS PUMPING

Total for bypass pumping from Oct 1 through March 31 per DWSD invoices

		-FEI		
October	\$3,226,976.60	\$67,142.87	\$3,159,833.73	
November	\$2,343,437.93	\$4,102.39	\$2,339,335.54	
December	\$1,421,361.73	\$28,781.96	\$1,392,579.77	
January	\$1,129,339.43	\$31,141.49	\$1,098,197.94	
February	\$779,940.39		\$779,940.39	
March	\$488,028.28		\$488,028.28	
	Total		\$9,257,915.65 /6	\$1,542,985.94 Per month
				\$1,543,000.00

Bypass pumping system online by end of September

- 10/7 - Bladder installed in 8' bypass sewer; bladder failed to due pressure
- 10/10 & 10/11 - LDS placed sandbags in the 8' diameter bypass sewer
- 10/12 - Divers discovered some of the sandbags had been knocked down by the current and installed more
- 10/13 - Reset sandbags and installed concrete-filled geobags
- 10/14 - Divers began work on a bulkhead within the 11' diameter sewer, using flyash filled geobags
- 10/18 - Geobag bulkhead in 11' diameter sewer complete
- 10/19 - Installation of the steel bulkhead (in the same location as the geobag bulkhead begins)

REALITY CHECK - From Inland Waters Budget as of 9/30/04

Pump Rental = \$1,807,443.12 for 12 months =	\$150,620.26 /month	
Stand-by Generator = \$857,520 for 12 months =	\$71,460.00 /month	
Stand-by pump rental = \$120,960 for 12 months =	\$10,080.00 /month	
Bypass Pumping Maintenance = \$1,008,000 for 600 days =	\$1,676.67 /day	\$50,300.00 /month
Electrical Service = \$480,000 for 12 months =	\$40,000.00 /month	
Clinton-Fraser Bypass = \$456,000 for 12 months =	\$38,000.00 /month	
+ a fixed cost for the divers to place the bulkheads through the months of October and November @ \$5,000/day		
Assume work every day for six weeks (10/1 through 11/14) = 42 days = \$210,000		
\$210,000/9 months =	\$23,333.33	
Cost per month =	\$383,793.59 /month	
	\$383,800.00	

MIDDD 932

DEWATERING

Total for Mersino dewatering from Oct 1 through March 31 per DWSD invoices

		-Bypass pumping	
October	\$652,723.68	0	\$652,723.68
November	\$444,206.71	88841.34	\$355,365.37
December	\$446,985.03	44698.5	\$402,286.53
January	\$371,704.87	0	\$371,704.87
February	\$364,200.66	0	\$364,200.66
March	\$638,992.67	0	\$638,992.67
			\$2,785,273.78 /6
			\$464,212.30 Per month
			\$464,200.00

REALITY CHECK - From Inland Waters Budget as of 9/30/04

10/5/04 IDR lists 12 dewatering wells in service, Revision #4 (sheet 014) shows 12 wells approx. 100' deep each + 5 observation wells

Maintenance = \$786,400 for 12 months =

\$65,533.33 /month
\$65,500.00

MIDDD 933

MONITORING

Assume 1 person can monitor the observation wells and force main

Assume 9 months
24 hours per day, average 30 days in a month = 720 hours

Assume a graduate engineer at \$98.50 /HR= \$70,920.00 /month

VENTILATION

From Inland Water Budget as of 9/30/04

Ventilation = \$216,000 for 12 months

\$18,000.00 /month

SECURITY

Total for J. Mack Security from Oct 1 through May 31 per DWSD invoices

October	\$77,280.00	
November	\$75,840.00	
December	\$74,880.00	
January	\$77,280.00	
February	\$96,600.00	
March	\$77,280.00	
April	\$77,280.00	
May	\$87,840.00	
	\$644,280.00 /8	\$80,535.00 Per month
		\$80,500.00

For 11 months of security: \$885,500.00

MIDDD 936

Reality Check:
 11 months of security @ 30 days/ month = 330 days
 24 hours per day 7920 hours

\$885,500 equals \$111/hour
 According to <http://www.securityguardservicesguide.com>, fees paid to regular trained guards can be as high as \$30/hr, and armed guards range as high as \$50/hr

Assume \$40/hr
 For 30 days (1 month) = \$28,800.00

TRAFFIC MAINTENANCE AND CONTROL

15 Mile Road was opened to traffic on June 9, 2005

Temporary Pavement for access

Estimated area: 10550 SF
 1172.222 SY

Assume 4" asphalt on 6" base

Asphalt	257.8889 Ton	\$85.00	\$21,920.56
Base	1172.222 SY	\$10.00	<u>\$11,722.22</u>
			\$33,642.78

Per Inland Waters Budget as of 9/30/04:

Barricades = \$36,000 for 12 months = \$3,000.00 /month

After emergency work, roads were closed between October and June 9 (8 months)

For 11 months of closure: \$33,000.00

Lump Sum Temp. roads plus barricades = \$66,642.78
 \$66,600.00

BULKHEAD SEWERS

11' Diameter Sewer - Fabricate and place two 11' diameter steel bulkheads on the east and west ends of collapse

From Inland Waters budget dated 9/30/11:

11' Diameter Bulkhead = \$50,000/Ea

8' Diameter Sewer (Clinton-Fraser Connection)

Based on as-built plan, this sewer was bulkheaded using sandbags at the bottom of the 1st upstream manhole

Conservatively assume \$25,000 for this bulkhead

MIDDD 938

TEMPORARY EARTH RETENTION SYSTEM

Dimension of Recovery Shaft = 28 x 260
 Perimeter of Recovery Shaft = 576 Ft
 Depth of Recovery Shaft = 64 Ft

36" Concrete Piers
 Space 2.5' O.C. 230 Piers 64 feet long
 Area of one pier = 7.065 SF

Volume of one pier = 16.75 CY
 Volume of 230 piers = 3852.5

Support Ex. Tunnel	1 LS	\$110,000.00	\$110,000.00
Excavation	26813 CYD	\$20.00	\$536,260.00
36" Dia. Drilled Piers (Concrete)	3852.5 CYD	\$100.00	\$385,250.00
Steel for Soldier Pile (W18x76)	1118720 Lbs	\$1.25	\$1,398,400.00
Wales (W18x143)	297440 Lbs	\$1.25	\$371,800.00
Struts (W18x143)	192192 Lbs	\$1.25	<u>\$240,240.00</u>
			\$3,041,950.00
			\$3,042,000.00

Assumes no salvage on the steel bracing system

RECONSTRUCT ACCESS SHAFT

Construct the west bulkhead shaft around the existing sanitary manhole as shown on sheet 29

Construction procedure appears to be very similar to the intermediate manhole shafts on the NGI-1
Cost of intermediate shafts = Approx. \$80,000/Ea

REMOVE/REPLACE PIPE

Assume excavation was performed under "Temporary Earth Retention"

Pipe Removal

230 LF	\$550.00	\$126,500.00
1 LS	\$230,000.00	\$230,000.00
	SUBTOTAL	\$356,500.00

From budget, adjusted to cut labor cost in half and remove material cost
Taken from "Angle Grout" on Inland Waters 9/30/04 budget

Pipe Replacement

2' Thick Concrete Base Slab	\$140.00	\$94,920.00
6.5' Thick Concrete Cradle	\$80.00	\$175,920.00
11' I.D. MDOT C-76 CIV RCP	\$1,250.00	\$287,500.00
10.6' Thick Cement/Fiyash Fill	\$65.00	\$230,425.00
Class II Backfill (5' deep)	\$10.00	\$268,130.00
Connect Sewer to Existing	\$50,000.00	<u>\$100,000.00</u>
	SUBTOTAL	\$1,156,895.00

Unit price from Inland Waters budget dated 9/30/04

From Inland Waters budget dated 9/30/04

Unit price from Inland Waters budget dated 9/30/04

From Inland Waters budget dated 9/30/04

TOTAL		\$1,513,395.00
		\$1,513,400.00

MIDDD 941

BULKHEAD REMOVAL

Covers removal and dismantling of 2 11' diameter steel bulkheads, as well as sandbags and geobags from the sewer

Bulkheads were removed between 3/6/05 and 3/13/05 (1 week, overnight shift, 6 divers per shift)

Assume 8 hour shift for two 3-man sewer crews (@ \$287.50/hour each)

7 days x 8 hours x 2 x 287.50 = 32200

Assume \$50,000 to be conservative

MIDDD 942

SEWER TV & CLEANING

From Inland Waters "Speedy Effort Fixes Macomb Interceptor Giant Sinkhole"

Length of Sewer Cleaned = 5,500 LF ("Over 5,000 LF")

From Inland Waters Budget as of 9/30/04:

Clean Pipe = \$532,000 for 2,500 LF = \$212.80 /LF

For 5,500 LF: \$1,170,400.00

REALITY CHECK:

Assume 4' of materials on average must be removed from 5500' of pipe.

$2 \times 0.5' \times 6.5' \times 4' = 27 \text{ cft/lf} = 1 \text{ cyd/lf}$ (rough estimate)

Assume \$150.00 /LF

For 5,500 LF: \$825,000.00

PAVEMENT RESTORATION

Sheet 23 of Restoration Plan:

Pavement, Rem	461 SY	\$5.00	\$2,305.00
Aggregate Base, 8 inch	401 SY	\$7.00	\$2,807.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	201 SY	\$45.00	\$9,045.00
Conc Pavt, Misc, Nonreinf, 9 inch	200 SY	\$40.00	\$8,000.00
Driveway, Nonreinf Conc, 6 inch	42 SY	\$28.00	\$1,176.00
Sidewalk, Conc, 4 inch	80 SF	\$2.50	\$200.00
Sidewalk Ramp, ADA, 8 inch	80 SF	\$9.00	\$720.00
			<u>\$24,253.00</u> SUBTOTAL

Sheet 24 of Restoration Plan:

Pavement, Rem	3138 SY	\$5.00	\$15,691.11
Underdrain, Subgrade, 6 inch	800 LF	\$7.50	\$6,000.00
Aggregate Base, 8 inch	2967 SY	\$7.00	\$20,769.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	2667 SY	\$45.00	\$120,015.00
Conc Pavt, Misc, Nonreinf, 9 inch	122 SY	\$40.00	\$4,880.00
Driveway, Nonreinf Conc, 6 inch	177 SY	\$28.00	\$4,956.00
Sidewalk, Conc, 4 inch	1550 SF	\$2.50	\$3,875.00
			<u>\$176,186.11</u> SUBTOTAL

Sheet 25 of Restoration Plan:

Pavement, Rem	4599 SY	\$5.00	\$22,996.11
Underdrain, Subgrade, 6 inch	1160 LF	\$7.50	\$8,700.00
Aggregate Base, 8 inch	4194 SY	\$7.00	\$29,358.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	3936 SY	\$45.00	\$177,120.00
Driveway, Nonreinf Conc, 6 inch	431 SY	\$28.00	\$12,068.00
Curb and Gutter	60 LF	\$25.00	\$1,500.00
Sidewalk, Conc, 4 inch	1890 SF	\$2.50	\$4,725.00
Sidewalk Ramp, ADA, 8 inch	80 SF	\$9.00	\$720.00
			<u>\$256,467.11</u> SUBTOTAL

Sheet 26 of Restoration Plan:

Pavement, Rem	2522 SY	\$5.00	\$12,610.56
Aggregate Base, 8 inch	2591 SY	\$7.00	\$18,137.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	1917 SY	\$45.00	\$86,265.00
Conc Pavt, Misc, Nonreinf, 9 inch	574 SY	\$40.00	\$22,960.00
Curb and Gutter	850 LF	\$25.00	\$21,250.00
Sidewalk Ramp, ADA, 8 inch	280 SF	\$9.00	\$2,520.00
			<u>\$117,012.56</u> SUBTOTAL

Sheet 27 of Restoration Plan:

Pavement, Rem	3557 SY	\$5.00	\$17,785.00
Underdrain, Subgrade, 6 inch	600 LF	\$7.50	\$4,500.00
Aggregate Base, 8 inch	4683 SY	\$7.00	\$32,781.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	2697 SY	\$45.00	\$121,365.00
Conc Pavt, Misc, Nonreinf, 9 inch	446 SY	\$40.00	\$17,840.00
Driveway, Nonreinf Conc, 6 inch	340 SY	\$28.00	\$9,520.00
Curb and Gutter	20 LF	\$25.00	\$500.00
Sidewalk, Conc, 4 inch	325 SF	\$2.50	\$812.50
Sidewalk Ramp, ADA, 8 inch	160 SF	\$9.00	\$1,440.00
			<u>\$205,103.50</u> SUBTOTAL

MIDDD 944

Sheet 28 of Restoration Plan:

Pavement, Rem	1620 SY	\$5.00	\$8,099.44
Underdrain, Subgrade, 6 inch	390 LF	\$7.50	\$2,925.00
Aggregate Base, 8 inch	1533 SY	\$7.00	\$10,731.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	1404 SY	\$45.00	\$63,180.00
Driveway, Nonreinf Conc, 6 inch	42 SY	\$28.00	\$1,176.00
Sidewalk, Conc, 4 inch	1525 SF	\$2.50	\$3,812.50
Sidewalk Ramp, ADA, 8 inch	40 SF	\$9.00	\$360.00
			<u>\$89,923.94</u> SUBTOTAL

Sheet 29 of Restoration Plan:

Pavement, Rem	1550 SY	\$5.00	\$7,749.44
Underdrain, Subgrade, 6 inch	484 LF	\$7.50	\$3,630.00
Aggregate Base, 8 inch	1465 SY	\$7.00	\$10,255.00
Conc Pavt with Integral Curb, Nonreinf, 9 inch	1411 SY	\$45.00	\$63,495.00
Sidewalk, Conc, 4 inch	1250 SF	\$2.50	\$3,125.00
			<u>\$88,254.44</u> SUBTOTAL

\$957,200.67 TOTAL ALL SHEETS
 \$957,200.00

UTILITY RESTORATION

Fiberlink, Inc.	\$62,635.86	8/2005
Comcast	\$82,024.13	3/2005
Consumers	\$7,040.00	3/2005
SBC	\$200,064.37	5/2005
WOW Internet and Cable	\$30,523.50	3/2005
DTE Energy	\$438,940.57	3/2005

Based on when the majority of other utility work was performed

Budget as of 9/30 was \$902,000

Subtotal	\$821,228.43
	\$821,200.00

8" Diameter D.I. (Cl 54) WM	280 LF	\$50.00	\$16,800.00
12" Diameter D.I. (Cl 54) WM	147 LF	\$80.00	\$11,760.00
2" Copper Water Service	46 LF	\$20.00	\$920.00
Water Main Connection	4 EA	\$1,500.00	\$6,000.00
10" Diameter Truss	144 LF	\$150.00	\$21,600.00
12" Diameter Truss	375 LF	\$175.00	\$65,625.00
4' Diameter Sanitary Manhole	4 EA	\$3,500.00	\$14,000.00
Manhole Reconstruction	4 EA	\$2,500.00	\$10,000.00
Remove Storm Sewer	98 LF	\$10.00	\$980.00
12" Diameter CL IV RCP	135 LF	\$35.00	\$4,725.00
15" Diameter CL IV RCP	98 LF	\$40.00	\$3,920.00
2' Diameter Inlet	1 EA	\$800.00	\$800.00
3' Diameter Catch Basin	1 EA	\$1,000.00	\$1,000.00
4' Diameter Catch Basin	1 EA	\$1,200.00	\$1,200.00
Structure Adjust	4 EA	\$500.00	\$2,000.00
Repair Irrigation System	1 LS	\$5,000.00	\$5,000.00

Subtotal	\$166,330.00
	\$166,300.00

TOTAL	\$987,558.43
	\$987,600.00

MIDDD 946

LANDSCAPE RESTORATION

Estimated ROW area of disturbance: 5266 SY
 Assumes entire Hayes ROW from 15 Mile to Peggy Court (minus pavt) and temp pavt areas

Parking area	24533 SY		
Remove Gravel Parking	4089 CY	\$3.00	\$12,267.00
Remove Temp Pavement	1172 SY	\$4.00	\$4,688.00
3" Topsoil, all areas	29799 SY	\$2.00	\$59,598.00
Sod (ROW)	5266 SY	\$2.50	\$13,165.00
Seeding (Parking)	24533 SY	\$1.00	\$24,533.00
Villa Fontana Monument Signs	2 Ea	\$10,000.00	\$20,000.00
Trees	71 Ea	\$250.00	\$17,750.00
Flowers (by the gallon)	207 Ea	\$40.00	<u>\$8,280.00</u>
		TOTAL	\$160,281.00
			\$160,300.00

Soil Erosion

Curb & Gutter Inlet Filter	30 Ea	\$150.00	\$4,500.00
Silt Fence	1880 LF	\$1.25	\$2,350.00
Dust Control	1 LS	\$10,000.00	\$10,000.00
Street Sweeping	1 LS	\$15,000.00	\$15,000.00
			<u>\$31,850.00</u> Total

PUBLIC AGENCIES

Assume these cost would have been incurred regardless

Macomb County:	\$343.87	Oct-04
	\$5,684.80	Nov-04
	\$165.00	Dec-04
	\$405.83	Jan-05
	\$214.12	Feb-05
	\$642.50	Mar-05
	\$1,449.91	May-05
	<u>\$202.99</u>	Apr-05
	\$9,109.02	

OMCPW:	\$9,300.00	Nov-04
	<u>\$6,200.00</u>	Aug-05
	\$15,500.00	

Sterling Heights:	\$44,389.84	Feb-05
	\$32,156.28	May-05
	<u>\$33,232.75</u>	Jul-05
	\$109,778.87	

Total:	\$134,387.89	
	\$134,400.00	

In The Matter Of:
In Re: City of Detroit, Michigan

Ramesh C. Shukla
July 09, 2014



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: _____) Case No. 13-53845
CITY OF DETROIT, MICHIGAN)
) Chapter 9
Debtor)
_____) Hon. Steven W. Rhodes

The Deposition of RAMESH C. SHUKLA,
Taken at 150 W. Jefferson Avenue, Suite 2500,
Detroit, Michigan,
Commencing at 1:25 p.m.,
Wednesday, July 9, 2014,
Before Melinda S. Moore, CSR-2258.

Page 3

1 ARTHUR H. RUEGGER
2 Salans FMC SNR Denton
3 1221 Avenue of the Americas
4 New York, New York 10020
5 212.768.6881
6 arthur.ruegger@dentons.com
7 Appearing on behalf of the
8 Official Committee of Retirees
9 of the City of Detroit.

Page 2

1 APPEARANCES:
2
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11 Drain Drainage District.
12
13 JEROME R. WATSON (P27082)
14 M. MISBAH SHAHID (P73450)
15 Miller Canfield Paddock & Stone, PLC
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22 Appearing on behalf of the City of
23 Detroit and the Witness.
24
25

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Page 5

1 Detroit, Michigan
 2 Wednesday, July 9, 2014
 3 1:25 p.m.
 4 (Mr. Ruegger not present at 1:25
 5 p.m.)
 6 RAMESH C. SHUKLA,
 7 was thereupon called as a witness herein, and
 8 after having first been duly sworn to testify to
 9 the truth, the whole truth and nothing but the
 10 truth, was examined and testified as follows:
 11 **EXAMINATION**
 12 **BY MS. BADALAMENTI:**
 13 Q. Sir, can you state your name for the record.
 14 **A. Yeah. My name is Ramesh Shukla, R-a-m-e-s-h.**
 15 **S-h-u-k-l-a, that's my last name.**
 16 Q. And do you go by R.C. Shukla?
 17 **A. Yeah. C is my middle initial.**
 18 Q. What does it stand for?
 19 **A. It's stands for C-h-a-n-d-e-r.**
 20 Q. Are you currently employed?
 21 **A. No. I'm retired.**
 22 Q. When did you retire?
 23 **A. March 2012.**
 24 Q. Where did you retire from?
 25 **A. From City of Detroit Water and Sewerage**

Page 6

1 **Department.**
 2 Q. What is your educational background? Do you hold
 3 any degrees?
 4 **A. I have a bachelor's in engineering and I have got**
 5 **a master's in business administration.**
 6 Q. From where did you get your bachelor's?
 7 **A. I did both of them in India.**
 8 Q. Do you hold any other certifications?
 9 **A. Professional engineer from State of Michigan.**
 10 Q. Any other certifications or licenses that you
 11 hold?
 12 **A. No.**
 13 Q. Have you ever been a party to a civil lawsuit?
 14 **A. I don't understand the question. What --**
 15 Q. Have you ever been sued or sued anybody?
 16 **A. No, I've not sued anybody, nor anybody has sued**
 17 **me.**
 18 Q. Have you ever been charged with a crime?
 19 **A. No.**
 20 Q. When did you become employed with the Detroit
 21 Water and Sewerage Department?
 22 **A. 1988.**
 23 Q. And what was the position you took in 1988?
 24 **A. I joined as a junior mechanical engineer, the**
 25 **bottom rung, the first one.**

Page 7

1 Q. And were you promoted at some point?
 2 **A. Yeah, I got promotions in between, yeah.**
 3 Q. What other positions did you hold?
 4 **A. Ultimately I ended up as assistant director of**
 5 **engineering.**
 6 Q. And when did you get that position?
 7 **A. I think it was in 2006.**
 8 Q. Who was the assistant director of engineering
 9 before you?
 10 **A. His name was Gregory White -- Greg White.**
 11 Q. And where did he go when you took that position?
 12 **A. I don't know. He just left the city. I'm not**
 13 **sure where he went.**
 14 Q. Do you know if he retired?
 15 **A. No, he just resigned and left.**
 16 Q. Prior to being employed with the Detroit Water
 17 and Sewerage Department, where were you employed?
 18 **A. This is like my first job in the States. I came**
 19 **to the States in August 1988, joined the city in**
 20 **November '88. That's when I started.**
 21 Q. Have you been employed since -- in any capacity
 22 since retiring from the city?
 23 **A. I worked for one company in Toledo for about**
 24 **10 months. It's a private company -- HVAC**
 25 **company.**

Page 8

1 Q. What's the name of the company?
 2 **A. Frische-Mullin, F-r-i-s-c-h-e-M-u-l-l-i-n.**
 3 Q. What would your job duties have entailed once you
 4 took the assistant director of engineering
 5 position in 2006?
 6 **A. The description of my job, is that what you're**
 7 **saying.**
 8 Q. Yes.
 9 **A. I was in charge of engineering, which means**
 10 **looking out for all the functions that were done**
 11 **in the engineering department, like planning,**
 12 **design, consultants -- you know, hiring of the**
 13 **consultants and all that, basically getting the**
 14 **work done by the consultants, bidding the projects**
 15 **out for construction, managing construction,**
 16 **payments, the whole thing.**
 17 Q. When you say "hiring consultants," would those be
 18 engineering consultants?
 19 **A. Engineering consultants.**
 20 Q. Would you hire contractors and subcontractors to
 21 actually perform the work?
 22 **A. I wouldn't hire them, but I will get the work done**
 23 **from the consultants and contractors that was**
 24 **hired by the city -- by the department.**
 25 Q. Did you ever sign contracts on behalf of the

Page 9

1 defendant -- or the city?
 2 **A. No.**
 3 Q. What was the process by which consultants were
 4 selected by you or approved by the city during
 5 that time period?
 6 **A. I said I did not select any consultants.**
 7 Q. Okay.
 8 **A. The process normally -- normally the process is**
 9 **that the consultant contracts are advertised by**
 10 **our contracting and grants department. They get**
 11 **all the quotations; they get all the proposals,**
 12 **are proposal type and all that, and the proposals**
 13 **will be evaluated -- the evaluation of the**
 14 **engineering part of the proposal, my group will be**
 15 **involved in that. We would evaluate that and give**
 16 **the recommendation to contracts and grants. They**
 17 **will do all the further work. They'll select the**
 18 **consultant, get it approved by the board and the**
 19 **council.**
 20 **Once the consultant is given a start**
 21 **work order, my work starts. Then they work under**
 22 **me.**
 23 Q. What was the method by which you would evaluate
 24 the consultants or the proposals that were given
 25 to you?

Page 10

1 **A. Technical evaluation and all that.**
 2 Q. Was there a rating system?
 3 **A. There used to be a rating and weighting system --**
 4 **yes, weight system.**
 5 Q. Before you answered that question, you told me
 6 normally there's a bidding process. Was it ever
 7 the case there was not a bidding process?
 8 **A. I don't remember any time when it was not done by**
 9 **the open advertisement. And I wouldn't rule out**
 10 **anything, but I don't remember anybody that we**
 11 **selected that was not advertised.**
 12 Q. What position did you hold in -- immediately
 13 prior to being the assistant director of
 14 engineering?
 15 **A. Before that for almost 10 months I was the interim**
 16 **general superintendent of engineering, and that**
 17 **happened in 2005.**
 18 Q. And how would those job duties have been
 19 different, if at all, from the position that you
 20 got in 2006?
 21 **A. More or less the same thing.**
 22 Q. I'm sorry?
 23 **A. It's more or less similar. Because position was**
 24 **vacant, so they gave me that position right away.**
 25 **And they promoted me to the AD after that.**

Page 11

1 Q. How about prior to being the interim general
 2 superintendent?
 3 **A. Before that, my designation was field engineer.**
 4 Q. And how long did you hold that position?
 5 **A. From 1998 till 2005. Seven years.**
 6 Q. Did you have any oversight responsibilities as a
 7 field engineer over the department?
 8 **A. Over site of what?**
 9 Q. Over site of the engineering department.
 10 **A. No. No. No. We had a specific role. My job was**
 11 **oversight of the construction activities. That**
 12 **was my job those days.**
 13 Q. Okay. Who did you report to when you were in the
 14 position of field engineer?
 15 **A. I had a head engineer which was in charge of my**
 16 **section. I was reporting to him.**
 17 Q. Who was that?
 18 **A. You want his name?**
 19 Q. Yes.
 20 **A. His name was K.V.; those are initials. Last name**
 21 **is Ramachandran, R-a-m-a-c-h-a-n-d-r-a-n. He was**
 22 **there at the time.**
 23 Q. How about when you held the position of interim
 24 general superintendent, who did you report to?
 25 **A. I reported to our deputy director, which was Gary**

Page 12

1 **Fujita, F-u-j-i-t-a.**
 2 Q. Is as the assistant director of engineering, who
 3 did you report to?
 4 **A. I reported to Gary Fujita. He was the deputy**
 5 **director.**
 6 Q. Who did Fujita report to?
 7 **A. The director, Mr. Mercado.**
 8 **MR. WATSON:** Are you asking for any
 9 specific time period here?
 10 **BY MS. BADALAMENTI:**
 11 Q. Did that change at any point?
 12 **A. You mean change what?**
 13 Q. We've talked about the time period from 1998
 14 until the time that you retired. Did Mr. Fujita
 15 hold the position of deputy director?
 16 (Mr. Ruegger present at 1:36
 17 p.m.)
 18 **THE WITNESS:** No. No. There were
 19 other people during that time. I think Gary
 20 became the deputy sometime in the mid-90s or
 21 something like that. There were other people
 22 before that.
 23 **BY MS. BADALAMENTI:**
 24 Q. In the course of your employment with the
 25 engineering department, did you become familiar

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1 with a firm known as Inland -- Inland Waters?
 2 **A. Yes.**
 3 Q. Did Inland Waters -- when you were field
 4 engineer, did you oversee any project that was
 5 being done by Inland Waters?
 6 **A. Yeah. They did some work for us, yeah.**
 7 Q. What projects were you involved with as a project
 8 engineer for Inland Waters?
 9 **A. One of the projects was the construction of a**
 10 **water main in Ypsilanti Township. The project**
 11 **number was WS-360C.**
 12 Q. Any others you remember?
 13 **A. I don't remember a whole lot of projects. This**
 14 **was one of the major projects.**
 15 Q. How about when you were the interim general
 16 superintendent, was there any project with Inland
 17 Waters that you recall being involved with?
 18 **A. As part of the interim general superintendent of**
 19 **engineering, all the projects that were done in**
 20 **the city engineering department, they were all**
 21 **under me. Inland Waters was doing the -- what**
 22 **they call the sewer repair project, CS-1368, if**
 23 **that's what you mean. That's what they were**
 24 **doing.**
 25 Q. So what would your role have been with respect to

Page 14

1 oversight or involvement in CS-1368?
 2 **A. No. As I said, I was in charge of the whole**
 3 **department -- whole section.**
 4 Q. I understand that.
 5 **A. CS-1369 was being overseen by the field**
 6 **engineering group and the design group, and then**
 7 **they were all reporting to me.**
 8 Q. So your department would be overseeing CS-1368?
 9 **A. Right.**
 10 Q. Okay. And that oversight, what types of things
 11 would you be doing? When you say the word
 12 "oversight," what --
 13 **A. Basically issue them the task orders for work in**
 14 **various locations in terms of collapse, blockage.**
 15 **That was their kind of work they were doing, and**
 16 **then whatever we need to do in order to repair**
 17 **that. Whether we need to dig it up, put a new**
 18 **pipe in or put some kind of lining system, that**
 19 **was part of the job.**
 20 Q. So would your department actually prepare the
 21 task order for --
 22 **A. Yeah, we prepared the task order, yes.**
 23 Q. Who determined the price associated or the cost
 24 associated with the task order?
 25 **A. There were prices in the contract and all, in the**

Page 15

1 **document, pipe sizes and footages and all that.**
 2 **So they went and did the investigation and found**
 3 **the size of the pipe, how deep it is, what kind of**
 4 **material it is. Based on that, based on the price**
 5 **that was in the contract documents and all, they**
 6 **will give us a price for that. We approve the**
 7 **price or we negotiate, whatever we need to do.**
 8 Q. The price is determined before the work is done?
 9 **A. Unit prices were there in the contract.**
 10 Q. Did you have occasion to personally speak to
 11 anyone at Inland during your involvement in
 12 CS-1368?
 13 **A. Actually personally -- what do you mean by**
 14 **personally?**
 15 Q. A few minutes ago you told me your department
 16 over saw the construction. So my question is:
 17 Did you have any one-on-one contact with anybody
 18 from Inland Waters?
 19 **A. I mean, as part of the -- as in charge of the**
 20 **section, no. I knew all the contractors and**
 21 **subcontractors. I knew their project managers. I**
 22 **met them when they came for some meetings. So I**
 23 **did talk to them.**
 24 Q. Was there a time during 1368 -- the
 25 implementation of 1368 where you became the

Page 16

1 person that was out at the site while the work
 2 was being done?
 3 **MR. WATSON:** Are you talking about once
 4 we get into the sinkhole and the repairs?
 5 **THE WITNESS:** The sinkhole, is that
 6 what you're talking about?
 7 **BY MS. BADALAMENTI:**
 8 Q. With respect to 1368, the sewer lining contract,
 9 was there ever a point in time before that
 10 contract had any amendments issued that you were
 11 the person that was out at the job site looking
 12 at work that was being done?
 13 **A. Okay. I'll answer it this way: I was personally**
 14 **involved -- personally I was in charge of one of**
 15 **the projects when I was not the assistant director**
 16 **or interim general superintendent of engineering.**
 17 **At that time I was field engineer. That was the**
 18 **sinkhole in 15 Mile Road between Hayes and**
 19 **Schoenherr.**
 20 Q. So as the field engineer, the position that you
 21 held, was that till 2005?
 22 **A. 2004 and '05.**
 23 Q. So you were the field engineer and that was your
 24 designated project?
 25 **A. That was my project, yes. I was the project**

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1 **manager on that job.**
 2 Q. Was there a team underneath you?
 3 A. **Yes.**
 4 Q. Who else was involved?
 5 A. **I had two other engineers working for me, and then**
 6 **two inspectors.**
 7 Q. What are their names?
 8 A. **The engineers are one George Rayes, R-a-y-e-s.**
 9 **The other name was Casey Mansour, M-a-n-s-o-u-r.**
 10 **The inspectors was Charles George -- and I'm**
 11 **forgetting the name of the other guy. There was**
 12 **one more. I don't remember his name, though.**
 13 Q. So as the project manager what would your duties
 14 have entailed out at the sinkhole?
 15 A. **My duty was to supervise the -- not supervise --**
 16 **yeah, that's right, supervise the day-to-day**
 17 **construction work going on there.**
 18 Q. So were you out there all day every day?
 19 A. **I was there every day.**
 20 Q. Who was the lead contractor who was overseeing
 21 all the subs?
 22 A. **Lead contractor of CS-1368 was Inland Waters.**
 23 **That was the name of the contract, 1368.**
 24 Q. Is that what you observed to be the case out
 25 there? Was Inland actually the one holding the

Page 18

1 morning meetings and coordinating the work?
 2 A. **Yes, we had daily meetings.**
 3 Q. Inland Waters held those meetings?
 4 A. **Inland Waters was in charge of the meetings, yes.**
 5 Q. Who from Inland Waters would have been in charge?
 6 A. **The main person was Walter Rozycki, R-o-z-y-c-k-i.**
 7 **And then they have another project manager who**
 8 **came from time to time, not every day. His name**
 9 **was Dennis Oszust, O-s-z-u-s-t. He was not there**
 10 **every day, but Walter was there every day.**
 11 Q. Were you involved at all when the 1368 Amendment
 12 2 -- when the terms and conditions of that were
 13 negotiated and arrived at and the amendment was
 14 actually executed?
 15 A. **Amendment of the original contract?**
 16 Q. Right, Amendment 2 of 1368. Were you involved in
 17 that process?
 18 A. **We had quite a few amendments. Which one are you**
 19 **talking about? Which year?**
 20 Q. Let me pull it out for you.
 21 A. **Yeah, please.**
 22 **MS. BADALAMENTI:** I'm going to mark as
 23 Exhibit 1 a package of documents that the front
 24 page reads Amendment No. 2, Contract No. CS-1368.
 25 **MARKED FOR IDENTIFICATION:**

Page 19

1 DEPOSITION EXHIBIT 1
 2 1:45 p.m.
 3 **THE WITNESS:** Is there a board letter
 4 here? Just the legal documents.
 5 **MR. WATSON:** It's the same thing you're
 6 looking at.
 7 **THE WITNESS:** It's the same thing?
 8 **BY MS. BADALAMENTI:**
 9 Q. Yes.
 10 A. **This is amendment for the \$35 million? Is that --**
 11 Q. I'm asking you, is this the amendment?
 12 A. **I don't see --**
 13 Q. Do you recognize this to be Amendment 2 to
 14 CS1368? If it's not, it's not. I just need to
 15 know that from you.
 16 A. **I think I remember this amendment. I remember**
 17 **seeing this. I was not the one who presented it**
 18 **to the board, but I did go through this, yes. 35**
 19 **million, the original --**
 20 Q. The page on the top that reads page 3 of the
 21 contract, there's the reference to the
 22 \$35 million that you asked about.
 23 A. **Yeah, I saw that.**
 24 Q. Is it your understanding that Amendment 2 to
 25 CS-1368 was for \$35 million?

Page 20

1 A. **Yes, that's what it says.**
 2 Q. Were you involved in the negotiation --
 3 A. **No.**
 4 Q. -- of --
 5 A. **No, I was not involved in the negotiation. I**
 6 **remember this one. I remember this one.**
 7 Q. Do you know who was involved in the negotiation?
 8 A. **It must be the contracts and grants group. They**
 9 **do all the negotiations. And some people from**
 10 **engineering department may be part of it, but not**
 11 **my group, because I was field engineer those days.**
 12 Q. So did anybody come to you and ask you about
 13 Amendment 2 before it was entered into?
 14 A. **I don't remember that. I don't know. I don't**
 15 **remember that specifically. But I know it's**
 16 **involved in sinkhole. I remember that.**
 17 Q. When you use the term "sinkhole," what are you
 18 referring to?
 19 A. **15 Mile and Hayes sewer collapse.**
 20 Q. And the sinkhole was repaired under the terms of
 21 this Amendment 2; is that right?
 22 A. **Under the terms of this amendment, yes.**
 23 Q. The last six pages of this document, can you flip
 24 to that. It begins with Exhibit B-2, Costing
 25 Summary.

Page 21

1 A. Costing Summary, um-hmm.
 2 Q. Do you recognize this document?
 3 A. Yeah, I do, this page.
 4 Q. This is a document that you prepared. Is that
 5 your signature on the bottom of it?
 6 A. That's my signature. Prepared by my engineer, but
 7 my signature is on there, right.
 8 Q. What engineer would have prepared it?
 9 A. George Rayes, the guy that was working with me.
 10 Q. And what was the purpose of this document?
 11 A. Some of the item that -- like overtime, overtime
 12 was not specifically specified in the contract
 13 documents 1368. Since we are working 24 hours a
 14 day, we had to set up some price -- not exactly
 15 price, but how do we pay for the overtime and all
 16 that, consultants' hours, and how we are going to
 17 pay and all that. That was not specified in the
 18 original document. So this document is to, you
 19 know, give some direction to the contract, which
 20 is 1368, how will we pay for their labor and the
 21 materials if they were to do something on that.
 22 That's why we did that.
 23 Q. Was this something that you were requested to
 24 prepare?
 25 A. This is something the contractor asked for because

Page 22

1 he was saying how will I pay these guys, how will
 2 I pay for the overtime. We clarified that and we
 3 told him this is how we are going to pay for that.
 4 Q. Do you remember the date that the sinkhole
 5 occurred?
 6 A. Sinkhole occurred on August 24, 2004.
 7 Q. This document is dated September 20th of 2004.
 8 A. Right.
 9 Q. How were these things being charged prior to
 10 that?
 11 A. When we started that, the CS-1368 contract, the
 12 contractor was selected to do this job. Until
 13 September 20, 2004, they had not given us any
 14 estimate to pay for that. They incurred the cost.
 15 It was all at their expense. Of course, they were
 16 making notes of what they were doing every day.
 17 When the time came to make the first invoice and
 18 all that, this issue came up, and that's when we
 19 clarified. If I remember, that first payment we
 20 made to them was sometime the end of September or
 21 early October, when we processed the first invoice
 22 for them.
 23 Q. So did this result in the allowance of the
 24 charges that they submitted or did this result in
 25 a change of what had already been submitted?

Page 23

1 A. Nothing was submitted to us before that. Based on
 2 this document, they prepared the first invoice as
 3 to how to charge for the hours.
 4 Q. Are the line items in this document something
 5 that has ever been approved or implemented with
 6 respect to another DWSD contract?
 7 A. Yeah, there were others.
 8 Q. What other contracts were there?
 9 A. Every contract has the same language. It's in the
 10 specification book.
 11 Q. As this costing supplement?
 12 A. Pardon me?
 13 Q. Every DWSD contract has a costing supplement like
 14 this?
 15 A. They have some kind of language which says that
 16 time will be paid like this. There are clauses in
 17 the contract. That's what I'm trying to say.
 18 DWSD.
 19 Q. So there are clauses in the contract or there is
 20 a costing supplement that's always used?
 21 A. There are clauses in the contract.
 22 Q. Okay. Do you know why there wasn't clauses in
 23 this contract?
 24 A. I don't know why it was omitted. It should have
 25 been, but I do not know why it was not there.

Page 24

1 Q. There is -- in section 2 of this letter it
 2 indicates that a 15% markup on overtime for
 3 direct labor would be allowed.
 4 A. Um-hmm.
 5 Q. Is that something that had been allowed by DWSD
 6 in other contracts?
 7 A. That's right.
 8 Q. And the reference to contractor invoices, what
 9 does that section mean? "Mobilization and
 10 demobilization will be a maximum of 5%" --
 11 A. "...of total invoice." See, the way this CS-1368,
 12 I don't know how they -- I mean, I didn't write
 13 the specifications for that contract, but
 14 mobilization and demobilization was not addressed
 15 as part of the contract. This is the language
 16 that we have in every other contract, that 5% will
 17 be the total maximum cap on the mobilization and
 18 demobilization. We brought the clause into this
 19 contract which wasn't there before.
 20 Q. So the -- in your opinion, CS-1368 didn't have
 21 any language like this. It wasn't that it had
 22 different language; it was that it didn't have
 23 any?
 24 A. These were not there. If remember that correctly,
 25 these four items were not there.

1 Q. The next page is a correspondence from Victor
 2 Mercado going to Robert Williams at Inland
 3 Waters. Have you ever seen this document before?
 4 **A. Yeah, I've seen that.**
 5 Q. What is this document? What do you know it to
 6 be?
 7 **A. I think this is a kind of a letter telling them**
 8 **that Amendment No. 2 is going to be -- it's**
 9 **already approved, but it's going -- April 2005 was**
 10 **already approved, so this is giving them the**
 11 **letter saying your amendment is approved, if you**
 12 **agree to that, sign here and all that, and then**
 13 **back to us. This is a letter of authority kind of**
 14 **thing.**
 15 Q. So this correspondence April 4, 2005 is
 16 indicating to Inland Waters, as you understand
 17 it, Amendment 2 is approved?
 18 **A. Yeah. You know why?**
 19 Q. I'm not asking you why. Why does it issue in
 20 April of '05?
 21 **A. I takes time to get the amendment approved through**
 22 **the board and the Board of Water Commissioners and**
 23 **the council. If we did the amendment in**
 24 **September, then it has to go to the board and go**
 25 **to council. It takes almost three to six months,**

1 **and that's what it took. I'm not trying to be**
 2 **over smart. I'm just telling you how the**
 3 **system -- this is how long it takes.**
 4 Q. If you go back a few pages, the contract
 5 Amendment 2 has a signature page, and it
 6 indicates this contract was approved by City
 7 Council, and there's a signature, and there's a
 8 date and the date is 12/30 of '04.
 9 **A. Which page are we talking about?**
 10 Q. It looks like this.
 11 **A. Oh.**
 12 Q. It reads at the top page S-1.
 13 **MR. WATSON:** S-1?
 14 **MS. BADALAMENTI:** S-1, yes.
 15 **BY MS. BADALAMENTI:**
 16 Q. Do you see those dates on those signatures?
 17 There's two dates actually in December of '04.
 18 Do you understand that the amendment was not
 19 approved in December '04? You understand that
 20 the time was different?
 21 **A. No, this say the amendment was approved, signed by**
 22 **the City Council 12/30/04, yeah.**
 23 Q. And we don't see Mr. Mercado's letter. The
 24 letter we were looking at to Inland Waters, it's
 25 dated April 4th of 2005.

1 **A. The letter was issued late. I don't know why, but**
 2 **it was issued late.**
 3 Q. It wasn't because the Amendment 2 was waiting for
 4 approval by City Council, though; is that fair to
 5 say?
 6 **MR. WATSON:** Object to foundation. The
 7 witness can answer, if he can.
 8 **BY MS. BADALAMENTI:**
 9 Q. You can answer.
 10 **A. I'm just looking at this.**
 11 Q. Take your time.
 12 **A. I'm not sure what happened here in this case, but**
 13 **if you look a few pages further down, it says**
 14 **"Resolution of Corporate Authority." That was**
 15 **signed on April 30, 2005. So I'm not sure why,**
 16 **December 30, 2004 and April 2005, why did it take**
 17 **four months, but the amendment did become official**
 18 **sometime in April.**
 19 Q. Okay. The Resolution of Corporate Authority
 20 you're referring to is for Inland Waters?
 21 **A. For Inland Waters.**
 22 Q. The one before that has a Resolution of
 23 Corporate --
 24 **A. 2004, yeah.**
 25 Q. So the one April 13, 2005, specifically refers to

1 the costing supplement that is Mr. Mercado's
 2 letter dated April 4, 2005?
 3 **A. Yeah. That basically came off of that.**
 4 Q. Okay. So you don't know why is the answer?
 5 **A. I don't know why it took that long.**
 6 Q. Okay. The document that begins with
 7 Mr. Mercado's letter dated April 4, 2005, is a
 8 document, though, that you have seen before; is
 9 that right?
 10 **A. I've seen that, yeah.**
 11 Q. Do you know who directed that this document be
 12 issued?
 13 **A. It will be prepared by contracts and grants group,**
 14 **and you see the name here and all that, the last**
 15 **line? Any questions, contact Darryl Latimer. He**
 16 **was the contracts and grants manager those days.**
 17 **His group prepared that for Mr. Mercado's**
 18 **signature and to be countersigned by the**
 19 **contractor.**
 20 Q. The next page -- let me back up. Do you know if
 21 this costing supplement was something that was
 22 requested by Inland?
 23 **A. This was all the -- how the payment is going to be**
 24 **done so. This was included as part of the**
 25 **amendment.**

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1 Q. How far along was the work by April of 2005?
 2 **A. We were almost done. The sinkhole was done.**
 3 Q. And so what is this costing supplement supposed
 4 to do, in your opinion?
 5 **A. This costing supplement is supposed to -- all the**
 6 **costs and all -- how they're going to be paid,**
 7 **they'll be as per these terms and conditions.**
 8 Q. What about the costing supplement that you had
 9 attached as Exhibit B-2 to the contract that you
 10 told me these are the standard terms that DWSD
 11 used? Why was there a new costing supplement for
 12 this contract?
 13 **A. Because if you see in these documents, the**
 14 **supplement that you are referring to that, it does**
 15 **not have anything for the overtime payment.**
 16 Q. For the what?
 17 **A. Overtime payment -- overtime. It does not have**
 18 **any clause in these pages.**
 19 Q. Okay.
 20 **MR. WATSON:** What pages are you
 21 referring to?
 22 **THE WITNESS:** These last five pages.
 23 So we had to make some kind of a -- make it clear
 24 how they're going to be paid for that. Same thing
 25 with the consultants' work and all that. You

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1 don't see any reference in these things -- in
 2 these two pages.
 3 **BY MS. BADALAMENTI:**
 4 Q. So Mr. Mercado's costing supplement, you're
 5 saying, doesn't relate to overtime or how
 6 consultants will be paid?
 7 **A. Um-hmm.**
 8 Q. That was dealt with by your costing supplement?
 9 **A. Right.**
 10 Q. So what does Mr. Mercado's costing supplement do?
 11 What does it deal with?
 12 **A. This is Mr. Mercado's cost -- if I remember this**
 13 **correctly, this is part of CS-1368 contract --**
 14 **original contract. They just attached that to**
 15 **that particular letter. If you see the original**
 16 **CS-1368 contract, if I remember that right, they**
 17 **will have these clauses. But it does not have any**
 18 **clause for overtime. It does not have any clause**
 19 **for how the consultants' time will be paid. And**
 20 **it does not have any clause for mobilization and**
 21 **demobilization. That's how we did that, by the**
 22 **letter I was supposed to sign, which I signed.**
 23 Q. Okay. So let me just make the record clear.
 24 There is a letter here dated April 4, 2005 that's
 25 in front of three pages that purport to be or are

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1 titled CS-1368 Amendment No. 2 Costing Supplement
 2 that says "Effective December 3, 2004." There's
 3 a second page to that and then a Billing Rate
 4 Sheets page, right?
 5 **A. Um-hmm.**
 6 Q. So when you were referring to these pages, that
 7 these pages were part of the original 1368,
 8 you're referring to those three pages?
 9 **A. Except this table.**
 10 Q. Let me -- I've just got to clean up the record.
 11 **A. Please.**
 12 Q. So you're referring to those three pages that I
 13 just pointed out that you believe that those were
 14 part of the original 1368 contract?
 15 **A. Not entirely.**
 16 Q. Okay.
 17 **A. The two pages were part of the original contract.**
 18 **The table was not.**
 19 Q. Okay.
 20 **A. The table is prepared as per my letter.**
 21 Q. Okay. All right. So then let's start with the
 22 table. The table is prepared per your letter,
 23 and I note that the table gives some standard
 24 overtime and double time rates.
 25 **A. Um-hmm.**

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1 Q. Is this a table that you prepared?
 2 **A. No.**
 3 Q. Do you know who prepared it?
 4 **A. It was prepared by the contractor.**
 5 Q. I see some initials in the corner and they're
 6 dated 3/17 of '05. Do you see that?
 7 **A. Yeah.**
 8 Q. Are one of those sets of initials yours?
 9 **A. Yeah, one of those is mine.**
 10 Q. Your costing supplement, Exhibit B-2 to the
 11 contract, was dated in September of 2004.
 12 **A. Um-hmm.**
 13 Q. Is that right?
 14 **A. Yeah.**
 15 Q. So this billing rates sheet is not dated in 2004,
 16 is it?
 17 **A. Yeah, dated in 2005.**
 18 Q. They did this one in 2005?
 19 **A. Um-hmm.**
 20 Q. Okay. They also in 2005 did the two pages that
 21 precede it behind Mr. Mercado's letter, right?
 22 **A. Um-hmm.**
 23 Q. Is that a yes?
 24 **A. Yeah. The two pages, yeah.**
 25 Q. And there are some sets of signatures on those

1 two pages as well?
2 **A. Yeah, my initial is one of them.**
3 Q. And they're dated, again, 3/17?
4 **A. Same day.**
5 Q. I've just got to make a clear record.
6 **A. Okay.**
7 Q. So you have to let me finish so she can get down
8 what we are both saying.
9 There are initials and dates. One of
10 those initials is yours, correct?
11 **A. Um-hmm.**
12 Q. Is that a yes?
13 **A. Yes.**
14 Q. The date 3/17/05 is the same date as on the last
15 page, correct?
16 **A. That's correct.**
17 Q. So these three documents were then prepared at
18 the same time; would you agree with that?
19 **A. Yes, they were prepared on that particular date.**
20 Q. Who prepared them?
21 **A. The contractor.**
22 Q. Inland?
23 **A. Inland.**
24 Q. And why is Inland preparing its own costing
25 supplement for how its contract is going to be

1 paid?
2 **A. They are just telling us we had been charging or**
3 **we are charging as per these documents. We were**
4 **trying to formalize it on that particular date.**
5 Q. Did -- was there a costing supplement like this
6 for CS-1368, the sewer lining part of the
7 project?
8 **A. Okay. Let me clarify that. These two pages which**
9 **says the amendment No. 2 costing supplement and**
10 **all that, as far as I remember, they're part of**
11 **the original contract, these two pages. This**
12 **table is not.**
13 Q. Okay. When you say it's part of the original
14 contract, who prepared it?
15 **A. That was prepared by contracts and grants, our**
16 **group.**
17 Q. So Darryl Latimer?
18 **A. Darryl Latimer's group.**
19 Q. He would have prepared it, and he would have
20 prepared it at the time Amendment 2, back in
21 2004, was entered into? That's your opinion?
22 **A. Whenever the original contract was awarded to**
23 **these people, yes.**
24 Q. Why do your initials appear with the date of 3/17
25 of '05?

1 **A. Because the contractor initial that; I initial**
2 **that that we are going to use these documents.**
3 **That's what we said. Technically if you ask my**
4 **opinion, I should have initialed only the table,**
5 **not the other two, but since these three came**
6 **together and all that, I initialed the first two**
7 **also.**
8 Q. And it's your belief that this was attached to
9 and approved by -- or attached to the original
10 contract as it was approved by council and signed
11 off on by --
12 **A. That's my belief, yes.**
13 Q. And this document you recall being prepared by
14 Inland?
15 **A. They attached these paperwork to that particular**
16 **letter, yes.**
17 Q. I'm sorry?
18 **A. Yes.**
19 Q. Inland prepared?
20 **A. They just took a copy of the clauses from the**
21 **contract and brought this paperwork in front of**
22 **me.**
23 Q. Have you ever seen a costing supplement like this
24 prepared for any DWSD contract?
25 **A. I don't understand this question. What is that**

1 **supposed to mean?**
2 Q. Has another Detroit Water and Sewerage contract
3 attached a costing supplement like this here or a
4 table like this one here?
5 **A. This table is special, because we did not have**
6 **those clauses in the contract documents. In all**
7 **other contracts and all that that we considered as**
8 **part of the DWSD, these clauses are there, so we**
9 **don't have to have a supplement attached. This**
10 **contract did not have what is in the table. I'm**
11 **specifically referring to the table.**
12 Q. Okay. How about the clauses in the two pages?
13 **A. These clauses, as far as I know -- I mean, it's so**
14 **long ago -- they are part of the original**
15 **contract. They are there. The table is not, what**
16 **is in the table.**
17 Q. What are you doing on March 17, '05 with these
18 documents? Why are you initialing them at that
19 point in time?
20 **A. I don't remember that, why did we initial that.**
21 **All it is that -- the amendment was going to be**
22 **approved or not approved by that particular time.**
23 **This letter was going to be issued, and then I**
24 **initialed that this is how the payment is made or**
25 **has been made or is going to be made. That's the**

1 **only reason for my initial on this.**
 2 Q. The costing supplement that you did in September
 3 of 2004, you said, was because there were not --
 4 consultants were not provided for -- how to pay
 5 consultants, right?
 6 **A. In CS-1368, yes.**
 7 Q. I see on page 2 of these two sheets behind
 8 Mr. Mercado's letter it indicates consultant and
 9 professional engineers' cost will remain as per
 10 the attached table. So would it be fair to say
 11 that this document, then, would have come after
 12 your costing supplement in September of 2004?
 13 **A. This document did come after that, because this is**
 14 **attached to the letter that Mr. Mercado signed,**
 15 **which was when the amendment is approved, but we**
 16 **have to make payments to the contractor before**
 17 **that.**
 18 Q. So when you say --
 19 **MR. WATSON:** Let him finish.
 20 **THE WITNESS:** The contract did raise
 21 some issues in September, how do we make the
 22 payment to the contractor. We made the payment as
 23 per this particular letter and this letter
 24 resulted in the table that is down here.
 25 **BY MS. BADALAMENTI:**

1 **BY MS. BADALAMENTI:**
 2 Q. Go ahead.
 3 **MR. WATSON:** You can answer.
 4 **THE WITNESS:** CS-1368, the original
 5 contract for certain amount of money -- the
 6 contract already had money in the contract
 7 available for payment for any work that is going
 8 to be done underneath that, including the sinkhole
 9 work. The sinkhole work amendment officially got
 10 approved in December and formalized on April 2005
 11 with this letter, but we did make payments to the
 12 contractor for the work that he was doing on the
 13 sinkhole before that, and that's the reason for my
 14 letter, because we have to pay him sometime in
 15 September. April 2005 and this table that you see
 16 with my initial on 3/17, 2005, this is basically
 17 formalizing the whole thing, making it official,
 18 but we are still making him payments before that
 19 based on only the terms and conditions that are in
 20 my letter and that are in this table, which is
 21 part of this letter of April 2004 -- 2005. Did I
 22 make myself clear, please?
 23 **BY MS. BADALAMENTI:**
 24 Q. I think I've got it.
 25 **A. Okay.**

1 Q. Right.
 2 **A. We were making payments to the contractor based on**
 3 **my letter.**
 4 Q. Now, in April of 2005, when you say that this
 5 April 2005 and the three pages behind it are part
 6 of the original CS-1368, that would be because
 7 you were assuming that CS-1368 Amendment 2 wasn't
 8 approved prior to April of 2005?
 9 **A. Right. That's right.**
 10 Q. But we know that City Council did approve it in
 11 December of 2004; so to the extent that it was
 12 approved before April of 2005, you would agree
 13 with me that costing supplement, then, came
 14 later?
 15 **MR. WATSON:** I'm going to object to the
 16 form of the question. I don't understand it. If
 17 the witness does.
 18 **BY MS. BADALAMENTI:**
 19 Q. Let me ask it another way. Would you agree with
 20 me that this document, other than your table,
 21 that the two pages behind Mr. Mercado's letter
 22 were not prepared or circulated at any point
 23 before March 17th of 2005?
 24 **A. Okay.**
 25 **MR. RUEGGER:** I'll object to the form.

1 Q. One thing that you just said that we need to
 2 clarify, you said the contract was approved in
 3 December of 2004, but it was not authorized until
 4 April of 2005.
 5 **A. Officially authorized.**
 6 Q. And what does that mean?
 7 **A. That means that that amendment is part of the**
 8 **contract officially on that particular date.**
 9 Q. And who makes it official?
 10 **A. That's by contracts and grants, and then the**
 11 **director's office. This is when they prepare an**
 12 **official amendment and then it's given to the**
 13 **contractor, and it becomes part of their contract.**
 14 Q. Are you familiar with the rates in this costing
 15 supplement?
 16 **A. I'm familiar with the clauses, yes.**
 17 Q. Are these clauses that you had seen in any other
 18 DWSD contracts?
 19 **A. That's right.**
 20 Q. What other contracts?
 21 **A. Every contract, more or less.**
 22 Q. More or less, tell me the ones that they're in.
 23 **A. You want the names of the contract?**
 24 Q. The projects, yeah.
 25 **A. I mean, if you look at WS-360C, it will have**

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1 **contract clauses like this. Every contract will**
 2 **have some clauses like this. Some have some of**
 3 **them; some have all of them, depending on what**
 4 **kind of work, but they are the clauses in the**
 5 **contracts.**
 6 Q. Any contracts that did not involve Inland Waters
 7 have clauses like these?
 8 A. **Name any contract, they should have it.**
 9 Q. Okay.
 10 A. **Any contract with the city -- construction**
 11 **contract I'm talking about.**
 12 Q. Um-hmm.
 13 A. **Specifically you want me to name something? I**
 14 **don't remember the names and the numbers right**
 15 **now. But these clauses are there as part of those**
 16 **contracts.**
 17 **MR. WATSON:** And you're referring to
 18 the clauses in the document dated -- or entitled
 19 CS-1368 Amendment No. 2 Costing Supplement with
 20 initials in the-right-hand corner?
 21 **THE WITNESS:** Um-hmm.
 22 **MR. WATSON:** That two-page document?
 23 **THE WITNESS:** That's what she's talking
 24 about.
 25 **MR. WATSON:** Okay.

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1 **BY MS. BADALAMENTI:**
 2 Q. In section VII there's a reference to limits on
 3 fee for the work involved. Do you know what that
 4 paragraph means or --
 5 A. **This means the markup that we are going to pay the**
 6 **contractor and subcontractors for the work they**
 7 **have done.**
 8 Q. It indicates here that it will include a
 9 negotiated fee to cover certain costs described
 10 above and a profit.
 11 A. **Um-hmm.**
 12 Q. And that the fee can't exceed 10% of the
 13 contractor's cost.
 14 A. **These are the limits on the total fees.**
 15 Q. Were those standard terms in all DWSD contracts?
 16 A. **The one and two are the standard terms, yes.**
 17 Q. Was it the case that DWSD would issue a costing
 18 supplement that would include a fee that was
 19 still to be negotiated?
 20 A. **It says the fee shall be negotiated, but most of**
 21 **the -- not most. All the time we paid them 10%**
 22 **for the main contract and 5% for the subcontract.**
 23 **That's what the charge --**
 24 Q. Well, there was a time in implementing the
 25 contract that those amounts were changed. Are

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1 you aware of that?
 2 A. **I don't --**
 3 Q. During the first four months of the contract the
 4 markups that were permitted and paid were
 5 different. Were you aware of that?
 6 A. **Tell me that specifically. I didn't understand it**
 7 **fully.**
 8 Q. During the first four months that the sinkhole
 9 repair was invoiced and paid on, the markups were
 10 different. The markups were 15 and 10.
 11 A. **I'm not aware of that. I'll have to see the**
 12 **document, what it is.**
 13 Q. But it's your opinion that these rates, 10 and 5%
 14 on markup, that that's standard DWSD language?
 15 A. **Standard DWSD conditions.**
 16 Q. Was it standard for DWSD to have a term in the
 17 contract that says it will include a negotiated
 18 fee?
 19 A. **I don't remember this word, but my feeling is that**
 20 **this is a standard language from the contract. My**
 21 **feeling is it should be.**
 22 Q. Were you authorized by someone to put your
 23 initials on this document?
 24 A. **Yeah, I mean, this document should have been**
 25 **signed by the director, but since I was there at**

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1 **the site on that particular date, I signed that.**
 2 Q. The director's letter is dated a couple weeks
 3 after the -- your initials are placed on the
 4 costing supplement. Is this something that you
 5 brought back to the director or deputy director
 6 or is it something that he was provided by
 7 someone else?
 8 A. **No, this is a document that the contractor brought**
 9 **to me. I initialed those. They initialed that.**
 10 **He took that to the contracts and grants people.**
 11 **They prepared this letter. Then they sent it to**
 12 **him. I did not take it to the director.**
 13 Q. Is it typical to see a contract that's being
 14 performed for -- since August of 2004, is it
 15 typical that a costing supplement like this would
 16 not be agreed upon until March or April of 2005?
 17 A. **No, it's not typical because this was a special**
 18 **project. This is emergency project. So typically**
 19 **this is not done.**
 20 Q. Had the City of Detroit had any other emergency
 21 projects -- any other emergency collapses?
 22 A. **We did some emergency work, not to this magnitude.**
 23 **Like on Jefferson, we had a 42-inch water main**
 24 **break that was done as an emergency. Similarly,**
 25 **some other collapses were done for the water main**

1 sewer throughout the city and outside the city on
 2 an emergency basis, not to the scale that this
 3 was.
 4 Q. Any other DWSD contract where the terms that are
 5 in this costing supplement are not agreed upon
 6 before the work begins?
 7 A. **It depends on the kind of work that we are doing.**
 8 **I'll answer it this way: Most of the time we know**
 9 **what work they're doing, and then the conditions**
 10 **and the terms and conditions and the clauses are**
 11 **already in the contract. This particular case,**
 12 **for this type of a contract that CS-1368 was, it**
 13 **did not have these clauses; so this is some kind**
 14 **of something special.**
 15 Q. By September 20th of 2004, the emergency at this
 16 project was over; wasn't the bypass already
 17 installed?
 18 A. **No. September -- not emergency was over, but the**
 19 **bypass was in service, yes.**
 20 Q. So why was it still considered to be an emergency
 21 project at that point?
 22 A. **Because we still have to repair the sinkhole, and**
 23 **then the bypass will have to be continued.**
 24 **Something happen to the bypass, then that**
 25 **particular bypass has to maintain all the time,**

1 A. **I think sometime in October.**
 2 Q. When -- were you involved in any other project
 3 where an interceptor had failed?
 4 A. **Not of this magnitude, no.**
 5 Q. Any other project that involved a sinkhole at
 6 all, whether it was of this --
 7 A. **No, I was not involved. This was my first major**
 8 **project, yes.**
 9 Q. Are you aware of any situations like this that
 10 have occurred recently in the City of Detroit?
 11 A. **Recently means when, after I retired?**
 12 Q. After you retired.
 13 A. **I mean, there was something in the papers the**
 14 **other day. That was what -- what was that? Six,**
 15 **seven months ago there was a collapse on**
 16 **Jefferson.**
 17 Q. Other than those more recent occurrences, you
 18 were not involved in any --
 19 A. **No, I'm not involved in any DWSD since I retired.**
 20 **My only information is based on papers and what I**
 21 **hear on the radio and TV.**
 22 Q. If the city had determined that there was no
 23 longer an emergency once the bypass was installed
 24 and the sinkhole was secure, would the remaining
 25 work then have to have been bid or how would it

1 all the pumps and motors and everything that needs
 2 to be done. It has to be monitored on a
 3 day-to-day basis. And we were still monitoring
 4 the sewer levels in case, let's say, those bypass
 5 pumps are not able to handle it? What will happen
 6 to the flow that needs to be conveyed? So it was
 7 an emergency until the main trunk sewer line get
 8 into service. The bypass was a temporary, or say
 9 for the time being it was a system and all that
 10 that we tried to take the sewage from one point A
 11 to point B around the sinkhole. That's what we
 12 did.
 13 Q. Was the sinkhole secure at the time that you
 14 issued the September 20, 2004 cost supplement?
 15 A. **The sinkhole was not totally secure, no.**
 16 Q. What was not secure about it?
 17 A. **Because we still have to build the system around**
 18 **the sinkhole so that it does not take the rest of**
 19 **either the pavement or somebody's backyard into**
 20 **the sinkhole. We need to secure it.**
 21 Q. Weren't there walls -- retaining walls that had
 22 been put up to secure it?
 23 A. **We did what we call the piles and all that. I**
 24 **don't think they were all finished by this time.**
 25 Q. Okay. When were they finished?

1 have been handled?
 2 A. **As far as I know, the emergency will be lifted**
 3 **only once we put the main trunk line sewer back in**
 4 **service, because anything can happen to the**
 5 **bypass.**
 6 Q. And who makes the determination that it's still
 7 an emergency?
 8 A. **The director.**
 9 Q. Did anyone raise that issue with him?
 10 A. **No. As far as -- I'm not aware of that. I didn't**
 11 **raise that question with him. I still think that**
 12 **it was an emergency until we put the sewer back**
 13 **into service.**
 14 Q. Is the costing supplement, the overtime and the
 15 markups that are in your September of 2004
 16 costing supplements, that's because this is an
 17 emergency project?
 18 A. **How do I answer that? This letter that I have --**
 19 **that I signed in 2004 is to pay for the charges**
 20 **that we are accumulating in the contract which is**
 21 **being done under CS-1368.**
 22 Q. Is this --
 23 A. **Why is it -- is it something because of the**
 24 **emergency? Not necessarily so. If I had a**
 25 **similar project going on somewhere else also, did**

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1 **not have these clauses where I'm going to incur**
 2 **costs like this, we would still issue a similar;**
 3 **letter like this.**
 4 Q. My question is: Do you have overtime that is
 5 allowed on other projects where you issue a
 6 similar letter like this allowing overtime, or is
 7 overtime not standard on DWSD contracts?
 8 **A. Overtime is -- some kind of a clause is there in**
 9 **various contracts. It was not in CS-1368.**
 10 Q. Do you know why not?
 11 **A. I didn't prepare the documents. I don't know why.**
 12 Q. Did you ever ask anyone?
 13 **A. No, I never asked anybody.**
 14 Q. Who directed you in September of 2004 to prepare
 15 that costing supplement?
 16 **A. As far as I'm concerned -- as far as I remember,**
 17 **we did talk about when they were preparing the**
 18 **invoice, the contractor represented, which is**
 19 **Dennis Oszust -- basically he talked to me. We do**
 20 **not have this kind of language in the contract**
 21 **documents. I said I remember we did talk to the**
 22 **director, and he said we need to pay for these**
 23 **costs, how do we do that, and it was decided we**
 24 **were going to issue a letter explaining how the**
 25 **costs are going to be paid. And that's how the**

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1 **document came about.**
 2 Q. Was there any discussion with Kwame Kilpatrick
 3 about that letter?
 4 **A. No.**
 5 **MR. WATSON:** Object to foundation.
 6 **THE WITNESS:** I can answer that. No.
 7 **BY MS. BADALAMENTI:**
 8 Q. What about when Mr. Mercado issued his letter in
 9 April of 2005, did he come to you to discuss it?
 10 **A. He's my boss. Why would he come to me for that?**
 11 Q. Did he come to you to compare his letter to what
 12 you had issued in September of 2004?
 13 **A. No. I don't remember -- I mean, I got this letter**
 14 **later on once he signed it, but he never came to**
 15 **me or he never asked me to -- he'll never come to**
 16 **me. He'll ask me to come. He never asked me to**
 17 **come forward and then come to his office or look**
 18 **at this letter. I know I did not. I only got it**
 19 **after it's signed.**
 20 Q. Are you aware of Amendment 3 to CS-1368?
 21 **A. I mean, that was after. This should be -- if you**
 22 **want me -- can I see the paperwork, please.**
 23 Q. Sure. What do you remember about Amendment 3?
 24 **A. Let me see the paper. Then I'll tell you. I**
 25 **don't remember all the amendments on the documents**

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1 **right now.**
 2 Q. I'd like you to answer the question while I find
 3 the document. Do you remember anything about
 4 there being a third amendment to CS-1368?
 5 **A. There was Amendment No. 3. That, I know. I don't**
 6 **know exactly the scope of work. I don't know the**
 7 **amount. But I know Amendment 3 was done, and I'm**
 8 **aware of that. But if I can see the document,**
 9 **then I'll tell you what the scope is and what the**
 10 **cost is.**
 11 Q. Do you remember if there was a costing supplement
 12 done for Amendment 3?
 13 **A. No, I don't remember that.**
 14 Q. Were you ever questioned by law enforcement about
 15 that costing supplement that's in front of you?
 16 **A. I don't remember. I did talk to the law**
 17 **enforcement -- you're talking about FBI? Is that**
 18 **what you're saying?**
 19 Q. Any law enforcement officer or agent.
 20 **A. I did talk to the FBI and all that regarding**
 21 **various contracts, and sinkhole was one of them,**
 22 **but I don't remember exactly if we talked about**
 23 **the amendment.**
 24 Q. Before we move too far off what's in front of
 25 you, let me ask you, do you remember any -- do

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1 you remember any circumstances that led to
 2 certain costs being disallowed with him respect
 3 to Amendment 2?
 4 **A. This is determined by our contracts and grants**
 5 **group. After the contractor submits the invoice,**
 6 **then we sign it. We send it to the contracts and**
 7 **grants. They are the people who finally pay for**
 8 **it. They will go through the various clauses and**
 9 **all that, seeing if anything is not per the**
 10 **documents. If they think something is not, then**
 11 **they'll say this is not allowed. They'll take**
 12 **that out. They determine that; we do not.**
 13 Q. When you say that it's given to contracts and
 14 grants and contracts and grants make the
 15 determination, who provides the information to
 16 the contracts and grants department?
 17 **A. We send them all the documents from engineering.**
 18 Q. You personally or someone else?
 19 **A. No. No, I cannot not by me personally. Has to be**
 20 **the group that is basically handling. In this**
 21 **case, the field engineering group, they will do**
 22 **that. They will send it over there.**
 23 Q. Did any of the contractors or subcontractors
 24 express that they were not happy with your
 25 costing supplement?

1 **A. I don't remember anybody saying that.**
 2 Q. Did anybody contact you to express that they were
 3 not happy with Mr. Mercado's April 2005 costing
 4 supplement?
 5 **A. I don't remember that, no.**
 6 Q. Do you remember a circumstance where there was a
 7 meeting that was requested and how to discuss the
 8 changes that were referenced in those two costing
 9 supplements?
 10 **A. It was so long ago, I don't remember if somebody**
 11 **asked for a meeting. I don't remember that.**
 12 **MARKED FOR IDENTIFICATION:**
 13 **DEPOSITION EXHIBIT 2**
 14 2:32 p.m.
 15 **BY MS. BADALAMENTI:**
 16 Q. This is a correspondence dated January 10th of
 17 2005. I've marked it as Exhibit 2. Do you
 18 recognize that document?
 19 **A. This letter is copied to me, so obviously I must**
 20 **have seen it, but it's something that Inland**
 21 **Waters is trying to clarify to the director that**
 22 **this is all they'll be able to charge.**
 23 Q. This is Inland Waters actually going around your
 24 September 3rd, 2004 costing supplement, isn't it,
 25 these rates will modify those set forth in the

1 Q. Okay.
 2 **A. Which one are you talking about?**
 3 Q. You're right. Your intra-departmental memorandum
 4 dated March 16th, 2005 to Darryl Latimer, it
 5 refers to a memo dated January 20, 2005, from Ed
 6 Ramey to John McGrail. And it's referring to
 7 markup percentage approval letter dated
 8 September 3rd, 2004. Do you see that?
 9 **A. Um-hmm.**
 10 Q. Is that markup approval letter the third page of
 11 what I just handed to you, this document here?
 12 **A. Yeah.**
 13 Q. Okay. Is this something that you prepared or
 14 Inland prepared?
 15 **A. This is the one that I prepared.**
 16 Q. The first page, okay.
 17 **A. Right.**
 18 Q. The memo?
 19 **A. Yeah. And this was something that was circulated**
 20 **in the department claiming that this is my**
 21 **initial. This is not my initial. And that's what**
 22 **I'm trying to explain. Somebody complained to the**
 23 **director that I'm trying to sign on his behalf and**
 24 **all. I cannot sign on behalf of the contract**
 25 **because I was too junior guy at that particular**

1 September 3, 2004 letter?
 2 **A. That's what they are saying here, that we are**
 3 **going to change those terms and conditions.**
 4 **That's what they're saying.**
 5 Q. Were you involved in the negotiations that led to
 6 this letter, if there were any?
 7 **A. No. But they issued the letter, and later on they**
 8 **charged us per this.**
 9 Q. Do you remember any discussing or meetings about
 10 this letter?
 11 **A. I don't remember having any meetings on this. The**
 12 **letter -- they sent the letter to the director.**
 13 **MARKED FOR IDENTIFICATION:**
 14 **DEPOSITION EXHIBIT 3**
 15 2:34 p.m.
 16 **MR. WATSON:** Is this letter Exhibit 2.
 17 **MS. BADALAMENTI:** 3.
 18 **MR. WATSON:** So the January 10th letter
 19 was 2. And now you've shown a letter dated --
 20 looks like a memo dated March 16, 2005. That's 3.
 21 **BY MS. BADALAMENTI:**
 22 Q. Do you recognize Exhibit 3?
 23 **A. I recognize this one.**
 24 Q. Which one are you referring to, the first page?
 25 **A. My memo to Darryl Latimer.**

1 **time when I was doing the sinkhole. Somebody put**
 2 **my initials on this. And they were saying I'm**
 3 **trying to sign for the contract and the director.**
 4 **Darryl Latimer was creating an issue. This is my**
 5 **memo that I showed him that I did not do that.**
 6 Q. So your memo says, "This memo includes the markup
 7 percentage approval letter dated September 3,
 8 2004, signed by me for Mr. Victor Mercado (See
 9 attached). Please be informed the signature on
 10 this letter is not mine..."
 11 **A. Is not mine.**
 12 Q. "...and the official letter signed by me... was
 13 based on a meeting held with Inland Waters on
 14 September 3, 2004." Is that correct?
 15 **A. Yeah.**
 16 Q. And that -- that letter that you're referring to
 17 that was by you, it is where?
 18 **A. This one, September 20th letter. Ultimately it**
 19 **resulted in this letter, not this one.**
 20 Q. Okay.
 21 **A. That's what I'm trying to say.**
 22 **MR. WATSON:** When you said "not this
 23 one," you're referring to the third page of
 24 Exhibit 3?
 25 **THE WITNESS:** Third page of --

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1 whichever exhibit this is.
 2 **BY MS. BADALAMENTI:**
 3 Q. Do you know --
 4 **A. We did talk on September 3rd that we were going to**
 5 **pay them certain things which are not in the**
 6 **contract document that resulted in the letter of**
 7 **September 20, 2004, which I signed, but I did not**
 8 **initial this one. That's what I'm trying to say.**
 9 Q. Do you know who did put the initials?
 10 **A. I don't remember who put these initials. It's not**
 11 **mine. It's not done by me.**
 12 Q. Did you ever find out who put them?
 13 **A. No.**
 14 Q. And when you say Darrel Latimer was making an
 15 issue of it, what was he doing?
 16 **A. The issue was Shukla is not authorized to sign for**
 17 **the director. That was the issue, which is true,**
 18 **which is fact. I'm not authorized to sign for the**
 19 **director. Even for him I cannot do that.**
 20 **That's -- issue here was this, how can I initial**
 21 **on behalf of the director and I cannot.**
 22 **MR. WATSON:** That last statement, you
 23 were referring to the second or third page of --
 24 third page again of exhibit --
 25 **THE WITNESS:** Third page of.

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1 **MR. WATSON:** -- of Exhibit 3.
 2 **BY MS. BADALAMENTI:**
 3 Q. There is some handwriting on this letter. It
 4 reads "DWSD's management reviewed and approved
 5 the listed percentages that were confirmed with
 6 Inland through letter dated September 3rd, 2004."
 7 And then there's some handwriting. Do you see
 8 that there?
 9 **A. Where?**
 10 Q. On the memorandum. "These percentages were later
 11 revised for contractors" --
 12 **A. Which document are you referring to?**
 13 Q. The memorandum.
 14 **A. You're talking about the first one?**
 15 Q. Yes.
 16 **A. Okay.**
 17 Q. Do you see the handwriting there? Is that your
 18 handwriting?
 19 **A. Yeah, this is my handwriting.**
 20 Q. What does it say there?
 21 **A. "These percentages were later revised for the**
 22 **contractors based on IWPC's letter of January 10,**
 23 **2005," which is this one.**
 24 **MR. WATSON:** By "this one," you're
 25 referring to Exhibit 2?

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1 **THE WITNESS:** Right. And remember that
 2 this letter was done in March of 2005.
 3 **BY MS. BADALAMENTI:**
 4 Q. So your September 20, 2004 cost supplement was
 5 later revised by Exhibit 2?
 6 **A. Um-hmm.**
 7 Q. Which was something prepared by Inland, correct?
 8 **A. Prepared by Inland.**
 9 Q. And it was then revised again -- is that fair
 10 statement -- by the documents that we see from --
 11 beginning with Mr. Mercado's letter in April of
 12 2005?
 13 **A. No, that particular document has exactly the same**
 14 **things what it has here.**
 15 Q. So did you actually hold the meeting that led to
 16 Inland issuing that January 10th -- did you
 17 actually hold a meeting that led to the
 18 January 10, 2005 letter?
 19 **A. I don't remember holding a meeting for that. I**
 20 **had a meeting for the 20th letter, 2004, but not**
 21 **that one. I don't remember that.**
 22 Q. Do you know what transpires between January of
 23 2005 and April of 2005 when Mr. Mercado actually
 24 issues the letter reflecting the changes that
 25 Inland had requested in January?

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1 **A. First of all, I don't understand this question.**
 2 **What -- transpired means what?**
 3 Q. Had the invoices been being paid based on the
 4 January 10 letter or were they being paid based
 5 on your September 2004 costing supplement?
 6 **A. As far as I remember, if I remember that, the**
 7 **invoices that were paid before December of 2004,**
 8 **they were according to my letter. But once the**
 9 **letter came up in January of 2005 and the**
 10 **percentages were changed, then later on invoices**
 11 **made all the corrections to them, including the**
 12 **invoices that were paid before that.**
 13 Q. And that's as of January?
 14 **A. That's as of January.**
 15 Q. Okay. Do you remember any drafts that were done
 16 but not approved by Inland prior to the issuance
 17 of that January 2005 letter?
 18 **A. You mean a draft letter, is that what you're**
 19 **saying?**
 20 Q. A draft costing supplement.
 21 **A. No, I don't remember anything like that. I don't**
 22 **know.**
 23 **MS. BADALAMENTI:** Let me mark these
 24 four pages as Exhibit 4.
 25 **MARKED FOR IDENTIFICATION:**

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1 DEPOSITION EXHIBIT 4
 2 2:43 p.m.
 3 **BY MS. BADALAMENTI:**
 4 Q. Have you ever seen Exhibit 4?
 5 **A. I'm not sure if I saw this. I'm not sure. I**
 6 **don't remember this letter, no.**
 7 **MARKED FOR IDENTIFICATION:**
 8 DEPOSITION EXHIBIT 5
 9 2:43 p.m.
 10 **BY MS. BADALAMENTI:**
 11 Q. I'm marking two pages as Exhibit 5. It appears
 12 to me to be the response to that Exhibit 4. Have
 13 you ever seen that document?
 14 **A. I don't remember seeing this also. I don't know.**
 15 **They may have had a meeting with the contracts and**
 16 **grants with the director's office. I don't**
 17 **remember. I'm not sure if I was part of this**
 18 **meeting.**
 19 Q. Okay. Do you remember having reviewed and
 20 disallowed a required change to amounts that had
 21 been submitted by Inland Waters?
 22 **A. I don't remember disallowing anything from my**
 23 **side.**
 24 Q. Do you recall a point in time when you directed
 25 Inland Waters to use certain contractors or

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1 subcontractors on the job?
 2 **A. No. It's not even my job to tell the contractor**
 3 **which subcontractor to hire, no.**
 4 Q. Did you ever inform Mr. Mercado that a certain
 5 subcontractor should be used on this job?
 6 **A. No.**
 7 Q. Are you aware that certain individuals from
 8 Inland Waters have said that you did convey such
 9 information to them?
 10 **A. No, I did not do that. And I'm not aware if**
 11 **anybody said that. As part of my job, I cannot**
 12 **tell contractor to hire any sub or anybody like**
 13 **that.**
 14 Q. Were you questioned by the federal government on
 15 whether or not you directed Inland Waters to
 16 retain certain subcontractors?
 17 **A. They did ask me and I said no there, too.**
 18 Q. And you said you are aware that there was an
 19 Amendment 3, but you're not aware of the details?
 20 **A. There was an Amendment 3. I remember that. If**
 21 **you can show me, I can tell you that.**
 22 Q. It's not something that we need to go into great
 23 detail. Do you know the circumstances that led
 24 to there being a third amendment?
 25 **A. The third amendment is that -- if I remember it**

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1 **correctly, we did Amendment No. 2 but the costs**
 2 **were actually more than that, and then the third**
 3 **amendment was done to cover for the additional**
 4 **costs. I think that's in a nutshell what I**
 5 **remember.**
 6 Q. Was there something that occurred out of the
 7 project site that caused there to be such a cost
 8 overrun?
 9 **MR. WATSON:** I'll object to the form of
 10 the question.
 11 **THE WITNESS:** Do you want me to answer
 12 that?
 13 **BY MS. BADALAMENTI:**
 14 Q. Yes.
 15 **MR. WATSON:** You can go ahead and
 16 answer.
 17 **THE WITNESS:** The project turned out to
 18 be much more complicated than what we had
 19 anticipated when we were planning -- not
 20 planning -- when we were originally thinking about
 21 these are the steps that we are going to take to
 22 effect the repairs. The actual details turned out
 23 to be much more complicated than what we
 24 anticipated, and that's how the cost overrun took
 25 place.

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1 **BY MS. BADALAMENTI:**
 2 Q. How so? Can you give me some examples.
 3 **A. Okay. One example is that we thought that when we**
 4 **dig up all the way down, we'll find the original**
 5 **pipe down there. We'll take it out, and then**
 6 **we'll replace it with the a new pipe. When we**
 7 **went down there, we found out that the sinkhole,**
 8 **which was supposed to be 70 feet deep, it was**
 9 **actually another 25 feet deeper than that. We had**
 10 **to make allowance for that. We had to do some**
 11 **extra digging. Then we had to do some bulkheads**
 12 **basically to stop the flow on either side when we**
 13 **did the bypass. It became very difficult to**
 14 **install the bulkheads when the water is flowing**
 15 **through, even though it's basically blocked by the**
 16 **sinkhole in the middle. So we had to take some**
 17 **additional steps in terms of how do we temporarily**
 18 **block it upstream and all that, what can we do,**
 19 **what kind of bulkhead is going to be suitable for**
 20 **that. That became an issue.**
 21 **Third thing is that the equipment that**
 22 **we had over there, the pumps and motors, they're**
 23 **supposed to run continually, 24 hours a day, for**
 24 **almost eight to nine months and all that. They**
 25 **kept on breaking down. We had to bring some**

1 additional equipment on the site.
 2 Then there were some issues with the
 3 conveyance of the bypass from one side to the
 4 other. It's not that you take the pump, do it
 5 over there, transport to the pipe and take it to
 6 the other side. Sometimes the sewage does not
 7 flow through. It blocks it. Then you have to
 8 clean that up and all. You have to take some
 9 additional measures so that this thing does not
 10 occur again.
 11 Then the amount of water in the ground,
 12 even though we had all the solubles and all that
 13 from the previous years and all that, the water
 14 table was very high. It took us a lot longer time
 15 and all that to dewater the site so that we can
 16 dig up and then do it in as dry a condition as
 17 possible.
 18 So these are some of the examples that
 19 I can tell you that happened along the way.
 20 Q. The original contract was for \$35 million. Do
 21 you know what the project ultimately cost?
 22 A. I don't remember the amount, but it was in excess
 23 of \$53 million.
 24 Q. Would it be your opinion that it was these
 25 unexpected issues that you just told me about

1 to come back to Mr. Shukla.
 2 MR. WATSON: We are not going to agree
 3 to any further depositions of this witness.
 4 MS. BADALAMENTI: I understand that.
 5 But we are reserving our right to finish the
 6 deposition when discovery actually opens in our
 7 case. We understand there's no agreement in that
 8 regard.
 9 BY MS. BADALAMENTI:
 10 Q. Mr. Shukla, I was asking you whether you were
 11 involved in any of the -- in getting approval of
 12 any amount that had been disallowed from Inland's
 13 invoices by the contracts department or Darryl
 14 Latimer.
 15 A. No, I'm not involved in the approval or
 16 disapproval of the total amount. I may be
 17 informed after they have done that, that this is
 18 what we paid.
 19 Q. Were you involved in recommending the amendments
 20 to CS-1368?
 21 A. Am I involved in recommending? Recommending means
 22 what?
 23 Q. Did you ever recommend that an amendment to 1368
 24 be executed by the City of Detroit?
 25 A. Which one, No. 3?

1 here --
 2 A. That's my opinion, yeah.
 3 Q. -- that caused the difference from 35 to 53?
 4 A. That's right.
 5 Q. Did Darryl Latimer, to the best of your
 6 knowledge, disapprove certain amounts that had
 7 been submitted by Inland?
 8 A. I'm not aware of anything, but he might have done
 9 that, because they're the people who finally look
 10 at the invoice and they pay for it. They
 11 recommend the payment to the council department.
 12 They may have done that.
 13 Q. Did you ever get involved when Darryl Latimer or
 14 the contracting and grants department disallowed
 15 something?
 16 A. No, I was not involved in those. I may have been
 17 copied on the letter finally what they issued on
 18 that, but I was not involved in the process.
 19 MR. WATSON: Let's take a break now.
 20 MS. BADALAMENTI: Okay.
 21 (Off the record at 2:51 p.m.)
 22 (Back on the record at 3:09 p.m.)
 23 MS. BADALAMENTI: This deposition was
 24 to be limited, so I'm going to try and skip over
 25 some of the issues, of course reserving my right

1 Q. Any of them.
 2 A. Okay. Let me put -- let me -- Amendment No. 2, I
 3 did not recommend that.
 4 Q. Okay.
 5 A. That's a fact of life. I'm not sure if Amendment
 6 No. 3 was at a time when I became the interim
 7 general superintendent of engineering. If it is
 8 that particular -- I don't know the dates on
 9 those. If it became at that particular time, then
 10 the amendment will be prepared by my section. It
 11 will be presented to the board by me. Then the
 12 recommendation is by me, if that's how it is.
 13 Q. So during the time that you were interim director
 14 and assistant director, those recommendations
 15 would have been by you?
 16 A. On paper, the recommendation is by me.
 17 Q. Okay.
 18 A. That's how the board letter is prepared.
 19 Q. In making those recommendations, what sort of
 20 review would you undertake?
 21 A. Review in terms of what? Please explain that.
 22 Q. What did you do as the interim director or
 23 assistant director to be in a position to make a
 24 recommendation that an amendment to 1368 be
 25 entered into?

1 **A. Okay. Now, the amount of work that needs to be**
 2 **done as part of that amendment and then the**
 3 **costing for that, that will be prepared by people**
 4 **who will be working under me. They'll prepare**
 5 **some kind of what's called board letter. I'm**
 6 **going to look at that board letter. I'm going to**
 7 **review that, just make sure all the language is**
 8 **okay and they have covered all the things that was**
 9 **asked for; so that's the kind of review that I'm**
 10 **going to do.**
 11 Q. Was it -- when you were in that position and
 12 making those recommendations, would you recommend
 13 an amendment after the work's already done, so
 14 after the costs have already been incurred, would
 15 you then make a recommendation?
 16 **A. It can happen, too. If it's an emergency that**
 17 **happened, that we are to start the work right**
 18 **away. Then the amendment can happen after the**
 19 **work is done.**
 20 Q. What contracts were you involved with in those
 21 positions from 2005 until your retirement where
 22 that was the case where you were recommending a
 23 contract amendment?
 24 **A. CS-1368 is one of them.**
 25 Q. Any others?

1 **A. I don't remember any other one. I'm not sure.**
 2 Q. And just to be clear, when we say CS-1368 is one
 3 of them, which amendments were recommended for
 4 approval after the work was done?
 5 **A. Like that Amendment No. 3, if you're talking about**
 6 **that. Work was already either wholly done or**
 7 **mostly done.**
 8 Q. And what about 4 and 5, do you know whether they
 9 were recommended after work was done?
 10 **A. You'll have to show me 4 and 5, what they are.**
 11 Q. Sitting here now, you don't know?
 12 **A. I don't remember exactly, but on 1368, most of the**
 13 **amendments were done after the work was already**
 14 **done.**
 15 Q. Amendment 2 and Amendment 3 you would agree were
 16 for the sinkhole; is that correct?
 17 **A. I think so.**
 18 Q. Do you know what Amendment 4 related to?
 19 **A. I don't know. You'd have to tell me. I don't**
 20 **remember all those things now.**
 21 Q. Okay. Same answer for Amendment 5?
 22 **A. Yeah. If you show me the document, then I'll be**
 23 **able to tell you.**
 24 Q. At some point in time did you become involved
 25 with the negotiations of the Macomb or Oakland

1 County purchase of the interceptor system?
 2 **A. I was not involved in the negotiation with Oakland**
 3 **Macomb, if you're talking OMID. Is that what**
 4 **you're talking about?**
 5 Q. Either Oakland County's purchase or acquisition
 6 of the interceptors or Macomb's.
 7 **A. No. I did attend some meetings which were called**
 8 **for, and my role specifically was related to the**
 9 **sewer station we have on 8 Mile Road. My input**
 10 **was needed for those things. So I attended some**
 11 **of those meetings, but I was not involved in the**
 12 **overall project or overall agreement that Macomb**
 13 **County and DWSD agreed to.**
 14 Q. Do you remember when you first learned that there
 15 was a criminal investigation of contracts that
 16 were let by the DWSD?
 17 **A. Please explain that question again. Contract that**
 18 **was let by DWSD?**
 19 Q. When did you first become aware that there was a
 20 criminal investigation of any DWSD contract?
 21 **A. Any DWSD contract?**
 22 Q. Any.
 23 **A. Criminal investigation by who?**
 24 Q. By any law enforcement agency that was
 25 investigating the -- any illegal practice in the

1 Detroit Water and Sewerage Department or with
 2 respect to any contract that it had entered into
 3 with a contractor.
 4 **A. I remember that I was contacted by FBI sometime in**
 5 **2008 -- October or November of 2008, that they**
 6 **want -- they left a message on my office phone**
 7 **saying that they want to come and talk to me, so I**
 8 **called them back and they came back and talked to**
 9 **me.**
 10 Q. What did they talk to you about?
 11 **A. Basically they were talking about the various**
 12 **contracts that we are doing, and was --**
 13 **specifically the thrust was did Ferguson -- was**
 14 **Ferguson -- how do I put it? Did Ferguson take**
 15 **advantage of his position with the mayor's office**
 16 **to get contracts from City of Detroit DWSD.**
 17 **That's what they were trying to talk to me about.**
 18 Q. Was 1368, Amendments 2, 3, 4, 5 the subject of
 19 any of the discussions?
 20 **A. I don't remember if they talked -- at that**
 21 **particular time in 2008 if they talked**
 22 **specifically of any amendment, but they did talk**
 23 **about the sinkhole, yes. That was talked about.**
 24 Q. Do you remember what they asked you about the
 25 sinkhole project?

1 **A. Same issue, that did Ferguson use his position to**
2 **get himself on the contract, who appointed him and**
3 **all that, how did they get on the job and all that**
4 **kind of questions. And I told them I didn't hire**
5 **him, it was a decision of CS-1368 contractor. My**
6 **job was to make sure that the work gets done.**
7 **That's what my job was.**
8 Q. Were you -- was Victor Mercado on site at the
9 sinkhole every day that you were on site?
10 **A. Mr. Mercado was on the sinkhole every day till the**
11 **bypass was done and the houses were secure on**
12 **either side of the sinkhole, mainly on the south**
13 **side. He was there every day in every meeting.**
14 Q. When do you think that work was done?
15 **A. That was -- I don't remember the exact dates and**
16 **all that. It was sometime end of September/early**
17 **October, around that time.**
18 Q. Why is it, to the best of your knowledge, that
19 Mr. Mercado stopped being on site every day after
20 that?
21 **A. I don't know exactly reason why he stopped, but**
22 **then his number two guy, my boss -- direct boss,**
23 **Gary Fujita -- Gary was there every day and day in**
24 **and out like me almost till January until we**
25 **stabilized the sinkhole. So he was there every**

1 **A. I'm not sure about that.**
2 Q. Do you know whether there was a bidding process
3 for 1368, how it was awarded to Inland?
4 **A. There's a proposal which they asked from the**
5 **various contractors, which is a form of bidding,**
6 **because this is a hybrid consultant construction**
7 **contract. That's what 1368 is. So we asked**
8 **people to submit a proposal based on the contract**
9 **documents, and they had to do the unit prices --**
10 **quote the unit prices, you know, the repairs that**
11 **would be anticipated.**
12 Q. And to the best of your knowledge, that occurred
13 with respect to 1368?
14 **A. That's right.**
15 **MR. WATSON:** I'm going to object to the
16 form of the question because 1368 had so many
17 facets and I'm not sure which one the witness is
18 testifying to or if his testimony covers them all.
19 **BY MS. BADALAMENTI:**
20 Q. Do you know what CS-1361 was?
21 **A. Yes. CS-1361, if I remember it now correctly, is**
22 **for the emergency repairs of sewers and water**
23 **mains in the City of Detroit. I don't know**
24 **exactly the scope of the work but that was the**
25 **smaller contract that they wanted to do in**

1 **day. Mercado stopped coming on a daily basis. He**
2 **did come off and on, but on a daily basis stopped**
3 **coming after that.**
4 Q. And do you know why the switch?
5 **A. He probably had other things to do. I don't know.**
6 Q. Did you ever speak to Inland about why Mr.
7 Mercado wasn't going to be on the site?
8 **A. I didn't talk to Inland about that, no.**
9 Q. Did you know that 1368 -- that the work
10 contemplated by CS-1368 was originally given to a
11 contractor other than Inland?
12 **A. 1368? You mean -- are you talking about the**
13 **sinkhole?**
14 Q. I'm talking about the sewer lining contract,
15 1368.
16 **A. Was given to somebody else?**
17 Q. Did you know that it was given to Lakeshore
18 initially under contract 1372?
19 **MR. WATSON:** I'll object to foundation
20 and as to relevance. I don't think this case
21 involves that at all.
22 **THE WITNESS:** I don't think 1368 was
23 given to anybody else.
24 **BY MS. BADALAMENTI:**
25 Q. Okay.

1 **addition to 1368 or it was before 1368. I'm not**
2 **sure about the timeline.**
3 Q. Do you remember that that contract was cancelled?
4 **A. I remember that was cancelled.**
5 Q. Do you know why?
6 **A. I don't know why. I was too junior in the**
7 **department to know anything like that.**
8 Q. Do you know whether 1361 was the product of that
9 typical process where you received requests for
10 proposals and they're rated and the contractors
11 are rated?
12 **A. I don't know how they did that. Maybe that's the**
13 **process they went through. I'm not sure about**
14 **that.**
15 Q. And was it your testimony that you didn't know if
16 1368 was done that way or you thought it was?
17 **A. I'm not sure about that.**
18 **MR. WATSON:** I'll object to the form of
19 that question.
20 **MARKED FOR IDENTIFICATION:**
21 DEPOSITION EXHIBIT 6
22 3:24 p.m.
23 **BY MS. BADALAMENTI:**
24 Q. The document that we've marked as Exhibit 6
25 begins with a transmittal record for Amendment 4

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1 for 1368. Do you recognize that document?
 2 **A. I'm not sure if recognize it fully or not, because**
 3 **for me to recognize any of these documents, this**
 4 **paperwork is not the right amount of paperwork.**
 5 **You need to show me the board letter and then I'll**
 6 **be able to tell you whether I know it or not, but**
 7 **I know that amendment No. 4 was done to this**
 8 **contract. I know that.**
 9 Q. Is your signature any of those that are contained
 10 on that first page?
 11 **A. No, there's not my signature on this one -- on the**
 12 **first page, no.**
 13 Q. Given the date of Amendment 4, would that have
 14 been something that you recommended?
 15 **A. I may have done that. I'm not sure if I -- this**
 16 **is 8/12/05. I'm not sure if I got the interim**
 17 **position, if I became in charge of engineering by**
 18 **that time. I'm not sure about that, August time,**
 19 **so --**
 20 Q. What was that amendment for, to the best of your
 21 knowledge?
 22 **A. I don't know. You need to tell me the scope of**
 23 **work.**
 24 Q. You can't tell from --
 25 **A. I really do not know the exact scope of work right**

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1 **now.**
 2 Q. On that first page there's a description, and
 3 it's to -- related to the emergency repairs?
 4 **A. 15 Mile and Hayes, that's what it says.**
 5 Q. Do you have any reason to believe that Amendment
 6 4 was not related to 15 Mile and Hayes?
 7 **MR. WATSON: I'm going to --**
 8 **THE WITNESS: It's related to 15 Mile**
 9 **and Hayes. That's what was part of the contract,**
 10 **but it's not necessarily that I would see all the**
 11 **board letters, if it was not prepared by me.**
 12 **BY MS. BADALAMENTI:**
 13 Q. I understand. The board letters are what will
 14 tell you if you've seen a document before?
 15 **A. Exactly.**
 16 Q. I understand.
 17 **A. That will tell me that.**
 18 **(Off the record at 3:28 p.m.)**
 19 **(Back on the record at 3:28 p.m)**
 20 **BY MS. BADALAMENTI:**
 21 Q. I was asking you earlier about your involvement
 22 in the criminal investigation, and I think you
 23 told me that you were first contacted
 24 October/November of 2008. Did you speak with law
 25 enforcement on a number of occasions or was it

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1 just once?
 2 **A. No, I think I did talk to them quite at few times**
 3 **after that. That was the first time they talked**
 4 **to me.**
 5 Q. Did you go somewhere and speak to them or did
 6 they come to you?
 7 **A. I think first time they came to my office, when**
 8 **they contacted me, and then later on I met them in**
 9 **our main office, which is Water Board Building,**
 10 **and I've gone to their office also, which is in**
 11 **the federal building. I have been there, too --**
 12 **both the places.**
 13 Q. Did you sign any statements in any of those
 14 meetings?
 15 **A. I don't remember signing any statements.**
 16 Q. Did you testify before a grand jury?
 17 **A. I did testify before the first grand jury, yeah.**
 18 Q. Did you provide any documents?
 19 **A. I did not provide any. I don't think I**
 20 **provided -- they had all the documents. All they**
 21 **were questioning me was based on the documents**
 22 **that came from the department. I don't remember**
 23 **giving them any from my side.**
 24 Q. Did they ever tell you that you were the target
 25 of the investigation?

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1 **A. No, they told me that I was not the target of the**
 2 **investigation. They were trying to take my**
 3 **deposition for whatever they were investigating.**
 4 **I was specifically told that I was not the target**
 5 **of the investigation.**
 6 Q. Were you told who was the target of the
 7 investigation?
 8 **A. The first agent who called me sometime in 2008,**
 9 **they said the same thing, and then the other**
 10 **agents who I talked to when I talked to them in**
 11 **our office -- not my office, but in the DWSD**
 12 **office or their building those agents.**
 13 Q. They said someone different?
 14 **A. Pardon me?**
 15 Q. They told you there were different targets?
 16 **A. All of them told me I was not a target of the**
 17 **investigation. All of them.**
 18 Q. Okay. My question was: Did they ever tell you
 19 who the target was?
 20 **A. They never told me who the target was, no.**
 21 Q. Did they ask you questions about Mr. Mercado?
 22 **A. Yeah, they did ask me some kind of questions about**
 23 **Mr. Mercado.**
 24 Q. Were you aware of anybody else at DWSD who had
 25 been speaking with law enforcement or received a

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1 subpoena to speak with them?
 2 **A. I believe they talked to a lot of people in my**
 3 **department and in other departments.**
 4 Q. Who do you know of from your department?
 5 **A. I know they talked to Darryl Latimer, if I**
 6 **remember right, contracts and grants manager. I'm**
 7 **pretty sure they talked to Gary Fujita, the**
 8 **director. They talked to one my head engineers,**
 9 **Dennis Green; they talked to him. He was under**
 10 **me. They talked to some of my inspectors. I**
 11 **don't remember all the names. They talked to a**
 12 **lot of people.**
 13 Q. When did you first become aware of Macomb
 14 County's discussions with Detroit about
 15 purchasing the Macomb interceptor system?
 16 **A. I don't remember the date. I was aware of that**
 17 **that they're going to purchase that. I don't**
 18 **remember the date.**
 19 Q. Do you remember the year?
 20 **A. I don't remember the year also. I don't want to**
 21 **guess on that.**
 22 Q. Do you know if it was something that was
 23 negotiated over several years or something
 24 negotiated within one year?
 25 **A. I don't know exactly how many years it took, but**

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1 **it took some time. That, I know.**
 2 Q. More than one?
 3 **A. I couldn't give you the number of years. I did**
 4 **attend some meetings, like I told you that. The**
 5 **meetings did take place over probably more than**
 6 **one year.**
 7 Q. Okay. The meetings that you attended, do you
 8 remember if Macomb representatives were at those
 9 meetings?
 10 **A. Yeah, they were present, at least -- all the**
 11 **meetings that I attended, they were present.**
 12 Q. And there were Detroit people as well, correct?
 13 **A. They were DWSD people as well.**
 14 Q. Were there Oakland County people?
 15 **A. I didn't know all of them, so I'm not sure if they**
 16 **were there or not.**
 17 Q. And what was your role? Why were you at these
 18 meetings?
 19 **A. Like I said, my role was basically to talk about**
 20 **the 8 Mile sewer station that we have south of 8**
 21 **Mile Road right on -- you know, what we call the**
 22 **Northeast Water Treatment Plant. At one time the**
 23 **recommendation was that when we -- when they buy**
 24 **the sewer system north of 8 Mile Road, they will**
 25 **buy the sewer station, too. And we were objecting**

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1 **from the engineering side saying this is not a**
 2 **good idea. So my role was that, to talk about the**
 3 **8 Mile sewer station.**
 4 Q. There was a calculation of system debt that was
 5 prepared by the city and provided to Macomb. Did
 6 you play any role in --
 7 **A. No.**
 8 Q. -- calculating that?
 9 **A. No.**
 10 Q. Did you provide information to an individual
 11 named Bart Foster so that he could prepare that
 12 information?
 13 **A. I don't know if I provided him any information on**
 14 **anything. I'm not sure about that.**
 15 Q. Do you recall having provided Macomb with
 16 information about work that DWSD had did?
 17 **A. Which work are you talking about?**
 18 Q. Any work on projects to portions of the Macomb
 19 system.
 20 **A. Yeah, we -- they did ask for some kind of as-built**
 21 **drawings and all that kind of work we have done on**
 22 **various locations. We did give them some**
 23 **documents -- I remember that -- the drawings and**
 24 **specifications.**
 25 Q. Invoices, pay estimates?

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1 **A. No, I'm not aware of that, no.**
 2 Q. You didn't get them?
 3 **A. As far as I know, no. They gave them technical**
 4 **documents. That's what I remember giving them.**
 5 Q. Do you know whether anyone in your office
 6 provided pay estimates or invoices so that the
 7 system debt could be calculated?
 8 **A. I'm not sure about that. I don't know. It didn't**
 9 **go through me.**
 10 Q. What about on pending contracts -- pending
 11 engineering contracts that would relate to the
 12 Macomb system, were you asked to provide that?
 13 **A. Pending contracts, what pending -- we had some**
 14 **work at Clintondale to be done and some meters.**
 15 **We did them -- we gave them the technical**
 16 **documents. That's what we did.**
 17 Q. Did you keep any records of what was provided at
 18 the DWSD offices or your own personal records?
 19 **A. No, I don't think I kept any records. I'm not**
 20 **sure. I don't think so.**
 21 Q. If --
 22 **A. We provided the information, whatever we had when**
 23 **they asked for that, but that's all.**
 24 Q. Who did you provide it to?
 25 **A. I thought I sent it to Mark Jacobs, I believe. I**

1 **don't remember the name of his company, but I**
 2 **think we gave it to him.**
 3 Q. Were you aware of any change in DWSD
 4 record-keeping practices during the time of
 5 CS-1368?
 6 **MR. WATSON:** Object to foundation. The
 7 witness can testify, if he can.
 8 **THE WITNESS:** I don't even understand
 9 that question. I don't know what you mean by
 10 that.
 11 **BY MS. BADALAMENTI:**
 12 Q. In DWSD contracts would the contractor be
 13 required to keep daily reports?
 14 **A. The contract -- in every construction contract,**
 15 **the daily reports are part of the contract.**
 16 Q. Do you know if in 1368 they were required to
 17 provide daily reports?
 18 **A. 1368 being a time-and-material contract, yeah,**
 19 **they were required to provide daily reports.**
 20 Q. Who would receive those daily reports?
 21 **A. The daily reports will come to engineering, yes.**
 22 **Yeah. My group will get those.**
 23 Q. So did you see daily reports for the sinkhole
 24 repairs?
 25 **A. I saw most of them, yes.**

1 **done by my people.**
 2 Q. You told me in every construction project at DWSD
 3 the contractor has to provide daily reports. Do
 4 you remember saying that a moment ago?
 5 **A. Yeah, I said that, but the daily report is**
 6 **prepared by our inspection group. I correct that**
 7 **now.**
 8 Q. Okay.
 9 **A. Not the contractor.**
 10 Q. So there were no daily reports provided by Inland
 11 on 1368?
 12 **A. Inland did give us daily timesheets.**
 13 Q. Daily timesheets?
 14 **A. Yeah, in terms of manpower, equipment and**
 15 **materials.**
 16 Q. Had the submission of timesheets been something
 17 that was done always at DWSD or was it something
 18 new?
 19 **A. No, this was a time-and-material contract. They**
 20 **have to give it to us.**
 21 Q. The daily reports that were prepared by
 22 engineering, is that something that was always
 23 done?
 24 **A. The engineering department always did daily**
 25 **reports.**

1 Q. They came from Inland?
 2 **A. They came from Inland.**
 3 Q. Do you recall a time when there was a directive
 4 that said there should not be any more daily
 5 reports coming for the sinkhole project?
 6 **A. I don't remember that. I don't remember anybody**
 7 **giving a directive like this.**
 8 Q. Was there a point in time when daily reports
 9 stopped coming from Inland for that project or on
 10 that contract, I should say?
 11 **A. I don't remember that.**
 12 Q. So as far as you know, there should be daily
 13 reports for all of 1368?
 14 **A. I don't know what you are trying to get at.**
 15 Q. I'm just asking you if you recall there being
 16 daily reports provided for 1368's performance of
 17 work.
 18 **A. I understand the question this way: Daily**
 19 **report -- I'm trying to understand what daily**
 20 **report means. Daily report means they have to**
 21 **give us details of what actually got done on a**
 22 **daily basis in terms of manpower, materials,**
 23 **timesheets and all that. Yes, they were done. If**
 24 **some daily report was generated saying that, okay,**
 25 **this inspector saw this and what he did, that was**

1 Q. And somewhere in the DWSD or in the city we would
 2 find those daily reports that were done by your
 3 department?
 4 **A. Sure.**
 5 Q. Were those something that were done by you
 6 personally?
 7 **A. No, not me. It's one of the inspector who worked**
 8 **under me or engineer who works under me; he does**
 9 **that. The daily records will be there somewhere.**
 10 Q. You were a field engineer with respect to the
 11 sinkhole, right?
 12 **A. Um-hmm.**
 13 Q. But you still would not have done the daily,
 14 right?
 15 **A. I don't write the daily reports, no.**
 16 Q. Do you know who did for the sinkhole?
 17 **A. As far as I remember correctly, it was done by two**
 18 **people, done by George Rayes, who was the**
 19 **engineering guy, and then he was helped by Charles**
 20 **George, who was the head inspector on job. These**
 21 **two people did most of the daily reports. What**
 22 **I'm saying, most of it. There may some days when**
 23 **they may not have done a report. That's why I'm**
 24 **saying, most of.**
 25 Q. And the Inland time-and-material sheets, those

1 are something that would be retained in the DWSD
 2 files?
 3 **A. Right, because they will be part of the invoice.**
 4 Q. Would those have come to you or would they have
 5 gone to someone else?
 6 **A. They would come to us first, and then we will send**
 7 **it to contracts and grants.**
 8 Q. By "us," I'm asking, does it come to you
 9 personally or come to your department?
 10 **A. It comes to the department.**
 11 Q. So do you know personally that Inland provided
 12 those time-and-material sheets every day?
 13 **A. Did they give it to us on daily basis? I'm not**
 14 **sure about that, but they gave it to us at a time**
 15 **when we were preparing the invoice.**
 16 Q. For every day?
 17 **A. For every day.**
 18 Q. Right. Okay. Were you the person at DWSD who
 19 signed off on invoices or who approved charges,
 20 designated them to be reasonable or unreasonable,
 21 things like that?
 22 **A. I think the first one or two signed by**
 23 **Mr. Mercado, if I remember that. And then he told**
 24 **me, okay, you start doing that. And then I signed**
 25 **those. I don't know if he signed one or signed**

1 **contract before 2000.**
 2 Q. Did you have any discussion with Mr. Ferguson
 3 regarding invoices submitted for the sinkhole
 4 repair?
 5 **A. No. I didn't have any discussions with him. I**
 6 **had discussion was Inland Waters, but not with**
 7 **him.**
 8 Q. Did you have discussions with Inland Waters about
 9 Ferguson's submission of bills on the sinkhole
 10 repairs?
 11 **A. I mean, not every invoice Ferguson submitted. We**
 12 **did have discussion about some invoices, yes.**
 13 Q. What was the nature of those discussions?
 14 **A. At one point in all that the amount that Ferguson**
 15 **was charging for the equipment that is on the site**
 16 **was not as per the approved documents. That's**
 17 **what Inland Waters brought to my attention. And**
 18 **ultimately we ended up paying him as per the**
 19 **documents. So we did some corrections based on --**
 20 **Inland Waters did some correction based on our**
 21 **discussions.**
 22 Q. Was there a point in time when Ferguson became
 23 upset that its charges were being reduced and you
 24 had to step in and be an intermediary between
 25 them and Inland?

1 **two. Later on I signed them.**
 2 Q. Why the change?
 3 **A. He was too busy and all. He said why don't you**
 4 **handle it right there.**
 5 Q. Do you know whether Mr. Mercado or Mr. Ferguson
 6 had a relationship at the time of the sinkhole?
 7 **A. I'm not aware of anything like that.**
 8 Q. Did Mr. Mercado ever tell you that he didn't want
 9 Ferguson at the site?
 10 **A. He never -- I'm too junior to ask him anything, or**
 11 **he doesn't talk to me like that. So we never**
 12 **talked like that.**
 13 Q. Did you have a relationship with Mr. Ferguson?
 14 **A. No, except that he's a contractor for us.**
 15 Q. How many jobs had he been involved with where you
 16 were a DWSD engineer prior to the sinkhole?
 17 **A. I don't know exactly the number, but maybe five or**
 18 **six contracts. I don't remember the exact number.**
 19 Q. Was he involved in any contracts when you were
 20 the engineer prior to Mr. Kilpatrick?
 21 **A. Yeah, he had one contract before that, yes.**
 22 Q. What was that?
 23 **A. I think that was the contract -- I remember the**
 24 **contract number, WS-623. That's replacing the**
 25 **water mains in the City of Detroit. He had that**

1 **A. Intermediary -- I mean, I've had some meetings**
 2 **with all three of them, not at the sinkhole time,**
 3 **but later on when I became the assistant director,**
 4 **and then if they have some issues among them, they**
 5 **came and talked to me and I told them come to my**
 6 **office and we can talk about that.**
 7 Q. Are you aware that Inland -- representatives from
 8 Inland testified that their amendments to the
 9 contract and their pay estimates were being
 10 withheld because of disputes they were having
 11 with Ferguson?
 12 **A. No, I don't remember. I've heard that, but I'm**
 13 **not fully sure and all of that if it was true. I**
 14 **heard that statement.**
 15 Q. So is it your testimony that you were not
 16 involved at all in getting those contracts
 17 approved once Inland and Ferguson worked out
 18 their differences?
 19 **A. That's up to them, yes.**
 20 Q. Who is Terry King?
 21 **A. Terry King -- are you talking about the sinkhole**
 22 **days? Is that what you're talking about?**
 23 Q. Terry King was a former inspector and he became a
 24 deputy director?
 25 **A. Not deputy director. He became an assistant**

1 **director. He was the inspector working in field**
 2 **engineer in the same group that I was but not**
 3 **under me. He was under a different engineer. And**
 4 **then he became the assistant director of**
 5 **maintenance.**
 6 Q. Do you know if he had a relationship with
 7 Mr. Ferguson?
 8 **A. I'm not sure about that. I don't know.**
 9 Q. Do you believe that the charges on the 15 Mile
 10 Road sinkhole repairs were reasonable?
 11 **A. I believe they were reasonable.**
 12 Q. You base that belief on the documents you
 13 received from Inland or your own personal
 14 knowledge?
 15 **A. Documents received from Inland and my knowledge,**
 16 **too.**
 17 Q. Are you aware of the fact that the City of
 18 Detroit asserted a claim that there were
 19 overcharges in connection with that project?
 20 **A. Repeat that question, please.**
 21 Q. Are you aware of the fact that the City of
 22 Detroit had asserted a claim in a federal case
 23 that there were overcharges by Inland and the
 24 subcontractors on the sinkhole project?
 25 **A. I'm not aware. Have they done that? I'm not sure**

1 standard practice is what was followed in the
 2 1368 sinkhole repair?
 3 **A. Mostly except some of those changes that we made**
 4 **to the overtimes and all that, yeah. They were**
 5 **done.**
 6 Q. The changes to the overtime on the documents that
 7 we marked as exhibits?
 8 **A. Right.**
 9 Q. The amount of the markups that were approved are
 10 dealt with in these documents that we marked as
 11 exhibits?
 12 **A. Yeah. One of those is there, yeah.**
 13 Q. Would you agree with me that that is not the same
 14 percentage of markups that you just described to
 15 me? This is a different -- permits a different
 16 rate of markup at the different layers?
 17 **A. I don't know if they are different from that, but**
 18 **there's always language in the contract. We were**
 19 **going to follow that. 1368 had all the language.**
 20 **I'm not sure about that, but this was the language**
 21 **that was incorporated into that.**
 22 Q. Okay. So you're not sure if it's standard
 23 language or different language?
 24 **A. I'm not sure about that, no. But there are some**
 25 **percentages like that.**

1 **about that. I don't know.**
 2 Q. I just want to know what you know.
 3 **A. No.**
 4 Q. Are you aware of the -- we refer to them as
 5 layers of markups where subcontractors are
 6 marking up, subcontractors are marking up,
 7 subcontractors, and ultimately Inland then marks
 8 up the whole bill and sends it for payment. Were
 9 you aware that that was --
 10 **A. That's how the system works.**
 11 Q. That's something permitted in DWSD?
 12 **A. Something permitted.**
 13 Q. What are those, the markups that are permitted at
 14 each layer?
 15 **A. Standard contract language will be the general**
 16 **contractor will get 10%, if they perform the work**
 17 **themselves. If the subcontractors perform the**
 18 **work, the first tier subcontractor, if they**
 19 **perform the work, they get 10%, but the second**
 20 **layer gets only 5%, and the general contractor**
 21 **gets 5% on top of all of that. That's what I**
 22 **remember. Don't remember exactly the language,**
 23 **but there is language like that in the contract**
 24 **documents.**
 25 Q. Do you believe that that standard language or

1 Q. In the course of -- your only role with respect
 2 to Macomb's purchase was to provide technical
 3 documents, correct?
 4 **A. You mean the agreement later on?**
 5 Q. Yeah, the agreement.
 6 **A. I gave them the technical documents.**
 7 Q. Did you ever review the Macomb acquisition
 8 agreement or any of the exhibits to that
 9 agreement?
 10 **A. No.**
 11 Q. Did you participate in any way in the due
 12 diligence other than providing the technical
 13 documents?
 14 **A. I mean as part of the meetings and all that,**
 15 **that's what I did.**
 16 Q. How many meetings do you think you attended? I
 17 don't expect you to know exactly, but was it one
 18 or --
 19 **A. It was more than one.**
 20 Q. Was it three? Four? More than ten?
 21 **A. Not ten.**
 22 Q. Between one and ten?
 23 **A. Maybe three or four.**
 24 Q. Okay. Do you know who Bart Foster is?
 25 **A. Yeah, I know who Bart Foster is.**

1 Q. Who is he?
 2 **A. He's a consultant who used to determine -- we used**
 3 **to call him rates consultant, how do we set up the**
 4 **rates and all that. He's the guy who used to do**
 5 **all the calculations. He's an expert in all**
 6 **those.**
 7 Q. By "we," do you mean the engineering department
 8 used to use him?
 9 **A. When I say "we," I represent engineering**
 10 **department.**
 11 Q. Did you use Bart Foster for anything else?
 12 **A. I don't remember using him for anything else. I**
 13 **attended meetings which he organized and all that**
 14 **He gave some presentations every year how the**
 15 **rates are going to be for the next year. I**
 16 **attended all those meetings.**
 17 Q. The information that he would get to calculate
 18 those rates, where would that information come
 19 from?
 20 **A. Some of that information will be the total amount**
 21 **of the contracts that we have done and all.**
 22 **99 percent of that information will come from**
 23 **contracts and grants group because they're the**
 24 **people who keep all the records, total money paid**
 25 **on any contract and what is the total value of the**

1 profess to know Bart Foster's job description.
 2 I'm not sure about that, but I provide information
 3 if somebody asks for it.
 4 **BY MS. BADALAMENTI:**
 5 Q. So let me say this: Is it fair to say that if
 6 you were asked for any information that went into
 7 a rate analysis, it was from contract and grants,
 8 and that's who you gave it to?
 9 **A. We gave it to them.**
 10 Q. All right. Would you ever give any of the
 11 invoices or daily reports or anything like that
 12 to go towards that rate analysis?
 13 **A. I don't think we provided any daily reports to**
 14 **anybody for this particular task.**
 15 Q. Did you ever provide an opinion on whether or not
 16 you thought charges that you were estimating were
 17 reasonable or appropriate or within the scope of
 18 the contract?
 19 **A. The opinion to who?**
 20 Q. To the contract and grants department when you
 21 gave them an estimate.
 22 **A. We signed it and basically told them this is what**
 23 **we plan to pay.**
 24 Q. The original Amendment 2 was for \$35 million, and
 25 you said you thought that was reasonable that the

1 **contract, whether it's done or going to be done.**
 2 **If they need any backup information and all that**
 3 **which we have, we might give that. Like some of**
 4 **the estimates we pay on the contract documents, if**
 5 **they need a copy, we give them a copy.**
 6 Q. So if money has been paid, that would go into his
 7 rate analysis, and that would come from contract
 8 and grants?
 9 **A. I don't know what else he uses in the rate**
 10 **analysis, but the value of the contract does go**
 11 **into the rate. That's what I think.**
 12 Q. Do you believe that estimates go into the rate
 13 analysis?
 14 **MR. WATSON:** I'm going to object to the
 15 foundation of the question. We're far afield, I
 16 think, from this witness's expertise, and I don't
 17 want him to guess.
 18 **MS. BADALAMENTI:** He just told me
 19 sometimes he gave estimates when the amount
 20 paid --
 21 **THE WITNESS:** Estimated monthly invoice
 22 that we paid the contractor, if it is requested by
 23 contracts and grants that they want to give to
 24 Bart Foster, we gave it to them. I don't remember
 25 I gave exactly anything to Bart Foster and I don't

1 amount went up so high because of all the changed
 2 conditions that you encountered.
 3 **A. And complications.**
 4 Q. And you listed some things for me that you
 5 thought were related to that. Was there anything
 6 that you thought about as we've been sitting here
 7 that you didn't tell me about that would be
 8 within that scope of change conditions?
 9 **A. Okay. Another thing which I think is worth**
 10 **mentioning is that in the original \$35 million, if**
 11 **I remember that correctly, it was anticipated that**
 12 **we will block the sewer on either side of the**
 13 **sinkhole by some either wooden bulkhead or a metal**
 14 **bulkhead. Bulkhead means stop -- going to put a**
 15 **stop on that. That particular method was found to**
 16 **be unfeasible because the water flowing. You**
 17 **could not even control the amount of water that we**
 18 **had through the sewer. You have to have the sewer**
 19 **as dry a condition as possible to install that.**
 20 **We couldn't do that. Ultimately we ended up**
 21 **putting sandbags, and sandbags were not feasible**
 22 **because they float away. We ended up putting**
 23 **concrete bags in there, and if I remember it**
 24 **correctly, on the two side -- the two locations**
 25 **either side of that, we ended up putting close to**

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1 **2,000 concrete bags. And that's how we built up**
 2 **the bulkhead. And once it became -- so we were**
 3 **able to stop the flow that way.**
 4 **Now, the question -- the concrete bags**
 5 **sat in there for almost nine months, and it became**
 6 **like a rock. And now you're almost 70 feet deep**
 7 **under the ground, and how do you take it out from**
 8 **the pipe? It became a massive task to break it up**
 9 **slowly one by one. We couldn't dynamite it.**
 10 **Couldn't do anything like that. So it became a**
 11 **manual labor and all that to take it out. We**
 12 **don't damage the rest of the pipe. That was one**
 13 **of the major expenses in all that we incurred, how**
 14 **to bulkhead that, how to debulkhead it.**
 15 Q. Who did that work?
 16 A. **Inland Waters and their subcontractors also they**
 17 **had.**
 18 Q. Do you know in particular who did that work?
 19 A. **I don't remember that, but they brought some**
 20 **concrete-breaking company. I don't remember who**
 21 **did it.**
 22 **MR. WATSON:** Let me interrupt. Foster
 23 has got to leave at 5:45. Are you just about done
 24 with this?
 25 **MS. BADALAMENTI:** Are you good?

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1 **MR. WATSON:** I was waiting for your
 2 answer.
 3 **MS. BADALAMENTI:** Yeah, I am.
 4 **MR. WATSON:** Okay. The other question
 5 is -- I probably have about 20 minutes of
 6 questions to ask him. I guess I can submit a
 7 declaration for him, but I don't want to submit a
 8 declaration and then you all object to it. Are
 9 you -- will you consent to my submitting a
 10 declaration for the witness?
 11 **MS. BADALAMENTI:** I'm not going to
 12 consent to that. That's a change from the
 13 position that you took, so, no. I can stay here
 14 as long as you need me. We can break with this
 15 witness and do Foster and come back.
 16 **MR. WATSON:** Well, finish up. Then
 17 I'll ask a few questions to this witness. I might
 18 choose to submit a declaration anyway without your
 19 consent, but we can argue about that.
 20 **BY MS. BADALAMENTI:**
 21 Q. You don't know who the concrete-breaking company
 22 is?
 23 A. **I don't remember that.**
 24 Q. With respect to the discussions that you had
 25 where Inland and Ferguson were both present, do

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1 you remember suggesting that certain Ferguson
 2 charges be changed into tool truck charges or gas
 3 or fuel surcharges so they could get approved?
 4 A. **Yeah, because they have to do that as per the**
 5 **rates that are allowed as per the contract**
 6 **documents. Some of the rates were high, and we**
 7 **asked them to change it.**
 8 Q. To change it to a different category?
 9 A. **No, not a category. To change it to what is**
 10 **allowed in the document, like a truck. A truck is**
 11 **a rental, allow daily rental rate based on certain**
 12 **documents in the contract it cannot be more. If**
 13 **the subcontractor or main contractor charges us**
 14 **more than that, we are going to bring it down. In**
 15 **this case, Ferguson was a subcontractor to Inland**
 16 **Waters. My recommendation to Inland Waters was,**
 17 **revise your estimate, and they did.**
 18 Q. Revise their estimate or revise their pay
 19 request?
 20 A. **Estimate -- in our engineering parlance we call**
 21 **estimate as the pay request.**
 22 Q. Okay. So you told them to revise their pay
 23 request to get Ferguson paid?
 24 A. **To get Inland Waters paid because Ferguson will be**
 25 **paid by Inland Waters.**

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1 Q. Did you have that same circumstance come up with
 2 respect to bills that were submitted by
 3 L.D'Agostini?
 4 A. **I don't remember anything from L.D'Agostini. In**
 5 **Ferguson's invoices, I think it was once or twice.**
 6 **I remember that, more than once.**
 7 Q. Do you remember having any meetings like that
 8 where you talked about revising the invoices with
 9 any other of Inland's subcontractors?
 10 A. **I did not have any meetings with Inland**
 11 **subcontractors regarding the pay invoices.**
 12 Q. Other than Ferguson?
 13 A. **I did not have any meetings with any**
 14 **subcontractors regarding payment period. I'm**
 15 **making that statement. DWSD does not talk to the**
 16 **subcontractors for payments. We talk to only**
 17 **general contractor.**
 18 Q. My question was: Did you have any meetings with
 19 Inland and any of Inland's subcontractors?
 20 A. **I don't remember that. I don't think so.**
 21 Q. Other than Ferguson?
 22 A. **Ferguson was the only one that we had.**
 23 Q. That was my question. Do you remember the
 24 amount -- the dollar amount of the dispute
 25 regarding Ferguson?

1 **A. I don't remember the dollar amount, but the unit**
 2 **rate was high. We needed to bring it down.**
 3 Q. Was it over \$600,000?
 4 **A. I don't remember the amount.**
 5 Q. In any event, you did not tell anyone at Macomb
 6 County anything about 1368? You didn't have
 7 anything to do with Macomb County's purchase of
 8 the system other than what you told me here
 9 today?
 10 **A. Yeah, that's true.**
 11 Q. Did you inform anybody at Macomb County of the
 12 investigation that was being done by the FBI?
 13 **A. Anybody in Macomb County?**
 14 Q. Yes.
 15 **A. I don't think so, no.**
 16 Q. Did you discuss the investigation with anybody
 17 from the Detroit Legal Department?
 18 **A. Our Law Department?**
 19 Q. Yes.
 20 **A. Yeah, the Law Department was with me quite a few**
 21 **times. They were present, too, when the**
 22 **investigation was going on.**
 23 Q. Who from the Law Department would go?
 24 **A. I think it was Ed Keelean most of the time.**
 25 **MS. BADALAMENTI:** I don't think I have

1 **the scope of work is, but we are telling them that**
 2 **a sewer has to be repaired from this location to**
 3 **this location. So what they do is whatever they**
 4 **do on a daily basis, they submit us the timesheets**
 5 **for the number of hours that each of the people**
 6 **spent on that in terms of various categories.**
 7 **They can be laborer; can be operator, the**
 8 **equipment that they use that particular day, the**
 9 **number of hours they use for each equipment, and**
 10 **the material that they purchased and all the**
 11 **invoices for those. So they submit to us on,**
 12 **day-to-day basis, at the time of the invoice, when**
 13 **they're submitting that, and then we total them**
 14 **and all that, and we look over them for the**
 15 **payment.**
 16 Q. How do you try to make sure that the time and
 17 material submitted are reasonable?
 18 **A. There are two things we were looking at that. The**
 19 **total number of hours in the day for the manpower**
 20 **cannot exceed 24 hours. If somebody charges more**
 21 **than 24 hours for a particular employee and all**
 22 **that, that's not right. So -- and then nobody**
 23 **works 24 hours a day and all -- various names, how**
 24 **many hours they worked. Equipment hours goes the**
 25 **same way. You can work only certain number of**

1 anything else.
 2 **EXAMINATION**
 3 **BY MR. WATSON:**
 4 Q. Mr. Shukla, were you involved in the original
 5 1368 project?
 6 **A. The original 1368, no, I was not involved in that.**
 7 Q. So you got involved at the time of Amendment No.
 8 2?
 9 **A. Before Amendment No. 2, when the sinkhole**
 10 **happened, so I got involved with when the sinkhole**
 11 **happened.**
 12 Q. And you indicated that you were working every
 13 day. Do you mean five days a week, seven days a
 14 week?
 15 **A. Seven days a week.**
 16 Q. How many hours a day did you typically work out
 17 there?
 18 **A. Average about 16 hours a day.**
 19 Q. You mentioned that 1368 was a task order project.
 20 Then you talked about a time-and-materials
 21 project. Was it both? Was it one or the other?
 22 Can you explain that.
 23 **A. This particular task was a time-and-material.**
 24 Q. How does that work?
 25 **A. Time-and-material is we do not know exactly what**

1 **hours in a day. And the material is the actual**
 2 **invoice what they're paying for it. So that's how**
 3 **we make sure they're charging us for that.**
 4 Q. Does anyone look over that stuff?
 5 **A. We review them and all that. We go over them, not**
 6 **all of them all the time, but we do that. But**
 7 **what was decided in this case was -- with**
 8 **Mr. Mercado is Inland Waters submit us the CPA**
 9 **audited invoices. So it was audited by their own**
 10 **people, submitted to us, and we took that as**
 11 **saying, okay, this is already audited by somebody**
 12 **in the accounting department.**
 13 Q. So Inland Waters' own people had to audit the
 14 invoices?
 15 **A. Right. Um-hmm.**
 16 Q. Were these audits signed?
 17 **A. Yeah, the audits were signed.**
 18 Q. That was for all time, all material, all
 19 equipment?
 20 **A. All timesheets, all the equipment, all invoices.**
 21 Q. And was that done before they could get any
 22 payment?
 23 **A. That's true.**
 24 Q. Did you ever see or hear anything that leads you
 25 to believe that Inland Waters was charging

1 excessive amounts for the work they were doing?
 2 **A. No. I don't think so, no.**
 3 Q. Did DWSD have anyone who would look into what was
 4 being done on the project and whether it was
 5 being done?
 6 **A. My engineers and inspectors would look at the**
 7 **timesheets and all that they submit to us with the**
 8 **invoice, but I'm not sure if they went through all**
 9 **of them. We depended on the audited statement**
 10 **that the contractor submitted. I didn't have time**
 11 **to go through each one of them one by one, page by**
 12 **page.**
 13 Q. You talked some about Ferguson and there were
 14 certain issues with Ferguson. Were those
 15 resolved to your satisfaction?
 16 **A. Those issues that came up regarding overcharges,**
 17 **they were resolved to my satisfaction. I'm**
 18 **positive about that.**
 19 Q. Were the amounts charged by Ferguson as a result
 20 of your actions increased, decreased, stayed the
 21 same?
 22 **A. No, they decreased.**
 23 Q. And how much money are we talking about? Are we
 24 talking about hundreds of thousands, millions,
 25 tens of millions?

1 Q. So that takes all the Macomb County sewage?
 2 **A. To the Detroit system and ultimately ends up at**
 3 **the sewage treatment plant on Jefferson. We had**
 4 **the break somewhere in this area, between Hayes**
 5 **and Schoenherr.**
 6 **Now, this becomes a health care**
 7 **emergency. If this sewer system is not conveyed,**
 8 **it doesn't flow through and all, then all this**
 9 **area will see flooded basements, everybody, and**
 10 **then it becomes a much bigger crisis than what we**
 11 **have to do in order to bypass it and let it flow**
 12 **through. That's why it's an emergency, because**
 13 **the sewage has to go -- it cannot stop. It has to**
 14 **go somewhere. And in this particular case, we**
 15 **don't even have an outlet where we can basically**
 16 **throw it into the river it's so far away from the**
 17 **Detroit river. This is the only way it can go.**
 18 **You've got to provide some kind of alternative**
 19 **way. There was no alternative in this case, and**
 20 **got to repair it on an emergency basis.**
 21 Q. How long did you work for DWSD?
 22 **A. Total service?**
 23 Q. Yes.
 24 **A. About 23 and a half years.**
 25 Q. Had you ever seen an emergency of this magnitude?

1 **A. No, it's not in the millions and all that. I'm**
 2 **not sure if it went over 100,000. I don't know**
 3 **exactly the amount, but it's not that high. But**
 4 **even if it's \$10, we have to go per the document.**
 5 **We cannot pay more than that to anybody.**
 6 Q. You indicated that this was an emergency repair.
 7 **A. Um-hmm.**
 8 Q. Why did you think it was an emergency?
 9 **A. The emergency is -- okay. Let me put it this way.**
 10 **I can draw a little sketch for you.**
 11 Q. Draw it on a separate page and we'll make it an
 12 exhibit.
 13 **A. This is all areas of Macomb County and all that.**
 14 **They have sewers and all coming through this and**
 15 **come through this 15 Mile Road sewer which we**
 16 **called the Oakland Macomb Interceptor. The reason**
 17 **it's called Oakland Macomb is because some part of**
 18 **Oakland County sewers also tie in Macomb sewers**
 19 **and then discharge into this. And this goes**
 20 **through the Edison corridor, 15 Mile Road south,**
 21 **and goes to 8 Mile Road sewer station. This is**
 22 **the only sewer that brings the whole of all**
 23 **sewers' flow from Macomb County into DWSD. It**
 24 **cannot go to any other sewer because there's no**
 25 **other sewer existing.**

1 **A. No, not this magnitude. This was really big.**
 2 Q. You testified the original estimate was 35
 3 million, but the total price paid was over 54
 4 million, I think you said. How can you justify
 5 that type of increase?
 6 **A. I think total price that we paid, if I remember,**
 7 **was around 53.5, if I remember that. I don't**
 8 **remember the \$54 million figure, how it came**
 9 **about. But when this happened, Inland Waters came**
 10 **on board, and then hired a consultant, which was**
 11 **NTH Consultants in this case. They prepared an**
 12 **estimate based on the way they are going to repair**
 13 **this sewer, based on the conditions which are**
 14 **going to be exactly as they anticipated, that**
 15 **we'll dig a shaft here, bypass it, bypass that**
 16 **one, and ultimately we'll dig up in place. We'll**
 17 **find the sewer exactly where we think it is, that**
 18 **deep and all that, put some shafts around this.**
 19 **Secure this place, and repair this, and ultimately**
 20 **get the system through.**
 21 **When we actually did that, it became a**
 22 **lot more complicated than the design concept that**
 23 **we are talking about.**
 24 Q. And you mentioned several factors. Let me --
 25 we've got those on the record. I don't want to

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1 talk about that. Let me ask you about a couple
 2 more. Was there any expense involved in water
 3 and air monitoring?
 4 **A. Yeah, we had to do the water and air monitoring on**
 5 **both sides of this because, one, we are next to**
 6 **the residential area now. Secondly, there are**
 7 **some water mains in the area and all. We don't**
 8 **want them to be contaminated, because the water**
 9 **mains are old. Who knows where they may be**
 10 **leaking. We had to monitor the water. And**
 11 **ultimately the drain running around 15 Mile Road**
 12 **and Schoenherr, we just want make sure that none**
 13 **of the sewage flow goes into -- in case there's a**
 14 **breakage and all that. So we are monitoring the**
 15 **water system. The water samples were taken from**
 16 **this on a daily basis, until this sinkhole was**
 17 **repaired to make sure that no sewage is getting**
 18 **into that.**
 19 Q. Was there any issue in regard to that sinkhole
 20 expanding and additional work as a result of
 21 that?
 22 **A. At the time when we were bypassing the sewer and**
 23 **all, the sinkhole is getting bigger and bigger and**
 24 **it was becoming a threat to houses, especially on**
 25 **the south side. So we had to stabilize the ground**

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1 **on the south side and make sure these houses don't**
 2 **get sucked into that like, if you remember**
 3 **happened three years ago in Florida. There was a**
 4 **news item where the house got sucked into a**
 5 **sinkhole. We didn't want the same thing to happen**
 6 **here.**
 7 Q. You indicated there were daily meetings on the
 8 project. Who attended those meetings?
 9 **A. I attended all those meeting. Mercado attended**
 10 **those meetings until the bypass was done and the**
 11 **sinkhole was basically secure. Gary Fujita was**
 12 **there all meetings until December. Then it was my**
 13 **inspectors, my engineers, Inland -- representative**
 14 **of Inland Waters, and all subcontractors who**
 15 **happened to be working at that time. And a**
 16 **representative from Macomb County was there for, I**
 17 **think, the first two months.**
 18 Q. What was his name?
 19 **A. He was an inspector, Donald Penrod. And**
 20 **representative from Sterling Heights, name of Joe**
 21 **Ross, he was there with us right from day one**
 22 **until the date we repaired the hole.**
 23 Q. Could the representatives from Sterling Heights
 24 and Macomb County ask any questions they wanted
 25 to at those meetings?

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1 **A. They can ask any questions they want.**
 2 Q. Could they get any documents that they wanted?
 3 **A. They could get any documents they wanted.**
 4 Q. Did any of them ever complain about excessive
 5 cost or wrongdoing?
 6 **A. None of them did that.**
 7 Q. I'm not sure I asked you. Do emergency repairs
 8 typically cost more? Are they more expensive
 9 than regular repairs?
 10 **A. Yeah, usually they cost more.**
 11 Q. We'd get into it, but let's skip that.
 12 You indicated that you believed all the
 13 charges were reasonable?
 14 **A. I still believe that.**
 15 Q. Well, do you think that at least some of these
 16 might have been overcharges and DWSD was
 17 excessively charged for this stuff?
 18 **A. I don't think so.**
 19 Q. Why not?
 20 **A. Because we looked at all the documents. We paid**
 21 **them what they actually worked on and the rates**
 22 **and all that were as per the documents. They were**
 23 **audited statements. And I was there on day-to-day**
 24 **basis and all. I knew what was going -- work was**
 25 **going on.**

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1 Q. Did you ever recommend approval of any payment or
 2 pass any payment through that you had questions
 3 about or felt was excessive?
 4 **A. Like I said, I had a question about one of the**
 5 **invoices we found out that his rates -- one of the**
 6 **subcontractors were high for some equipment, so we**
 7 **asked Inland Waters to revise that one.**
 8 Q. Ms. Badalamenti asked you about your testimony
 9 before the grand jury and your interviews by the
 10 federal government. What did you tell them?
 11 **A. Okay. Their main questioning was did Ferguson**
 12 **take advantage of his position to get some**
 13 **contracts with the City of Detroit. And my**
 14 **response to all of them was, no, because sinkhole**
 15 **was the only one where he was involved as a**
 16 **subcontractor to Inland Waters, and Inland Waters**
 17 **selected him to do that. The rest of them were**
 18 **all bid contracts. We had the documents. We bid**
 19 **them outside. They were all low bid contracts.**
 20 **He was the low bidder. He didn't get all of them,**
 21 **but low bidder on some. The ones that he got,**
 22 **then we got work done as per the document. We**
 23 **didn't pay him until the work is done.**
 24 Q. Did they ask you about excessive charges?
 25 **A. No, they didn't ask me about excessive charges.**

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1 Q. Was the thrust of their questions to you whether
 2 or not there was favoritism shown to Ferguson?
 3 **A. That's basically what it was. I was engineering**
 4 **part. I told them engineering was not part of**
 5 **that.**
 6 **MR. WATSON:** That's all. Thank you.
 7 RE-EXAMINATION
 8 **BY MS. BADALAMENTI:**
 9 Q. I just have a couple follow-ups. You referred to
 10 this now a couple different ways. And Mr. Watson
 11 asked you is it a task order or
 12 time-and-materials contract. In the documents
 13 that are in front of you, I would note that DWSD
 14 Contract No. CS-1368 Task ER 37 is referenced.
 15 Is it your belief, though, that this was not a
 16 task order contract?
 17 **A. No, CS-1368 is a task order contract. Now, this**
 18 **particular task underneath, that became a**
 19 **time-and-material. Most of the task orders that**
 20 **we gave them are not time and material. But**
 21 **sinkhole was a time-and-material task order.**
 22 Q. And how did that come to be the case?
 23 **A. Because it's an emergency. And we don't know the**
 24 **scope of work, what is to be done.**
 25 Q. So in that regard, Mr. Watson asked you do

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1 emergency repairs cost more, and you said yes?
 2 **A. Yeah.**
 3 Q. Why?
 4 **A. Because when you are going for a bid contract,**
 5 **where you're asking other people to bid on**
 6 **something, too, you know, there's a competition**
 7 **and all that. People search for various things**
 8 **around and all that, and ultimately they give you**
 9 **the price. Here he's going to get all that we're**
 10 **looking for. Say I need this pump on this site by**
 11 **tomorrow -- because that's what we needed in this**
 12 **case in order to convey this one. I needed pump**
 13 **and motor on the site by tomorrow. He's going to**
 14 **get one that is available right now. If he had**
 15 **waited two months and all that, he can get a lower**
 16 **price from somewhere else, but today he is going**
 17 **to get what is available in the market today, so**
 18 **that price may be higher; it usually is. So is**
 19 **for the piping, so is for the valves, and so is**
 20 **for the labor. Some labor is not available**
 21 **straightaway and all that. He has to lure**
 22 **people -- hire people from other subcontractors,**
 23 **other contractors by paying them a little bit**
 24 **more. That's how it goes.**
 25 Q. So the swiftness is one issue and the

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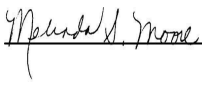
1 competitiveness is another?
 2 **A. Another issue.**
 3 Q. Okay. In that regard, Mr. Watson asked you what
 4 did you tell the federal investigators, and you
 5 told them, as I understand it, that you did
 6 not -- you were unaware of any wrongdoing by Mr.
 7 Ferguson because all the projects he was involved
 8 in except this one he had bid on?
 9 **A. He bid on those.**
 10 Q. But he didn't bid on this one, did he?
 11 **A. No, because this was task order given to Inland**
 12 **Waters, and Inland hired him to do the work for**
 13 **them. So there's no bidding on that.**
 14 Q. Did Inland bid for this work or for 1368, the
 15 original work?
 16 **A. This work, Inland got the subcontractors to do it**
 17 **right away because we needed people to work on**
 18 **that tomorrow. If I remember that correctly, any**
 19 **other task order that they got other than**
 20 **sinkhole, they did get some quotations from other**
 21 **subcontractors, too. We didn't tell them who to**
 22 **go to, but they did have some competition. There**
 23 **was no time for competition on this job.**
 24 Q. With respect to the original 1368, was it bid?
 25 Was it awarded based on bids?

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1 **A. You mean the original contract?**
 2 Q. Yes.
 3 **A. Original contract was advertised in the**
 4 **document -- in the papers and whatever. It was an**
 5 **open contract. There were other bidders. The**
 6 **contract was evaluated and ultimately Inland**
 7 **Waters was chosen as the most responsive to the**
 8 **contract.**
 9 Q. Your understanding is that Inland was selected as
 10 a result of the bid process for 1368?
 11 **A. That's true.**
 12 Q. I have just a couple. Let me go back to that.
 13 You indicated that there was -- there were a
 14 number of changes -- we talked a lot about
 15 them -- that resulted in the \$35 million estimate
 16 changing to be, you know, in excess of 50
 17 million -- whatever the number ended up being.
 18 The estimate, though, you would agree with me, of
 19 35 million or somewhere in that frame was after
 20 September 30th -- on or after September 30th of
 21 2004; isn't that true?
 22 **A. I don't remember the amount -- the exact date when**
 23 **the estimate was prepared, but it was definitely**
 24 **after the sinkhole -- we started working on that.**
 25 **Sometime in September, I think so.**

1 Q. In fact, the contract was not approved by City
 2 Council, we saw, until December of 2004, correct?
 3 So by that time would you have known of those
 4 changed conditions?
 5 **A. No, I wouldn't have known.**
 6 Q. Which changed conditions would have come up after
 7 December of 2004?
 8 **A. Like I told you, one where the bulkhead issue and**
 9 **all that, and the second one is amount of work we**
 10 **did for stabilizing the houses and all, in**
 11 **addition to doing the additional sheet piling and**
 12 **all that. Then the situation with the pumps and**
 13 **motors and all that, how long they going to last**
 14 **because most of the pumps and motors are not**
 15 **designed for continuous duty 24 hours a day.**
 16 Q. Okay.
 17 **A. The amount of breakage and maintenance and repairs**
 18 **and replacements that you get. Then the issue of**
 19 **the piping getting blocked and all that. Nobody**
 20 **anticipated those. All that happened after that.**
 21 Q. After that, okay. The last thing I want to show
 22 you -- and we'll mark it.
 23 **MARKED FOR IDENTIFICATION:**
 24 **DEPOSITION EXHIBIT 7**
 25 4:23 p.m.

1 **BY MR. WATSON:**
 2 Q. This is Exhibit 7. This is referring to
 3 Amendment 3, and it has a date of May 18th of
 4 2005. Is that the time frame that you recall
 5 Amendment 3 being proposed?
 6 **A. I don't know about the dates when this happened,**
 7 **because I was still in field engineering those**
 8 **days. So -- if this is what it says, then this is**
 9 **what it says. It happened in May 2005.**
 10 Q. You don't know one way or the other?
 11 **A. I don't know.**
 12 **MS. BADALAMENTI:** I don't have anything
 13 else.
 14 **MR. WATSON:** Okay.
 15 (The deposition was concluded at 4:26 p.m.
 16 Signature of the witness was not requested by
 17 counsel for the respective parties hereto.)
 18
 19
 20
 21
 22
 23
 24
 25

1 **CERTIFICATE OF NOTARY**
 2 **STATE OF MICHIGAN)**
 3 **) SS**
 4 **COUNTY OF MACOMB)**
 5
 6 I, MELINDA S. MOORE, certify that this
 7 deposition was taken before me on the date
 8 hereinbefore set forth; that the foregoing
 9 questions and answers were recorded by me
 10 stenographically and reduced to computer
 11 transcription; that this is a true, full and
 12 correct transcript of my stenographic notes so
 13 taken; and that I am not related to, nor of
 14 counsel to, either party nor interested in the
 15 event of this cause.
 16
 17
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 22 **MELINDA S. MOORE, CSR-2258**
 23 **Notary Public,**
 24 **Macomb County, Michigan**
 25 **My Commission expires: September 6, 2016**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant,

Civil Action No. 77-71100

And

Honorable John Feikens

vs

THE STATE OF MICHIGAN,

Defendant, Counter-Plaintiff
and Cross-Defendant,

vs

THE CITY OF DETROIT, a municipal
corporation and THE DETROIT WATER
AND SEWERAGE DEPARTMENT,

Defendants and Cross-Plaintiff,

vs

ALL COMMUNITIES AND AGENCIES
UNDER
CONTRACT WITH THE CITY OF
DETROIT
FOR SEWAGE TREATMENT SERVICES,

et al

**CITY OF DETROIT'S BRIEF IN RESPONSE TO MACOMB COUNTY'S
MOTION AND BRIEF FOR PRELIMINARY INJUNCTION**

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STATEMENT OF ISSUES PRESENTED

1. Is Macomb County entitled to extraordinary remedy of injunctive relief where it has failed to even address the crucial element of irreparable injury, but instead has simply ignored its burden of making a particularized showing of irreparable injury? DWSD submits that this failure is fatal to Macomb County's request for such relief.

2. Is Macomb County entitled to the extraordinary remedy of injunctive relief where it can be adequately compensated through look back procedures regularly used by DWSD to adjust rates retrospectively based on changed circumstances?

3. Has Macomb County shown a likelihood of success on the merits, even though the challenged rates have been set in accordance with the law, the contract between Macomb County and DWSD and the prior Rate Settlement Agreements, and where the law grants a presumption of validity to the rates set by DWSD, and in order to void that action, Macomb County bears a heavy burden of showing that such rates are arbitrary, capricious or unreasonable?

4. Has Macomb County failed to show a likelihood of success on the merits where its claims sound in negligence and would be barred by governmental immunity?

5. Has Macomb County failed to show a likelihood of success on the merits where it relies on the prudent investment rule to attack DWSD's determination of its rates, where that rule does not apply and has not been applied to municipally owned utilities and applies only where the public utility or its investors earn a rate of return on their investments, which is not the case with DWSD's sewer rates?

6. Should the relief requested by Macomb County be denied, where to grant that relief would force all users to bear the cost of repairs of the Romeo Arm interceptor even though that Interceptor solely benefits Macomb County, and such action would be contrary to the

contract between Macomb County and DWSD and prior Rate Settlement Agreements and contrary to the long established practices of DWSD in setting such rates and to the law?

CONTROLLING AUTHORITIES

Barber ex rel. Barber v. Dearborn Public Schools, 286 F.Supp.2d 847 (E.D.Mich. 2003)

Basicomputer Corp. v. Scott, 973 F.2d 507, 511 (6th Cir. 1992)

Cellnet Communications, Inc. v. New Par, 292 F.Supp.2d 565 (E.D. Mich. 2003)

City of Novi v. City of Detroit, 433 Mich. 414, 425-426 (1889)

City of Plymouth v. City of Detroit, 423 Mich. 106, 1033; 377 NW2d 689 (1985)

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Michigan Bell Telephone Co. v. MCI Metro Access Transmission Services, Inc., 323 F.3d 348, 354 (6TH Cir. 2003)

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40 C.F.R. §§ 35.929-1 through 35.929-3

M.C.L. 460.6

STATEMENT OF FACTS

In this action, Macomb County seeks to enjoin DWSD from collecting, through the rates charged to Macomb County, the costs DWSD incurred in performing timely repairs to the Romeo Arm of the Macomb interceptor system. Those repairs ensured the provision of uninterrupted sewerage service to the Macomb County communities exclusively served by the Romeo Arm. Those communities, and only those communities, benefited from the efforts DWSD undertook to implement those repairs. While Macomb does not dispute the critical benefits its citizens enjoyed as the direct result of those efforts, it seeks to avoid responsibility for payment for those benefits.

In 1962, a study authorized by an Inter-County Drain Committee representing the counties of Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne recommended that the City of Detroit's sewage disposal system be expanded to cover the larger metropolitan area. *See, Davis v. City of Detroit*, 98 Mich. App. 705, 709; 296 NW2d 341 (1980). As the court in *Davis* explained, one of the purposes of that recommended system was to address severe water pollution problems resulting from Macomb County's sewage discharges into the Clinton River:

By 1966, increased pollution of the Clinton River prompted the Michigan Water Resources Commission (MWRC) to deny disposal permits. This directly affected Macomb County, which had previously dumped its effluent into the river, and the City of Detroit, as the river emptied into the Great Lakes upstream, polluting the City's raw water intake. Soon thereafter, the City of Detroit entered into a contract with Macomb County to provide sewage disposal with the express goals of serving the public and enhancing the water quality of the Great Lakes.

Id. 98 Mich. App. At 709-710.

Under the contract referenced in *Davis*, and unlike all other customers in the Detroit metropolitan area which financed and constructed their own connections to DWSD's sewerage system, DWSD agree to finance and construct a sewer interceptor system to collect sewage from

Macomb County (along with the Clinton-Oakland sewerage district) and to convey it to Detroit for treatment. As described in a University of Pennsylvania law review article, cited by the Michigan Supreme Court in *Meridian Township v. City of East Lansing*, 342 Mich. 734, 747; 71 NW 234 (1955), DWSD's agreement to construct and finance the Macomb interceptor system enabled the citizens of Macomb County to "enjoy the economic and other advantages of city life without being subjected to all the responsibility of citizens."

The Romeo Arm interceptor that is the subject of this dispute is part of the Macomb Interceptor System and it is utilized solely by Macomb County customers. See Exhibit 1. The Romeo Arm runs south along Garfield Road from the Clinton River to 15 Mile Road, and then turns west along 15 Mile Road until connecting with the Edison Corridor interceptor, which serves both Macomb County and the Clinton-Oakland sewerage district. See Exhibits 1 and 2.

The Romeo Arm was constructed by DWSD between June 1971 and December 1972. See Exhibit A to Keith Swaffer Affidavit, Exhibit 3. It was financed by bonds issued by DWSD, along with state and federal grant funds. Unlike the other suburban customers who themselves financed, built and have maintained their interceptors, the Romeo Arm was built and financed through bonds issued by DWSD, the debt service of which is still being paid by Macomb County. Significantly, all of the debt service on the bonds issued to finance the Macomb interceptor system have been charged solely to Macomb County through DWSD's rates and none has been borne by other users. The Romeo Arm is 11 feet in diameter, and was installed a depth of approximately 60 feet below ground. It was designed to carry between 30-60 million gallons of sewage a day from Macomb County to the City of Detroit for treatment and disposal.

In the early morning hours of Sunday, August 22, 2004, a sinkhole began to form along 15 Mile Road, in Sterling Heights. It was quickly determined that the sinkhole was caused by

damage to the Romeo Arm, located beneath 15 Mile Road. Within hours, the sinkhole expanded to a maximum depth of 30 feet and extended a distance of approximately 245 feet in an east-west direction along 15 Mile Road. DWSD had to act quickly to that growing sinkhole to stabilize it, and then to undertake a full reconstruction. Between August 23, 2004 and March 14, 1005, DWSD designed, contracted for, implemented and completed the full reconstruction of the Romeo Arm. The overall project cost was approximately \$53 million.

NTH Consultants undertook a preliminary evaluation of the cause of the Romeo Arm break. See Exhibit 3A. That evaluation involved, among other things, a review of the subsurface geology in the area of the sewer break, observations and testing of sewer conditions during excavation and repair, and reviews of reports of investigations of prior breaks in the Macomb and Oakland-Macomb interceptors. *Id.* NTH's preliminary conclusion is that the pipe failure occurred as a sudden, catastrophic event, with the affected section breaking away and falling abruptly more than 10 feet into a void created beneath the interceptor. *Id.* That void appears to have been created by the gradual piping of fine soils into fine cracks in the bottom section of the interceptor over an extended period of time, which gradually caused the hardpan to lose the ability to span the sewer pipe. *Id.* When that happened the pipe collapsed downward. *Id.* NTH did not observe any evidence in the failed section of pipe of the types of circumferential cracks that would be indicative of a slowly developing potential pipe failure. *Id.* Those types of cracks were observed in previous failures. Due to the absence of those indicator cracks, the catastrophic nature of the failure, and the high levels of sewage and sewage sludge in the interceptor pipe, Mr. Swaffer concludes that the failure would not have been detected and prevented even with regular inspection of the interceptor. *Id.* The warning signs of a failure would not have been present, or visible.

FINANCING OF THE ROMEO ARM REPAIR

In order to understand how DWSD financed the Romeo Arm repairs, and why it did so in the manner that it did, some explanation of DWSD's financing of its capital improvement projects is required. DWSD employs, and is legally obligated by prior Rate Settlement Agreements to employ, what is referred to as "maximum debt financing" to pay the costs of capital improvements to its sewerage system. Maximum debt financing means using bond proceeds to the maximum extent possible to pay the costs of the expansion, renewal and reconstruction of capital assets. Conceptually, one of the primary purposes of employing maximum debt financing is to avoid the drastic variations in rates that would result if DWSD had to pay the full costs of capital improvements, as incurred, solely through revenues collected through its rates. By spreading the costs of capital improvements over the 25-30 year term of bonds, the magnitude and variability of the financial impacts of DWSD's capital improvement program on its customers is significantly reduced.

Paragraph 6 of the 1982 Rate Settlement Agreement, which amended paragraph 5B of the 1978 Settlement Agreement, directly addresses this issue:

Maximum Debt Financing. Detroit shall obtain capital funds for the expansion, renewal and reconstruction of common use or solely suburban use major capital assets or improvements from the issuance of revenue bonds, to the maximum extent possible together with the maximum use of coverage monies generated thereby. . .

See Exhibit 2 to Macomb County's Brief. Thus, where a capital project needs to be performed, and bond proceeds are available to fund that project, DWSD is obligated to finance that project with bond proceeds. That is precisely what DWSD did with respect to the Romeo Arm repairs.

In 1980, as required by its bond ordinance, DWSD created an Extraordinary Repair and Replacement Reserve Fund ("ERR Fund"). The ERR Fund's creation and its purpose are set out

in the bond ordinance, specifically because it is intended as security for the bond holders. The principal purpose of the ERR Fund was to strengthen the security for bonds sold in December 1980 to finance major improvements to the wastewater treatment plant mandated by the Amended Consent Judgment entered in this case. The concept was to provide additional assurance to bond holders that costs of extraordinary repairs would not impair DWSD's ability to pay bond debt. Thus, the ERR Fund was meant as security to the bond holders to protect their ability to collect debt service on the bonds and to thereby attract purchasers of those bonds. Indeed, under the Official Statement for the 2005 Bonds, the reference to the ERR Fund is under the heading "Security and Sources for Payment of 2005 Bonds." See Exhibit 6, p. 14. The ERR Fund was not intended as a substitute for the maximum bond financing required by the Rate Settlement Agreement. It was not intended to fund capital projects where bond proceeds are available, nor was it intended to pay debt service for bonds used to fund those repairs.

The ERR Fund continues in existence to this date. Pursuant to Section 13.D. of Bond Ordinance No. 27-86, attached as Exhibit 5, DWSD is required to fund the ERR Fund through revenues (after first transferring the necessary revenues into an operations and maintenance fund and debt retirement funds), and maintain an ERR Fund balance equal to 15% of each year's budgeted operations and maintenance expense. The moneys in the fund may be used only to pay costs of major unanticipated repairs or replacement to the sewer system. Monies expended from the fund must be replaced from revenues within 3-5 years.

When the Romeo Arm break was discovered, DWSD was provided an initial repair cost estimate of \$35 million. Upon receiving that estimate, DWSD reviewed both its bond fund account and anticipated fiscal year capital improvements projects, and determined that a sufficient amount of bond funds were available to pay the anticipated repair costs. When the

total cost of the repair increased beyond the initial estimate, DWSD redirected additional bond proceeds from other capital projects to cover those additional costs. DWSD's decision to finance the Romeo Arm repairs through its bond funds was required by the maximum debt financing requirement of the 1982 Rate Settlement Agreement. This also avoided the large rate increase that would have resulted if ERR Funds had been used, which would have had to be replaced through revenues over the succeeding 3-5 years. In sum, by using bond funds the cost of the repairs could be paid off over a 30 year period rather than the 3-5 years required by the bond ordinance for replacement of ERR Funds. Thus, even if the 1982 Rate Settlement Agreement had not required use of bond financing, the decision to use bond funds made financial and economic sense, and lessened the impact on the rate payers.

ARGUMENT

I. STANDARDS FOR PRELIMINARY INJUNCTION

A preliminary injunction is an extraordinary remedy which carries a heavy burden by the movant to show its entitlement to such relief. *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). “[T]he proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion.” *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). Four factors are considered by a court in deciding whether to grant a preliminary injunction: (1) whether, absent injunctive relief, the movant will suffer irreparable harm; (2) the likelihood of movant's success on the merits; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction. *Overstreet v. Lexington-Fayette Urban Co. Government*, 305 F.3d 566, 573 (6th Cir. 2002) (citing *Leary v. Daeschner*, 228 F.3d 729, 736 (6th Cir. 2000)); *The Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Productions*, 134 F.3d 749 (6th Cir 1998).

“The likelihood of success and irreparable harm factors predominate the preliminary injunction inquiry.” (Findings of Magistrate Judge Scheer in *Brighton Optical, et al. v. VSP*, No. 03-74974, Exhibit B, at 11). To obtain a preliminary injunction, plaintiffs must “at a minimum, show serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if the injunction is issued.” *Six Clinics Holding Corp. v. Cafcomp Sys., Inc.*, 119 F.3d 393, 400 (6th Cir. 1997) (internal quotation omitted); *Gaston Drugs, Inc. v. Metropolitan Life Ins. Co.*, 823 F.2d 984, 988 at n.2 (6th Cir. 1987). Further, “A district court is required to make specific findings concerning each of the four factors, unless fewer factors are dispositive of the issue.” *Six Clinics Holding Corporation, II v. Cafcomp Systems, Inc.*, 119 F.3d 393, 399 (6th Cir 1997). In the matter at hand, Macomb County has not, nor can it, demonstrate that a preliminary injunction should be issued. Indeed, as discussed below, Macomb has failed to make any showing of, or even to address, irreparable harm. That alone bars the relief it requests.

II. MACOMB HAS NOT SHOWN THAT IT WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF AND ITS FAILURE TO ADDRESS THAT ISSUE IS FATAL TO ITS REQUEST FOR INJUNCTIVE RELIEF.

The United States Supreme Court has recognized that, to obtain a preliminary injunction, the injury resulting in the absence of the injunction must be irreparable, not merely substantial:

‘The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.’

Sampson v. Murray, 415 U.S. 61, 90 (1974) (quoting *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259 F.2d 921 (U.S. App. D.C. 1958)).

In order to obtain a preliminary injunction, a plaintiff must always demonstrate that if the preliminary injunction is not granted, the plaintiff will suffer irreparable harm before a decision on the merits can be rendered. *Michigan Coalition of State Employee Unions v Michigan Civil Service Comm'n*, 465 Mich 212, 225 (2001) (“**a particularized showing of irreparable harm was, and still is, as our law is understood, an indispensable requirement to obtain a preliminary injunction.**”); *Barber ex rel. Barber v. Dearborn Public Schools*, 286 F.Supp.2d 847 (E.D.Mich. 2003) (“Before a preliminary injunction may issue, however, a plaintiff must *always* demonstrate some irreparable injury that necessitates the injunction.) (emphasis in original) (citing *Neveux v. Webcraft Tech., Inc.*, 921 F.Supp. 1568, 1570-71 (E.D. Mich. 1996)); (“The purpose of a preliminary injunction is always to prevent irreparable injury and to preserve the court’s ability to render a meaningful decision on the merits,” (emphasis added.) *United Food Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Transit Authority*, 163 F.3d 341, 348 (6th Cir 1998). Moreover, ““a plaintiff’s harm is not irreparable if it is fully compensable by money damages.”” *Cellnet Communications, Inc. v. New Par*, 292 F.Supp.2d 565 (E.D. Mich. 2003) (quoting *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

Macomb County’s brief wholly fails to make a showing of irreparable injury. In fact, it does not even address that element of injunctive relief. Although it cites case law which lays out the four factors to be addressed in deciding whether an injunction will issue, it only addresses the likelihood of success on the merits, the relative harm and the public interest. Its utter failure to make any showing on this crucial element of injunctive relief is telling and fatal to its motion. For this reason alone, Macomb’s Motion and Brief for Preliminary Injunction should be denied.

In any event, Macomb County cannot make the required showing of imminent irreparable injury, because this dispute is exclusively over money. Macomb County asks this Court enjoin

lawfully adopted and presumptively valid rates that became effective as of July 1, 2005, in which it is appropriately allocated the amortized cost of the repair of the Romeo Arm interceptor. Payment of the lawfully adopted approved rates simply cannot result in irreparable harm to Macomb County. In the unlikely event that Macomb were to succeed in the ordinary course of litigation, any adjustment to its rate could conveniently be implemented through the look-back process that DWSD has employed for many years and continues to employ in retrospectively adjusting rates for, *inter alia*, customers who are determined to have overpaid in a prior rate period. If Macomb were to lose, the status quo would remain.

Conversely, however, if the Court were to grant the preliminary injunction, and Macomb County ultimately lost, the rates of all customers, not just Macomb's customers, would be affected and would have to be adjusted. Moreover, granting the requested preliminary injunction would essentially grant the relief Macomb is seeking, without its having made the necessary showing for such relief. Because Macomb County's alleged injury is entirely monetary, no irreparable harm can be shown.

III. MACOMB COUNTY CANNOT SHOW AND HAS NOT SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS CLAIMS.

A. Macomb County Cannot Prevail on Its Claim That DWSD's Allocation To It Of The Costs To Repair the Romeo Arm Interceptor Is Arbitrary, Capricious Or Unreasonable Because It is Wholly Consistent With and Required by DWSD's Long Established Rate Making Practices, DWSD's Contract With Macomb County And Prior Rate Settlement Agreements.

There are certain fundamental principles that govern judicial review of municipal ratemaking issues such as the ones presented here. To begin with, under governing Michigan ratemaking law, "the fixing of such rates is a legislative matter with which the courts will not interfere unless the *plaintiff* shows that the rate determination was arbitrary, capricious or unreasonable." *City of Plymouth v. City of Detroit*, 423 Mich. 106, 1033; 377 NW2d 689

(1985)¹ (Emphasis by the Court). The arbitrary and capricious standard is the most deferential standard of review of agency action and mandates upholding all outcomes supported by a reasoned explanation based upon evidence in the records as a whole. *Michigan Bell Telephone Co. v. MCI Metro Access Transmission Services, Inc.*, 323 F.3d 348, 354 (6TH Cir. 2003).

Michigan courts accord “great deference” to legislatively authorized ratemaking authorities when reviewing the validity of municipal utility rates. *City of Novi v. City of Detroit*, 433 Mich. 414, 425-426 (1889). Additionally, a rate lawfully established presumed to be reasonable. *City of Detroit v. City of Highland Park*, 326 Mich. 78, 100 (1949). Thus, in order to prevail, Macomb County must satisfy a heavy burden of proving that DWSD’s presumptively reasonable decision to allocate the costs of the Romeo Arm Interceptor repair to Macomb County was arbitrary, capricious or unreasonable. For the reasons outlined below, Macomb County is unlikely to carry its heavy burden of showing that DWSD’s allocation of the subject repair costs is arbitrary or capricious because such allocation is consistent with and, indeed, mandated by DWSD’s long established ratemaking practices, the Wastewater Disposal Agreement between DWSD and Macomb County and the 1978 Settlement Agreement.

The March 6, 1967 Wastewater Disposal Agreement between DWSD and Macomb County (“Macomb Contract”) provides, in pertinent part, that: (a) the rates DWSD charges Macomb County for sewage treatment services “shall be uniform throughout the entire Detroit Wastewater Disposal system;” and (b) “the rates shall always be reasonable in relation to the costs incurred by BOARD for providing this service.” See, Macomb Contract, paragraph 9, attached as Exhibit 1 to Macomb County’s Brief. This provision of the Macomb Contract

¹ Concepts of “negligence” have no role in the review of municipal ratemaking and, as explained below, nor do questions of prudence of investment play any such role.

consistently has been interpreted and applied to mean that DWSD must charge Macomb County for the costs incurred in provided wastewater treatment and sewerage services to Macomb County and uniformly charge all other customers (and not Macomb) the cost of providing service to such customers.

For more than a quarter century, DWSD's wastewater treatment rates have been bottomed upon the fundamental principle that costs associated solely with service provided to residents of the City of Detroit are paid solely by Detroit ratepayers, and costs associated solely with suburban service provided to suburban customers are paid solely by suburban ratepayers. Based on this principle, since the Macomb Interceptor was constructed, its costs have been charged solely to Macomb County. The May 1, 1978 Report and Recommendations of the Masters, prepared in connection with earlier rate litigation before the Court, acknowledged this fundamental principle:

The first step in developing user charges . . . is to determine whether distinguishable customer classifications should be developed to reflect the fact that distinguishable costs are incurred in serving different classes of customers. Detroit has developed several different classes of customers. No challenge has been addressed to the propriety of the classes it has developed. Thus, as a matter of illustration, all parties agree that it is proper for Detroit to set rates on the assumption that Detroit customers should pay the costs of the local sewer system that provides individual service to individual customers in Detroit, and that suburban customers should not pay any part of those costs. So too, it is agreed that individual Detroit customers should not bear any portion of the costs of the Oakland-Macomb interceptor, a large interceptor sewer constructed by Detroit to gather sewage flow from points in Oakland and Macomb County.

See Exhibit 4

In 1978, the parties to the then-pending rate litigation, including DWSD and Macomb, Oakland and Wayne Counties, entered into a Settlement Agreement resolving the various issues

raised in that litigation. The 1978 Settlement Agreement is attached as Exhibit 7 to this Brief. Those issues included the question of cost allocation among customers of the DWSD system.

Paragraph 5.D. of the 1978 Settlement Agreement, p. 12, provides as follows:

Uniform Allocation of Costs Incurred. The recovery of costs incurred by the system shall be accomplished through the institution of rates which assign, allocate and apportion such costs to all ratepayers on the basis of principles uniformly applicable to all, it being the intention of the parties that such rates . . . will, as nearly as practical, recover from each customer class the costs of providing service regardless of the ratepayers location.

Thus, consistent with the requirements of the Macomb Contract, the 1978 Settlement Agreement, which remains binding on all parties thereto, requires DWSD's rates to recover from each customer class the cost of providing service to such class.² This is also consistent with established law, which forbids charging users for services provided to others. See *Bolt v. City of Lansing*, 459 Mich 152,; 587 N.W.2d 264 (1998); *City of Novi v. City of Detroit*, 433 Mich. 414; 446 N.W. 2d 118 (1989). See, also, Section 4f of the Home Rules Cities Act which requires that municipal sewage rates be based on the cost of service and be set at a level "...covering the cost of the service." M.C.L. 117.4f(d).

Here, it is undisputed that the subject interceptor provides service only to Macomb County. Under the long established and legally binding cost of service ratemaking principle described above, it is appropriate, necessary and legally required for DWSD to allocate all costs of such interceptor to Macomb County and, DWSD is forbidden to pass those costs on to any other customers. Therefore, Macomb County has little likelihood of success on a claim that

² Federal law also requires DWSD to implement a "user charge system" that assesses costs of operation, maintenance and replacement of its system based on the use of the system by each user or user class. See 40 C.F.R. §§ 35.929-1 through 35.929-3.

DWSD has acted in an arbitrary, capricious or unreasonable way in allocating the subject costs of repair solely to Macomb County.

Macomb County argues that the allocation to it of the costs of repairing the Romeo Arm is inconsistent with a “policy” that supposedly was “adopted” by the Detroit Board of Water Commissioners during its February 6, 1980 meeting, as well as with the 1982 Rate Settlement Agreement. Contrary to Macomb County’s argument, the minutes of the Board’s meeting do not reflect the adoption of a binding policy, nor even a ratemaking concept of any applicability to the matters at hand. The matter discussed at that meeting involved the allocation of costs of repairing the Edison Corridor interceptor. Unlike the Romeo Arm interceptor at issue here, the Edison Corridor interceptor serves both Macomb County and the Clinton-Oakland sewerage district. While the minutes of the February 6, 1980 Board meeting reflected the expression of a “sense” of the Board with respect to allocating to all customers (i.e., on a “common to all” basis) all extraordinary costs incurred in repairing major sewerage infrastructure, to the best knowledge of DWSD, that “sense” of the Board was never incorporated into a binding ratemaking policy. In addition, whatever the sense of the Board may have been in 1980, that sense is irrelevant to the cost allocation issues presented here. To begin with, this alleged policy dealt with damage to an interceptor that served more than one customer, and arguably could be construed to be consistent with DWSD’s policy of allocating costs of facilities that serve multiple customers on a common to all basis. The Romeo Arm sewer at issue here serves only Macomb County.

In June 1982, the parties to rate litigation pending before the Court at the time entered into a Settlement Agreement (“1982 Settlement Agreement”) that resolved the allocation of the Edison Corridor repair costs. The 1982 Settlement Agreement is attached as Exhibit 2 to Macomb County’s Brief. That allocation did not allocate those costs fully on a common to all

basis, but rather shifted to Wayne County only 40% of what otherwise would have been its share of those costs, if allocated fully on a common to all basis. That allocation demonstrates that the Board's statements at the February 6, 1980 meeting were never adopted as a binding policy.

This conclusion is unambiguously confirmed by paragraphs 5 and 13 of the 1982 Settlement Agreement. Paragraph 5 provides, in pertinent part: "No agreement is herein made as to any costs attributable to any subsequent or subsequently discovered failure of the Oakland-Macomb interceptor." Paragraph 13 of that agreement provides, in pertinent part:

It is expressly understood and agreed that the matters hereby agreed to are in compromise of the disputes among and between the parties. Except as expressly set forth herein, nothing contained in this Settlement Agreement shall govern future ratemaking or constitute evidence in any subsequent proceeding regarding the reasonableness of said Rates. No party, by execution hereof, acknowledges the correctness of the methodology used in deriving the Rates or the positions or claims asserted by others. Subject to the provisions of Items 3, 5 [with respect to allocation of the Edison Corridor repair costs] and 6 hereof, which are continuing obligations, Detroit and DWSD expressly preserve, unimpaired by this Settlement Agreement, the right to adopt sewage treatment rates and charges in the future pursuant to the authority vested in them by virtue of state law, and the Charter of the City of Detroit. . .

Thus, the "policy" Macomb County claims to rely upon to support its assertion that the Romeo Arm repair costs should be allocated as common to all costs: (a) was never adopted as a formal Board policy; (b) was related to a facility that served more than one customer and not to facilities serving only one customer; (c) was never incorporated into the 1982 Settlement Agreement; and (d) to the extent partially incorporated into that Agreement, was expressly made non-binding on future ratemaking by the terms of paragraphs 5 and 13 of that Agreement. Finally, that supposed policy is belied by the approval of the rate structure with respect to the repairs at issue here, which the Board approved be allocated solely to Macomb County. Thus, the "policy" of the Board has been deemed by the Board not to apply here. For these reasons,

Macomb County is unlikely to prevail on its claim that DWSD is prohibited by prior Board policy and/or the 1982 Settlement Agreement from allocating the costs of repairing the Romeo Arm Interceptor solely to Macomb County.

B. Macomb County Cannot Prevail On Its Claims Because They Are Barred By Governmental Immunity.

Macomb County attempts to avoid DWSD's governmental immunity by casting its claims in ratemaking terms (i.e., the inapplicable "prudent investor" rule and a claim for breach of contract). Its claims, however characterized by Macomb County, are nothing more than a tort claim for damages resulting from DWSD's alleged negligence in the operation of its sewerage system. They are no different from a claim that an owner of a sewer might bring for damage to such sewer by a negligent act of DWSD that caused the owner to incur the cost of repair and, consequently, higher costs of disposing its sewage. As the Court previously ruled in *Elsag Bailey, Inc. v. City of Detroit*, 975 F. Supp. 981 (E.D. Mich. 1997), because DWSD's operation of its sewerage system is a government function, DWSD is immune from common law tort liability under Michigan's governmental immunity statute.

See, also City of Detroit v. Michonski v. Department of Transportation, 162 Mich. App. 485, 413 N.W.2d 438 (1987) (emphasis added) (quoting *Furness v. Public Service Comm.*, 100 Mich. App. 365, 370, 299 N.W.2d 35 (1980) (finding that despite a plaintiff's attempt to characterize a claim as something other than negligence, if the gravamen of the claim sounds in negligence, governmental immunity would apply):

Here, we agree with the trial court that Count III sounds in negligence. Plaintiff has basically alleged that defendant failed to inspect and maintain the light pole. While it is true that plaintiff alleges that defendant knowingly and intentionally failed to do these acts, we do not find that these conclusory terms alter the fact that the underlying allegation is one of negligence . . . The gravamen of these allegations is that defendants were negligent in failing to correct a known danger (nuisance). **This alleged**

conduct is omissive rather than commissive and would therefore fall within the category of a negligent nuisance. As such it remains protected from suit by governmental immunity.

C. Macomb County Cannot Prevail On Its Claim That DWSD Violated The Prudent Investment Rule Where That Rule Is Inapplicable to DWSD Rates And, In Any Event, Does Not Obviate The Heavy Burden Macomb County Bears To Overturn The Rate Determination by DWSD and The Presumption Of Validity.

1. The Prudent Investment Rule Arises From Laws Regulating Public Utilities To Protect Investors' Return On Their Investments; It Does Not Apply To A Municipal Utility, Such As DWSD, Which Obtains No Return on Its Sewage Rates.

To try to avoid its responsibility for the costs of repairing the interceptor that only its residents utilize, and its obligations under its contract with DWSD, the 1978 Rate Settlement Agreement and existing law, Macomb County cites to the inapplicable prudent investment rule and numerous cases that allegedly applied that rule in Michigan and other jurisdictions. Macomb County argues that application of that rule here should prevent DWSD from assigning the cost of the repairs of the Romeo Arm interceptor to the customer (Macomb) that solely benefited from such repairs. Macomb's argument is without merit for a number of reasons.

First, the prudent investment rule does not apply to a municipally owned utility such as the DWSD. Rather, the so-called prudent investment rule has been applied exclusively to rates charged by privately owned utilities to address the proper balance between the interests of ratepayers and the return earned by the utility's shareholders. Because DWSD does not have shareholders who earn a return on investment in its wastewater treatment rates, the very rationale for the prudent investment rule is absent. .

Second, the prudent investor rule and the cases on which Macomb County relies exclusively address regulated rates of investor owned public utilities -- *i.e.*, rates that require approval by a state public service commission or other, similar, regulatory body. In Michigan as

in other states, however, rates charged by municipally owned utilities such as DWSD are specifically excluded from such regulation. M.C.L. 460.6.

Third, the prudent investment rule, even where it may be applied, is not mandated, but is simply one of a number of methods which can be used to determine if the rates set by a utility are reasonable. Other methods are also considered appropriate as well, including the cash basis method utilized by DWSD, and the utility basis method, which by statute, DWSD must use for its water rates.

Finally, even if the prudent investment rule applied, Macomb County would still have the burden of showing that DWSD's rate determination was arbitrary, capricious or unreasonable, and would have to overcome the presumption of validity accorded such determination. See Section III A above. In sum, Macomb County cannot avoid the standard applicable to DWSD's conduct in setting rates by citing to an inapplicable rule.

Michigan has not and does not apply the prudent investment rule to a municipal utility. Although the Michigan Public Service Commission has, on occasion, applied the prudent investment rule in determining public utilities' "just and reasonable rates,"³ the rule has never been applied to a utility that is exempt from Commission regulation. Similarly, none of the other

³ Public utility ratemaking is a legislative function, which by statute, the Legislature has delegated to the PSC. M.C.L. § 460.6; *Attorney General v Michigan Public Service Comm.*, 136 Mich App 790, 350 N.W.2d 320 (1984). The PSC has a statutory duty to provide just and reasonable utility rates. *Building Owners & Managers Ass'n of Metropolitan Detroit v. Public Service Comm.*, 424 Mich. 494, 510, 383 N.W.2d 72 (1986).

However, the courts have recognized that the "PSC is not bound by any particular method or formula in exercising its legislative function to determine just and reasonable rates." *Association of Business Advocating Tariff Equity v. Michigan Public Service Comm.*, 208 Mich. App. 248, 527 N.W.2d 533 (1994) (citing *Building Owners & Managers Ass'n of Metropolitan Detroit*, 424 Mich. at 510; *Michigan Bell Telephone Co. v. Public Service Comm.*, 332 Mich. 7, 36-37, 50 N.W.2d 826 (1952)). Indeed, the "PSC may consider 'all lawful elements' in determining rates." *Association of Business Advocating Tariff Equity*, 208 Mich. App. at 540 (citing M.C.L. § 460.557).

jurisdictions referenced by Macomb County applied that rule to municipally owned utilities. They have, rather, limited its application to investor-owned public utilities. The reason for this limited application of the rule is simple. The rule is designed to address both the private investors' rights to a just and reasonable rate of return on their investment and to prevent unwarranted profits by a regulated investor-owned utility. Such considerations are not present here, where DWSD has no investors and does not earn a return on wastewater treatment rates.

All of the cases cited by Macomb arise out of the public utility arena. The majority of the cases involve the entirely distinguishable situation of a privately owned public utility's attempt to recoup the costs associated with a failed nuclear plant.⁴ The limited number of cases cited by Macomb that do not involve a nuclear plant are also distinguishable because (i) the opinions discuss a public utility's challenge against a public service commission (rather than a customer's challenge against a municipality), and (ii) the opinions have no bearing on the appropriate methodology for municipalities in setting sewerage treatment rates.⁵

⁴ *Gulf States Utilities Co. v. Louisiana Public Service Comm.*, 578 So. 2d 71, 85, n6 (La. 1991), cert denied, 502 U.S. 1004 (1991) (Public utility sought to enjoin order of Public Utility Commission limiting it to first year return and finding restart of nuclear plant imprudent); *Georgia Power Co. v. Georgia Public Service Comm.*, 396 S.E.2d 562, 569 (Ga. Ct. App.), cert denied 1990 Ga. LEXIS 483 (Oct. 23, 1990) (Public utility challenged Public Service Commission's determination denying in part request for rate increase to recoup its share of investment in nuclear plant); *Re Union Electric Co.*, 66 P.U.R. 4th 202 at 214 (1985) (Public utilities proposed rate increase for nuclear plant); *Association of Businesses Advocating Tariff Equity v. Michigan Public Service Comm.*, 208 Mich. App. 248, 527 N.W.2d 533 (1994), lv denied 450 Mich. 890 (1995) (Public utility challenged Public Service Commission's determination denying in part request for rate increase to recoup its share of investment in nuclear plant); *Entergy Gulf States, Inc. v. Public Utility Comm. Of Texas*, 112 S.W.3d 208 (Tex. App. 2003, petition for review den., 2004 Tex. LEXIS 795 (Sept. 10, 2004) (Public utility challenged Public Service Commission's determination denying in part request for rate increase to recoup its share of investment in nuclear plant); *In Georgia Power Co. v Georgia Public Service Comm.*, 396 S.E.2d 562, 565 (Ga. Ct. App. 1990), cert. den., 1990 Ga. LEXIS 483 (Ga. Oct. 23, 1990) (Public utilities request for rate increase to recoup its share of approximately \$6.3 billion investment in nuclear plant).

⁵ *In re Detroit Edison Co.*, 24 P.U.R. 4th 362 (Mich. Pub. Svc. Com.) (1978) (Without discussing the prudent investment rule whatsoever, PSC reduced proposed rate increase by approximately 30% because public utility failed to meet its burden in showing that its decision to

Village of Niles, et al v. City of Chicago, 558 N.E.2d 1324 (Ill. App. 1990), although decided under Illinois law, is instructive. There, suburban communities of Chicago sued for injunctive and other relief challenging water rates charged to them as excessive and unreasonable. They argued, *inter alia*, that the “utility basis” method used by Chicago to set those rates failed to consider total revenue requirements of the system, and further, “bad management” of the city resulted in plaintiffs’ subsidizing other users in the system. The plaintiffs argued that, instead, the rates should be set and considered under the “original cost/prudent investment” rule. The Court rejected their argument. In its decision, among other things, the Court pointed out that the original cost/prudent investment cases arose out of the Illinois Public Utilities Act, from which municipally owned utilities are excluded. A similar situation exists under Michigan law. M.C.L. 460.6. The *Niles* court found:

No statute specifies which rate calculation method is preferable for use by municipalities in setting water rates. Illinois courts consistently have held that utility rates should include a reasonable return on the basis of the fair value of the utility property . . . [the *Union Electric* court] rejected the argument plaintiffs make here, that the “original cost/prudent investment” method should be adopted in Illinois . . . The *Union Electric* court explained that the fair value of public utility property is a “value” concept, not a cost concept which reflects the amount of capital invested. 77 Ill.2d at 377, 33 Ill.Dec. at 127, 396 N.E.2d at 516.

We are not persuaded to ignore *Union Electric’s* rationale in favor of plaintiffs’ position in this case.

install a flue gas conditioning system was reasonable); *Union Carbide Corp. v. Public Service Commission*, 431 Mich. 135, 149; 428 N.W.2d 322 (1988) (PSC exceeded its statutory authority by ordering public utility to stop operating Karn oil-fired generating plants and to limit acceptance of oil deliveries under contract with Union Carbide); *Consumers Power Co. v. Mich. Pub. Svc. Comm.*, 196 Mich. App. 687, 493 N.W.2d 494 (1992) (Costs associated with public utility’s settlement of breach of contract suit could not be included in rates to consumers); *Iowa-Illinois Gas and Electric Co. v. Iowa State Commerce Comm.*, 412 N.W.2d 600, 603-04 (Ia. 1987) (Applying the “used and useful” rule and a “zone of reasonableness” rule, rather than the prudent investment rule); *Entergy Gulf States, inc. v. Louisiana Public Service Comm.*, 726 So. 2d 870, 880 (La. 1999) (Disallowing fuel adjustment for outages and refueling outage because outages were not caused by “human error”).

Id. at 1333 (citing *Union Electric Co. v. Illinois Commerce Comm’n*, 396 N.E.2d 510 (1979)). Thus, *Niles* found that the utility basis of rate setting used by Chicago was proper and it rejected use of the prudent investment rule. Likewise, here DWSD uses the cash basis method (see Exhibit 4) in establishing its rates, which is also a proper method of rate setting. The basis for the prudent investment rule – to not only protect the rate of return expected by the investors but to also prevent unwarranted profiting by the utility, is simply not present here where DWSD obtains no return. The prudent investment rule, accordingly, does not apply.

2. Even If It Applied, The Prudent Investment Rule Is Merely One Rule A State May Apply When Regulating Whether A Privately Owned and Operated Utility Should Be Permitted to Recover The Cost of A Particular Asset, and Its Application Is Discretionary.

Because a public utility’s assets, unlike the City of Detroit, are owned and operated by private investors, the “partly public, partly private status of the utility creates its own set of questions under the Takings Clause of the Fifth Amendment. The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so ‘unjust’ as to be confiscatory.” *Duquesne Light Company v. Barasch*, 488 U.S. 299, 307 (1989) (citing *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597 (1896)). The fundamental issue in this approach is to evaluate the risk that investors expect given the risk of the enterprise, and to protect against public utilities’ taking advantage of their monopoly position to earn unwarranted returns. As the Supreme Court aptly described it in *Duquesne*:

(“A public utility is entitled to such rates as will permit it to earn a return ... equal to that generally being made at the same time and in the same general part of the country on investments in order business undertakings which are attended by corresponding risks and uncertainties.”); *Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679, 692-693; 43 S.Ct. 675, 679, 67 L.Ed. 1176 (1923). The risks a utility faces are in large part defined by the rate methodology because utilities

are virtually always public monopolies dealing in an essential service, and so relatively immune to the usual market risk. Consequently, a State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.

Duquesne, 488 U.S. at 314-315. These same concerns are clearly not present here, where DWSD obtains no rate of return on its wastewater treatment rates.

In any event, even where the prudent investment rule is applicable, its use is not mandated. Instead, in response to the Constitutional concern about reasonable rates of return to investors, courts have applied various tests, including the backward-looking "prudent investment" rule, and the forward-looking "fair value" or "used and useful" rule. *Id.* at 309. Whether a state applies the prudent investment rule, the fair value rule, or a some hybrid version of the rules is completely within the discretion of the state. "[T]o declare that a particular method of rate regulation is so sanctified as to make it highly unlikely that any other method could be sustained would be wholly out of keeping with this Court's consistent and clearly articulated approach to the question of the Commission's power to regulate rates. It has repeatedly been stated that no single method need be followed by the Commission in considering the justness and reasonableness of rates." *Id.* at 316 (citing *Wisconsin v. FPC*, 373 U.S. 294, 309 (1963)).⁶ Indeed, under Michigan law, it is well established that the public service commission is "not bound by any particular method or formula in exercising its legislative function to determine just and reasonable rates." *Association of Business Advocating Tariff Equity v. Public Service Commission*, 208 Mich. App. 248,; 537 N.W. 2d. 533, 539-540 (1994), citing to *Building*

⁶ "For example, rigid requirement of the prudent investment rule would foreclose hybrid systems . . . [i]t would also foreclose a return to some form of the fair value rule just as its practical problems may be diminishing." *Duquesne Light Company*, 488 U.S. at 316, n.10.

Owners & Managers Ass'n of Metropolitan Detroit v. Public Service Comm., 424 Mich. 494, 510; 383 N.W. 2d 72 (1986); *Michigan Bell Telephone Co. v. Public Service Comm.*, 332 Mich. 7, 36-37; 50 N.W.2d 826 (1952). Thus, even if the prudent investment rule was applicable to municipally owned utilities, its use is not mandated by DWSD in setting its rates. Finally, the prudent investment rule does not, and cannot, overcome the presumption in favor of the rate determination, and the heavy burden Macomb County faces in overturning DWSD's reasonable ratemaking decision to allocate the costs of the subject repair to the only customer benefiting from that repair. See Section III A.

D. Macomb County Cannot Prevail On Its Claim That DWSD Is Obligated To Indemnify It For the Cost of The Repairs.

Macomb County also claims, without support, that it is entitled to indemnity from DWSD for the costs of the repair of the Romeo Arm interceptor, citing to its paragraph 21 of its sewerage treatment contract with DWSD, Exhibit 1 to its Brief. However, paragraph 21 of the DWSD and Macomb County Contract clearly only applies to damages arising from the **construction** of wastewater disposal facilities. It reads, in pertinent part:

21. The COUNTY shall assist the BOARD to obtain permission to use streets, highways, alleys, and/or easements in the municipalities within the DISTRICT for the purpose of constructing, maintaining, and operating wastewater disposal facilities. ... In the event of such construction, the BOARD shall request the COUNTY and municipalities within the DISTRICT to execute such separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by the BOARD. **The BOARD shall restore all existing structures and/or improvements lying in the right-of-way of construction, to as good a condition as before the construction took place, and shall save harmless the COUNTY and municipalities therein from any and all liability, claims, suits, actions, or cause of action for damages for injuries, including death, or otherwise by reason of the construction work herein above provided for** "Provided that nothing in this section or in this agreement shall be construed to render the BOARD liable for acts of negligence by the COUNTY or any municipalities therein or any of their individual officers, employees or agents". Exhibit 1 to Macomb County's brief, paragraph 21.

Thus, any reading of the indemnity would conclude it runs only to harm caused by the actual construction activities themselves. It is inapplicable to Macomb County's claim that the cost of repairs for the interceptor are the result of negligence or breach of contract by DWSD. In addition, under the common law of indemnity, indemnity is triggered only by third party claims against the indemnitee, not by the claims of the indemnitee. "In the typical situation, the party who is entitled to indemnity . . . is vicariously liable for the negligence of another." *Prosky v. National Acme Company*, 404 F.Supp. 852, 855 (E.D.Mich.1975). "Michigan law provides for indemnity 'only when the charging party can prove that it has been found liable to a third party....'" *Douglas v. Robbins & Myers, Inc.*, 505 F.Supp. 765, 769 (W.D.Mich 1980) (quoting *Jorae v. Clinton Crop Service*, 465 F.Supp. 952, 957 (E.D.Mich 1979) Thus, even if this indemnity paragraph applied here, it would only be triggered by a third party claim against Macomb County not by a direct claim by Macomb County against DWSD.

IV. MACOMB COUNTY CANNOT AND HAS NOT SHOWN THAT THE RELATIVE HARM FROM AN INJUNCTION IS LESS THAN THE HARM IF ONE IS ISSUED.

Macomb County claims that its customers will face a "drastic" charge for the cost of the Romeo Arm interceptor repairs should the approved rates apply effective as of July 1 and advises this Court that spreading the cost among all users or utilizing the ERR Fund is of little harm. This argument is without merit. First, as discussed above, the ERR Fund cannot be utilized for that purpose. Its purpose is not to cover debt service, and it is to be utilized only when bond monies are not available, for emergency repairs. Second, because its funds have to be replaced within 3 to 5 years, and it is generated by monies from all customers, utilizing the ERR Fund essentially means that the cost is being spread to all users, and that the favorable amortization of the costs of repair over 30 years will be lost, at least to the extent the ERR Fund is utilized to pay that debt service on the bonds. The harm to other users, and the financial impact is significant.

Moreover, Macomb County's claim that if it wins it will be entitled to a refund does not support the argument that the relative harm to Macomb outweighs the harm to other customers of DWSD. If the costs of the repair are spread to other customers, whether through a rate increase or by utilizing the ERR Fund, and Macomb does not prevail here, instead of the look back refund/credit due solely Macomb County customers, DWSD will be forced to re-adjust and apply the look back to its other customers as well, and have a corresponding greater increase of rates to Macomb County customers for the previous underpayment by them. This is a much more onerous result. It also affects, negatively, far more ratepayers.

Finally, Macomb County's claim that the rate increase this year is "drastic" is unsupported and inaccurate. As evidenced by the affidavit of Bart Foster, Exhibit 8 hereto, and its Exhibit B, the effect on Macomb County customers this year is an increase of only 8.3%, without considering the credit they are receiving for the look back adjustment from the prior year's payments. See Exhibit 8B. Considering that look back brings the net effect down to 5.1%. That is the net increase which Macomb County customers will see in their bills. This is well within the rate increases other customers have faced, and certainly not "drastic."

V. THE PUBLIC INTEREST IS SERVED BY DENIAL OF INJUNCTIVE RELIEF.

As discussed at more length above, Macomb County's failure to make any showing it would suffer irreparable harm without injunctive relief means that the public interest is served by denial of such relief. It is not in the public interest to grant such extraordinary relief in the absence of the strict showing required. Moreover, in the light of the longstanding principles of setting rates commensurate with the services provided, the provisions of the Macomb County contract with DWSD which require same, the provisions of the 1978 Rate Settlement Agreement which also require that a service that solely benefits one set of customers be paid for by that set of customers, and the harm which would result if the ERR Fund instead of the favorable terms of

the debt service under bond financing were utilized to pay for the repairs, the public interest clearly favors denial of the relief requested by Macomb County.

CONCLUSION

A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it. *Overstreet*, 305 F.3d at 773. Macomb County has not met its burden here. The requested preliminary injunction should be denied.

Respectfully submitted:

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Dated: August 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: **G. Christopher Bernard, Kurt M. Brauer, Peter A. Caplan, Annette M. Lang, Robert A. Marzano, Mils T. Macik, Patrick B. McCauley, Barry A. Seifman, and Kenneth A. Slusser.**

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INDEX OF EXHIBITS

- Ex. 1 Drawing, Romeo Arm Interceptor
- Ex. 2 Map, Alignment of Romeo Arm Interceptor
- Ex. 3 Affidavit of Keith M. Swaffar, P.E.
- Ex. 3-A Memorandum Re: Preliminary Sinkhole Evaluation Romeo Arm Oakland-Macomb Interceptor, 15 Mile Road between Moravian and Hayes, Sterling Heights, Michigan dated June 30, 2005
Figures 1, 2 & 3 of Exhibit 3-A – filed in the traditional manner
- Ex. 4 May 1, 1978 Report and Recommendations of the Masters
- Ex. 5 Bond Ordinance No. 27-86
- Ex. 6 Official Statement In Connection With 2005 Bonds (excerpt)
- Ex. 7 1978 Rate Settlement Agreement
- Ex. 8 Affidavit of Bart Foster
- Ex. 8-A Curriculum Vitae of Bart Foster
- Ex. 8-B Summary of DWDS Rates/Charges of Macomb County FY 2004-05 vs. FY 2005-06

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EXHIBIT 1

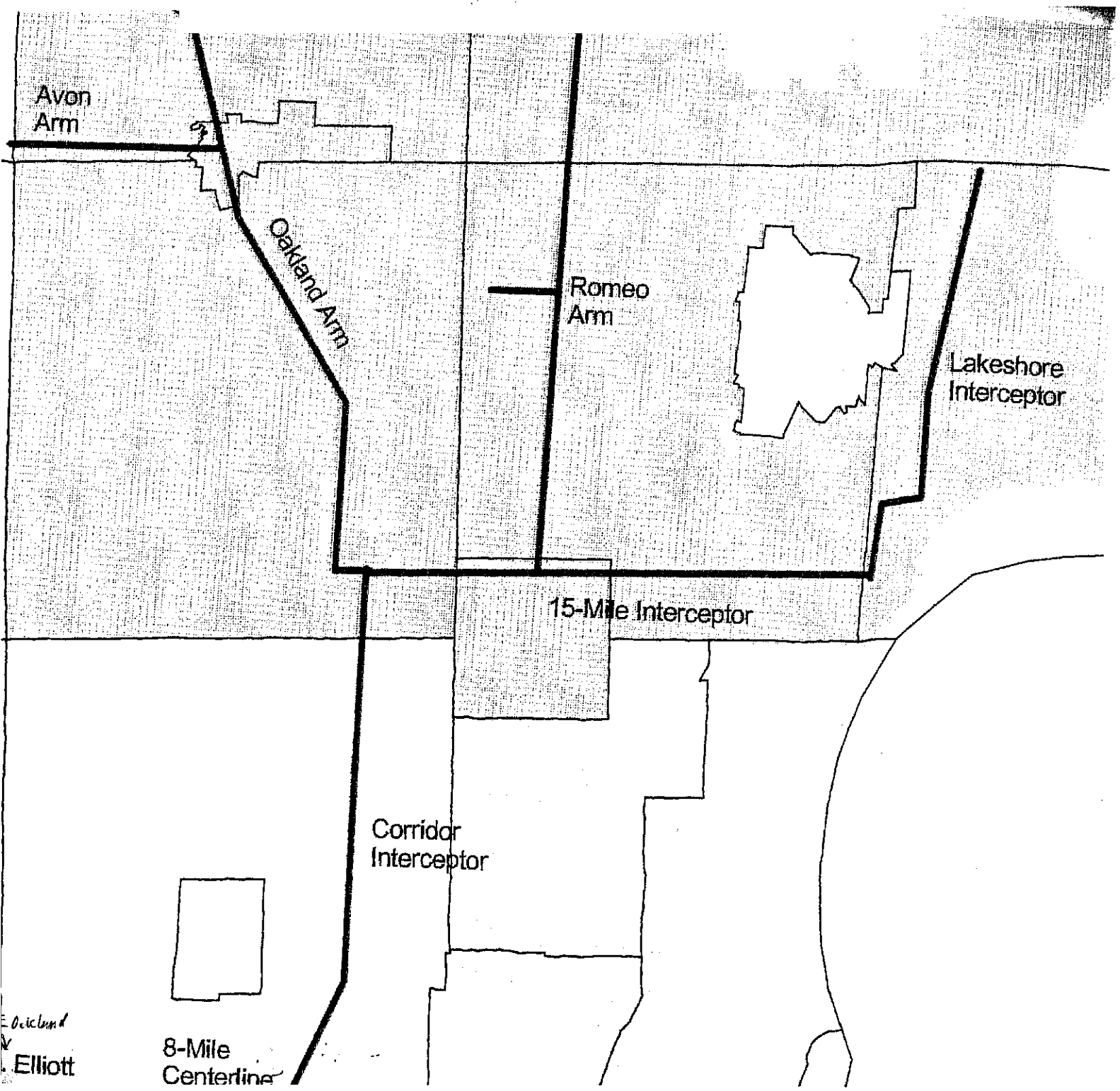


EXHIBIT 2

MAP SOURCE
STATE OF MICHIGAN
GIS DATABASE

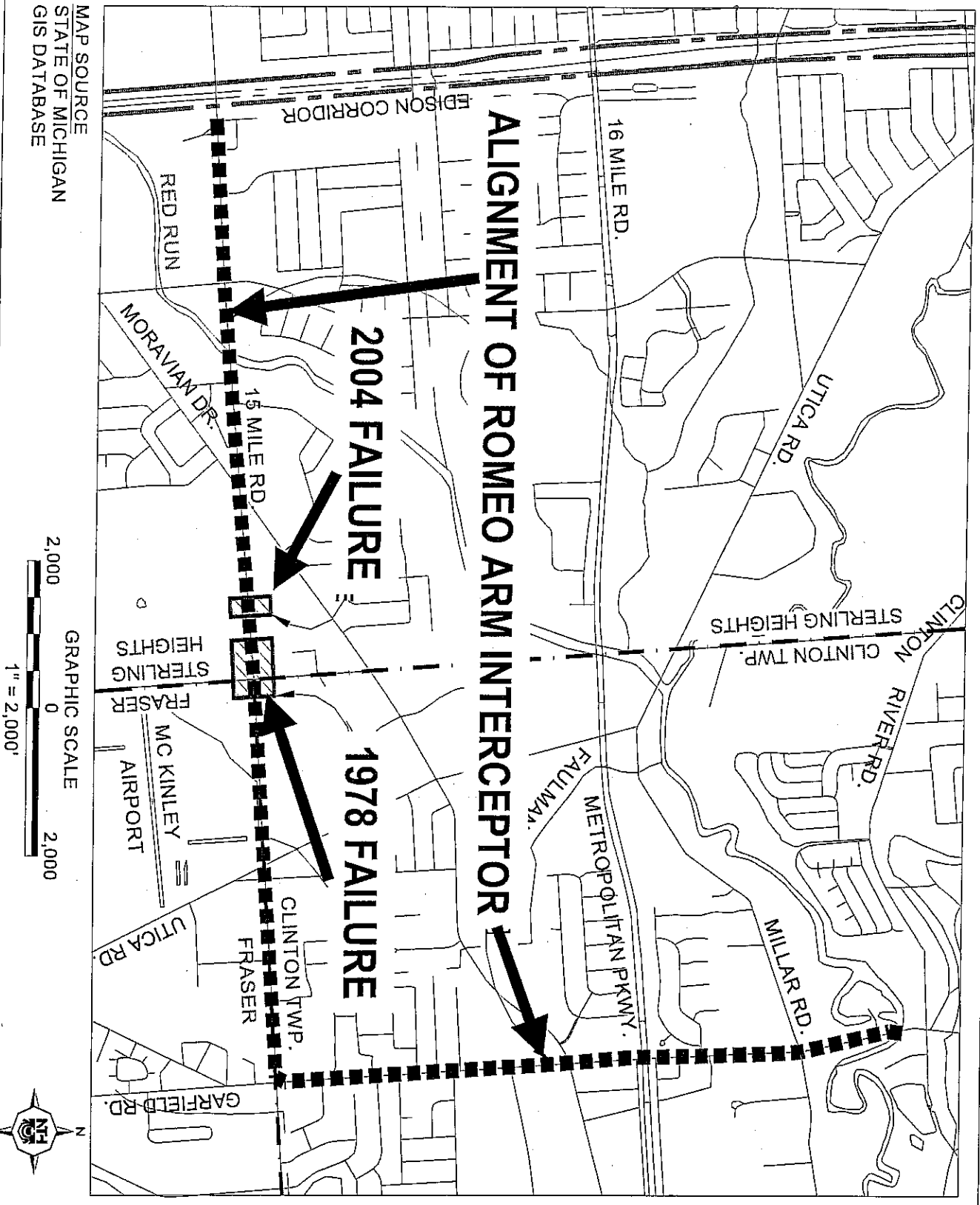


EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant,

Civil Action No. 77-71100
Honorable John Feikens

vs.

STATE OF MICHIGAN,

Defendant and Cross-Plaintiff
And Cross-Defendant,

vs.

CITY OF DETROIT, a municipal corporation, and
DETROIT WATER AND SEWERAGE DEPARTMENT

Defendant and Cross-Plaintiff,

vs.

ALL COMMUNITIES AND AGENCIES UNDER
CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES, et al.

AFFIDAVIT OF KEITH M. SWAFFAR, P.E.

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I, Keith M. Swaffar, P.E, after first being duly sworn, make this affidavit:

1. I am competent to make this Affidavit and can attest to the facts contained herein from my personal knowledge.
2. I served as the chief engineer during the stabilization, investigation, design and reconstruction of the Romeo Arm Interceptor sewer over the period from August 2004 until the project was completed in June 2005.
3. I have been a practicing civil engineer for the last 26 years and have been employed by NTH Consultants, Ltd. since 1979. I started with the firm as a staff

engineer and was named president in 2003. Over this period, I have served in all major engineering positions in the firm. I have a BS and MS in Civil Engineering from Michigan State University and have been a licensed professional engineer in the State of Michigan since 1982.

4. During my professional career, I served in a field-engineering role during the failure and subsequent stabilization of the Corridor Interceptor in 1981. I was also a design engineer for the turning structures associated with the permanent repair work for the previous repair work to the Romeo Arm Interceptor Sewer in 1983.

5. NTH Consultants, Ltd. has provided geotechnical and underground engineering services to DWSD as their engineering consultant since 1985. Over this period of time, I have been involved in a number of investigations and inspections related to existing DWSD underground facilities. These include the NE Raw Water Tunnel Failure, the Southfield Sewer Stabilization and By-pass construction as well as the inspection of the Springwells Raw Water Tunnel, SW Intake Tunnel, Belle Isle Intake Tunnel and the Port Huron Intake Tunnel. I have also been involved in tunnel condition investigations and tunnel distress evaluations for Wayne County, Michigan, Oakland County, Michigan as well as the City of Minneapolis, Minnesota. Many of these projects involved the design of access structures for inspection or the design of access structures and stabilization methods as a result of distress encountered in the tunnel.

6. On August 22, 2004, I received a call from DWSD staff to go into NTH records to find engineering drawings related to the previous repair efforts of the Romeo Arm Interceptor in the vicinity of 15 Mile and Hayes Roads in Sterling Heights, Michigan. I proceeded to go to the office to locate the drawings on Sunday afternoon so that I could have copies available for DWSD staff to review on Monday morning. I subsequently met with DWSD staff, provided the drawings and discussed my thoughts relative to stabilization and repair of the facility. Later that afternoon I was asked to visit the site and meet with Messrs. Mercado and Fujita of DWSD on the site. At that time, I reviewed the conditions apparent at the ground surface and provided my input to senior DWSD staff relative to what I believed to be the critical elements of work required to stabilize and repair the Romeo Arm Interceptor. Subsequently, NTH was retained under Inland Waters' Contract to manage the engineering investigation of the failure as well as the development of the stabilization and repair program and detailed design of the program components. During the field activities, my staff monitored and documented the work as well as the conditions encountered during repair of the sewer. Throughout the period of time the repair activities were under design and construction, I served as the project manager for the engineering efforts associated with the project.

7. During the course of the project, engineers with NTH Consultants as well as several subconsultants developed engineering designs and recommendations relative to various components of the project including:

- Stabilization of the sinkholes using grouting and sheet pile stabilization
- Monitoring the condition of the adjacent structures

- Installation of access and pumping shafts on the Romeo Arm
- Design of temporary and semi-permanent bypass pumping systems
- Design of isolation bulkheads
- Design of groundwater dewatering systems
- Exploration of subsurface conditions
- Design of a repair access shaft structure
- Design of Pipe replacement systems
- Documentation on in-situ sewer conditions during repair
- Replacement of utilities and roadways
- Grouting stabilization of settled pipe segments and subgrade materials

8. During the course of the repair activities at the site, staff from my firm documented the condition of the Romeo Arm Interceptor sewer as it was initially inspected using remote closed circuit television methods. During the repair and replacement activities, the condition of the pipe was also documented, as it was exposed, to aid in the evaluation of the failure. Based on these observations, the consideration of subsurface data from current and previous borings performed at the site as well as documented design and construction observations from the original construction and the 1978 failure and subsequent repair, we have evaluated the failure of the Romeo Arm Interceptor and prepared the attached memorandum, dated June 30, 2005, which summarizes our observations related to the ground and pipe conditions noted during the repair activities as well as our evaluation of the mechanism that resulted in the failure of the sewer. A copy of the memo is attached to this affidavit.

9. Based on the data developed during the repair activities, the following points are made in the referenced memorandum:

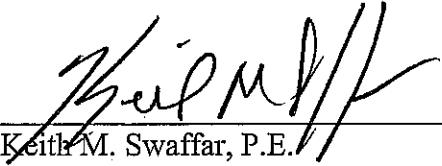
- A. Within the limits of the east sinkhole, the ground conditions surrounding the tunnel generally consist of very dense glacial till. This material, which is locally termed "hardpan," varies from very hard gray clayey silt to silty clay, but regardless of its exact constituent composition, generally behaves as a cohesive material. Within the limits of the east sinkhole, the hardpan is underlain by very compact silt to sandy silt. The thickness of this deposit ranges from 36-inches to 60-inches at the boring locations. The interface between the hardpan and silt materials is generally at or immediately below the invert of the sewer at this location.
- B. Flow levels of sewage within the Romeo Arm are influenced by the constriction placed in the Corridor Interceptor following the failure of that sewer in 1981. The constriction results in a backwater effect in the Romeo Interceptor as well as typical flow levels of 4-feet to 5-feet. Further review of DWSD inspection reports for the Romeo Arm indicate the presence of up to 12-inches of sludge at the invert as well as the presence of poisonous hydrogen sulfide gas. Due to these flow levels and the presence of sludge and gas, manned entry and inspection of the Romeo Interceptor is not routinely feasible. Under these conditions, remote inspection of the pipe using a closed circuit television camera and a floating sled are the most appropriate technology.

- C. Groundwater in the vicinity of the sinkhole was well above the tunnel at approximately elevation 580.
- D. The sewer invert in the vicinity of the east sinkhole is at approximately elevation 547.5. As such, there is a differential water head between the inside and the outside of the sewer on the order of 28-feet if a flow level in the pipe of 4-feet is considered.
- E. Unreinforced concrete tunnel linings such as that used for construction of the Romeo Arm typically develop longitudinal cracks at the crown and invert as a result of the redistribution of soil pressures such that the liner will function as a compression ring.
- F. The presence of circumferential cracks in unreinforced tunnel liners is not uncommon as a result of shrinkage when pour lengths exceed distances on the order of 35-feet. The presence of these cracks does not impact the liner's ability to resist the surrounding soil loads.
- G. The presence of the silt materials at and below the pipe invert together with the differential groundwater pressures and the cracking inherent in the unreinforced liner lead to a migration of the silt material into the pipe over time. This process, which is called "piping," eventually led to the development of a void underneath the pipe.
- H. Because the pipe in the vicinity of the east sinkhole was surrounded by hardpan material, the hardpan and sewer were able to bridge the void developed, as a result of the soil piping, until some point in time when the size of the void exceeded the hardpan's ability to span it.
- I. Based on our observations during the repair activities, the pipe sections within the east sinkhole area settled over 10-feet. Visual inspection of these sections indicated that they were essentially intact and did not exhibit the substantial diagonal cracking which has been previously observed in similar tunnels that have been subjected to settlement as a result of piping over extended periods of time, such as the conditions noted during the 1980 Corridor Interceptor failure or in 1985 in the NE Raw Water Tunnel.
- J. Based on the ground conditions and our observations of the failed pipe sections, our opinion is that the failure of the Romeo Arm beneath the east sinkhole was a catastrophic event that occurred suddenly. In this sort of failure, it is doubtful that there would have been clear indications in the tunnel that such a failure was imminent and such imminent failure would likely not have been obvious, even with regular inspections of the area.
- K. The west sinkhole developed subsequent to the failure of the tunnel beneath the east sinkhole. The failure to the west was a result of a domino-effect failure of adjacent sections as a result of the failure to the east and the resultant migration of the surrounding granular soils into the sewer.

10. The Romeo Arm Interceptor was inspected regularly into the mid 1990's and subsequent reinspections would have been recommended at 5-year intervals. In 2000, a limited inspection was performed that focused on a previously identified leak outside of the current failure area. Due to the catastrophic nature of the failure, inspection of the failure area in 2000 would certainly have not indicated any distress in the pipe and the

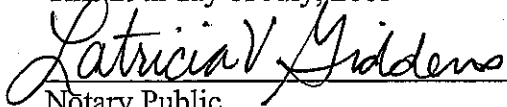
depth of flow would have made detection of silt piping into the pipe's invert undetectable. Further, based on the anticipated stable findings, re-inspection of the pipe would not have been called for a period of approximately a year after the current failure occurred.

Further, affiant sayeth not.



Keith M. Swaffar, P.E.

Subscribed and sworn to before me
This 29th day of July, 2005



Notary Public
Wayne County, Michigan

My Commission expires 5-9-06

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LATROIA V. GIDDENS
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES May 9, 2006

EXHIBIT 3-A

MEMORANDUM

TO: Mark Jacobs, Dykema Gossett, PLLC **DATE:** June 30, 2005

FROM: Harry Price / Keith Swaffar **PROJECT NO:** 15-040906-00

SUBJECT: Preliminary Sinkhole Evaluation
Romeo Arm Oakland – Macomb Interceptor
15 Mile Road between Moravian and Hayes
Sterling Heights, Michigan

Introduction

The purpose of this memorandum is to discuss the development of the sinkhole that appeared over the Romeo Arm of the Macomb Interceptor on August 22, 2004 and to provide our preliminary assessment of the failure. The following sections and paragraphs discuss the history of the sewer, its construction and surrounding ground conditions, as well as our observations made during repair activities. Based on our analyses of the available and developed data and our field observations, we present herewith our preliminary evaluation of the failure mechanism for the Interceptor pipe.

From the initial discovery of the developing sinkhole in the early morning hours of August 22nd, the sinkhole expanded to an overall length (east and west) of approximately 245 feet, with a maximum width (north and south) of 130 feet at its deepest section. The sinkhole was characterized by distinct depressions at the east and west ends, with the eastern depression being the wider and deeper of the two. The cone of the eastern depression extended to approximately 30 feet below the existing ground surface, while the western cone extended to a depth of approximately 20 feet. Based on the surveyed dimensions at the depressions, the volume of material lost has been computed to be approximately 7,000 cubic yards of soil.

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The sinkhole is located approximately 900 feet west of a 1978 sewer failure reportedly caused by a third party action, and is located to the west of the terminal shaft constructed as part of the repair activities associated with the 1978 failure. Based on dimensions obtained in the field, the bottom of the cone associated with the easterly depression is located approximately 10 feet west of the outside edge of the aforementioned terminal shaft.

The stabilization of the sinkhole was accomplished using a number of methods, including dewatering, compaction grouting, jet grouting, and the installation of steel sheet piling between the sinkhole and the adjacent houses on the southern side of the sinkhole. To maintain service to customers during the stabilization and subsequent repair activities, wastewater flows were maintained through construction of a by-pass system which included construction of two pumping shafts, bulkheads, installation of pumps, valves, an at-grade pipeline as well as excavation and construction of a discharge shaft.

The repair of the damaged sewer in the sinkhole area was accomplished by the construction of a rectangular shaped recovery shaft, the removal of the enclosed soils and portions of the damaged tunnel followed by the installation of a reinforced concrete pipe supported on a concrete cradle. Within areas where the existing sewer had settled well below the shaft bottom, the failed sections below the bottom of the recovery shaft were grouted in place prior to placement of the cradle. During excavation and removal of the failed sewer sections, observations relative to elevations and distress of the sewer as well as ground conditions above and below the pipe were recorded. The shaft and its associated precast were backfilled with flowable fill to 18-inches above the pipe sections and with granular material thereafter to the original ground surface.

History

The Romeo Arm of the Macomb Interceptor was constructed during the period from June 1971 to December 1972 under DWSD Contract No. PCI-12A. The alignment of the Romeo Arm extends over

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a distance of approximately 22,400 feet. The sewer extends in a north-south direction beneath Garfield Road from immediately north of the Clinton River southward to 15 Mile Road. The alignment then turns to the west and extends beneath 15 Mile Road to the terminus of the Romeo Arm at the Corridor Interceptor.

The sinkhole depressions are located between approximately original project Station Nos. 70+00 and 67+70. Based on the test borings performed for Contract PCI-12A as well as the data associated with the 1978 failure under DWSD Contract No. PC433, the tunnel was constructed through a mix of granular and cohesive soils. In general, the data suggests that, within the eastern portion of the failure, the bore was generally through very hard silty clay with granular soils existing from immediately below the invert to as high as the lower quarter point. To the west, the hardpan disappeared and the base was essentially through granular soils. Based on Standard Penetration Test results for this material, the granular soils are very compact in relative density. The logs of test boring indicate that the groundwater table was located roughly 10 to 15 feet below the ground surface prior to the construction of the sewer. This elevation corresponds to a water head at the tunnel invert of approximately 40-feet. Groundwater control, during construction, was reportedly provided through a combination of dewatering and compressed air.

The available information indicates that the primary earth support system for this tunnel, prior to placing the concrete lining, was generally structural steel ribs and timber lagging. This support system was assembled in the tail shield of the mining machine and then expanded with hydraulic jacks once the rib cleared the tail shield of the mining machine. Each rib was assembled from three, 120-degree segments of structural steel bolted together end to end. It has been reported that the joints between the individual segments, within the PCI-12A Contract, were generally located at the tunnel invert and at the upper quarter points. The As-Built drawings indicate that these ribs were generally W4x13 steel sections installed at 4-feet on center. Timber boards were placed between the ribs to support the surrounding soil and transfer the earth loads back to the steel ribs. Details of lagging boards composition and dimensions are not available.

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It is our understanding that Contract PCI-12A was constructed in two directions from a central mining shaft located to the west of Garfield Road along the south side of 15 Mile Road, at the site of the present Garfield Gate. We also understand that, because of the use of the compressed air, concrete placement was accomplished through the use of a concrete pump and slick line system. Under this method of concrete placement, the discharge line from the pump (slick line) is inserted in the crown of the tunnel. As the concrete is placed in the crown, it flows by gravity around the tunnel and the slick line is withdrawn. The last portion of the concrete to be placed is at the bulkhead closest to the concrete pump. Using this concrete placement method, the leading edge of concrete generally slopes from the crown to the invert. American Concrete Institute literature indicates that this slope is approximately 3 horizontal to 1 vertical and does not build up until it encounters a bulkhead or an obstruction. Based on the As-Built Drawings, it appears that concrete was placed in reaches ranging from 30 feet to 140 feet in length.

Review of the PCI-12A As-Built Drawings indicates that, due to grade variations during mining, in some cases the available space for the concrete liner was thinner than specified. In these cases it appears that, if the variance was less than 3-inches, DWSD permitted the contractor to place reinforcing steel in the liner to help carry loads imposed by the surrounding ground. Within the sinkhole area and the immediately adjacent areas to the east and west, reinforcing steel was placed in the invert between Station Nos. 69+29 and 69+30, 70+49 and 70+69, 72+09 and 72+44, 72+44 and 72+78, and in the crown between Stations Nos. 71+74 and 72+09. The amount of reinforcing steel was a function of the decrease in liner thickness. If the decrease was greater than 3-inches, DWSD specifications required the contractor to re-mine the tunnel to achieve the required liner thickness. Based on our review of the As-Built records, it does not appear that re-mining occurred at any locations during construction of PC-12A.

Flows within the Romeo Arm are conveyed to its confluence with the Corridor Interceptor at 15 Mile and the Edison Corridor (approximately 1.3 miles to the west). At this location, flows from the 9.5 feet

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diameter Oakland Arm Sewer also enter the Corridor Sewer from the north. Following the 1978 failure within the Romeo Arm, subsequent DWSD inspection of the Corridor Interceptor in January 1980 identified three areas of distress within the sewer. The three distressed areas were located within a reach of sewer approximately 2300 lineal feet in length. The area identified as Distressed Area No. 1 was located approximately 400 feet south of 15 Mile Road and south of the confluence of the Oakland and Romeo Arms with the Corridor Interceptor. Details of this failure were documented in a report entitled, "15 Mile Road/Edison Corridor Sewer Tunnel Failure Study, Detroit Area, Michigan" prepared by the U.S. Army Corps of Engineers, dated January 1981.

Repair of the 1981 Corridor Interceptor failure was performed within an open cut excavation constructed over Distressed Area No. 1. From this excavation, 9-foot diameter precast concrete pipe was placed within the limits of the three distressed areas resulting in a 9-foot diameter constriction in the Corridor Interceptor over a distance of approximately 2,340 feet. As a result of this constriction as well as the volume of flow within the Oakland Arm, a backwater effect is developed in the Romeo Arm Interceptor. The backwater effect has been calculated to result in flow depths on the order of 4 to 5 feet in the vicinity of the recent repair activities to the Romeo Arm. The flow depths have, in general, been verified during the recent cleaning activities within the Romeo Arm.

As a result of the 1978 failure, flows from the Romeo Arm were diverted over the period from 1978 to 1983. The flow diversion over this period of time was accomplished through the reactivation of a treatment plant at the Selfridge Air National Guard Base and a pump station in Sterling Heights. In addition, flows could be held at the temporary pump station constructed as a part of the semi-permanent by-pass of the 1978 collapse.

Concurrent with the repairs at the corridor and the installation of the permanent by-pass at 15 Mile Road and Hayes, a detailed condition survey of the Oakland Macomb Interceptor System was undertaken for DWSD by Jenny Engineering in 1980. The results of this condition survey were presented in a report entitled "Inspection of Sewer Tunnels", dated December 1981. It should be noted

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that, because of the ongoing repair and remedial activities within the Romeo Arm and the Corridor Interceptor at that time, flow levels were substantially lower than current levels, thereby enabling inspection teams to walk the sewers. This permitted detailed observations and measurements to be taken relative to existing distress, sludge levels and ground water inflows.

Subsurface Conditions

In order to evaluate the subsurface conditions within the sinkhole area, we compiled the available geotechnical data in the vicinity of the failure. Available data included test borings performed as part of the original project design in the late 1960s, test borings and well installation logs associated with the previous failure and repair effort, as well as those borings performed during the current failure and repairs. The Pre-Failure Composite Plan and Profile (appended to this memorandum as Figure No. 1) was developed based on the reliable subsurface data, which consisted of discrete soil samples which included Standard Penetration Test (SPT) data for disturbed samples as well as laboratory test data for both disturbed and undisturbed samples. Also shown on Figure No. 1 is the "as-constructed" sewer alignment and profile as well as the locations of the various borings and other data points used in our evaluation. In addition, the profile contains relevant as-built data such as the locations of construction joints and waterstops as well as reinforcing steel obtained from the PCI-12A As-Built drawings.

We have also prepared a Post Failure Composite Plan and Profile, which is attached hereto as Figure No. 2. Presented on the Figure are the subsurface conditions developed from observations of excavations during construction and from discrete soil samples from soil boring performed during the repair activities. Data used in the development of this profile included SPT data for disturbed samples as well as grain size determinations, natural moisture content and in-place dry densities.

Review of the Pre-Failure ground conditions presented on Figure No. 1 indicates that the sewer conditions in the vicinity of the east sinkhole vary from those at the location of the west sinkhole. Within the east portion of the failure zone, the tunnel is overlain by sands containing varying amounts

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of silt and gravel that extend from the ground surface to approximately the crown of the sewer. As shown on the profile, within the limits of the east sinkhole, the tunnel is generally surrounded by very hard silty clay to clayey silt. This is a very dense soil that generally behaves as a cohesive material and is locally termed "hardpan". As shown on the profile, the hardpan material extends to the west to somewhere in the vicinity of Station No. 68+70.

Based on the test boring and laboratory data, the hardpan material is underlain, near or immediately below the tunnel invert, by very compact silt to sandy silt. The thickness of this material is somewhat limited, varying from 36-inches to as much as 60-inches. Due to the limited vertical extent of this material and the sampling interval used in the borings, it is very likely that the silt layer, although present, was not discovered through the soil boring sampling process. We believe such a situation likely existed east of the east sinkhole. Near this location, silt was noted to the east and to the west, but was not recovered in borings R-22 and C-89 and observation well OW-2. Within this reach, we have estimated the probable vertical extent of the silt, indicated as dashed lines on Figure No. 1.

As shown on the profile, the silt is generally located in the crown between approximately Station Nos. 66+80 and 67+60. Continuing to the east, the silt elevation declines to generally the springline of the tunnel. As also shown, the hardpan material terminates near Station No. 68+70.

West of the location where the hardpan appears to terminate, the silt is overlain by the granular materials that also overlie the hardpan. These sandy soils also underlie the silt within the tunnel reach presented on the profile. In general, the sands extend to elevations immediately above or below elevation 520, where they are in turn underlain by hardpan materials.

Following the previous two tunnel failures in the area in 1978 and 1981, the U.S. Army Corps of Engineers (COE) developed several methodologies to evaluate the piping potential of soils based on their grain size distribution. Specifically, the COE method utilizes the grain size distribution at which 50 percent and 85 percent, D50 and D85, of the soil particles are finer. Since the failure in 1981 of the Corridor Interceptor, the pre-failure presence of silt and sandy silt at and immediately below the tunnel

invert was viewed as a key factor in the failure. As such, more than 50 hydrometer tests were performed on fine grained silts and clays recovered from the borings to define the material characteristics and vertical extent of the silts and distinguish them from the overlying and underlying sands. This data was also used to evaluate the piping potential of the soils.

Based on the laboratory data, the silt deposits shown on the profile are non-plastic materials. The percent passing the No. 200 sieve ranges from 66% to 76%. Evaluation of the D50 and D85 indicates that these parameters range from 0.03 mm to 0.34 mm and from 0.04 mm to 9.5 mm, respectively.

Grain size analysis for the upper and lower sands indicates these soils are generally well graded with the percentage of fines and gravels ranging from 6% to 30% and from 2 to 20, respectively. Based on these parameters, these soils can be classified as SW, SP, SM, SG and SP-SM based on the Unified Classification System.

Field Observations

Observations and field measurements made during the repair activities are summarized on the Deflected Sewer Profile, which is attached as Figure No. 3. The figure also contains photographs at various locations depicting the condition of the pipe as the excavation progressed. Review of the Deflected Sewer Profile presented on Figure No. 3 indicates that, following the event, the sewer between approximately Station Nos. 68+80 and 69+23 dropped vertically 10.2 feet to 10.6 feet, with the greatest settlement noted at approximately Station No. 69+13. Within this zone, observations made during excavation within the recovery shaft indicated that the pipe was essentially intact and, with the exception of the upper reaches, filled with soils that are consistent with those encountered above the pipe. In general, the upper 2 feet to 5-feet of the barrel was filled with flowable fill material placed to stabilize the pipe prior to recovery shaft construction.

Based on the field observations noted on Figure No. 3 as well as subsurface data obtained following the failure, the tunnel barrel location and resulting ground conditions encountered are also presented on the

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Post Failure Profile, Figure No. 2. As indicated on Figure No. 3, east of the deepest zone, the pipe section was essentially crushed as a result of the failure. Within this zone, the sides of the pipe had collapsed and the tunnel roof and invert were crushed. West of the deep failure area, the sides had collapsed and the roof was crushed, but portions of the invert were found intact. Although the roof concrete had been crushed, the structural steel ribs, however, were intact. The top of pipe elevation shown on Figure Nos. 2 and 3 is based on the presence and vertical location of these rib sections. As a result of the failure, the structures east of the failed section also experienced settlements of approximately 12-inches.

On the west end of the failure, the pipe sheared at approximately Station No. 67+75. At this location, the invert on the east side of the failure plane appears to have dropped 0.8 feet to 1.6 feet. This section of failed pipe extends to the east to approximately Station No. 67+98. Review of the sinkhole depressions indicates that these were located away from the section of deepest failure. On the east side of the failure, the depression is generally centered above the crushed section where the tunnel pulled away from the permanent by-pass terminus shaft. The development of an opening at the crown appears to have allowed granular material from above to fill the sewer. Laboratory testing of samples of soils taken from inside the sewer at this location indicate that the grain size distributions are consistent with the overlaying pre-failure soils.

As may be seen, the greatest deflection was recorded at Station 69+13, where the pipe settled in excess of 10.5 feet based on the as-built drawings and the field measurements obtained during the repair. This location is 16 feet from the construction joint at Station 69+29. Between Stations 69+29 and 69+39, the As-Built drawings indicate that reinforcing steel was also used, presumably due to the inadequate liner thickness prior to placement.

Based on our field observations, the position of the joints between the individual structural steel sections used to create ribs were generally consistent with the record data. In general, the steel ribs consisted of three 120 degree arcs, with the joints typically located at the invert as well as the upper

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quarter points. Periodically, one of the ribs was oriented such that the joint between the individual sections was rotated approximately 30 degrees from the adjacent sections. This is a typical practice in tunnel construction.

While cracked and broken concrete was observed during the excavation of the tunnel, there was no evidence of characteristic diagonal cracking typically found in previous subsidence failures. As seen on the Deflected Sewer Profile and Photographic Location Plan, the tunnel barrel from Station Nos. 69+22 to 68+80 dropped as a unit vertically up to 10 feet. The limited observations of this section that were possible during the repair indicated that this reach of pipe was essentially intact and was not crushed, as would be expected as a result of subsidence occurring over an extended period of time. At each end of this central section, the failed pipe transitions from the subsided section to the undamaged adjacent reaches.

The ground conditions noted following the failure exhibited two significant differences from the pre-failure conditions. Although the post-failure ground conditions indicate that hardpan extends to the west to approximately the same general location, the hardpan material is significantly lower than pre-failure, compatible with the settlement of the sewer barrel. Also, the silt and sandy silt layer, which existed at or immediately below the invert, was now missing. Conditions observed in the borings and recovery shaft excavation indicated that this material no longer existed and instead had been replaced by the granular blends encountered above and below.

Evaluations

It is our opinion that the damage to the Romeo Arm of the Macomb County Interceptor and the resultant sinkhole appear to be consistent with a loss of ground into the tunnel. The principal soil type lost appears to be a stratum of silt that was immediately underlying the tunnel in the vicinity of the eastern end of the sinkhole before the failure but was noticeably absent during the repair activities. The mechanism of ground loss appears to be a process called piping. In this process, soils are forced

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through cracks by the pressure of the groundwater. This failure mechanism is described in great detail by the Corps of Engineers in their study of the Edison Corridor failure in the early 1980's. Based on the field observations, the failure appears to be centered at approximately Station 69+16, where the greatest deflection was observed.

In their 1981 report, the Corps indicated that the minimum size opening through which a soil could pipe was an opening equal in width to the D_{50} of the soil. This replaced an earlier criterion, which utilized a formula that considered both the soils D_{50} and D_{85} . Granular soils tend to erode more than cohesive soils in flowing water because there is no cohesion between the soil particles that must be overcome for the particle to move. Silt is a granular soil; accordingly, it is more erodible than hard clay. Silt is also a fine-grained material. Grain size data from the hydrometer tests indicate that the minimum slot widths for this material ranged from 0.001 inch to 0.002 inch in the silt stratum. As may be seen on the pre-failure composite profile, the silt material was present at or near the tunnel invert between approximately Station Nos. 68+00 and extending east past the failure areas. Between Station 69+80 and 72+20, the original PCI-12A tunnel was bypassed as a part of the repairs from the 1978 damage.

At Station 69+13, where the greatest drop was recorded, this silt stratum extended approximately 3 feet below the tunnel liner in the invert. Once the integrity of the tunnel was breached, the underlying sands were washed into the tunnel through a combination of sewage flows and groundwater inflows.

As noted previously, a condition survey of the entire Oakland Macomb Interceptor System was prepared by Jenny Engineering after the distress at the Edison Corridor was encountered. The Jenny Condition Survey Report indicates that sloping, circumferential and longitudinal cracking were observed in the PCI-12A tunnel. The Jenny Report indicates that these cracks were not active at the time of the condition survey. The sloping cracks generally appeared to be cold joints in the concrete liner resulting from the method of concrete placement for lining construction. The presence of these cold joints is consistent with published literature on tunnel concreting. With respect to circumferential

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cracking, these are typically associated with construction joints and, when the length of the concrete pour exceed 35 feet, tend to occur at approximately 30 feet on center as a result of the shrinkage of the concrete.

Longitudinal cracking occurs when the tunnel liner flexes. This flexing is generally associated with the redistribution of soil pressure that occurs after a tunnel is constructed. For tunnels constructed in cohesive soils, this redistribution may take several years. In predominately granular soils, this redistribution generally occurs faster. The Jenny Report suggests that the observed longitudinal cracks were associated with the placement of the joints in the rib sections. As discussed, the joints in the rib sections were generally at both upper quarter points and the remaining point is at the invert. Accordingly, if the cracks appear at the upper quarter point, it is likely that there is a corresponding crack on the invert of the tunnel that could not be observed because it was below the top of the flow in the tunnel at all times.

Station 69+13, where the greatest deflection was recorded, is located approximately 16 feet from a control joint. Because of its proximity to a bulkhead, cracking could be associated with either a cold joint or a result of concrete placement or longitudinal cracks. The proximity to the bulkhead likely excludes circumferential cracking. Because Station 69+13 is beyond the terminal shaft of the previous repairs, it suggests that it is not a consequence of the previous repair work.

It is significant that families of diagonal cracking were not observed on the ends of the distressed sections. The lack of these diagonal cracks suggests that the failure was a sudden catastrophic event rather than the result of slow and continuous subsidence/deflection of the tunnel. The Corps of Engineers Report on the Corridor Failure and the Failure Report for the Northeast Raw Water Tunnel prepared by NTH Consultants both documented the families of diagonal cracking resulting from subsidence throughout their respective failure sections. These families of diagonal cracks, when encountered, were generally oriented at roughly 45-degree angles to the invert and dipped downwards towards the point of greatest deflection.

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In conclusion, based on our evaluation of information and data presented herein, it is our opinion that the failure of the tunnel was due to loss of ground support. We believe the failure occurred as a result of the following developments: Cracks, which developed in the concrete tunnel over time, coupled with a high groundwater pressure head, allowed silt and sandy silt to infiltrate into the tunnel in the vicinity of the east sinkhole. Over time, this resulted in the development of voids to develop under the tunnel structure. However, because the upper portion of the tunnel was constructed within a layer of high shear strength, somewhat cohesive hardpan, the tunnel and hardpan acted as a structural unit and were able to remain essentially in place and intact until a very large void had developed underneath the tunnel. Eventually, the void became so large that the tunnel/hardpan matrix was no longer capable of bridging this void, resulting in a sudden drop of the tunnel/hardpan unit. Once this occurred, the hydrostatic pressure of the groundwater carried the easily erodable granular materials into the flowing tunnel, causing the sinkholes (depressions) to form at the surface. This failure mechanism is consistent with the generally intact nature of the tunnel and with the drop in elevation of the hard to very hard clay stratum observed in the photographs taken in the recovery shaft and presented on Figure 3.

With regard to the western depression on 15 Mile, as indicated on Figures 2 and 3, the center of the depression is located roughly at the western end of the dropped section. Based on observations of the condition of the pipe during the excavation for the repairs, as well as the prevailing subsurface conditions, it is our opinion that the western depression developed subsequent to the eastern depression. We believe that the sudden failure/drop of the tunnel near the east depression initiated a 'domino-effect' failure of the tunnel west of that location. The break in the tunnel resulting from the drop created significant openings, which allowed the surrounding granular soils to essentially 'flow' into the tunnel due to the high groundwater hydrostatic pressure. This resulted in loss of support for the sewer, which caused displacement of the sewer and the opening of additional cracks, which allowed more soils to flow into the sewer. This phenomena continued until emergency repairs were initiated, including stabilization of the surrounding soils by grouting and construction of the temporary by-pass system.

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It is also our opinion that, until the failure occurred, there would have been minimal or no visible evidence of the underlying void. Further, since the backwater from the Corridor restriction resulted in a minimum of 5 feet of water or more in the vicinity of the sinkhole, the presence of sand accumulating in the invert would likely have gone unnoticed.

At the present time, we are in the process of assembling the materials for a formal report documenting the failure and subsequent repair of the Romeo Arm Sewer.

EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff and
Counter-Defendant

Civil Action No.
771100

-vs-

STATE OF MICHIGAN,

Defendant and
Counter-Plaintiff
and Cross-Plaintiff,

-vs-

THE CITY OF DETROIT, a municipal
corporation, THE DETROIT WATER &
SEWERAGE DEPARTMENT,

Defendant and
Cross-Defendants

-vs-

All Communities and Agencies Under
Contract With the City of Detroit
For Sewage Treatment Services.

REPORT AND RECOMMENDATIONS
OF THE MASTERS

DATE: MAY 1, 1978

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(1) General Methodology

84. The "cash" basis of determining the revenue requirements of the Detroit sewage disposal system has been described in Part B. After total revenue requirements are determined by this method, deductions are taken for amounts to be raised by federal and state grants and by bond sales. The remainder of the revenue requirements must be raised by user charges. Development of a system of user charges to generate these revenue requirements could follow either a "cash" basis or a "utility" basis. Detroit has used a "utility" basis of developing user charges in the 1974 and 1977 rate studies, and apparently has always used this method. The expert witness for the objectors testified that this method of developing rates is "perfectly applicable to the Detroit situation." (Gillett, Tr. 189.)

85. The first step in developing user charges under either a cash basis or a utility basis is to determine whether distinguishable customer classifications should be developed to reflect the fact that distinguishable costs are incurred in serving different classes of customers. Detroit has developed several different classes of customers. No challenge has been addressed to the propriety of the classes it has developed. Thus, as a matter of illustration, all parties agree that it is proper for Detroit to set rates on the assumption that Detroit customers should pay the costs of the local sewer system that provides individual service to individual customers in Detroit, and that suburban customers should not pay any part of those costs. So too, it is agreed

that individual Detroit customers should not bear any portion of the costs of the Oakland-Macomb interceptor, a large interceptor sewer constructed by Detroit to gather sewage flow from points in Oakland and Macomb County.

86. After specific customer classes have been identified, and the costs that are peculiar to each class have been isolated, there remain many costs for facilities that are used to serve all of the various customer classes in common. Thus major interceptor sewers in Detroit, and the sewage treatment plant itself, provide service in common to all of the separate customer classes. Some method of allocating these common plant costs among the different customer classes must be found. Although it would be possible to take account of such matters as the relative strength of sewage flows or delivery flow rate characteristics in allocating common plant costs, Detroit has chosen to allocate these costs solely on the basis of relative volumes of flow. In the 1977 rate study, it was projected that of total sewage flow volume, Detroit would account for 53.7% in 1977-1978, 53.3% in 1978-1979, and 52.9% in 1979-1980. The suburbs, correspondingly, were projected to account for 46.3% in 1977-1978, 46.7% in 1978-1979, and 47.1% in 1979-1980. (Exhibit 9, Table 1, P. 12.) As noted in Part III-D, none of the objections that remain in this proceeding challenge the projections of relative flow, and none of the objectors have asserted that common costs should be allocated on any basis other than relative flow.

87. If rates were set on a cash basis, no further complications would remain. Common plant costs would be allocated

EXHIBIT 5

**ORDINANCE NO. 27-86
PROVIDE FOR ISSUANCE AND SALE OF NOT TO EXCEED
\$120,000,000 OF SEWERAGE DISPOSAL SYSTEM REVENUE
REFUNDING BONDS OF THE CITY.**

AN ORDINANCE to provide for the issuance and sale of Sewage Disposal System Revenue Refunding Bonds of the City of Detroit under the provisions of Act 94, Public Acts of Michigan, 1933, as amended for the purpose of refunding a portion of the City's outstanding Sewage Disposal System Revenue Bonds; to prescribe the form of bonds; to provide for the collection of revenues from the City of Detroit Sewage Disposal System sufficient for the purpose of paying the costs of operation and maintenance of said system and to pay the principal of and interest on said bonds and to provide for other requirements of this ordinance; to provide for the segregation and distribution of said revenues; to provide for the rights of the owners of said bonds and enforcement thereof; to provide for the issuance of additional bonds for additions, expansions, improvements and repairs to the Sewage Disposal System of the City and to refund outstanding bonds; to provide for other matters relating to said bonds and said system and to provide for the repeal of Ordinance No. 517-E, as amended by Ordinance No. 526-E, Ordinance No. 544-E, Ordinance No. 360-F, Ordinance No. 603-F, Ordinance No. 402-G, Ordinance No. 451-G, Ordinance No. 493-G, Ordinance No. 527-G, Ordinance No. 312-H, Ordinance No. 321-H, Ordinance No. 407-H, Ordinance No. 414-H, Ordinance No. 415-H, Ordinance No. 420-H, Ordinance No. 502-H, Ordinance No. 585-H, and Ordinance No. 26-86 of the City of Detroit.

WHEREAS, the City of Detroit (the "City"), Michigan, by Ordinance No. 517-E, as amended by Ordinance No. 526-E, Ordinance No. 544-E, Ordinance No. 360-F, Ordinance No. 603-F, Ordinance No. 402-G, Ordinance No. 451-G, Ordinance No. 493-G, Ordinance No. 527-G, Ordinance No. 312-H, Ordinance No. 321-H, Ordinance No. 407-H, Ordinance No. 414-H, Ordinance No. 415-H, Ordinance No. 420-H, Ordinance No. 502-H, Ordinance No. 585-H and Ordinance No. 26-86 (together "Ordinance No. 517-E"), entitled:

"AN ORDINANCE to provide for extending, enlarging and improving the sewage disposal system of the City of Detroit; to provide for the issuance and sale of revenue bonds under the provisions of Act 94, Public Acts of Michigan, 1933, as amended, to defray the cost thereof and to provide funds to refund outstanding sewage disposal system revenue refunding bonds; to provide for the retirement and security of the bonds to be issued hereunder; and to provide for other matters relative to said system and said bonds," has heretofore authorized, issued and sold Sewage Disposal System Revenue Bonds of the City in several series to finance extensions and improvements to the System (as hereinafter defined); and

WHEREAS, Sewage Disposal System Revenue Bonds Series A, Series 1969, Series 1970A, Series 1970B, Series 1979, Series 1980, Series 1982, and Series 1984 were issued pursuant to Ordinance No. 517-E in the original principal amount of \$216,000,000 of which \$194,520,000 remain outstanding and unpaid as of the date of the adoption of this Ordinance (the "517-E Bonds"); and

WHEREAS, Ordinance No. 517-E provides that bonds to refund the 517-E Bonds may be issued pursuant to an ordinance separate from Ordinance No. 517-E provided the issuance of such bonds satisfy the requirements of Ordinance No. 517-E; and

WHEREAS, to finance all or part of the cost of the refunding of the Refunded Bonds (as hereinafter defined) including costs of issuance and refunding, the Commissioners have recommended that the Series 1986 Bonds (as hereinafter defined) be issued in the aggregate principal amount of not to exceed One Hundred Twenty Million Dollars (\$120,000,000); and

WHEREAS, the refunding of the Refunded Bonds does not require the publication of a notice of intent under Act 94 (as hereinafter defined); and

WHEREAS, all things necessary to the authorization and issuance of the Series 1986 Bonds under the Constitution and laws of the State of Michigan and the City including Ordinance No. 517-E, have been done or will be completed or obtained prior to the issuance of the Series 1986 Bonds, and the City Council of the City is now empowered and desires to authorize the issuance of the Series 1986 Bonds;
THE CITY OF DETROIT ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

- (a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.
- (b) "Act 354" means Act 354, Public Acts of Michigan, 1972, as amended.
- (c) "Additional Bonds" means any additional bonds of equal standing with the Series 1986 Bonds issued pursuant to Section 22 of this Ordinance.
- (d) "Bond" or "Bonds" means the Series 1986 Bonds, together with any Additional Bonds.
- (e) "Bond Reserve Account" means the account established within the Redemption Fund pursuant to Section 13 hereof.
- (f) "Bond Reserve Requirement" means the lesser of the Maximum Annual Debt

Service on any outstanding Bonds or the maximum amount permitted by the Code; for purposes of the Bond Reserve Requirement annual debt service on Variable Rate Bonds shall not, after the issuance of such Variable Rate Bonds, be adjusted because of an adjustment to the interest rate borne by such Variable Rate Bonds.

(g) "City" means the City of Detroit, County of Wayne, State of Michigan.

(h) "Code" means the Internal Revenue Code of 1986, as it may be amended.

(i) "Commissioners" means the Board of Water Commissioners of the City created by Article 7, Section 1501 of the Charter of the City or any successor body.

(j) "Construction Fund" means the fund established pursuant to Section 18.

(k) "Council" means the City Council of the City.

(l) "Escrow Fund" means the Escrow Fund created pursuant to Section 17 hereof.

(m) "Fiscal Year" means the fiscal year and operating year of the City which begins on July 1 and ends on the following June 30 as it may be modified.

(n) "517-E Bonds" means the Sewage Disposal System Revenue Bonds Series A, Series 1969, Series 1970A, Series 1970B, Series 1979, Series 1980, Series 1982, and Series 1984 issued in the original principal amount of \$216,000,000 pursuant to Ordinance No. 517-E of which \$194,520,000 remains outstanding and unpaid as of the date of the adoption of this Ordinance.

(o) "Government Obligations" means any bonds or other obligations which as to principal and interest constitute direct obligations of the United States of America or obligations the principal and interest on which are fully guaranteed by the United States of America, including U.S. Treasury Trust Receipts.

(p) "Investment Obligations" means (if now or hereafter permitted by law) the following:

(i) Government Obligations;

(ii) Bonds or other obligations of the following agencies of the United States of America: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks System, Federal Land Banks, Export-Import Bank, Tennessee Valley Authority, Government National Mortgage Association, Farmers Home Administration, United States Postal Service, and the Federal National Mortgage Association to the extent that such obligations are guaranteed by the Government National Mortgage Association, any agency or instrumentality of the United States of America or any corporation controlled and supervised by, and acting as an agency or instrumentality of, the United States of America;

(iii) Certificates of deposit or bankers' acceptances of the Trustee or of any bank or savings and loan association with capital and surplus of at least \$100,000,000 and a bond or deposit rating of at least "A" from a Rating Agency or which bank or savings and loan association has its commercial paper rated in the highest category by a Rating Agency;

(iv) Repurchase agreements with a term not exceeding sixty (60) days with the Trustee or any bank with capital and surplus of at least \$100,000,000 and a bond or deposit rating of at least "A" from a Rating Agency which bank is a member of the Federal Reserve System or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, that are secured by Investment Obligations described in (i) or (ii) above, having a market value at the time of purchase (inclusive of accrued interest) at least equal to 102% of the full amount of the repurchase agreement and which Investment Obligations shall be held by a third party custodian which is a bank or trust company pursuant to a third party custodial agreement;

(v) Commercial paper rated in the highest category by a Rating Agency;

(vi) Any collective investment fund maintained or managed by a bank or trust company with capital and surplus of at least \$100,000,000 which invests solely in investments described in subsections (i) and (ii) hereof;

(vii) Direct and general obligations of any state of the United States of America, or any direct obligations of any political subdivision of a state, which, in each case, are rated in one of the highest two categories by a Rating Agency;

(viii) Municipal Obligations. (q) "Junior Lien Bonds" means bonds or other obligations which may be issued or incurred by the City to provide funds for any lawful purpose of the System which are of junior standing and priority of lien with respect to the Net Revenues to the claim of the 517-E Bonds or the Bonds.

(r) "Mandatory Redemption Date" means each of the several dates upon which Term Bonds in the principal amount of the applicable Mandatory Redemption Requirement are required to be redeemed under the ordinance or the resolution approving the sale of such Bonds.

(s) "Mandatory Redemption Requirements" means with respect to any Term Bonds, the principal amount of such Bonds required to be called for redemption prior to their stated maturity as provided in the ordinance authorizing the issuance or in the resolution providing for the sale of such Term Bonds. For all purposes of this Ordinance, Ordinance No. 517-E, the Bonds and the 517-E Bonds, Term Bonds shall be deemed to come due at the times and in the amounts of the Mandatory Redemption Requirements therefor and the principal amounts due on Term Bonds on the dates of their stated

maturities shall be reduced by the Mandatory Redemption Requirements theretofore becoming due prior to the stated maturities for such Term Bonds.

(t) "Maximum Annual Debt Service" means, at any point in time, with respect to Bonds and 517-E Bonds then outstanding, the maximum amount of principal and interest becoming due in the then current or any future Fiscal Year, calculated as provided in this definition. For purposes of calculating Maximum Annual Debt Service, the following assumptions are to be used to calculate the principal and interest becoming due in any Fiscal Year:

(i) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any scheduled mandatory redemption of Bonds or 517-E Bonds, and for such purpose, the mandatory redemption payment shall be deemed a principal payment; provided, however, that principal of and interest on Bonds maturing on the first day of any Fiscal Year shall be deemed for purposes of this definition to mature on the last day of the immediately preceding Fiscal Year;

(ii) if any outstanding Bonds constitute Tender Indebtedness or if Bonds then proposed to be issued would constitute Tender Indebtedness, then for purposes of determining the amount of principal and interest due in any Fiscal Year on such Bonds, the options or obligations of the owners of such Bonds to tender the same for purchase or payment prior to their stated maturity or maturities shall be treated as a principal maturity occurring on the first date on which owners of such Bonds may or are required to tender such Bonds except that any such option or obligation to tender Bonds shall be ignored and not treated as a principal maturity, if (1) such Bonds are rated in one of the two highest long-term rating categories (without reference to fractions such as "plus" or "minus") by a Rating Agency, (2) the obligation to purchase or to pay such Bonds when tendered is secured by a credit or liquidity facility or a bond insurance policy, or similar arrangement, and (3) any obligation, if any, the City may have, other than its obligation on such Bonds, to reimburse any person for having extended a credit or liquidity facility or a bond insurance policy, or similar arrangement, shall either be subordinated to the obligation of the City to make payments to the Operation and Maintenance Fund and Redemption Fund or be incurred under the conditions and meeting the tests for the issuance of Additional Bonds set forth in Section 22 hereof (assuming for purposes of such tests, if a facility, bond insurance policy, or similar arrangement provides for interest at a variable rate, that the rate to be used for such tests shall be the interest rate at the time of issue);

(iii) if any outstanding Bonds constitute Variable Rate Bonds, the interest rate on such Bonds shall be assumed to be 125% of the greater of (a) the daily average interest rate on such Bonds during the 12 months ending with the month preceding the date of calculation, or such shorter period that such Bonds shall have been outstanding, or (b) the rate of interest on such Bonds on the date of calculation;

(iv) if Additional Bonds will be Variable Rate Bonds, then such Additional Bonds shall be assumed to bear interest at the rate quoted in the Bond Buyer 25 Revenue Bond Index for the last week of the month preceding the date of sale of such Additional Bonds, as published in the Bond Buyer, or if that index is no longer published, another similar index selected by the City or if the City fails to select a replacement index, an interest rate equal to 80% of the yield for outstanding United States Treasury bonds having an equivalent maturity as the Additional Bonds proposed to be issued, or if there are no such Treasury bonds having an equivalent maturity as the additional Bonds proposed to be issued, or if there are no such Treasury bonds having equivalent maturities, 80% of the lowest prevailing prime rate of any of the five largest commercial banks in the United States ranked by assets;

(v) if and so long as an interest-rate guaranty agreement or an interest-rate protection agreement with respect to any Variable Rate Bonds is in effect with an institution that is rated by a Rating Agency in a category that is equal to or higher than the category in which such Variable Rate Bonds are rated, the interest rate on such Bonds shall be assumed to be the lesser of (a) the interest rate determined without regard to this subparagraph (v) and (b) the maximum interest rate to be paid by the City on such Variable Rate Bonds in accordance with such agreement.

(u) "Municipal Obligation" means any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (i) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, and (ii) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of Sufficient cash or Sufficient Government Obligations which fund may be applied only to the payment of such principal of, redemption premium, if any, and interest on such bonds or other obligations on the maturity date or dates thereof or the redemption date or dates specified in the irrevocable instructions referred to in subclause (i) hereof, as appropriate.

(v) "Ordinance" means this Ordinance and any other ordinance amendatory to or supplemental to this Ordinance and shall include any resolution authorizing the sale of a series of Bonds.

(w) "Ordinance No. 517-E" means Ordinance No. 517-E adopted by the City effective on November 9, 1950 as amended and supplemented by the ordinances listed in the preambles hereto.

(x) "Pre-1980 Bonds" means the Sewage Disposal System Revenue Bonds Series A, Series 1969, Series 1970A, Series 1970B, and Series 1979.

(y) "Rating Agency" means Moody's Investors Service and/or Standard and Poor's Corporation, or any successor to either thereof or similar national rating agency if the foregoing do not exist.

(z) "Refund" or "Refunded" means with respect to the Bonds, or any portion thereof specified, the payment thereof, or the provision for payment thereof by the deposit in trust of Sufficient cash, Sufficient Government Obligations, or Sufficient Municipal Obligations, or any combination thereof and with respect to the 517-E Bonds, or any portion thereof specified, the payment thereof, or the provision for payment thereof by the deposit in trust of Sufficient cash or Sufficient Government Obligations or any combination thereof.

(aa) "Refunded Bonds" means the Sewage Disposal System Revenue Bonds Series 1980, Series 1982 and Series 1984 which are being Refunded by the Series 1986 Bonds.

(bb) "Revenues" and "Net Revenues" means the revenues and net revenues of the City from the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues," the earnings derived from the investment of moneys in the various funds and accounts established by this Ordinance, other than the Escrow Fund and other than the Construction Fund for any Fiscal Year the Commissioners do not transfer earnings on the Construction Fund to the Receiving Fund; provided, however that Net Revenues for purposes of Section 10 hereof shall not include such earnings on the Construction Fund.

(cc) "Serial Bonds" means Bonds that are designated Serial Bonds in this Ordinance, in an ordinance authorizing Additional Bonds or in a resolution authorizing sale of any Bonds.

(dd) "Series 1986 Bonds" means the Sewage Disposal System Revenue Refunding Bonds, Series 1986, of the City authorized by this Ordinance.

(ee) "Sufficient" means with respect to (i) cash or (ii) Government Obligations or (iii) Municipal Obligations, or any combination thereof, not redeemable at the option of the issuer, the principal and interest payments upon which, without reinvestment of the interest, come due at such times and in such amounts, as to be fully sufficient to pay the interest as it comes due on the 517-E Bonds or the Bonds or any portion thereof and the principal and redemption premium, if any, on the 517-E Bonds or the Bonds or any portion thereof as they come due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations or cash shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the Transfer Agent.

(ff) "System" means the Sewage Disposal System of the City including all plants, works, instrumentalities and properties, used or useful in connection with the collection, interception, treatment and disposal of sewage, as the same now exists, together with all additions, extensions, repairs and improvements thereto hereafter acquired.

(gg) "Tender Indebtedness" means any Bonds or portions of Bonds a feature of which is an option or requirement, on the part of the bondholders, or an obligation, under the terms of such Bonds, to tender all or a portion of such Bonds to the City, the Trustee, the Transfer Agent or other fiduciary or agent for payment or purchase and requiring that such Bonds or portions of Bonds be purchased if properly presented.

(hh) "Term Bonds" means Bonds that are designated Term Bonds by this Ordinance, an ordinance authorizing Additional Bonds or a resolution authorizing sale of any Bonds.

(ii) "Transfer Agent" means the current official bank of the City as transfer agent selected by the Finance Director pursuant to Section 29 hereof.

(jj) "Transfer Date" means the date on which all of the 517-E Bonds shall be deemed Refunded in accordance with Ordinance No. 517-E.

(kk) "Trustee" means Manufacturers National Bank of Detroit, Detroit, Michigan or any successor thereto.

(ll) "U.S. Treasury Trust Receipts" means evidence of ownership of rights to payment of portions of the principal or interest on Government Obligations held by a bank or trust company organized under the laws of the United States acting as custodian of such obligations.

(mm) "Variable Rate Bonds" means any Bonds which bear a variable rate of interest.

Section 2. Necessity; Public Purpose. It is hereby determined to be a necessary public purpose of the City to Refund the Refunded Bonds so that the City may reduce

the debt service on obligations payable from the Net Revenues.

Section 3. Payment of All of Refunded Bonds; Series 1986 Bonds Authorized; Issuance of Series 1986 Bonds. To pay part of the cost to Refund all of the Refunded Bonds including payment of bond insurance, if any, underwriters' discount, escrow, agent fees and expenses, legal, financial and other expenses incident thereto and incident to the issuance and sale of the Series 1986 Bonds and to Refund the Refunded Bonds, the City shall borrow the sum of not to exceed One Hundred Twenty Million Dollars (\$120,000,000), as finally determined in the resolution authorizing the sale of the Series 1986 Bonds, and issue the Series 1986 Bonds therefor pursuant to the provisions of Act 94.

Section 4. Series 1986 Bond Details, Issuance in Series. The Series 1986 Bonds shall be designated Sewage Disposal System Revenue Refunding Bonds, Series 1986, shall be payable out of the Net Revenues, as set forth more fully in Section 6 hereof, shall consist of Bonds of the denomination of \$5,000, or multiples of \$5,000 not exceeding the principal amount of Series 1986 Bonds maturing in the applicable years, dated as of December 15, 1986 or such other date as the Council shall approve in the resolution authorizing the sale of the Series 1986 Bonds, numbered in a convenient manner, and shall mature on July 1st in the years 1987 to 2015, inclusive or such of those years as shall be determined in the resolution authorizing the sale of the Series 1986 Bonds; provided however that in accordance with Ordinance No. 517-E the interest and principal becoming due in any Fiscal Year on the Series 1986 Bonds shall not exceed the interest and principal to have been due on the Refunded Bonds in such years until their maturity. For purposes of the preceding sentence, the principal of and interest on the Series 1986 Bonds which mature on the first day of a Fiscal Year shall be deemed to mature on the last day of the preceding Fiscal Year. The Series 1986 Bonds shall bear interest at a rate or rates to be determined in the resolution authorizing sale of the Series 1986 Bonds, but in any event not exceeding 18% per annum, payable on July 1st and January 1st of each year, commencing July 1, 1987, by check drawn on the Transfer Agent and mailed to the registered owner at the registered address, as shown on the registration books of the City maintained by the Transfer Agent. Holders of not less than \$1,000,000 in principal amount of Series 1986 Bonds or more may request wire transfer of interest payments by providing the Transfer Agent prior to the record date with a written notice, including wire address and account number, requesting payment by wire transfer. Interest shall be payable to the registered owner of record as of the 15th day of the month preceding any interest payment date. The date of determination of the registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future. The principal of the Series 1986 Bonds shall be payable at the Transfer Agent as principal paying agent or at such other co-paying agents as may be designated by the Finance Director upon presentation and surrender of the appropriate Series 1986 Bond at maturity, prior redemption or purchase. The Series 1986 Bonds may be sold at a discount but may not be sold at a price which would make the interest rate of the Series 1986 Bonds, after deducting any premium or adding any discount, exceed the maximum rate permitted by law, as shall be determined by Council in the resolution authorizing the sale of the Series 1986 Bonds.

The Series 1986 Bonds may be subject to redemption prior to maturity at the times and prices and in the manner finally determined by the Council in the resolution authorizing the sale of the Series 1986 Bonds.

In case less than the full amount of an outstanding Series 1986 Bond is called for redemption, the Transfer Agent upon presentation of any Series 1986 Bond called in part for redemption shall register, authenticate and deliver to the registered owner a new Series 1986 Bond in the principal amount of the portion of the original Series 1986 Bond not called for redemption. Notice of redemption shall be given in the manner specified in the form of the Series 1986 Bonds contained in Section 20 of this Ordinance.

Section 5. Execution, Transfer, Registration and Replacement of Bond. The Bonds shall be executed in the name of the City with the facsimile signatures of the Mayor and the Finance Director and shall have a facsimile of the City's seal printed thereon. No Bond shall be valid until authenticated by an authorized representative of the Transfer Agent. The Bonds shall be delivered to the Transfer Agent for authentication and be delivered by the Transfer Agent to the City's Finance Director or designee for delivery to the purchaser(s) or to the purchaser in accordance with instructions from the Finance Director of the City upon payment of the purchase price for the Bonds in accordance with the bid or purchase contract therefor when accepted. Executed blank Bonds for registration and issuance to transferees shall simultaneously, and from time to time thereafter as necessary, be delivered to the Transfer Agent for safekeeping.

Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Transfer Agent shall authenticate and deliver a new Bond or

Bonds, in the same aggregate principal amount, of the same maturity, and bearing the same rate or rates of interest. The Transfer Agent shall require payment by the registered owner requesting the transfer of any Bond of any tax or other governmental charge required to be paid with respect to such transfer. The Transfer Agent shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption and ending at the close of business on the day of giving of that notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part.

The Transfer Agent shall keep or cause to be kept, at its principal office, sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City; and, upon presentation for such purpose, the Transfer Agent shall, under such reasonable regulations as it may prescribe, transfer or cause to be transferred, on said books, Bonds as hereinbefore provided.

If any Bond shall become mutilated, the City, at the expense of the registered owner of the Bond, shall execute, and the Transfer Agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the Transfer Agent of the mutilated Bond. If any Bond shall be lost, destroyed or stolen, evidence of ownership of the Bond and of the loss, destruction or theft may be submitted to the Transfer Agent and, if this evidence is satisfactory to the City and the Transfer Agent and indemnity satisfactory to the Transfer Agent and the City shall be given, and if all requirements of any applicable law including Act 354 have been met, the City, at the expense of the owner, shall execute, and the Transfer Agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the Transfer Agent may pay the same without surrender thereof as authorized by Act 354.

Section 6. Payment of Bonds, Defeasance. The Bonds and the interest thereon shall be payable solely from the Net Revenues (except to the extent payable from the proceeds of bond insurance or other credit enhancement or from the proceeds of Bonds), and to secure such payment, there is hereby created a statutory lien upon the whole of the Net Revenues which shall be a first lien, subject only to the lien rights created for the 517-E Bonds by Ordinance No. 517-E as herein provided (the "Prior Lien"), to continue until payment in full of the principal of and interest on all Bonds payable from the Net Revenues, or, until Sufficient cash, Sufficient Government Obligations, Sufficient Municipal Obligations or any combination thereof shall have been deposited in trust for payment in full of the principal of and the interest on all Bonds to be paid or defeased to their maturity, or, if called or if irrevocable instructions have been given to call for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of Sufficient cash, Sufficient Government Obligations, Sufficient Municipal Obligations or any combination thereof, as provided in the previous sentence, the statutory lien herein created shall be terminated with respect to the Bonds to be defeased, the holders of these Bonds shall have no further rights under this Ordinance except for payment from the deposited funds and for rights of replacement, registration and transfer, and such Bonds shall no longer be considered to be outstanding under this Ordinance.

The Prior Lien secures the payment of the principal of and interest on the 517-E Bonds. Pursuant to Section 17 hereof, sufficient proceeds of the Series 1986 Bonds shall be deposited in the Escrow Fund to Refund the Refunded Bonds as they come due. Pursuant to Ordinance No. 517-E, the Bonds and the 517-E Bonds (other than those which have been deemed Refunded) shall be equally and ratably payable from the Net Revenues unless and until moneys or securities pledged to Refund 517-E Bonds are not sufficient for any reason to pay such bonds when due, in which event the claim of the 517-E Bonds to the Net Revenue and the Funds and Accounts of the System shall be superior and prior to the claim of the Bonds to the extent of such insufficiency. The City and the Transfer Agent are authorized to segregate funds or create sub-accounts in the funds of the System to effect such priority as provided in Ordinance No. 517-E.

Section 7. Bondholders' Rights; Receiver. The registered owner or owners of the Bonds representing in the aggregate not less than twenty per cent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the City under this Ordinance, Act 94 and any other applicable provisions of law, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest upon the Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the City and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the City more particularly set forth herein and in Act 94.

The registered owner or owners of the Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the security therefor.

Section 8. Municipal Bond Insurance or other Credit Enhancement. The Finance Director may obtain municipal bond insurance or other credit enhancement in respect of all or part of the Series 1986 Bonds or any Additional Bonds which, if obtained, shall be provided for in the resolution authorizing the sale of the Series 1986 Bonds or any Additional Bonds. Such municipal bond insurance or other credit enhancement may only insure or secure certain Bonds and may or may not insure or secure any other series of Bonds or any part thereof. Such municipal bond insurer or other credit enhancement provider may be afforded certain rights and remedies to direct the proceedings with respect to the enforcement of payment of the Bonds as shall be provided in the resolution authorizing the sale of the Series 1986 Bonds or Additional Bonds.

The City may at any time fulfill its obligation to fund the Bond Reserve Account by acquiring for the benefit of the Bond Reserve Account an irrevocable surety bond payable on any interest or interest and principal payment date in an amount which, when added to any other funds in the Bond Reserve Account, equals the Bond Reserve Requirement. Before any such surety bond is substituted for moneys or applied in lieu of moneys within the Bond Reserve Account, there shall be filed with the Commissioners (i) an opinion of nationally recognized bond counsel to the effect that such substitution will not adversely affect the tax-exempt status of interest on any Bonds; (ii) evidence that such surety bond is provided by an insurance company rated by each Rating Agency then rating the Bonds to the effect that if the issuers of the surety bond were insuring payment of principal and interest on the Bonds to which the Bond Reserve Account relates, such Bonds would receive the highest rating available from each such Rating Agency; (iii) a copy of the surety bond; and (iv) an opinion of counsel satisfactory to said nationally recognized bond counsel to the effect that the surety bond is valid and enforceable in accordance with its terms. Each such surety bond shall be unconditional and irrevocable and shall provide liquidity for the Bonds with respect to which the surety bond is purchased and, if the surety bond is purchased with respect to more than one issue of Bonds, then for the term of all the then outstanding Bonds for which the surety bond is purchased. So long as the amount to the credit of the Bond Reserve Account equals the Bond Reserve Requirement, any reimbursement or other agreement entered into between the City and issuer of any such surety bond may provide that the City will be obligated to repay such issuer an amount equal to any draw-down on the surety bond on a subordinated basis as set forth below, plus a market rate of interest but not in excess of the maximum rate permitted by law over a specified period of time.

The City reserves the right, if it deems it necessary in order to acquire such a surety bond, to amend this Ordinance without the consent of any of the Bondholders in the following respects:

(i) to provide that repayment of any draw-down under such surety bond shall be secured by a lien on the Revenues subordinate only to payments into the Operation and Maintenance Fund and payments into the Redemption Fund (including the Bond Reserve Account); and

(ii) to grant to the issuer of said surety bond such additional rights as it may request, provided that such amendment shall not, in the written opinion of nationally recognized bond counsel filed with the Commissioners, impair or reduce the security or rights hereby granted to the owners of the 517-E Bonds or the Bonds or any of them.

Section 9. Management. The operation, repair and management of the System shall remain under the supervision and control of the Commissioners in the manner provided in Article 7, Chapter 15 of the Charter of the City subject to the rights, powers and duties in respect thereto which are reserved by law and the City Charter to the City Council.

Section 10. Fixing and Revising Rates; Rate Covenants. The rates for sewage disposal service and the regulations for the collection thereof now in effect, shall remain in full force and effect and shall be the rates and regulations required to be established by Act 94. The rates presently in effect are estimated to be sufficient to provide for the payment of the interest upon and the principal of all 517-E Bonds and Bonds to be payable from the Revenues following the delivery of the Series 1986 Bonds as and when the same become due and payable, to provide for the creation and maintenance of a reserve therefor as required by Ordinance No. 517E (or, after the Transfer Date, as required by this Ordinance), to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other

requirements, expenditures and funds for the System as Ordinance No. 517-E, this Ordinance and Act 94 may require. After the Transfer Date, such rates shall be fixed and revised from time to time as may be necessary to produce the greater of (1) the amounts hereinbefore set forth in this Section 10 or (2) an amount so that the Net Revenues during each Fiscal Year are projected at the beginning of such Fiscal Year to be equal to not less than 125% of the annual principal and interest requirements coming due during such Fiscal Year on all Bonds, and the City hereby covenants and agrees at all times to fix and maintain such rates for services furnished by the System as shall be sufficient to provide for the foregoing. For purposes of this paragraph principal of and interest on Bonds which mature on the first day of any Fiscal Year shall be deemed to mature on the last day of the immediately preceding Fiscal Year.

The charges for sewage disposal service which are under the provisions of Section 21 of Act 94 made a lien on all premises served thereby, unless notice is given that the tenant is responsible, are hereby recognized to constitute such lien and whenever any such charge against any premises shall be delinquent for six (6) months, the City official or officials in charge of the collection thereof may certify to the tax-assessing officer of the City not later than April 1 of each year the fact of such delinquency, whereupon such charge shall be entered upon the next tax roll as a charge against such premises and the lien thereof enforced in the same manner as general City taxes against such premises are collected and the lien thereof enforced; provided, however, where notice is given that a tenant is responsible for such charges and service as provided by said Section 21 of Act 94, no further service shall be rendered such premises until a cash deposit equal to the estimated amount of the next ensuing bill shall have been made as security for payment of such charges and services.

In addition to other remedies provided, the City shall have the right to shut off and discontinue the supply of water to any premises for the non-payment of sewage disposal rates, when due.

Section 11. No Free Service or Use; Metered Service. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentally including the City or any other municipality.

Section 12. Operating and Fiscal Year. The System shall be operated on the basis of the Fiscal Year.

Section 13. Funds and Accounts; Flow of Funds. Prior to the Transfer Date, Revenues shall be set aside as collected and credited to the Funds and Accounts as provided in Ordinance No. 517-E. Commencing on the Transfer Date, all Revenues shall be set aside as collected and credited to a fund to be designated Sewage Disposal System Receiving Fund (the "Receiving Fund"). In addition, except as otherwise provided herein, on the Transfer Date all moneys in any funds or accounts of the System established by Ordinance No. 517-E which are not deposited in an escrow fund to be used to Refund 517-E Bonds shall be transferred to the Receiving Fund and credited to the funds and accounts as provided in this Section 13. The Council in the ordinance or resolution establishing the Transfer Date shall determine the amount of moneys which, on the Transfer Date, are to be deposited into such escrow fund, if any, from the various funds and accounts established by Ordinance No. 517-E and Bond proceeds, and the amount therefrom to be deposited into the Receiving Fund or other funds or accounts of the System. After the Transfer Date, the Revenues credited to the Receiving Fund are pledged for the purpose of the following funds and shall be transferred or debited from the Receiving Fund periodically in the manner and at the times and in the order of priority hereinafter specified:

A. OPERATION AND MAINTENANCE FUND:

Out of the Revenues credited to the Receiving Fund there shall be first set aside in, or credited to, a fund designated OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"), on the Transfer Date a sum sufficient to provide for payment of the expense of administration and operation of the System and such current expense for the maintenance thereof as may be necessary to keep the same in good repair and working order for the balance of the month in which the Transfer Date occurs and thereafter monthly, commencing with the month in which the Transfer Date occurs, a sum sufficient to provide for the payment of the next month's expenses of administration and operation of the System and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

B. BOND AND INTEREST REDEMPTION FUND:

There shall be established and maintained a separate depository fund designated Bond and Interest Redemption Fund (the "Redemption Fund"), the moneys on deposit therein from time to time to be used solely for the purpose of paying the principal of, redemption premiums (if any) and interest on the Bonds. The moneys in the Redemption Fund (including the Bond Reserve Account) shall be kept on deposit with one of the banks or trust companies where the principal of and interest on the Bonds are payable, i.e., the Transfer Agent or a transfer agent for Additional Bonds.

Out of the Revenues remaining in the Receiving Fund, after provision for the Operation and Maintenance Fund, there shall be set aside monthly in the Redemption

Fund a sum proportionately sufficient to provide for the payment when due of the current principal of and interest on the Bonds, less any amount in the Redemption Fund representing accrued interest received on the Bonds or capitalized interest on the Bonds as may be appropriate or moneys transferred from the Bond and Interest Redemption Fund established by Ordinance No. 517-E on the Transfer Date. Commencing the month in which the Transfer Date occurs, the amount set aside each month for interest on the Bonds after taking into account moneys in the Redemption Fund as above provided shall be 1/6 of the total amount of interest on the Bonds next coming due on each series of Bonds or such greater or lesser amount in approximately equal monthly installments necessary to accumulate the amount of interest next coming due on each series of Bonds by the date such interest is to be paid which is not to be paid from other sources. The amount set aside each month for principal after taking into account moneys in the Redemption Fund as above provided, commencing the month in which the Transfer Date occurs, shall be 1/12 of or such greater or lesser amount in approximately equal monthly installments necessary to accumulate the amount of principal coming due on each series of Bonds by the date such principal is to be paid. If there is any deficiency in the amount previously set aside, that deficiency shall be added to the next succeeding month's requirements.

There is hereby established in the Redemption Fund a separate account to be known as the Bond Reserve Account, into which shall be deposited on the Transfer Date, (i) such moneys or securities then on deposit in the bond reserve account established under Ordinance No. 517-E, and (ii) such moneys from the proceeds of sale of Bonds then delivered, if any, as determined by the Council in the resolution authorizing the sale of such Bonds, after the set aside provided in clause (i), that will equal the Bond Reserve Requirement. Thereafter, from the Revenues remaining in the Receiving Fund after provision has been made for the Operation and Maintenance Fund and the Redemption Fund, there shall be deposited in the Bond Reserve Account each month an amount equal to the balance in the Receiving Fund or the amount necessary to accumulate and maintain in said Bond Reserve Account a sum equal to the Bond Reserve Requirement, whichever is lesser. Except as otherwise provided herein, moneys in the Bond Reserve Account shall be used solely for the payment of the principal of and interest on Bonds as to which there would otherwise be default.

Notwithstanding the foregoing provisions of this Section 13B, the City reserves the right to establish a separate Bond Reserve Account for each or any issue of Additional Bonds. Any such separate Bond Reserve Account may contain either cash or investments permitted by this Ordinance for a Bond Reserve Account, an insurance policy or any other form of security deemed advisable by the City and the purchasers of such Additional Bonds but only if such separate Bond Reserve Account is fully equal to the Bond Reserve Requirement for the issue of Additional Bonds to which it pertains at the time such Additional Bonds are issued. The amounts to be paid into each separate Bond Reserve Account to restore it to its Bond Reserve Requirement shall be made on a parity with payments into all other Bond Reserve Accounts and shall not exceed, in any Fiscal Year, its Proportionate Deficit Payment. "Proportionate Deficit Payment" for a separate Bond Reserve Account means an amount which bears to the deficit in such a separate Bond Reserve Account the same proportion that the amount available to remedy deficits in all separate Bond Reserve Accounts bears to the aggregate deficit in all separate Bond Reserve Accounts.

No further payments need be made into the Redemption Fund after enough of the Bonds have been retired so that the amount then held in said Fund, including the Bond Reserve Account, is equal to the entire amount of principal and interest which will be payable at the time of maturity of all the then outstanding Bonds.

If at any time, the amount on deposit in or credited to the Bond Reserve Account exceeds the Bond Reserve Requirement, the amount of such excess shall be transferred therefrom and deposited in or credited to the Receiving Fund.

Unless a surety bond is provided therefor in accordance with Section 8 hereof, there shall be deposited in the Bond Reserve Account from the proceeds of the sale of each issue of Additional Bonds the lesser of (i) the amount which, when added to the amount on deposit therein on the date of delivery of such issue of Additional Bonds will equal the Bond Reserve Requirement for all Bonds then outstanding including such Additional Bonds or (ii) the maximum permitted by the Code.

There shall be established in the Redemption Fund under Ordinance No. 517-E an account to be designated "Term Bond Sinking Fund Account" (the "Sinking Fund") which account shall be transferred on the Transfer Date to the Redemption Fund created hereunder. There shall be credited to said Sinking Fund the amounts required to be deposited in the Redemption Fund to meet the next due Mandatory Redemption Requirement for the Bonds that are Term Bonds becoming due within the next twelve months.

A Mandatory Redemption Requirement for a series of Term Bonds may be satisfied by the call of Term Bonds of the same maturity in the principal amount of the Mandatory Redemption Requirement at par and accrued interest or by the purchase and surrender to the Transfer Agent of Term Bonds of the same term maturity from moneys

allocated therefor in the Sinking Fund of the Redemption Fund, as provided herein, or purchased with other funds legally available therefor. The City shall elect the manner in which it intends to satisfy a Mandatory Redemption Requirement not less than forty days prior to the due date of each Mandatory Redemption Requirement.

The moneys so credited to the Sinking Fund shall be used to satisfy the next Mandatory Redemption Requirement for Bonds that are Term Bonds either by (a) redeeming said Term Bonds on the following Mandatory Redemption Date, or (b) by purchasing Term Bonds of the same maturity with respect to which the Mandatory Redemption Requirement applies and surrendering the same to the Transfer Agent for cancellation on or prior to the required Mandatory Redemption Date. In the event that after any Mandatory Redemption Date moneys remain in the Redemption Fund credited to the Sinking Fund as a result of the purchase of Term Bonds at less than par, the amount of such excess may be transferred to the Receiving Fund. If no Bonds are issued as Term Bonds then there shall be no Mandatory Redemption Requirement with respect to the Bonds and the Term Bond Sinking Fund shall be disestablished.

C. JUNIOR LIEN BOND AND INTEREST REDEMPTION FUND:

If the City shall ever issue Junior Lien Bonds, there shall be established and maintained a separate depository fund for the purpose of paying the principal redemption premiums, if any, and interest on such Junior Lien Bonds as they come due. Revenues remaining in the Receiving Fund after provision for the requirements of the Operation and Maintenance Fund and Redemption Fund including the Bond Reserve Account shall be set aside, but not more often than monthly, in such fund for the Junior Lien Bonds in accordance with the ordinance authorizing the issuance of the Junior Lien Bonds. Additionally, a separate account may also be established within such fund as a bond reserve account to be funded on a junior lien basis in accordance with the ordinance authorizing the issuance of the Junior Lien Bonds. The detail of the establishment and maintenance of such fund shall be provided in the ordinance of the Council authorizing the issuance of such Junior Lien Bonds.

D. EXTRAORDINARY REPAIR AND REPLACEMENT RESERVE FUND:

On the Transfer Date, all funds shall be transferred from the Extraordinary Repair and Replacement Reserve Fund established under Ordinance No. 517-E to a separate depository account hereby established, to be designated Extraordinary Repair and Replacement Reserve Fund. Beginning the first day of the month following the Transfer Date, out of the Revenues remaining after meeting the monthly requirements of the foregoing funds, there shall be deposited monthly into the Extraordinary Repair and Replacement Fund, so long as the balance of such Fund is less than the Requirement (as hereinafter defined) due to reasons other than withdrawal for major unanticipated repairs and replacement as provided below, 1/12 of three percent (3%) of the budgeted operation and maintenance expense of the System for the Fiscal Year in which the set aside is made. Revenues shall be deposited into this Fund until the total amount of money accumulated in such Fund equals an amount not less than fifteen percent (15%) of the then current Fiscal Year's budgeted operation and maintenance expense of the System (the "Requirement"). Once the amount accumulated in this Fund equals or exceeds the Requirement, such monthly deposits to such Fund may cease. The money deposited in said Fund shall be used only for the purpose of paying the costs of making major unanticipated repairs and replacements to the System which individually have cost or are reasonably expected to cost in excess of One Million Dollars as determined by the Commissioners or to reimburse the City for any amounts advanced for such purposes. The deposits required hereby shall be mandatory and cumulative. Earnings on this Fund shall be transferred to the Receiving Fund. Any moneys of this Fund withdrawn to be used to pay the costs of a major unanticipated repair or replacement to the System which have not been repaid to the Fund at the end of the second Fiscal Year following such withdrawals, after meeting the requirements of subparagraphs A, B and C of this Section, shall be repaid by depositing Revenues in the amount of 1/12 of three percent (3%) of the budgeted operation and maintenance expense of the System for the Fiscal Year in which the deposit is made until the amount in the Fund equals the Requirement. If all deposits and repayments have been made as required hereinabove, and all borrowings from prior Fiscal Years, as hereinbelow provided, have been repaid, on or after the first day of each Fiscal Year the City may borrow, for transfer to and use from the Improvement and Extension Fund hereinafter created up to fifty percent (50%) in aggregate of the balance in this Fund on the first day of such Fiscal Year. Any such borrowings shall be repaid before any deposits are made to the Improvement and Extension Fund or Surplus Fund created hereinafter. The City shall fix rates and charges for the services supplied by the System sufficient to permit it to meet its obligations under this subsection.

E. IMPROVEMENT AND EXTENSION FUND:

There shall be established and maintained a separate depository account designated Improvement and Extension Fund. On the Transfer Date, all funds which are not transferred to an escrow fund to be used to Refund 517-E Bonds, as determined by the Council in the resolution establishing the Transfer Date, shall be transferred from the Improvement and Extension Fund established by Ordinance No. 517-E to the

Improvement and Extension Fund created hereunder. Out of the Revenues remaining in the Receiving Fund after meeting the requirements of the Operation and Maintenance Fund, the Redemption Fund, including the Bond Reserve Account, and fund created for the benefit of Junior Lien Bonds and the Extraordinary Repair and Replacement Reserve Fund, if any, there shall be deposited into the Improvement and Extension Fund, in any month, such sums as the Commissioners may deem advisable, to be used for improvements, enlargements, repairs, extensions or betterment to the System.

In expending any funds from the Improvement and Extension Fund or in transferring any funds to the Surplus Fund, the Commissioners shall take into account any funds which may be necessary to compensate for any future rate adjustments due to overpayments received in prior years. The Commissioners are authorized to transfer any moneys from the Improvement and Extension Fund to the Receiving Fund or the Operation and Maintenance Fund as are necessary to effect such account.

F. SURPLUS FUND:

Money remaining in the Receiving Fund at the end of any Fiscal Year, after satisfaction of the requirements of the foregoing funds, shall be transferred to a separate depository account designated the Surplus Fund. Moneys from time to time on hand in the Surplus Fund may, at the option of the Commissioners, be used and applied for any of the purposes related to the System for which the foregoing funds and accounts were established or for any other lawful purpose of the System; provided, however, that if there should be any deficit in the Operation and Maintenance Fund or the Redemption Fund (including the Bond Reserve Account), and funds or accounts created for the benefit of Junior Lien Bonds, then transfers shall be made from the Surplus Fund to such funds in the priority and order named, to the extent of any such deficit.

Section 14. Depository and Funds on Hand. Moneys in the several funds and the accounts established pursuant to this Ordinance, except moneys in the Escrow Fund established below, the Redemption Fund (including the Bond Reserve Account) and the Construction Fund, may be kept in one or more bank accounts at a bank or banks designated by the Finance Director, and if kept in one bank account the moneys shall be allocated on the books and records of the City in the manner and at the times provided in this Ordinance. The depository of all funds and accounts, except as otherwise specifically provided for herein, shall be those banks or trust companies designated from time to time as such by the Finance Director of the City.

Section 15. Priority of Funds. In the event the moneys in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Fund and the Redemption Fund, any moneys or securities in other funds of the System (except moneys in the Escrow Fund and Construction Fund) shall be credited or transferred, first, to the Operation and Maintenance Fund and second, to the Redemption Fund, to the extent of any deficit therein.

Section 16. Investments. Except as herein otherwise provided, moneys in the funds and accounts established herein and moneys derived from the proceeds of sale of the Series 1986 Bonds, may be invested by the City in Investment Obligations. Investment of moneys in the Redemption Fund being accumulated for payment of the next maturing principal or interest payment of the Bonds shall be limited to Government Obligations or other Investment Obligations which are permitted under Act 94, bearing maturity dates on or prior to the date of the next maturing principal and/or interest payment date on the Bonds. Investment of the proceeds of Additional Bonds and any other funds deposited into an escrow fund to Refund Bonds shall be in cash or Government Obligations or Municipal Obligations in the manner established in the ordinance authorizing the issuance of such Additional Bonds. Investment of the proceeds of the Series 1986 Bonds and any other funds deposited in the Escrow Fund shall be as provided in Section 17. Investment of moneys in the Bond Reserve Account shall be limited to obligations bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than ten years from the date of the investment. In the event investments are made, any securities representing the same shall be kept on deposit with the bank or trust company having on deposit the fund or funds or account from which the purchase was made. Profit realized or interest income earned on investment of funds in the Receiving Fund, Operation and Maintenance Fund, Redemption Fund (including the Bond Reserve Account), the Extraordinary Repair and Replacement Reserve Fund and Improvement and Extension Fund shall be deposited in or credited to the Receiving Fund. Profit realized or interest earned on investments of funds in the Construction Fund and the Escrow Fund or any other escrow fund shall be deposited in or credited as received to the funds from which such investments were made; provided, however, that profit realized or interest earned on the Construction Fund may, if permitted by law, be deposited in the Receiving Fund at the option of the Commissioners. Except as otherwise herein provided, investments shall mature at such times as it is estimated the funds therefrom will be required, but shall be limited to obligations bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than five years from the date of investment. Investments credited to the Bond Reserve Account shall be valued as of the Transfer Date at the market value thereof, and thereafter shall be valued at least annually on each January 1 beginning

the first January 1 after the Transfer Date at par or at amortized value if purchased at other than par. Amortized value when used with respect to an obligation purchased or transferred on the Transfer Date at a premium above or discount below par, means the value as of any given time obtained by dividing the total premium or discount at which such obligation was purchased or transferred by the number of days remaining to maturity on such obligation at the date of such purchase or transfer and by multiplying the amount thus calculated by the number of days having passed since such purchase or transfer; and (1) in the case of an obligation purchased or transferred at a premium by deducting the product thus obtained from the purchase price, and (2) in the case of an obligation purchased or transferred at a discount by adding the product thus obtained to the purchase price. The City shall withdraw from the Bond Reserve Account any excess immediately and, in the event of a deficit, budget such additional deposits for the next Fiscal Year in amounts necessary to restore the Bond Reserve Account to the Bond Reserve Requirement and there shall be credited to the Bond Reserve Account after providing for the current requirements of the Operation and Maintenance Fund and the Redemption Fund all Revenues remaining in the Receiving Fund until the amount credited to the Bond Reserve Account is equal to the Bond Reserve Requirement. Investments in the Extraordinary Repair and Replacement Reserve Fund shall be valued at least annually on each July 1 beginning the first July 1 after the Transfer Date, at the cost thereof.

Section 17. Series 1986 Bond Proceeds. From the proceeds of the sale of the Series 1986 Bonds there shall be immediately deposited in the Redemption Fund created under Ordinance No. 517-E an amount equal to the accrued interest and premium, if any, received on the delivery of the Series 1986 Bonds and the City may take credit for the amount so deposited against the amount required to be deposited in the Redemption Fund for payment of the next maturing interest on the Series 1986 Bonds. There shall next be deposited in the bond reserve account established under Ordinance No. 517-E an amount sufficient when added to any moneys or securities in such bond reserve account and any other deposits made by the City to meet the Bond Reserve Requirement, but not in excess of the maximum permitted by the Code.

There shall next be deposited in an escrow fund (the "Escrow Fund"), Sufficient cash and/or Sufficient Government Obligations which shall be used to pay the principal of, interest and redemption premiums, if any, on the Refunded Bonds as they become due at maturity or earlier redemption and, except as otherwise herein provided, shall be used only for such purposes. The Escrow Fund shall be held by an escrow agent (the "Escrow Agent") in trust pursuant to an escrow deposit agreement (the "Escrow Agreement"), which Escrow Agreement shall irrevocably direct the Escrow Agent to take all necessary steps to pay the principal of and interest and redemption premiums, if any, on the Refunded Bonds when due and if so determined in the resolution of Council authorizing the sale of the Series 1986 Bonds, to call the Refunded Bonds in whole or in part for redemption, as specified in the Escrow Agreement. Any balance remaining in the Escrow Fund after payment in full of principal of and redemption premium, if any, and interest on the Refunded Bonds shall be applied as provided in the Escrow Agreement.

The Escrow Agent under the Escrow Agreement shall be the paying agent for the Refunded Bonds and the Council shall, in the resolution authorizing the sale of the Series 1986 Bonds, authorize the form of and execution of the Escrow Agreement for and on behalf of the City.

The balance from the proceeds of the Series 1986 Bonds shall be deposited in a separate subaccount in the Improvement and Extension Fund and used to pay the costs of issuance of the Series 1986 Bonds and the costs of refunding the Refunded Bonds.

Section 18. Construction Fund. The portion of the proceeds of the sale of a series of Bonds issued for the purpose of purchasing, acquiring, constructing, improving, enlarging or extending additions and improvements of the System, as determined by the Council in the resolution authorizing the sale of the such Bonds, shall be deposited in the Construction Fund in separate accounts for each series of Bonds which shall be established and maintained as separate depository accounts with a depository qualified to be a depository of moneys under Michigan law as designated by the Finance Director. In addition, subaccounts may be created for the deposit of moneys other than Bond proceeds to better account for the expenditure of Bond proceeds. Moneys in the Construction Fund or account or subaccount thereof shall be applied solely in payment of the cost of any project financed thereby and any costs of engineering, legal, bond insurance premiums, if any, credit enhancement fees, if any, and other expenses incident thereto, to the financing thereof as determined in the resolution authorizing sale of such Bonds. Payments for construction, either on account or otherwise, shall not be made unless the registered engineer in charge of such work shall file with the Commissioners a signed statement to the effect that the work has been completed in accordance with the plans and specifications therefor, that it was done pursuant to and in accordance with the contract therefor, that such work is satisfactory and that such work has not been previously paid for. Payment of the cost of engineering, legal, financial, bond insurance premium, credit enhancement fees, etc., as provided in this

section shall be made upon submission of appropriate documentation to the Finance Director of the City.

Section 19. Trustee. In addition, in order to further assure prompt compliance with all of the requirements, duties and obligations of the City with respect to the System and the Bonds in accordance with and as authorized by Section 38 of Act 94, the Council in the resolution authorizing the sale of Series 1986 Bonds shall appoint and designate a Trustee, to perform the duties hereinafter described. The City covenants and agrees that at the time following the Transfer Date that each monthly deposit or payment is made to the Redemption Fund, in accordance with Section 13(B) of this Ordinance, it will file with the Trustee within 10 days after the deposit or payment a certificate signed by the chief accounting officer of the System setting forth, (i) the date of such payment or deposit, (ii) the amount of such payment or deposit, (iii) the purpose or purposes of such payment or deposit, (iv) that such payment or deposit has been made from Revenues or, if not derived from the Revenues, the source of such payment or deposit, and (v) that the monthly deposit to the Operation and Maintenance Fund, established by Section 13(A) of this Ordinance, for the same month that the foregoing deposit was made, has been made from the Revenues and, if not so made, the source of such payment. There shall be attached to such certificate written statements from the banks receiving such deposits or payments to the Redemption Fund and the Operation and Maintenance Fund, setting forth the date, amount and purpose of each such deposit or payment. The City further covenants that it will cause a copy of the annual audit of the System as required by Section 21(c) of this Ordinance, or other provisions of law, to be filed with the Trustee promptly upon completion thereof and in any event no later than six months following the close of the Fiscal Year to which such audit pertains and will further cause a copy of the annual budget for the System for each Fiscal Year to be filed with the Trustee not more than twenty (20) days after its adoption. In the event that the City shall at any time fail to file with the Trustee any of the foregoing monthly certificates, the annual audit or the annual budget required by this Ordinance or if any of the monthly certificates shall fail to show that the deposits to the Operation and Maintenance Fund or the Redemption Fund are made from Revenues or if the annual audit or budget shall show that the rates in effect for the period covered by such audit or budget failed or may fail to produce Revenues in the amounts required by Section 10 of this Ordinance, or if the Trustee becomes aware of any failure on the part of the City to comply with any other covenant or requirement in this Ordinance or of Act 94, the Trustee shall give written notice of such failure to the City by causing such notice to be either personally served on or mailed by registered or certified mail to the Commissioners and the Finance Director of the City. The notice shall specify the requirements or covenants which the City has failed to meet and shall request the City to take corrective steps to remedy such failure. If the City does not take and diligently pursue action to remedy such failure within ninety (90) days from service of the foregoing notice, the Trustee shall cause an appropriate notice of the foregoing failure and the failure of the City to correct the same, to be published for four consecutive weeks in a financial journal circulating in both the City of Detroit, Michigan and the City of New York, New York. In addition said notice shall be mailed by first class mail by the Trustee to the holders of Bonds at the address shown for such holders on the registration books kept by the City and the City covenants and agrees that it will supply or will cause the Transfer Agent to supply the names and addresses of all holders to the Trustee promptly upon request therefor made by the Trustee. Thereafter, in the event that the holder or holders of Bonds representing in the aggregate not less than 20% of all Bonds payable from the Revenues then outstanding, shall request the Trustee in writing, the Trustee may by suit, action, mandamus or other proceedings enforce and compel the performance of all of the duties of the City required by this Ordinance, Act 94 or other provisions of law with respect to the Bonds. All fees, costs and expenses of the Trustee in performing its duties and obligations under this Ordinance, including but not limited to all costs and expenses of any legal proceedings that may be brought by the Trustee in connection with such duties and obligations and any moneys advanced by holders to the Trustee for such costs and expenses shall be paid by the City to the Trustee or the holders, or both, as the case may be, in the first instance from the Revenues, but only after providing for all requirements of the Operation and Maintenance Fund and the Redemption Fund (including the Bond Reserve Account therefor) and Junior Lien Fund as provided by Section 13 of this Ordinance, and, to the extent that sufficient moneys are not available from the Revenues therefor, from general funds of the City. In the event that general funds of the City are used to pay any such costs and expenses, the City shall be reimbursed therefor with interest at the rate of 7% per annum from the first Revenues not required to meet the requirements of said Operation and Maintenance Fund, the Redemption Fund (including the Bond Reserve Account therefor), any redemption fund including any bond reserve account for Junior Lien Bonds or to reimburse the Trustee or bondholders as herein provided. The Trustee is authorized to act in reliance upon the sufficiency, correctness, genuineness or validity of any instrument or document or other writing submitted to it hereunder and shall have no liability with respect to said matters. The Trustee shall not be liable for any error in judgment or any act done or omitted by it

in good faith. In the event of any dispute or question arising hereunder the Trustee shall not be liable if it acts or takes no action in accordance with the opinion of its legal counsel.

In the event the holders of outstanding Bonds shall so direct the Trustee in writing to exercise one or more of the remedies specified in this Ordinance or in Act 94, the Trustee shall be under no obligation to proceed to enforce or compel the performance of the duties and obligations of the City under this Ordinance unless and until the holders shall have reasonably indemnified the Trustee for all estimated costs and expenses in the exercise of said remedies, including necessary attorneys' fees.

Section 20. Series 1986 Bond Form. The Series 1986 Bonds shall be in substantially the following form, with such changes and additions as shall be determined appropriate by the Finance Director:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF DETROIT
SEWAGE DISPOSAL SYSTEM REVENUE REFUNDING BOND SERIES 1986
Interest Rate Maturity Date Date of Original Issue CUSIP
December 15, 1986

REGISTERED

PRINCIPAL AMOUNT:

The CITY OF DETROIT, County of Wayne, State of Michigan (the "City"), for value received, hereby promises to pay the principal amount shown above to the Registered Owner specified above on the Maturity Date specified above with interest thereon from the Date of Original Issue specified above until paid at the Interest Rate per annum specified above, payable on _____, 1, 1987, and semiannually thereafter. Principal of this bond is payable at the principal office of _____ or such other transfer agent as the City may hereinafter designate by notice mailed to the registered owner not less than 60 days prior to any interest payment date (the "Transfer Agent"). Interest on this bond is payable to the registered owner of record as of the 15th day of the month next preceding the payment date as shown on the registration books kept by the Transfer Agent by check or draft mailed to the registered owner at the registered address or, for registered owners of not less than \$1,000,000 in principal amount, by wire transfer if such registered owners request such wire transfer in writing prior to the record date and provide the Transfer Agent with written wire instructions and account numbers, and for the prompt payment thereof, the revenues of the Sewage Disposal System of the City (the "System"), including all appurtenances, extensions and improvements thereto, after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), are irrevocably pledged and a statutory lien thereon is hereby recognized and created subject only to certain rights of the holders of the 517-E Bonds (as hereinafter defined) for which a portion of the proceeds of the Series 1986 Bonds (as hereinafter defined) have been deposited in escrow in an amount sufficient with interest on investments thereof to pay in full all of the principal of and interest, and redemption premium, on such portion of the 517-E Bonds as it comes due, all as provided in Ordinance No. _____ which authorized the issuance of the Series 1986 Bonds.

OWNER:
DOLLARS

This bond is one of a series of bonds (the "Series 1986 Bonds") of even date and like tenor, except as to denomination, rate of interest and date of maturity, aggregating the principal sum of \$ _____ issued pursuant to Ordinance No. _____ duly adopted by the City Council of the City, and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying part of the cost of refunding a portion of certain outstanding revenue bonds of the City issued under Ordinance No. 517-E, effective November 9, 1950 as amended and supplemented (all such bonds the "517-E Bonds" and such bonds being refunded herein the "Refunded Bonds") and the costs of issuing the bonds. The Series 1986 Bonds are equally and ratably payable with the 517-E Bonds from the Net Revenues so long as there is no insufficiency for any reason in the securities deposited in Trust to refund the Refunded Bonds or other 517-E Bonds hereafter refunded.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to Ordinance NO. _____

Bonds of this issue maturing in the years _____ to _____ inclusive, are not subject to redemption prior to maturity. Bonds or portions of bonds in multiples of \$5,000, of this issue maturing in the year _____ and thereafter may be redeemed at the option of the City, in such order of maturity as the City shall determine and within any maturity by lot,

on any interest payment date on or after July 1, _____ at par and accrued interest to the date fixed for redemption plus a premium expressed as a percentage of par as follows:

_____ % of the par value of each bond or portion thereof called for redemption on or after July 1, _____, but prior to July 1, _____;

_____ % of the par value of each bond or portion thereof called for redemption on or after July 1, _____; and

_____ % of the par value of each bond or portion thereof called for redemption on or after July 1, _____.

No premium shall be paid on bonds called for redemption on or after July 1, _____. Bonds of this issue maturing on July 1, _____ are subject to mandatory redemption pursuant to the terms of Ordinance No. _____ (as selected by lot) on July 1, _____ and on each July 1 thereafter to and including July 1, _____ at 100% of the principal amount thereof plus accrued interest to the redemption date in the principal amounts as follows:

July 1 of the Year	Principal Amount	July 1 of the Year	Principal Amount
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In case less than the full amount of an outstanding bond is called for redemption, the Transfer Agent upon presentation of the bond called in part for redemption shall register, authenticate and deliver to the registered owner a new bond in the principal amount of the portion of the original bond not called for redemption.

Notice of redemption shall be given to the registered owners of the bonds or portions of bonds to be redeemed by mailing of such notice by first class mail not less than twenty (20) days prior to the date fixed for redemption to the registered owner at the address of the registered owner as shown on the registration books of the City. Bonds or portions of bonds so called for redemption shall not bear interest after the date fixed for redemption, provided funds are on hand with the Transfer Agent to redeem the bonds or portions of bonds called for redemption.

This bond is a self-liquidating bond and is not a general obligation of the City and does not constitute an indebtedness of the City within any constitutional, statutory or charter limitation, but is payable, both as to principal and interest, solely from the Net Revenues of the System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

The City has covenanted and agreed, and does hereby covenant and agree to fix and maintain at all times while any bonds payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of the bonds of this issue and any other bonds payable from the Net Revenues as and when the same shall become due and payable, and to maintain a bond redemption fund therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by Ordinance No. 517-E, as amended and supplemented and Ordinance No. _____.

This bond is transferable only upon the books of the City kept for that purpose at the office of the Transfer Agent by the registered owner hereof in person, or by his attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing, and thereupon a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in Ordinance No. _____ and upon the payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law precedent to and in the issuance of this bond and the series of bonds of which this is one have been done and performed in regular and due time and form as required by law.

This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.

IN WITNESS WHEREOF, the City Council of the City of Detroit, County of Wayne, State of Michigan, has caused this bond to be executed with the facsimile signatures of its Mayor and its Finance Director and a facsimile of its corporate seal to be printed on this bond, all as of the Date of Original Issue.

CITY OF DETROIT

By _____ (Facimile)
Mayor

(Seal) [Facsimile]
Countersigned:

(Facimile)
Finance Director

[FORM OF TRANSFER AGENT'S CERTIFICATE
OF AUTHENTICATION]

Certificate of Authentication

This bond is one of the bonds described in the withinmentioned Ordinance.

By Transfer Agent

Authorized Representative

Date of Authentication:

Section 21. Covenants. The City covenants and represents with the registered owners of the Bonds that so long as any of the 517-E Bonds or Bonds remain outstanding and unpaid as to either principal or interest.

(a) The City is the lawful owner of the System, the System is free from any and all liens and encumbrances, and the City has good right and lawful authority to encumber and pledge the revenues of the System as such revenues are herein encumbered and pledged.

(b) The City will, through its Commissioners, or such successor board or body as may hereafter be legally charged with the duty of the operation of the System, maintain the System in good repair and working order and will operate it efficiently and will faithfully and punctually perform all duties with reference to the System required by the constitution and laws of the State of Michigan, including the making and collecting of sufficient rates for services rendered by the System and the segregation and application of the revenues of the System in the manner provided in this Ordinance. The City will from time to time make all needful and proper repairs, replacements, additions and betterments to the System so that the System may at all times be operated properly and advantageously, and whenever any portion of the System shall have been worn out, destroyed or become obsolete, inefficient or otherwise unfit for use, the City will procure and install substitutes of at least equal utility and efficiency so that the value and efficiency of the System shall at all times be fully maintained.

(c) The City will maintain and keep proper books of record and account separate from all other records and accounts in which shall be made full and correct entries of all transactions relating to the System. Not later than four (4) months after the close of each Fiscal Year, the City will cause to be prepared a statement in reasonable detail, sworn to by its chief accounting officer, showing the cash income and disbursements of the System during such Fiscal Year, the assets and liabilities of the System at the beginning and close of the Fiscal Year, and such other information as is necessary to enable the residents of the City and the holders of the Bonds to be fully informed as to all matters pertaining to the financial operation of the System during such year. A certified copy of such statement shall be filed with the Michigan Department of Treasury and shall be mailed to each holder of the Bonds who has requested such financial statements. Said statement shall at all times be open to inspection by the holder or holders of any of the Bonds. The City will also cause an annual audit of such books of record and account for the preceding Fiscal Year to be made by an independent certified public accountant who shall comment on the manner in which the City has complied with the requirements of this Ordinance. The City will make such audit available to the holders of any of the Bonds upon request.

(d) The City will not sell, lease or dispose of the System or any substantial part thereof until all of the Bonds have been paid in full as to both principal and interest. This covenant shall not be construed to prohibit the disposition or lease of any property comprising part of the System which is no longer necessary, appropriate, required for the use of, or profitable to the System, or which is no longer necessary to the proper operation and maintenance thereof, or which may be sold and leased back to the extent such arrangement is permitted by law: Provided, however, that the provision of this sentence shall not be construed to authorize or permit the sale, lease or disposition of any substantial part of the System. The City is to be permitted at all times in its discretion to alter, repair or replace any buildings or structures or any part of the System and appurtenances thereto as the Commissioners determine necessary for the System.

(e) The City will acquire and construct the Project promptly and in accordance with the plans therefor.

(f) The City will not and will not, to the extent permitted by law, permit others to, operate a sewage disposal system that will compete with the System.

(g) The City will not issue any Bonds or incur any indebtedness with a claim on Net Revenues prior to the lien of the 517-E Bonds and the Bonds.

(h) The City will promptly comply with all of its obligations, covenants and duties required by this Ordinance, Ordinance No. 517-E and law.

(i) The City will take all action and refrain from any action as is necessary, including paying any rebates to the United States government that may be required by the Code, which are hereby authorized to be paid from the Operation and Maintenance Fund as an expense of the System, so as not to impair the tax exemption of the interest

on the 517-E Bonds and the Bonds from general federal and State of Michigan income taxation. This covenant shall prevent the City from issuing bonds or incurring indebtedness which is subject to federal or State of Michigan income taxation.

Section 22. Additional Bonds. Except as hereinafter provided, the City shall not issue Additional Bonds of equal standing with respect to the Net Revenues with the Series 1986 Bonds but may issue Junior Lien Bonds. Prior to the Transfer Date, Additional Bonds shall only be issued in compliance with both Section 19 of Ordinance No. 517-E and this Section 22 and thereafter only in accordance with this Section 22.

The right is reserved in accordance with the provisions of Act 94, to issue Additional Bonds payable from the Revenues of the System which shall be of equal standing and priority of lien on the Net Revenues of the System with the Series 1986 Bonds but only for the purposes and under the terms and conditions provided in subsection (a), (b), (c) or (d) below:

(a) For repairs, extensions, enlargements and improvements to the System, refunding all or a part of the 517-E Bonds or any outstanding Bonds or any other debt incurred by the City for any purpose for which Bonds may be issued hereunder and paying costs of issuing such Additional Bonds including deposits, if any, to be made to the Bond Reserve Account and to pay interest on such Additional Bonds. Bonds for such purposes shall not be issued pursuant to this subparagraph (a) unless the actual or augmented (as hereinafter detailed in this paragraph) Net Revenues of the System (not including investment earnings on the various funds and accounts established hereunder but including investment earnings on the Bond Reserve Account) for the then last preceding audited Fiscal Year shall be equal to at least one hundred thirty-five percent (135%) of the Maximum Annual Debt Service on the 517-E Bonds, any outstanding Bonds and Additional Bonds then being issued. If the Additional Bonds are to be issued in whole or in part for refunding of 517-E Bonds or outstanding Bonds the annual principal and interest requirements shall be determined by deducting from the principal and interest requirements for each Fiscal Year the annual principal and interest requirements of any 517-E Bonds or Bonds to be Refunded from the proceeds of the Additional Bonds. For purposes of this subparagraph (a) the City may elect to use as the last preceding Fiscal Year any Fiscal Year ending not more than sixteen months prior to the date of delivery of the Additional Bonds for which an audit is available. If any change in the rates, fees or charges of the System shall be authorized at or prior to the time of the resolution authorizing the sale of any Additional Bonds, the Net Revenues for the preceding Fiscal Year shall be augmented by an amount reflecting the effect of such change had the System's billings during such Fiscal Year been at the adopted rates. In addition, the actual Net Revenues for the preceding audited Fiscal Year may be augmented by seventy percent (70%) of the estimated increase in Net Revenues to accrue as a result of the acquisition of the repairs, extensions, enlargements and improvements to the system to be paid for in whole or in part from the proceeds of the Additional Bonds and one hundred percent (100%) of any extension or connection which was made subsequent to the end of the last audited Fiscal Year. Determination by the Council as to existence of conditions permitting the issuance of Additional Bonds shall be conclusive; provided, however, that with respect to augmentation of Net Revenues, the City shall engage the services of and receive the certificate of a consulting engineer of national reputation for advising municipalities with respect to setting rates and charges for the use of sewage disposal systems regarding the existence of such conditions, or, if no augmentation is required, Council may rely only on audited financial statements. No Additional Bonds of equal standing as to the Net Revenues of the System shall be issued pursuant to the authorization contained in this subparagraph if the City shall then be in default in making its required payments to any funds or accounts created hereunder.

(b) To Refund all or a part of the Pre-1980 Bonds or any Bonds outstanding hereunder and paying costs of issuing such Additional Bonds including deposits which may be made to the Bond Reserve Account. No Additional Bonds shall be issued pursuant to this subsection unless the total amount of principal and interest falling due in the then current Fiscal Year and each Fiscal Year thereafter until maturity of all Pre-1980 Bonds and Bonds which have not been Refunded after giving effect to such refunding shall be not greater than the total amount of principal and interest maturing in the then current Fiscal Year and each Fiscal Year thereafter until maturity prior to giving effect to such refunding. For purposes of this paragraph, principal of and interest on 517-E Bonds or Bonds which mature on the first day of a Fiscal Year shall be deemed to mature on the last day of the immediately preceding Fiscal Year.

(c) To provide for the accession of Junior Lien Bonds to the status of complete parity with the Bonds as provided in Section 23 below.

(d) To provide for the conversion of Variable Rate Bonds (which have been previously issued in accordance with subsection (a), (b) or (c) hereof) to bear interest at fixed rate, in accordance with their terms.

Section 23, Accession of Junior Lien Bonds to Parity Status. The City may provide for the accession of Junior Lien Bonds to the status of complete parity with the Bonds when there shall have been filed with the Commissioners a certificate of either a

national consulting firm meeting the requirements of Section 22(a) or a national firm of certified public accountants, reciting:

(i) that the Bond Reserve Account contains an amount equal to the Bond Reserve Requirement computed on a basis which includes all 517-E Bonds not Refunded, all Bonds then outstanding and said Junior Lien Bonds;

(ii) that all payments into the various funds and accounts hereinabove required to be held are current as of the date of accession;

(iii) that the Redemption Fund contains the amounts which would have been required to be accumulated therein on the date of accession if said Junior Lien Bonds had originally been issued as Bonds; such amounts shall be shown in said certificate; and

(iv) that the requirements of Section 22(a) for issuing Additional Bonds are met after such accession.

The accession of Junior Lien Bonds shall be conclusively evidenced by notice from the City to the Trustee, each holder of a 517-E Bond or Bond which has not been Refunded and each holder of a Junior Lien Bond.

Section 24. Department of Treasury Approval; Sale of Series 1986 Bonds. The Finance Director shall make application to the State Treasurer for authority to issue and sell the Series 1986 Bonds or for an exception from prior approval for the sale of the Series 1986 Bonds. The Finance Director is hereby authorized to negotiate and subject to the approval of the Council execute a bond purchase agreement with a purchaser or purchasers approved by the Council finalizing the details of the Series 1986 Bonds within the authorized parameters of this Ordinance. The Finance Director may negotiate, approve and execute the Escrow Agreement with the Escrow Agent and approve the circulation of a preliminary and, after approval by the Council, a final official statement describing the Series 1986 Bonds, and do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Series 1986 Bonds.

Section 25. Finance Director Determinations, Reduction Amount, Serial and Term Bonds. The Finance Director of the City shall determine, on the basis of her evaluation of the maximum amount of Series 1986 Bonds which can be sold, given anticipated interest rates and the revenue coverage requirements with respect to the Series 1986 Bonds or for any other reasons whether to offer the full authorized amount of the Series 1986 Bonds. The Finance Director shall also determine and establish, in accordance with this Ordinance, the annual maturities of the Series 1986 Bonds (whether as Serial Bonds or Term Bonds, or a combination of both) and the Mandatory Redemption Requirement, if any, and the redemption provisions with respect to the Series 1986 Bonds.

During the Finance Director's absence or disability, or while the Finance Director's position is vacant, the Deputy Finance Director shall exercise all the powers, perform all the duties and make all the determinations herein required or permitted with respect to the Series 1986 Bonds.

All the foregoing determinations and actions of the Finance Director shall be ratified and confirmed by resolution of the City Council authorizing the sale of the Series 1986 Bonds.

Section 26. Amendments; Consent of Bondholders.

(A) The City, from time to time and at any time, subject to the conditions and restrictions in this Ordinance contained, may enact one or more supplemental or amendatory ordinances or resolutions or both which thereafter shall form a part hereof, for any one or more or all of the following purposes:

(i) To issue Additional Bonds or Junior Lien Bonds;

(ii) To add to the covenants and agreements of the City in this Ordinance contained, other covenants and agreements thereafter to be observed or to surrender, restrict or limit any right or power herein reserved to or conferred upon the City (including but not limited to the right to issue Additional Bonds) and which shall not have a material adverse effect on the interests of the owners of the Bonds;

(iii) To make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provisions contained in this Ordinance, or in regard to matters or questions arising under this Ordinance, as the City may deem necessary or desirable and not inconsistent with this Ordinance and which shall not have material, adverse effect on the interests of the owners of the Bonds;

(iv) To increase the size or scope of the System;

(v) To make such modifications in the provisions hereof as may be deemed necessary by the City to accommodate the issuance of Additional Bonds or Junior Lien Bonds which (a) are "Capital Appreciation Bonds" or "Zero Coupon Bonds" to the extent permitted by law or (b) are Variable Rate Bonds or (c) which are payable as to principal on dates other than July 1 or as to interest on dates other than January 1 and July 1, but only if such modifications, in the written opinion of nationally recognized bond counsel filed with the Council, do not result in materially diminishing the security hereby granted to the owners of any Bonds at the time outstanding; and

(vi) As provided in Sections 6 and 8 hereof.

Any amendment or supplemental ordinance or resolution authorized by the provisions of this Section 26(A) may be enacted by the City without the consent of or notice to the owners of any of the Bonds at the time outstanding, notwithstanding any of the provisions of Section 26(B) below.

(B) With the consent of the owners of not less than 51% in principal amount of the Bonds then outstanding, the City may from time to time and at any time adopt an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall (a) extend the fixed maturity of any Bond, change a Mandatory Redemption Requirement or reduce the rate of interest thereon or extend the time of payment of interest, or reduce the amount of the principal thereof, or reduce or extend the time for payment of any premium payable on the redemption thereof, without the consent of the owner of each Bond so affected, or (b) reduce the aforesaid percentage of owners of the Bonds required to approve any such supplemental ordinance, or (c) deprive the owners of the Bonds (except as aforesaid) of the right to payment of the Bonds from the Net Revenues, without the consent of the owners of all the Bonds then outstanding. No amendment may be made under this Section 26(B) which affects the rights or duties of the insurer of any of the Bonds without its consent.

It shall not be necessary for the consent of the Bondholders under this Section 26(B) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the enactment by the City of any supplemental ordinance pursuant to the provisions of this Section 26(B), the City shall cause the Transfer Agent to mail a notice by registered or certified mail to the registered owners of all Bonds outstanding at their addresses shown on the bond register or at such other address as is furnished in writing by such registered owner to the Transfer Agent setting forth in general terms the substance of such supplemental ordinance.

Section 27. Repeal, Savings Clause. Ordinance No. 517-E shall be repealed effective the Transfer Date; provided, however, that the lien created by Ordinance No. 517-E on Net Revenues shall remain prior to the lien created hereby for the benefit of the 517-E Bonds as described in Ordinance No. 517-E until all 517-E Bonds are retired. All other ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, repealed.

Section 28. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 29. Transfer Agent. The Finance Director is hereby authorized to select a bank or trust company to act as registrar and transfer agent for the Series 1986 Bonds and to insert the name of such transfer agent in the appropriate places in the Bond Form.

Section 30. Publication and Recordation. This Ordinance shall be published in full in the Detroit Legal News, a newspaper of general circulation in the City qualified under State law to publish legal notices, promptly after its adoption and shall be recorded in the official proceedings of the Council and such recording shall be authenticated by the signature of the President of the Council and the City Clerk.

Section 31. Effective Date. This Ordinance shall be effective immediately.

(JCCP. 2356-2377)

Passed:

Approved:

Published:

Effective:

December 9, 1986)

December 9, 1986

December 12, 1986

December 17, 1986

December 17, 1986

JAMES H. BRADLEY

City Clerk

EXHIBIT 6

NEW ISSUE (Book Entry-Only)

RATINGS: (See "RATINGS" herein)

In the opinion of Bond Counsel, Lewis & Munday, A Professional Corporation, and Miller, Canfield, Paddock and Stone, P.L.C., under existing law as presently interpreted (i) interest on the 2005 Bonds is excluded from gross income for federal income tax purposes, (ii) interest on the 2005 Bonds is not an item of tax preference for purposes of the alternative minimum tax on individuals and corporations, and (iii) the 2005 Bonds and the interest thereon are exempt from all taxation imposed by the laws of the State of Michigan except inheritance and estate taxes and taxes on gains realized from the sale, payment or other disposition thereof, in each case to the extent and subject to the conditions described under "TAX MATTERS" and in Appendix F.

\$376,730,000
City of Detroit, Michigan
Sewage Disposal System

\$273,355,000
Revenue Second Lien Bonds,
Series 2005(A)

\$40,215,000
Revenue Refunding
Second Lien Bonds,
Series 2005(B)

\$63,160,000
Revenue Refunding
Second Lien Bonds,
Series 2005(C)

Dated: Date of Delivery

Due: July 1, as shown on inside cover

The Sewage Disposal System Revenue Second Lien Bonds, Series 2005(A) (the "2005A Bonds"), Sewage Disposal System Revenue Refunding Second Lien Bonds, Series 2005(B) (the "2005B Bonds") and Sewage Disposal System Revenue Refunding Second Lien Bonds, Series 2005(C) (the "2005C Bonds", and together with the 2005A Bonds and 2005B Bonds, the "2005 Bonds") are issuable only in book-entry form and when issued will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the 2005 Bonds. Purchasers will not receive certificates representing their interests in the 2005 Bonds. Individual purchases of beneficial ownership interests in the 2005 Bonds will be made in book-entry form in denominations of \$5,000 or integral multiples thereof. So long as Cede & Co. is the registered owner of the 2005 Bonds, principal of and interest on the 2005 Bonds will be paid directly to Cede & Co., as nominee for DTC, by U.S. Bank National Association, Detroit, Michigan, as Transfer Agent. See "THE 2005 BONDS - Book-Entry-Only System."

The 2005 Bonds will bear interest from their respective dates of delivery at the rates, and will mature on July 1 in the years and the principal amounts set forth on the inside cover of this Official Statement. Interest on the 2005 Bonds is payable each January 1 and July 1, commencing July 1, 2005.

The 2005B Bonds are not subject to redemption prior to maturity. The 2005A and 2005C Bonds are subject to optional and mandatory redemption prior to maturity as more fully described under "THE 2005 BONDS - Redemption Provisions."

The proceeds of the 2005 Bonds will be used to finance a portion of the costs of certain repairs, extensions and improvements to the City's Sewage Disposal System as part of the long-term capital improvement program of the City's Water and Sewerage Department, refund certain of the City's outstanding Sewage Disposal System Revenue Senior Lien Bonds, purchase a debt service reserve surety to satisfy the reserve requirement attributable to the 2005 Bonds, fund capitalized interest and pay costs of issuance associated with the 2005 Bonds. See "PLAN OF FINANCING."

The 2005 Bonds are not general obligations of the City and do not constitute indebtedness of the City for purposes of computing its debt limitations imposed by constitutional, statutory or charter provisions. The 2005 Bonds do not constitute a charge against the general credit or taxing power of the City, and the City is not liable for the payment of the 2005 Bonds except from the sources herein described. The 2005 Bonds are secured by a second lien on the Net Revenues of the City's Sewage Disposal System, as provided in the Ordinance, subordinate to Senior Lien Bonds heretofore and hereafter issued on a first lien basis and related Ancillary Obligations. See "SECURITY AND SOURCES OF PAYMENT FOR THE 2005 BONDS." Payment of the principal of and interest on the 2005 Bonds of each series when due will be insured by a separate financial guaranty insurance policy to be issued by MBIA Insurance Corporation simultaneously with the delivery of such series of 2005 Bonds. See "BOND INSURANCE."



THIS COVER PAGE CONTAINS INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

The 2005 Bonds are offered when, as and if issued and received by the Underwriters, subject to approval of legality by Bond Counsel, Lewis & Munday, A Professional Corporation, Detroit, Michigan and Miller, Canfield, Paddock and Stone, P.L.C., Detroit, Michigan, and satisfaction of certain other conditions. Certain legal matters will be passed upon for the Underwriters by Pepper Hamilton LLP, Detroit, Michigan. The 2005A Bonds and 2005B Bonds are expected to be available for delivery through the facilities of DTC on or about March 17, 2005. The 2005C Bonds are expected to be available for delivery through the facilities of DTC on or about April 5, 2005.

Citigroup

Loop Capital Markets, LLC
Comerica Securities
Morgan Stanley

JPMorgan
M.R. Beal & Company
Siebert Brandford Shank & Co., LLC

Merrill Lynch & Co.
Melvin Securities L.L.C.
Oppenheimer & Co. Inc.

March 9, 2005

\$273,355,000
City of Detroit, Michigan
Sewage Disposal System Revenue Second Lien Bonds, Series 2005(A)
\$10,355,000 Serial Bonds

<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Rate</u>	<u>Yield</u>	<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Rate</u>	<u>Price/ Yield</u>
2008	\$ 20,000	2.75%	2.85%	2017	\$ 545,000	4.00%	100.00
2009	250,000	2.90	2.95	2018	555,000	4.00	4.06%
2010	420,000	3.00	3.10	2019	830,000	4.00	4.15
2011	580,000	3.25	3.35	2020	860,000	4.00	4.20
2012	675,000	3.40	3.50	2021	905,000	4.10	4.26
2013	705,000	3.50	3.65	2022	925,000	4.125	4.32
2014	625,000	3.60	3.77	2023	970,000	4.25	4.38
2015	490,000	3.70	3.86	2024	490,000	4.25	4.42
2016	510,000	3.75	3.94				

\$35,890,000 5% Term Bonds due July 1, 2030 Yield 4.49%*
\$41,165,000 5.125% Term Bonds due July 1, 2033 Yield 4.48%*
\$138,945,000 5% Term Bonds due July 1, 2035 Yield 4.53%*
\$47,000,000 4.5% Term Bonds due July 1, 2035 Yield 4.72%

\$40,215,000
City of Detroit, Michigan
Sewage Disposal System Revenue Refunding Second Lien Bonds, Series 2005(B)
\$40,215,000 Serial Bonds

<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Rate</u>	<u>Yield</u>	<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Rate</u>	<u>Yield</u>
2012	\$ 500,000	3.40%	3.50%	2015	\$8,010,000	5.00%	3.86%
2012	2,520,000	5.00	3.50	2021	10,420,000	5.50	4.18
2014	7,775,000	5.00	3.77	2022	10,990,000	5.50	4.23

\$63,160,000
City of Detroit, Michigan
Sewage Disposal System Revenue Refunding Second Lien Bonds, Series 2005(C)
\$63,160,000 Serial Bonds

<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Rate</u>	<u>Yield</u>	<u>Maturity (July 1)</u>	<u>Amount</u>	<u>Rate</u>	<u>Yield</u>
2006	\$ 195,000	2.40%	2.45%	2016	\$4,570,000	5.00%	3.94%*
2007	100,000	2.625	2.69	2017	4,795,000	5.00	4.01 *
2008	2,265,000	5.00	2.85	2018	5,030,000	5.00	4.06 *
2011	3,320,000	5.00	3.35	2019	5,280,000	5.00	4.11 *
2012	3,760,000	5.00	3.50	2020	7,355,000	5.00	4.15 *
2013	3,940,000	5.00	3.65	2021	7,720,000	5.00	4.20 *
2014	4,140,000	5.00	3.77	2025	6,345,000	5.00	4.39 *
2015	4,345,000	5.00	3.86				

* Yield to first call date.



CITY OF DETROIT

MAYOR
KWAME M. KILPATRICK

CITY COUNCIL
MARYANN MAHAFFEY, President

KENNETH V. COCKREL, JR, President, *Pro Tem*
ALONZO W. BATES
SHEILA M. COCKREL
BARBARA-ROSE COLLINS
SHARON McPHAIL
ALBERTA TINSLEY-TALABI
JOANN WATSON

CITY CLERK
JACKIE L. CURRIE

CHIEF FINANCIAL OFFICER/FINANCE DIRECTOR
SEAN K. WERDLOW

WATER AND SEWERAGE DEPARTMENT DIRECTOR
VICTOR M. MERCADO

BOARD OF WATER COMMISSIONERS
MARY E. BLACKMON, President

HILLIARD HAMPTON
JOHN E. JOHNSON
CARLA WALKER-MILLER

MARILYNN E. GOSLING
GREGORY TERRELL
WILLIAM G. WESTRICK

SPECIAL SERVICES

LEWIS & MUNDAY, A PROFESSIONAL CORPORATION, and
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., Bond Counsel

ROBERT W. BAIRD & CO., Financial Advisors

THE FOSTER GROUP, LLC, Feasibility Consultants

KPMG LLP, Independent Auditors

This Official Statement has been prepared by the City and provides certain information relating to the City and its Sewage Disposal System in connection with the sale of the 2005 Bonds. This Official Statement is distributed in connection with the sale of the 2005 Bonds and may not be reproduced or used, in whole or in part, for any other purpose. No dealer, broker, salesman or other person has been authorized by the City or the Underwriters to give any information or to make any representations with respect to the City or its 2005 Bonds other than those contained in this Official Statement and, if given or made, such other information or representations must not be relied upon as having been authorized by the City or the Underwriters. Neither the City nor the Underwriters have undertaken any independent investigation of the operations of the Bond Insurer and they make no representation herein as to the accuracy or adequacy of such information or as to the ability of the Bond Insurer to make payments under the bond insurance policy. The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their respective responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

This Official Statement does not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the 2005 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Sewage Disposal System or the City since the date hereof.

Upon issuance, the 2005 Bonds will not be registered under the Securities Act of 1933, as amended, and will not be listed on any stock or other securities exchange, and neither the Securities and Exchange Commission nor any other federal, state, municipal or other governmental entity other than the City will have passed upon the accuracy or adequacy of this Official Statement.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE 2005 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The order and placement of materials in this Official Statement, including the Appendices, are not to be deemed to be a determination of relevance, materiality or importance and this Official Statement, including the Appendices, must be considered in its entirety.

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OFFICIAL STATEMENT

\$376,730,000
CITY OF DETROIT, MICHIGAN
Sewage Disposal System

\$273,355,000
Revenue Second Lien Bonds,
Series 2005(A)

\$40,215,000
Revenue Refunding Second Lien Bonds,
Series 2005(B)

\$63,160,000
Revenue Refunding Second Lien Bonds,
Series 2005(C)

INTRODUCTION

This Official Statement provides certain information in connection with the issuance by the City of Detroit (the "City"), in the State of Michigan (the "State"), of its Sewage Disposal System Revenue Second Lien Bonds, Series 2005(A) (the "2005A Bonds"), Sewage Disposal System Revenue Refunding Second Lien Bonds, Series 2005(B) (the "2005B Bonds") and Sewage Disposal System Revenue Refunding Second Lien Bonds, Series 2005(C) (the "2005C Bonds", and together with the 2005A Bonds and 2005B Bonds, the "2005 Bonds"). For definitions of certain capitalized terms used but not otherwise defined in this Official Statement, see Appendix D - "The Ordinance."

Authorization

The 2005 Bonds are authorized under the Revenue Bond Act of 1933, Act No. 94, Public Acts of Michigan, 1933, as amended (the "Act"), and issued pursuant to Ordinance No. 18-01 adopted by the City Council on October 18, 2001 (the "Ordinance"), as supplemented by a resolution adopted by the City Council on November 17, 2004 (the "Resolution") and Sale Orders of the Finance Director of the City dated as of March 9, 2005 executed in connection with the sale of the 2005 Bonds to the Underwriters (collectively, the "Sale Order"). The Ordinance, the Resolution and the Sale Order are collectively referred to as the "Bond Ordinance."

Senior Lien Bonds, Junior Lien Bonds, Second Lien Bonds

The Ordinance authorizes the issuance of Sewage Disposal System Revenue Bonds and Revenue Refunding Bonds (the "Sewage System Bonds" or the "Bonds") to finance and refinance capital improvements to the City's Sewage Disposal System. All Sewage System Bonds issued and to be issued under the Ordinance are payable solely from the Pledged Assets, which include the Net Revenues of the Sewage Disposal System and amounts available in certain funds and accounts established under the Ordinance. Sewage System Bonds secured by a senior lien on Pledged Assets constitute and are sometimes referred to in this Official Statement as "Senior Lien Bonds." All other Sewage System Bonds secured on a basis subordinate to the Senior Lien Bonds constitute and are sometimes referred to in this Official Statement as "Junior Lien Bonds." Second Lien Bonds (including the 2005 Bonds) are a type of Junior Lien Bonds secured by a second lien on the Pledged Assets, subordinate to the lien of all Senior Lien Bonds but superior to the lien of any other type of Junior Lien Bonds. To date, the only other type of Junior Lien Bonds issued and outstanding under the Ordinance are State Revolving Fund Junior Lien Bonds (the "SRF Junior Lien Bonds"). See "DEBT SERVICE AND OUTSTANDING INDEBTEDNESS" and "SECURITY AND SOURCES OF PAYMENT FOR THE 2005 BONDS."

Sewage Disposal System

The Sewage Disposal System (sometimes referred to herein as the "System") is owned by the City and is operated, managed and accounted for by the City as a separate enterprise fund through the Water and Sewerage Department (the "Department"), which is established under the Charter of the City. All funds and accounts of the System are maintained separate from other City funds. See "FINANCIAL PROCEDURES - Cash Management." The Department is headed by a seven-member board appointed by the Mayor, known as the

Board of Water Commissioners (the "Board"), which meets monthly. The Department and the Board oversee both the Sewage Disposal System and the Water Supply System.

The Sewage Disposal System, including a plant providing primary and secondary wastewater treatment (see "THE SEWAGE DISPOSAL SYSTEM – The Plant") as well as a sewage collection and interceptor network, is one of the largest in the nation in terms of wastewater treated and population served. The Department is responsible for collection and treatment of wastewater for most of southeast Michigan and for approximately one-third of the State's population. Of the estimated population of 3.0 million served by the System, approximately 69% are suburban wholesale customers with the remaining 31% served on a retail basis. As a matter of policy, the City generally does not contract with individual or corporate consumers outside the City, but only with municipal entities and public sewage disposal districts or authorities. Because of its long standing relationship with most of the wholesale customers as well as the lack of economically feasible alternatives, the Department expects that, with minor exceptions, such customers will continue to be served by the System for the foreseeable future. See Appendix B – "Feasibility Report." On the basis of historical trends, the Department also anticipates that the number of people served by the System on a wholesale basis will grow as a percentage of the total population served. See "THE SEWAGE DISPOSAL SYSTEM - Service Area" and Appendix A - "Characteristics of the Sewage Disposal System Service Area."

The System is operated pursuant to the provisions of a National Pollutant Discharge Elimination System ("NPDES") permit. Such permit, issued by the Michigan Department of Environmental Quality ("MDEQ"), sets certain discharge and reporting requirements. The Department's current NPDES permit was issued on September 26, 2003 and became effective on January 1, 2004.

The System has experienced favorable financial operations for the past five years. The volume of wastewater treated during that period has been generally stable. While the demand for service is expected to grow slightly in the future, it is anticipated that additional revenues required for normal increases in operating expenses and debt service for Bonds issued to finance the System's ongoing Capital Improvement Program will be provided primarily through rate adjustments. The Department anticipates that any necessary future rate adjustments can be implemented.

Purpose of the 2005 Bonds

The 2005 Bonds are being issued to provide funds to finance a portion of the costs of construction of certain repairs, extensions and improvements to the Sewage Disposal System as part of the Department's long-term Capital Improvement Program, refund certain outstanding Senior Lien Bonds described herein, purchase a debt service reserve surety to satisfy the reserve requirement attributable to the 2005 Bonds, finance capitalized interest and pay costs of issuance of the 2005 Bonds. See "PLAN OF FINANCING."

Miscellaneous

There follow in this Official Statement descriptions of the 2005 Bonds, the Ordinance, the municipal bond insurance policy and the provider of such policy, the System and its service area, the Capital Improvement Program, the Department and its financial procedures and operations, the City's continuing disclosure undertaking, and other matters generally relating to the issuance of the 2005 Bonds, including Appendices relating to demographic, financial and legal matters, bond insurance and continuing disclosure. *Persons considering a purchase of the 2005 Bonds should read this Official Statement in its entirety.* All capitalized terms used in this Official Statement, unless otherwise defined or the context otherwise indicates, have the same meanings as in the Ordinance.

THE 2005 BONDS

General

The 2005 Bonds are issuable as fully registered bonds in authorized denominations of \$5,000 or integral multiples thereof, and will be issued in book-entry form. The 2005 Bonds will be dated their respective dates of issuance and delivery, and will mature on July 1 in the years and principal amounts and bear interest at the rates set forth on the inside cover of this Official Statement. Interest on the 2005 Bonds is payable on July 1, 2005 and semiannually on each January 1 and July 1 thereafter (each an "Interest Payment Date") by check or draft mailed by the Transfer Agent (defined below) or, upon the request of an owner of \$1,000,000 or more in principal amount of 2005 Bonds, by wire transfer. So long as the 2005 Bonds are held in book-entry form by The Depository Trust Company ("DTC"), interest on the 2005 Bonds will be paid to DTC or its nominee as described under "Book-Entry-Only System" below.

U.S. Bank National Association, Detroit, Michigan is the Transfer Agent for the 2005 Bonds. The City is required to give notice of any change in the Transfer Agent to the holders of the 2005 Bonds by mail not less than 60 days prior to any Interest Payment Date. The Transfer Agent will also serve as the escrow trustee for the Refunded Bonds (defined below).

Redemption Provisions

The 2005B Bonds are not subject to redemption prior to their stated maturity dates. The 2005A Bonds and 2005C Bonds are subject to optional and mandatory redemption as described below.

Optional Redemption. The 2005A Bonds and 2005C Bonds maturing prior to July 1, 2016 are not subject to redemption prior to maturity. The 2005A Bonds and 2005C Bonds maturing on and after July 1, 2016 are subject to redemption at the option of the City in whole or in part in such order of maturity as the City shall determine and within a maturity by lot, at any time on and after July 1, 2015, at a redemption price of 100% of the principal amount thereof to be redeemed, plus accrued interest to the date fixed for redemption.

Mandatory Sinking Fund Redemption – 2005A Bonds. The 2005A Bonds maturing on July 1, 2030, July 1, 2033 and July 1, 2035 (the "Term Bonds") are subject to mandatory redemption in part at a redemption price of 100% of the principal amount of such 2005A Bonds to be redeemed, plus accrued interest to the date fixed for redemption, from monies to be deposited in the Sinking Fund established under the Bond Ordinance in satisfaction of applicable Mandatory Redemption Requirements, on July 1 in the respective years and principal amounts set forth below:

<u>July 1</u>	Term Bonds <u>due July 1, 2030</u>	<u>July 1</u>	Term Bonds <u>due July 1, 2033</u>
2026	\$ 4,475,000	2031	\$ 7,970,000
2027	7,290,000	2032	8,375,000
2028	7,650,000	2033 †	24,820,000
2029	8,040,000		
2030 †	8,435,000		

<u>July 1</u>	5.0% Term Bonds <u>due July 1, 2035</u>	<u>July 1</u>	4.5% Term Bonds <u>due July 1, 2035</u>
2034	\$ 67,705,000	2034	\$ 23,000,000
2035 †	71,240,000	2035 †	24,000,000

† Maturity.

The principal amount of Term Bonds of a maturity to be redeemed on the dates set forth above shall be reduced by the principal amount of Term Bonds of the same maturity and interest rate that have been redeemed (other than by application of Mandatory Redemption Requirements) or otherwise acquired by the City and delivered to the Transfer Agent prior to giving the notice of redemption described below. The City may satisfy any Mandatory Redemption Requirement by the purchase and surrender of Term Bonds of the same maturity and interest rate in lieu of calling such Term Bonds for mandatory redemption.

Notice of Redemption and Manner of Selection. If less than all the 2005A Bonds or 2005C Bonds of any maturity are called for redemption, the Transfer Agent will select such 2005A Bonds or 2005C Bonds or portions thereof in Authorized Denominations for redemption by lot or in any other manner of selection as the Transfer Agent in its discretion shall deem appropriate and fair. The Transfer Agent will mail notice of redemption to the registered owners of 2005A Bonds or 2005C Bonds or portions thereof to be redeemed not less than 30 days prior to the date fixed for redemption. So long as DTC or its nominee is the registered owner of the 2005 Bonds, the Transfer Agent will send any notice of redemption only to DTC, as described in "Book-Entry-Only System" below.

2005A Bonds and 2005C Bonds or portions thereof duly called for redemption will cease to bear interest on and after the date fixed for redemption, whether or not presented for payment, provided that funds are on hand with the Transfer Agent to redeem such 2005 Bonds or portions thereof. A registered owner of a 2005A Bond or 2005C Bond selected for redemption in part, upon surrender of such 2005A Bond or 2005C Bond for redemption, shall receive without cost a new 2005 Bond of the same Series, maturity and interest rate, and in the principal amount of the unredeemed portion of the 2005A Bond or 2005C Bond that was surrendered.

Book-Entry-Only System

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the 2005 Bonds. The 2005 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the 2005 Bonds in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 85 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, GSCC, MBSCC and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of the 2005 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2005 Bonds on DTC's records. The ownership interest of each actual purchaser of each 2005 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2005 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in 2005 Bonds, except in the event that use of the book-entry system for the 2005 Bonds is discontinued.

To facilitate subsequent transfers, all 2005 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the 2005 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2005 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2005 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices will be sent to DTC. If less than all of the 2005 Bonds of a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the 2005 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2005 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, if any, and interest payments with respect to the 2005 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Transfer Agent on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Transfer Agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, if any, and interest to Cede & Co. (or such other DTC nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Transfer Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the 2005 Bonds at any time by giving reasonable notice to the City or the Transfer Agent. Under such circumstances, in the event that a successor securities depository is not obtained, bond certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

The foregoing information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but neither the City nor the Underwriters take any responsibility for the accuracy thereof.

Disclaimer of Liability for Failures of DTC

The City and the Underwriters cannot and do not give any assurances that DTC, the Direct and Indirect Participants or others will distribute payments of principal, interest or premium with respect to the 2005 Bonds paid to DTC or its nominee as the owner of 2005 Bonds, or will distribute any redemption or other notices, to the Beneficial Owners, or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The City and the Underwriters are not responsible or liable for the failure of DTC or any Participant to make any payment or give any notice to a Beneficial Owner with respect to the 2005 Bonds, or any error or delay relating thereto.

Transfer and Exchange of 2005 Bonds

So long as the 2005 Bonds are held in book-entry form and DTC or its nominee is the registered owner of the 2005 Bonds, beneficial ownership interests in the 2005 Bonds may only be transferred through a DTC Participant as described above in "Book-Entry-Only System." In the event the book-entry system is discontinued, the City will execute and the Transfer Agent will authenticate and deliver 2005 Bond certificates in such authorized denominations and registered in such names as DTC or its Participants shall instruct the City and the Transfer Agent. Thereafter, the City and the Transfer Agent may deem and treat the registered owners of the 2005 Bonds as the absolute owners thereof for all purposes described herein and in the Bond Ordinance.

If issued in such certificated form, any 2005 Bond may be transferred or exchanged for one or more 2005 Bonds of the same maturity and interest rate in a like aggregate principal amount and in authorized denominations, upon surrender of such 2005 Bond to the Transfer Agent, together with an assignment duly executed by the registered owner or such owner's attorney or legal representative in form satisfactory to the Transfer Agent. The Transfer Agent will record the transfer or exchange in the registration books and will authenticate and deliver a new 2005 Bond or Bonds of the same maturity and interest rate and in a like aggregate principal amount, appropriately registered and in appropriate authorized denominations. The registered owner requesting any such transfer or exchange may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed with respect thereto.

PLAN OF FINANCING

The Project

The 2005A Bonds are being issued (i) to finance the costs of acquisition, construction, equipping and installation of certain repairs, extensions and improvements to the System as described in the Department's current Capital Improvement Program (see "THE CAPITAL IMPROVEMENT PROGRAM") as it may be modified by the Department from time to time (the "Project"), (ii) to finance capitalized interest on the 2005A Bonds through April 1, 2007, (iii) to purchase a debt service reserve surety to satisfy the reserve requirement attributable to the 2005 Bonds, and (iv) to pay a portion of the costs of issuance of the 2005 Bonds.

Plan of Refunding

Advance Refunding. The 2005B Bonds are being issued to advance refund \$42,580,000 aggregate principal amount of the City's outstanding Sewage Disposal System Senior Lien Bonds of various Series (the "Advance Refunded Bonds"), and to pay a portion of the costs of issuance of the 2005 Bonds. The respective

Series, maturity dates, interest rates and principal amounts of the Advance Refunded Bonds are set forth below. The Advance Refunded Bonds will be redeemed on their respective first available call dates at the redemption prices shown below, plus accrued interest to the redemption date.

<u>Series</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Principal Amount</u>		<u>First Call Date</u>	<u>Redemption</u>	
				<u>Refunded</u>			<u>Price</u>
1997A	July 1, 2022	5.00%	\$	22,355,000	July 1, 2007		101%
1999A	July 1, 2011	5.20		115,000	January 1, 2010		101
1999A	July 1, 2012	5.25		3,425,000	January 1, 2010		101
2003A	July 1, 2014	5.00		8,215,000	July 1, 2013		100
2003A	July 1, 2015	5.00		8,470,000	July 1, 2013		100

Current Refunding. The 2005C Bonds will be issued and delivered on or about April 5, 2005, subsequent to the issuance and delivery of the 2005A Bonds and 2005B Bonds. See "Delivery of 2005C Bonds" below. The 2005C Bonds will be issued to refund \$66,185,000 aggregate principal amount of the City's outstanding Sewage Disposal System Senior Lien Bonds of various Series (the "Current Refunded Bonds" and, together with the Advance Refunded Bonds, the "Refunded Bonds"), and to pay a portion of the costs of issuance of the 2005 Bonds. The respective Series, maturity dates, interest rates and principal amounts of the Current Refunded Bonds are set forth below. The Current Refunded Bonds will be redeemed on July 1, 2005 at the redemption prices shown below, plus accrued interest to the redemption date.

<u>Series</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Principal Amount</u>		<u>Call Date</u>	<u>Redemption</u>	
				<u>Refunded</u>			<u>Price</u>
1995A	July 1, 2025	5.00%	\$	6,770,000	July 1, 2005		100%
1995B	July 1, 2008	5.25		2,400,000	July 1, 2005		101
1995B	July 1, 2015	5.25		20,410,000	July 1, 2005		101
1995B	July 1, 2021	5.25		36,605,000	July 1, 2005		101

Escrow Agreements. Pursuant to the terms of the Escrow Deposit Agreements (the "Escrow Agreements") to be entered into between the City and U. S. Bank National Association (the "Escrow Trustee"), the refundings will be effected by the City's depositing in trust with the Escrow Trustee proceeds of the 2005B Bonds in a separate irrevocable escrow fund for the Advance Refunded Bonds, and proceeds of the 2005C Bonds in a separate irrevocable escrow fund for the Current Refunded Bonds. In each case such proceeds, together with available funds transferred from the Debt Service Accounts related to the Refunded Bonds, will be used to purchase certain direct obligations of the United States of America, or obligations the principal of and interest on which are guaranteed by the United States of America, or a combination thereof (collectively, the "Government Obligations"). The Government Obligations will bear interest and will be scheduled to mature at such times and in such amounts so that, when paid in accordance with their respective terms, sufficient moneys will be available therefrom (together with any uninvested cash) to pay when due (i) interest becoming due on the Refunded Bonds on and prior to their respective redemption dates, and (ii) the principal of and redemption premium, if any, on the Refunded Bonds on their respective redemption dates. Principal of and interest on the Government Obligations will be held in trust and used solely for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds, subject only to the payment to the City in accordance with the Escrow Agreements of any cash not required for such purposes.

Estimated Sources and Uses of Funds

The estimated sources and uses of funds in connection with the issuance of the 2005 Bonds are as follows:

<u>Sources:</u>	<u>2005A Bonds</u>	<u>2005B Bonds</u>	<u>2005C Bonds</u>	<u>Total</u>
Principal Amount of 2005 Bonds	\$273,355,000	\$40,215,000	\$63,160,000	\$376,730,000
Net Original Issue Premium	7,168,607	5,061,098	4,920,754	17,150,459
Refunded Bonds Debt Service Accounts	<u> </u>	<u>451,312</u>	<u>902,866</u>	<u>1,354,178</u>
TOTAL SOURCES:	\$280,523,607	\$45,727,410	\$68,983,620	\$395,234,637
 <u>Uses:</u>				
Deposit to Construction Fund	\$250,000,000	\$ 0	\$ 0	\$250,000,000
Debt Service Reserve Surety Bond Premium	311,282	45,795	71,923	429,000
Deposit to Escrow Funds	0	44,809,249	68,081,258	112,890,507
Capitalized Interest ⁽¹⁾	26,139,096	0	0	26,139,096
Costs of Issuance ⁽²⁾	<u>4,073,229</u>	<u>872,366</u>	<u>830,439</u>	<u>5,776,034</u>
TOTAL USES:	\$280,523,607	\$45,727,410	\$68,983,620	\$395,234,637

⁽¹⁾ Deposit to Second Lien Bond Interest and Redemption Fund to pay capitalized interest on 2005A Bonds to April 1, 2007.

⁽²⁾ Includes underwriters' discount, bond insurance premium, printing costs, rating agency fees, legal fees and other issuance expenses. Any 2005 Bond proceeds not needed to pay issuance expenses will be transferred to the 2005 Construction Fund.

Delivery of 2005C Bonds

The City has agreed to issue and sell and the Underwriters have agreed to purchase the 2005C Bonds, subject to certain conditions, for settlement and delivery (the "Settlement") on or about April 5, 2005. Substantially all of the conditions for the sale and purchase of the 2005C Bonds will be satisfied on the date the 2005A Bonds and 2005B Bonds are issued and delivered. At the Settlement certain additional documents, certificates and opinions will be delivered to the Underwriters, including the approving opinions of Lewis & Munday, A Professional Corporation, and Miller, Canfield, Paddock and Stone, P.L.C., Bond Counsel, in substantially the forms attached hereto as Appendix F, and an executed financial guaranty insurance policy with respect to the 2005C Bonds issued by the Bond Insurer. The City will then issue and deliver the 2005C Bonds to the Underwriters upon their payment of the purchase price for the 2005C Bonds.

DEBT SERVICE AND OUTSTANDING INDEBTEDNESS

As of January 1, 2005, there were \$2,365,301,174 aggregate principal amount of Sewage System Bonds outstanding, consisting of \$1,716,834,307 Senior Lien Bonds, \$342,080,000 Second Lien Bonds and \$306,386,867 SRF Junior Lien Bonds. The following tables set forth various information with respect to outstanding Sewage System Bonds, and the annual debt service on the 2005 Bonds and on the total outstanding Sewage System Bonds after issuance of the 2005 Bonds and defeasance of the Refunded Bonds.

Sewage Disposal System Revenue Bonds and Revenue Refunding Bonds

	Original Principal Amount		Outstanding as of Jan. 1, 2005	Amount to be Issued
Senior Lien Bonds				
Sewage Disposal System Revenue Bond, Series 1992-A	\$ 4,360,000	(1)	\$ 2,175,000	\$ 0
Sewage Disposal System Revenue Bond, Series 1992-B	1,915,000	(1)	955,000	0
Sewage Disposal System Revenue Bond, Series 1993-B	6,603,996	(1)	3,590,000	0
Sewage Disposal System Revenue Bonds, Series 1995-A	132,430,000		9,655,000	(2) 0
Sewage Disposal System Revenue Refunding Bonds, Series 1995-B	125,295,000		80,255,000	(2) 0
Sewage Disposal System Revenue Bonds, Series 1997-A	262,494,128		138,174,128	(2) 0
Sewage Disposal System Revenue Bond, Series 1997-B	6,075,000	(1)	4,005,000	0
Sewage Disposal System Revenue Refunding Bonds, Series 1998-A	69,000,000		68,000,000	0
Sewage Disposal System Revenue Refunding Bonds, Series 1998-B	68,955,000		67,900,000	0
Sewage Disposal System Revenue Bond, Series 1999-SRF1	21,475,000	(1)	17,985,000	0
Sewage Disposal System Revenue Bond, Series 1999-SRF2	46,000,000	(1)	42,365,000	0
Sewage Disposal System Revenue Bond, Series 1999-SRF3	31,030,000	(1)	26,000,000	0
Sewage Disposal System Revenue Bond, Series 1999-SRF4	40,655,000	(1)	34,065,000	0
Sewage Disposal System Revenue Bonds, Series 1999-A	302,995,178		39,135,179	(2) 0
Sewage Disposal System Revenue Bonds, Series 2001(A)	76,375,000		76,375,000	0
Sewage Disposal System Revenue Bonds, Series 2001(C-1)	159,970,000		156,500,000	0
Sewage Disposal System Revenue Bonds, Series 2001(C-2)	127,165,000		124,500,000	0
Sewage Disposal System Revenue / Revenue Refunding Bonds, Series 2003(A)	599,380,000		574,335,000	(2) 0
Sewage Disposal System Revenue Bonds, Series 2003(B)	150,000,000		150,000,000	0
Sewage Disposal System Revenue Refunding Bonds, Series 2004-A	<u>101,435,000</u>		<u>100,865,000</u>	0
Total Senior Lien Bonds	<u>\$2,333,608,302</u>		<u>\$1,716,834,307</u>	<u>\$ 0</u>
Second Lien Bonds				
Sewage Disposal System Revenue Bonds, Series 2001(B)	\$110,550,000		\$110,550,000	\$ 0
Sewage Disposal System Revenue Bonds, Series 2001(D-1)	20,000,000		20,000,000	0
Sewage Disposal System Revenue Bonds, Series 2001(D-2)	72,450,000		72,450,000	0
Sewage Disposal System Revenue Bonds, Series 2001(E)	139,080,000		139,080,000	0
Sewage Disposal System Revenue Bonds, Series 2005(A)				273,355,000
Sewage Disposal System Revenue Refunding Bonds, Series 2005(B)				40,215,000
Sewage Disposal System Revenue Refunding Bonds, Series 2005(C)				<u>63,160,000</u>
Total Second Lien Bonds	<u>\$342,080,000</u>		<u>\$342,080,000</u>	<u>\$376,730,000</u>
SRF Junior Lien Bonds(1)				
Sewage Disposal System Revenue Bonds, Series 2000-SRF1	\$53,475,000	(1)	\$ 42,368,275	\$ 0
Sewage Disposal System Revenue Bonds, Series 2000-SRF2	65,000,000	(1)	53,541,582	0
Sewage Disposal System Revenue Bonds, Series 2001-SRF1	82,200,000	(1)	82,200,000	0
Sewage Disposal System Revenue Bonds, Series 2001-SRF2	59,850,000	(1)	59,850,000	0
Sewage Disposal System Revenue Bonds, Series 2002-SRF1	18,985,000	(1)	17,849,339	0
Sewage Disposal System Revenue Bonds, Series 2002-SRF2	1,970,000	(1)	1,142,253	0
Sewage Disposal System Revenue Bonds, Series 2002-SRF3	43,740,000	(1)	10,002,442	0
Sewage Disposal System Revenue Bonds, Series 2003-SRF1	48,520,000	(1)	24,580,387	0
Sewage Disposal System Revenue Bonds, Series 2003-SRF2	25,800,000	(1)	11,058,716	0
Sewage Disposal System Revenue Bonds, Series 2004-SRF1	2,910,000	(1)	133,136	0
Sewage Disposal System Revenue Bonds, Series 2004-SRF2	18,690,000	(1)	1,613,167	0
Sewage Disposal System Revenue Bonds, Series 2004-SRF3	<u>12,920,000</u>	(1)	<u>1,047,570</u>	0
Total SRF Junior Lien Bonds	<u>\$ 434,060,000</u>		<u>\$ 306,386,867</u>	<u>\$ 0</u>
Total All Bonds	<u>\$3,109,748,302</u>		<u>\$2,365,301,174</u>	<u>\$376,730,000</u>

(1) Stated Principal amount of State Revolving Fund Bonds issued as part of the State of Michigan's Revolving Loan Program. As the Department draws additional amounts from time to time hereafter, the outstanding principal amounts of such Bonds will correspondingly increase. It is anticipated that the maximum amounts will not be fully drawn until Fiscal Year 2006.

(2) Includes Refunded Bonds to be defeased upon issuance of 2005 Bonds.

SOURCE: The Department.

Debt Service Schedule

Fiscal Year Ending June 30 ⁽¹⁾	Total Senior Lien Debt Service ⁽²⁾	Outstanding Second Lien Debt Service ⁽³⁾	2005 Bonds Principal	2005 Bonds Interest ⁽⁴⁾	2005 Bonds Debt Service ⁽⁴⁾	Total Second Lien Debt Service	Total SRF Junior Lien Debt Service ⁽⁵⁾	Total System Debt Service
2005	\$ 99,492,452	\$ 13,973,166	\$ 0	\$ 1,362,130	\$ 1,362,130	\$ 15,335,296	\$ 12,875,163	\$ 127,702,911
2006	95,827,908	14,224,760	195,000	5,260,355	5,455,355	19,680,115	24,613,959	140,121,982
2007	95,976,353	14,224,760	100,000	8,596,174	8,696,174	22,920,934	27,574,690	146,471,977
2008	93,443,998	14,228,974	2,285,000	18,615,048	20,900,048	35,129,022	27,546,228	156,119,248
2009	96,391,505	13,790,870	250,000	18,501,248	18,751,248	32,542,117	27,549,534	156,483,157
2010	96,399,558	13,796,185	420,000	18,493,998	18,913,998	32,710,182	27,541,525	156,651,265
2011	92,746,826	13,863,327	3,900,000	18,481,398	22,381,398	36,244,725	27,552,056	156,543,607
2012	90,022,056	13,020,933	7,455,000	18,296,548	25,751,548	38,772,481	27,550,416	156,344,952
2013	94,342,967	12,300,663	4,645,000	17,942,598	22,587,598	34,888,260	27,546,816	156,778,042
2014	86,212,471	12,486,894	12,540,000	17,720,923	30,260,923	42,747,817	27,550,669	156,510,957
2015	86,917,188	12,310,813	12,845,000	17,102,673	29,947,673	42,258,485	27,551,716	156,727,389
2016	96,261,468	12,245,157	5,080,000	16,466,793	21,546,793	33,791,950	27,549,716	157,603,134
2017	96,026,420	12,476,744	5,340,000	16,219,168	21,559,168	34,035,911	27,544,213	157,606,544
2018	96,196,506	12,310,813	5,585,000	15,957,618	21,542,618	33,853,430	27,555,081	157,605,017
2019	95,792,013	12,486,894	6,110,000	15,683,918	21,793,918	34,280,812	27,541,672	157,614,497
2020	94,519,588	12,312,300	8,215,000	15,386,718	23,601,718	35,914,017	27,549,038	157,982,642
2021	84,832,239	12,476,744	19,045,000	14,984,568	34,029,568	46,506,311	27,546,481	158,885,031
2022	98,088,602	12,310,813	11,915,000	13,988,363	25,903,363	38,214,175	27,553,628	163,856,405
2023	107,358,539	15,068,670	970,000	13,345,756	14,315,756	43,384,427	27,545,194	164,288,160
2024	104,089,925	30,182,525	490,000	13,304,531	13,794,531	43,977,056	18,676,159	166,743,140
2025	97,801,358	29,995,094	6,345,000	13,283,706	19,628,706	49,623,800	18,682,034	166,107,193
2026	116,624,182	30,079,479	4,475,000	12,966,456	17,441,456	47,520,935	3,083,063	167,228,180
2027	116,942,649	29,759,808	7,290,000	12,742,706	20,032,706	49,792,514	0	166,735,164
2028	117,641,401	29,065,474	7,650,000	12,378,206	20,028,206	49,093,681	0	166,735,082
2029	118,056,173	28,643,361	8,040,000	11,995,706	20,035,706	48,679,067	0	166,735,241
2030	77,981,706	68,725,024	8,435,000	11,593,706	20,028,706	88,753,730	0	166,735,437
2031	76,794,156	69,912,513	7,970,000	11,171,956	19,141,956	89,054,469	0	165,848,625
2032	50,902,250	95,803,311	8,375,000	10,763,494	19,138,494	114,941,805	0	165,844,055
2033	130,691,935	0	24,820,000	10,334,275	35,154,275	35,154,275	0	165,846,210
2034	0	0	90,705,000	9,062,250	99,767,250	99,767,250	0	99,767,250
2035	0	0	95,240,000	4,642,000	99,882,000	99,882,000	0	99,882,000
Total	\$ 2,804,374,392	\$ 662,076,069	\$ 376,730,000	\$ 416,644,982	\$ 793,374,982	\$ 1,455,451,051	\$ 546,279,049	\$ 4,806,104,493

⁽¹⁾ Amounts due July 1 are shown as debt service for the preceding Fiscal Year ending June 30 (the amounts actually required to be set aside in that Fiscal Year). For example, debt service payments due July 1, 2005 are shown in the Fiscal Year ending June 30, 2005.

⁽²⁾ Debt service on variable rate Senior Lien Bonds with fixed interest rate swap agreements is calculated at the respective swap rates. Excludes debt service on the Refunded Bonds to be refunded with proceeds of the 2005 Bonds.

⁽³⁾ Debt service on variable rate Second Lien Bonds is calculated in accordance with the Additional Bonds test and the other provisions of the Ordinance.

⁽⁴⁾ Net of capitalized interest.

⁽⁵⁾ Based on projected drawdown and expenditure of SRF-funded projects.

Totals may not add due to rounding.

SOURCE: The Department.

SECURITY AND SOURCES OF PAYMENT FOR THE 2005 BONDS

Nature of Obligations under the Ordinance

Sewage System Bonds and Ancillary Obligations are self-liquidating obligations of the City, payable solely from the Pledged Assets under the Ordinance. "Ancillary Obligations" are obligations incurred by the City with respect to particular Sewage System Bonds and consist of Hedge Obligations and Reimbursement Obligations. Hedge Obligations are payment obligations under a hedge agreement, such as an interest rate swap, other than the fees and expenses to be paid in the ordinary course of the transaction. Reimbursement Obligations are repayment obligations under a credit enhancement or liquidity facility, other than the fees and expenses to be paid in the ordinary course of the transaction. The fees and expenses payable by the City in connection with any hedge agreement, credit enhancement or liquidity facility in the ordinary course of the transaction (the "Ancillary Obligation Fees and Expenses") are treated separately under the Ordinance from payments on Sewage System Bonds and Ancillary Obligations and have a different payment priority, as described under "Priority Lien and Payment Status" below.

Pledged Assets

"Pledged Assets" under the Ordinance consist of:

- Net Revenues (defined below);
- the funds and accounts established by or pursuant to the Ordinance except for the Operation and Maintenance Fund and the Construction Fund and any account thereof;
- investments of amounts credited to any fund, account or subaccount that is a Pledged Asset; and
- any income or gain realized from investments that are Pledged Assets to the extent that such income or gain is not a Net Revenue.

"Revenues" are defined in the Ordinance as the revenues of the City from the System (construed in accordance with the Act) and include amounts received by the City under its hedge agreements with respect to Sewage System Bonds, including any termination payments, and income earned and gains realized from the investment of amounts in the various funds, accounts and subaccounts established by the Ordinance other than the Construction Fund for any Fiscal Year earnings on the Construction Fund are not transferred to the Receiving Fund by the Board. The Board's current policy is to transfer Construction Fund earnings to the Receiving Fund, and therefore such earnings are included in Revenues. "Net Revenues" are defined in the Ordinance as Revenues except for those transferred to the Operation and Maintenance Fund.

Priority Lien and Payment Status

Sewage System Bonds are secured under the Ordinance in accordance with their relative priorities by a statutory lien on Pledged Assets, as described below. The Ordinance permits the City to secure Ancillary Obligations by a lien on Pledged Assets having the same or a lower priority than the lien securing the particular Sewage System Bonds to which the Ancillary Obligations relate. Ancillary Obligation Fees and Expenses have a higher payment status than Sewage System Bonds and Ancillary Obligations, as described below.

- All Ancillary Obligation Fees and Expenses are paid from Revenues in the Operation and Maintenance Fund on the same basis as operating and administrative fees and expenses of the System, with the result being that they are paid before debt service on the Sewage System Bonds and before Ancillary Obligations.

- Senior Lien Bonds and related Ancillary Obligations are secured by a first lien on Pledged Assets and rank first in the order of payment from Net Revenues.
- Second Lien Bonds (including the 2005 Bonds) and related Ancillary Obligations are secured by a lien on Pledged Assets second only to the Senior Lien Bonds and their related Ancillary Obligations, and rank second in order of payment from Net Revenues.
- SRF Junior Lien Bonds and related Ancillary Obligations have a lien subordinate to the liens securing all other Sewage System Bonds and their related Ancillary Obligations, and rank last in order of payment from Net Revenues.

Ordinance Flow of Funds

In accordance with the requirements of the Act and the City Charter, the Ordinance establishes certain funds and accounts for the System and permits the establishment of additional funds for additional priorities of Sewage System Bonds. All funds and accounts are held and managed by the City. All Revenues are set aside as collected and credited to the Receiving Fund. As of the first day of each month, amounts credited to the Receiving Fund are transferred seriatim into the following funds and accounts but only within the respective limitations and only if the maximum amount within such limitation has been credited to the preceding fund or account:

First: to the Operation and Maintenance Fund, a sum sufficient to provide for the payment of the next month's expenses of administration and operation of the System (including Ancillary Obligation Fees and Expenses) and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order;

Second: to the Senior Lien Bond Debt Service Account, an amount that, when added to all other amounts then on deposit therein, shall equal the Debt Service Installment Requirement for Senior Lien Bonds and related Ancillary Obligations of the same priority as of the first day of such month;

Third: to the Senior Lien Bond Reserve Account, an amount that when added to all other amounts then on deposit therein shall equal the Reserve Requirement for Senior Lien Bonds;

Fourth: to the Interest and Redemption Fund established for each priority of Junior Lien Bonds, beginning with the Second Lien Bonds (including the 2005 Bonds) and continuing in descending order of priority to, and including, the SRF Junior Lien Bonds:

First: to the Debt Service Account established for such priority, an amount that, when added to all other amounts then on deposit therein, shall equal the Debt Service Installment Requirement for Junior Lien Bonds and related Ancillary Obligations of the same priority as of the first day of such month; and

Second: to the Reserve Account, if any, established for such priority an amount that, when added to all other amounts then on deposit therein, shall equal the Reserve Requirement for such priority of Junior Lien Bonds;

Fifth: to the Extraordinary Repair and Replacement Reserve Fund, the amount of the Extraordinary Repair and Replacement Minimum Requirement so long as the balance thereof is less than the Extraordinary Repair and Replacement Maximum Requirement, except that an amount withdrawn from such Fund and transferred to the Improvement and Extension Fund as provided in the Ordinance, shall be deducted from the Extraordinary Repair and Replacement Maximum Requirement in the Fiscal Year of withdrawal; and

Sixth: to the Improvement and Extension Fund, such amount, if any, that the Board may deem advisable; provided that no amount shall be deposited therein or credited thereto for so long as a borrowing from the Extraordinary Repair and Replacement Reserve Fund remains unpaid.

Amounts remaining in the Receiving Fund as of the last day of each Fiscal Year shall be credited to the Surplus Fund to be used for any purposes related to the System. The use and application of amounts in the funds and accounts established by the Ordinance are set forth in Appendix D — "The Ordinance."

Reverse Flow of Funds

If amounts in the Receiving Fund are insufficient to provide for current requirements of the Operation and Maintenance Fund and each Interest and Redemption Fund (including the Reserve Account, if any, therein), then any amounts or securities held in the Surplus Fund, the Improvement and Extension Fund and the Extraordinary Repair and Replacement Reserve Fund shall be credited or transferred, first, to the Operation and Maintenance Fund and second, to the particular Interest and Redemption Fund, to the extent of the insufficiency therein from the aforesaid funds in the order listed.

If any principal (and redemption premium, if any) of or interest on Sewage System Bonds of a priority or any related Ancillary Obligations become due (whether on a stated or scheduled date, by reason of call for redemption or otherwise), and there are insufficient amounts for the payment thereof in the Interest and Redemption Fund established for such priority of Sewage System Bonds and Ancillary Obligations after applying payments in the Reserve Account, if any, established for such priority of Sewage System Bonds, then there shall be applied to such payment amounts in each Interest and Redemption Account established for each lower priority of Sewage System Bonds, beginning with the lowest priority and proceeding *seriatim* in ascending order of priority, until such payments are made in full.

Reserve Accounts and Reserve Requirements

The Ordinance establishes a Senior Lien Bond Reserve Account and a Second Lien Bond Reserve Account, and authorizes a Reserve Account to be established for other priorities of Junior Lien Bonds but no such other Junior Lien Bond Reserve Account has been established to date. Amounts in a Reserve Account may be used solely for the payment of the principal (and premium, if any) of and interest on the Sewage System Bonds and Ancillary Obligations of the priority for which such Reserve Account was established, as to which there would otherwise be a default.

The Reserve Requirement for Senior Lien Bonds is the maximum Annual Debt Service on all Senior Lien Bonds then outstanding for the current or any future Fiscal Year or the maximum amount permitted by the Internal Revenue Code of 1986, as amended (the "Code"). The Reserve Requirement for Second Lien Bonds is the average Annual Debt Service on all Second Lien Bonds then outstanding for the current or any future Fiscal Year or the maximum amount permitted by the Code. If a Reserve Account is established for any other priority of Junior Lien Bonds, the Reserve Requirement for such other Junior Lien Bonds shall be the amount set forth in the supplemental action establishing such Reserve Account, and if no amount is set forth, shall be the average Annual Debt Service on all Junior Lien Bonds of such priority then outstanding for the current or any future Fiscal Year or the maximum amount permitted by the Code.

Concurrently with the issuance of Sewage System Bonds of a priority for which a Reserve Account has been or is being established, the Ordinance requires there be credited to such Reserve Account the amount that, added to the amount on deposit in such account or credited thereto, equals the Reserve Requirement for the Bonds then to be issued and all Bonds of the same priority then outstanding. The Ordinance permits the use of Credit Enhancement to fund any Reserve Account or to substitute for amounts on deposit in a Reserve Account, if the provider is rated in the highest rating category of each Rating Agency then rating the Bonds having the benefit of such Reserve Account, and the City receives

an opinion of nationally recognized bond counsel to the effect that such Credit Enhancement will not adversely affect the tax-exempt status of interest on any Bonds.

Debt Service Reserve Surety Bond

The City has received a commitment from MBIA Insurance Corporation (the "Insurer") to issue a surety bond (the "Debt Service Reserve Surety Bond") for the 2005 Bonds in an initial face amount equal to the Reserve Requirement for the 2005 Bonds. The Debt Service Reserve Surety Bond will provide that upon notice from the Transfer Agent to the Insurer to the effect that insufficient amounts are on deposit in the Second Lien Bond Debt Service Account to pay the principal of (at maturity or pursuant to mandatory redemption requirements) and interest on the 2005 Bonds, the Insurer will promptly deposit with the Transfer Agent an amount sufficient to pay the principal of and interest on the 2005 Bonds or the available amount of the Debt Service Reserve Surety Bond, whichever is less.

The available amount of the Debt Service Reserve Surety Bond is the initial face amount of the Debt Service Reserve Surety Bond less the amount of any previous deposits by the Insurer with the Transfer Agent which have not been reimbursed by the City. The City and the Insurer will enter into a Financial Guaranty Agreement dated the date of issuance of the 2005A Bonds and 2005B Bonds (the "Agreement"). Pursuant to the Agreement, the City is required to reimburse the Insurer, within one year of any deposit, the amount of such deposit made by the Insurer with the Transfer Agent under the Debt Service Reserve Surety Bond. Such reimbursement shall be made only after all required deposits to the Operation and Maintenance Fund, the Debt Service Account and Reserve Account for the Senior Lien Bonds, and the Debt Service Account for the Second Lien Bonds have been made.

Under the terms of the Agreement, the Transfer Agent is required to reimburse the Insurer, with interest, until the face amount of the Debt Service Reserve Surety Bond is reinstated before any deposit is made to the Surplus Fund. No optional redemption of 2005 Bonds may be made until the Insurer's Debt Service Reserve Surety Bond is reinstated. The Debt Service Reserve Surety Bond will be held by the Transfer Agent in the Second Lien Bond Reserve Account and is provided as an alternative to the City depositing funds equal to the Reserve Requirement for the 2005 Bonds and any outstanding Second Lien Bonds. The Debt Service Reserve Surety Bond will be issued and the premium therefor will be fully paid by the City at the time of delivery of the 2005A Bonds and 2005B Bonds. The Debt Service Reserve Surety Bond expires July 1, 2035.

Certain Other Funds

As described in "Reverse Flow of Funds" above, amounts held in certain other funds established under the Ordinance may be transferred to the Operation and Maintenance Fund and the Interest and Redemption Fund in the event of a shortfall of Revenues.

Extraordinary Repair and Replacement Fund. The Extraordinary Repair and Replacement Fund is funded by monthly transfers of Revenues in minimum amounts equal to 1/12 of 3% of the budgeted operation and maintenance expense of the System for the Fiscal Year, until the balance in such fund equals 15% of the budgeted operation and maintenance expense of the System for such Fiscal Year. Amounts in the Extraordinary Repair and Replacement Fund may be used to pay costs of making major unanticipated repairs and replacements to the System which individually cost or are reasonably expected to cost in excess of \$1 million. The Ordinance authorizes the Finance Director, on and after the first day of each Fiscal Year, to transfer not more than 50% of the balance in the Extraordinary Repair and Replacement Fund to the Improvement and Extension Fund, but only if in the month of such transfer the full amount of the minimum monthly transfer has been credited to the fund, and the amounts of all prior transfers from the fund to the Improvement and Extension Fund have been restored in full.

Improvement and Extension Fund. The Improvement and Extension Fund is to be used for improvements, enlargements, extensions or betterment to the System.

Rate Stabilization Fund. The Ordinance permits the Board to create a Rate Stabilization Fund, the purpose of which is to enable the City to set aside Prior Revenues to augment Revenues in future years in order to satisfy the requirements of the Ordinance with respect to rate covenants related to Sewage System Bonds. See "Rate Covenant" below for a description of the restriction on use of transfers from the Rate Stabilization Fund in meeting the rate covenant's coverage requirements. Any funding of the Rate Stabilization Fund is at the sole discretion of the Board.

Only Prior Revenues may be deposited in the Rate Stabilization Fund. "Prior Revenues" are Revenues or Net Revenues only to the extent they may be applied to any lawful purpose of the System, in effect limiting Prior Revenues to Net Revenues that, in the Fiscal Year of receipt, exceed the required deposits described above under "Ordinance Flow of Funds." The deposit of Prior Revenues into the Rate Stabilization Fund is limited in any Fiscal Year as described in Appendix D — "The Ordinance — Rate Stabilization Fund." Except as reserved in connection with a coverage determination, amounts on deposit in the Rate Stabilization Fund may be applied for any lawful purpose of the System.

Rate Covenant

The Bond Ordinance requires that the Board fix and revise rates for sewage disposal service from time to time as may be expected to be necessary to produce the greater of:

1. The amounts required to provide for:
 - a. the payment of the expenses for maintenance of the System as are necessary to preserve the same in good repair and working order;
 - b. the payment of Indebtedness coming due for the Fiscal Year of calculation;
 - c. the creation and maintenance of reserves therefor as required by the Ordinance or any ordinance or resolution adopted in accordance with the terms thereof; and
 - d. such other expenditures and funds for the System as the Ordinance may require; and
2. The Required Combined Coverage.

For purposes of the rate covenant, "Required Combined Coverage" means Net Revenues projected for the Fiscal Year of calculation at least equal to 120% of Senior Lien Indebtedness coming due for such Fiscal Year, 110% of combined Senior Lien Indebtedness and Second Lien Indebtedness coming due for such Fiscal Year, and 100% of combined Senior Lien Indebtedness, Second Lien Indebtedness and SRF Junior Lien Bonds coming due for such Fiscal Year.

The Ordinance defines "Indebtedness" as (without duplication) (i) principal of and interest on Sewage System Bonds outstanding in the Fiscal Year of calculation, (ii) Reimbursement Obligations, and (iii) amounts payable by the City under a Hedge by reason of the early termination thereof. The City may take into account transfers from the Rate Stabilization Fund in calculating compliance with the rate covenant, but the City shall also comply with the rate covenant by maintaining rate coverage percentages of 100 without taking into account any transfers from the Rate Stabilization Fund.

Enforceability of Rates

The charges for sewage disposal service are a lien on the respective premises, and the Ordinance provides for certain means of enforcement including the right to shut off and discontinue the supply of water to any premises for the nonpayment of sewage disposal rates when due.

The Act provides that the rates charged for services furnished by any public improvement constructed under the Act shall not be subject to supervision or regulation by any State bureau, board, commissioner or other like instrumentality or agency thereof.

Additional Bonds

The City intends to issue additional Sewage System Bonds to finance the System's Capital Improvement Program, but does not intend to do so, other than for SRF Junior Lien Bonds, prior to July 1, 2007. Additional Sewage System Bonds may be issued either as Senior Lien Bonds, Second Lien Bonds or other Junior Lien Bonds (of which only SRF Junior Lien Bonds are authorized at present). See "THE CAPITAL IMPROVEMENT PROGRAM."

General Authority. The City may issue Sewage System Bonds of any Priority (herein, "Additional Bonds") for repairs, extensions, enlargements, and improvements to the System (including repaying amounts withdrawn from the Extraordinary Repair and Replacement Reserve Fund), refunding all or a part of any Outstanding Sewage System Bonds and paying the costs of issuing such Additional Bonds, including deposits, if any, to be made to any Reserve Account established or to be established for such Additional Bonds or any other Sewage System Bonds, if, but only if, there is Required Combined Coverage under either the Projected Net Revenues Test or the Historical Net Revenues Test.

Projected Net Revenues Test. For purposes of determining the Required Coverage Requirement for the Projected Net Revenues Test, "Required Combined Coverage" means, for a priority of Sewage System Bonds for which a determination is to be made, that (i) the result produced by dividing the Inflows by the Outflows for the highest priority of Sewage System Bonds so required for such determination and performing the same calculation for each successively lower priority of Sewage System Bonds and expanding the divisor in each instance by the sum of the outflows for such priority (a "Priority") and each higher Priority, equals or exceeds (ii) the coverage requirement for the lowest Priority in each calculation, such that

Where

- I = Inflows are Net Revenues of the System for the then current or the next succeeding Fiscal Year
- O = Outflows are the maximum composite Annual Debt Service in any Fiscal Year on Outstanding Sewage System Bonds and the Additional Sewage System Bonds to be issued:
 - O₁ Senior Lien Bonds
 - O₂ Second Lien Bonds
 - O₃ Junior Lien SRF Bonds
- C = Coverage requirements:
 - C₁ for Senior Lien Bonds 120%
 - C₂ for Second Lien Bonds 110
 - C₃ for Junior Lien SRF Bonds 100

Required Combined Coverage is:

$$[1] \frac{I}{O_1} \geq C_1 \text{ and } [2] \frac{I}{(O_1 + O_2)} \geq C_2 \text{ and } [3] \frac{I}{(O_1 + O_2 + O_3)} \geq C_3$$

Projected Net Revenues may include 100% of the estimated increase in Net Revenues to accrue as a result of the acquisition of the repairs, extensions, enlargements and improvements to the System to be paid for in whole or in part from the proceeds of the Additional Sewage System Bonds. In projecting Net Revenues, the City shall engage the services of and be guided by a consultant of national reputation for advising municipalities with respect to setting rates and charging for the use of sewage disposal systems.

Annual Debt Service is a defined term in the Ordinance, and reference should be made to Appendix D — "The Ordinance" for the definition and the rules for determining Annual Debt Service.

If any additional Sewage System Bonds (any of such, the "Refunding Sewage System Bonds") are to be issued to refund Outstanding Sewage System Bonds (the "Sewage System Bonds to be Refunded"), the Annual Debt Service to be used for determining the Required Combined Coverage shall

until maturity on (A) the Additional Sewage System Bonds and (B) giving effect to the refunding, all Outstanding unrefunded Sewage System Bonds of equal and higher Priority is less than the combined Annual Debt Service coming due in the current Fiscal Year and each Fiscal Year thereafter until maturity on all equal and higher Priority Sewage System Bonds, without giving effect to the refunding.

Amendments Without Consent

The Ordinance may be amended or supplemented from time to time by Act of Council or Supplemental Action without consent of the Holders of Sewage System Bonds:

- (1) To issue Sewage System Bonds of any Priority;
- (2) To add to the covenants and agreements of the City in the Ordinance contained, other covenants and agreements thereafter to be observed or to surrender, restrict or limit any right or power reserved to or conferred upon the City (including but not limited to the right to issue Sewage System Bonds or incur other Secured Obligations of, in either case, any Priority);
- (3) To make such provisions for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provisions contained in the Ordinance, or in regard to matters or questions arising under the Ordinance, as the City may deem necessary or desirable;
- (4) To increase the size or scope of the System; and
- (5) To amend or supplement the Ordinance in any respect with regard to one or more Priorities of Sewage System Bonds so long as such amendment does not materially adversely affect the Holders of Outstanding Sewage System Bonds.

The Ordinance provides that no Holders of a Priority of Sewage System Bonds shall be "materially adversely affected" for the purposes of the Ordinance by the change of any coverage percentage established for any other Priority of Sewage System Bonds, and no amendment of or supplement to the Ordinance that provides for or facilitates the issuance of Sewage System Bonds or incurs Ancillary Obligations or Ancillary Obligations Fees and Expenses, in either case, of any Priority shall "materially adversely affect" the Holders of Sewage System Bonds of any other Priority for the purposes of the Ordinance so long as such amendment does not change any coverage percentage established for such Priority of Sewage System Bonds or is not an amendment that requires the consent of the Holder of such Sewage System Bonds because it (i) reduces the aforesaid percentage of Holders of Sewage System Bonds required to consent to an amendment to the Ordinance, (ii) extends the fixed maturity of such Holder's Sewage System Bonds or reduces the rate of interest thereon or extends the time of payment of interest, or reduces the amount of the principal or redemption premium thereof, or reduces or extends the time for payment of any premium payable on the redemption thereof or (iii) changes the Priority of such Holder's Sewage System Bonds or deprives such Holder of the right to payment from Pledged Assets.

The Ordinance further provides that a confirmation of the rating of the Sewage System Bonds held by Holders affected by any amendment of or supplement to the Ordinance shall be conclusive evidence that such Holders were not materially adversely affected by such amendment or supplement.

Trustee

The City has appointed U.S. Bank National Association, Detroit, Michigan as trustee (the "Trustee"). The Trustee does not have an active role under the Ordinance, and funds and accounts established under the Ordinance are not held by the Trustee, and the Trustee is not responsible for the administration, investment or disbursement of the monies allocated to such funds and accounts.

Remedies

The Holder or Holders of Sewage System Bonds representing in the aggregate not less than 20% of the entire principal amount thereof then Outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon Pledged Assets, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the City, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon Pledged Assets, however, shall not be construed to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal (and premium, if any) of and interest on any Sewage System Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the City and, under the direction of the court, perform all of the duties of the officers of the City more particularly set forth herein and in Act 94.

A Holder of Sewage System Bonds shall have all other rights and remedies given by Act 94 and by law for the payment and enforcement of the Sewage System Bonds and the security therefor.

BOND INSURANCE

In connection with the issuance of each series of the 2005 Bonds, the City will obtain a financial guaranty insurance policy from MBIA Insurance Corporation (the "Bond Insurer" or "MBIA"). Neither the City nor the Underwriters have undertaken any independent investigation of the operations of the Bond Insurer and make no representations as to the accuracy or adequacy of the information provided by the Bond Insurer herein. Additionally, neither the City nor the Underwriters make any representations as to the ability of the Bond Insurer to make payments under the financial guaranty insurance policies or on the debt service reserve surety bond.

The MBIA Insurance Corporation Insurance Policy

The following information has been furnished by MBIA Insurance Corporation ("MBIA") for use in this Official Statement. Reference is made to Appendix E for a specimen of MBIA's policy.

MBIA's policy unconditionally and irrevocably guarantees the full and complete payment required to be made by or on behalf of the City to the Transfer Agent or its successor of an amount equal to (i) the principal of (either at the stated maturity or by an advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the 2005 Bonds as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed by MBIA's policy shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner of the 2005 Bonds pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law (a "Preference").

MBIA's policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any 2005 Bonds. MBIA's policy does not, under any circumstance, insure against loss relating to: (i) optional or mandatory redemptions (other than mandatory sinking fund redemptions); (ii) any payments to be made on an accelerated basis; (iii) payments of the purchase price of 2005 Bonds upon tender by an owner thereof; or (iv) any Preference relating to (i) through (iii) above. MBIA's policy also does not insure against nonpayment of principal of or interest on the 2005 Bonds resulting from the insolvency, negligence or any other act or omission of the Transfer Agent or any other paying agent for the 2005 Bonds.

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by MBIA from the Transfer Agent or any owner of a 2005 Bond the payment of an insured amount for which is then due, that such required payment has not been made, MBIA on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment of any such insured amounts which are then due. Upon presentment and surrender of such 2005 Bonds or presentment of such other proof of ownership of the 2005 Bonds, together with any appropriate instruments of assignment to evidence the assignment of the insured amounts due on the 2005 Bonds as are paid by MBIA, and appropriate instruments to effect the appointment of MBIA as agent for such owners of the 2005 Bonds in any legal proceeding related to payment of insured amounts on the 2005 Bonds, such instruments being in a form satisfactory to U.S. Bank Trust National Association, U.S. Bank Trust National Association shall disburse to such owners or the Trustee payment of the insured amounts due on such 2005 Bonds, less any amount held by the Transfer Agent for the payment of such insured amounts and legally available therefor.

MBIA

MBIA Insurance Corporation ("MBIA") is the principal operating subsidiary of MBIA Inc., a New York Stock Exchange listed company (the "Company"). The Company is not obligated to pay the debts of or claims against MBIA. MBIA is domiciled in the State of New York and licensed to do business in and subject to regulation under the laws of all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States and the Territory of Guam. MBIA has three branches, one in the Republic of France, one in the Republic of Singapore and one in the Kingdom of Spain. New York has laws prescribing minimum capital requirements, limiting classes and concentrations of investments and requiring the approval of policy rates and forms. State laws also regulate the amount of both the aggregate and individual risks that may be insured, the payment of dividends by MBIA, changes in control and transactions among affiliates. Additionally, MBIA is required to maintain contingency reserves on its liabilities in certain amounts and for certain periods of time.

MBIA does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding the policy and MBIA set forth under the heading "BOND INSURANCE." Additionally, MBIA makes no representation regarding the 2005 Bonds or the advisability of investing in the 2005 Bonds.

The Financial Guarantee Insurance Policies are not covered by the Property/Casualty Insurance Security Fund specified in Article 76 of the New York Insurance Law.

MBIA Information

The following documents filed by the Company with the Securities and Exchange Commission (the "SEC") are incorporated herein by reference:

Company's Annual Report on Form 10-K for the year ended December 31, 2003; and
Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.

Any documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Official Statement and prior to the termination of the offering of the 2005 Bonds offered hereby shall be deemed to be incorporated by reference in this Official Statement and to be a part hereof. Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Official Statement, shall be deemed to be modified or superseded for purposes of this Official Statement to the extent that a

statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Official Statement.

The Company files annual, quarterly and special reports, information statements and other information with the SEC under File No. 1-9583. Copies of the SEC filings (including (1) the Company's Annual Report on Form 10-K for the year ended December 31, 2003, and (2) the Company's Quarterly Report on Form 10-Q for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004) are available (i) over the Internet at the SEC's web site at <http://www.sec.gov>; (ii) at the SEC's public reference room in Washington D.C.; (iii) over the Internet at the Company's web site at <http://www.mbia.com>; and (iv) at no cost, upon request to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504. The telephone number of MBIA is (914) 273-4545.

As of December 31, 2003, MBIA had admitted assets of \$9.9 billion (audited), total liabilities of \$6.2 billion (audited), and total capital and surplus of \$3.7 billion (audited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of September 30, 2004, MBIA had admitted assets of \$10.4 billion (unaudited), total liabilities of \$6.7 billion (unaudited), and total capital and surplus of \$3.7 billion (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities.

Financial Strength Ratings of MBIA

Moody's Investors Service, Inc. rates the financial strength of MBIA "Aaa."

Standard & Poor's, a division of The McGraw-Hill Companies, Inc. rates the financial strength of MBIA "AAA."

Fitch Ratings rates the financial strength of MBIA "AAA."

Each rating of MBIA should be evaluated independently. The ratings reflect the respective rating agency's current assessment of the creditworthiness of MBIA and its ability to pay claims on its policies of insurance. Any further explanation as to the significance of the above ratings may be obtained only from the applicable rating agency.

The above ratings are not recommendations to buy, sell or hold the 2005 Bonds, and such ratings may be subject to revision or withdrawal at any time by the rating agencies. Any downward revision or withdrawal of any of the above ratings may have an adverse effect on the market price of the 2005 Bonds. MBIA does not guarantee the market price of the 2005 Bonds nor does it guarantee that the ratings on the 2005 Bonds will not be revised or withdrawn.

THE WATER AND SEWERAGE DEPARTMENT

Organization

The Sewage Disposal System is owned by the City and is operated, managed and accounted for as a separate enterprise fund (the "Sewage Fund") by the City through the Department, established under the City Charter. The Department is governed by a seven-member Board of Water Commissioners appointed by the Mayor. The Department is empowered to supply sewage disposal services within and outside the City and operates out of its own 20-story office building in downtown Detroit.

The City Charter provides that the Board shall periodically establish equitable rates for retail and wholesale sewage disposal services. Such rates are established with the concurrence of the City Council. See "FINANCIAL PROCEDURES - Rates." The Board authorizes and executes all service and

construction contracts. Certain contracting and other policy-making powers of the Board are subject to the approval or rejection of the City Council and the approval or veto of the Mayor. In addition, the Bonds and covenants with respect thereto are authorized pursuant to the Ordinances of the City Council, which have been approved by the Mayor.

Water supply service to the residents of the City and to a substantial portion of the Sewage Disposal System service area outside the City is also provided by the City through the Department and the Board. However, the Water Supply System is operated, managed and accounted for as a separate enterprise fund of the City apart from the Sewage Fund.

The Board

The members of the Board are appointed by and serve at the pleasure of the Mayor. The members serve four-year terms and the terms are staggered so that not more than two members' terms expire each year. Board members must be citizens of the United States and residents of Michigan. The City Charter provides that at least four members of the Board must be residents of the City. Currently the Board consists of four City residents plus one member each from Oakland County, western Wayne County (not including the City) and Macomb County. Board membership is as follows (dates in parentheses are dates of original appointment to Board).

Mary E. Blackmon, President (1989). Mrs. Blackmon was elected President in January 2003. She is a retiree of Ameritech, where she served as a Director of Public Relations and Associate Director of Urban and Civic Affairs. She is a current member of the Wayne County Regional Educational Service Agency Board of Education, where she has served since 1982. Mrs. Blackmon also served for 10 years as a member of the Detroit Board of Education. She has served on several committees for the Southeast Michigan Council of Governments (SEMCOG), where she is a Vice President. A graduate of Leadership Detroit, Mrs. Blackmon remains active in a number of civic and community organizations.

Marilynn E. Gosling (1995). Ms. Gosling was elected Vice President in January 2003. She was a member of the Oakland County Board of Commissioners for 14 years before retiring in January 1995. She currently serves on the Board of Directors of the Dispute Resolution Settlement Center and is active as a community mediator. She is also a board member of Camp Oakland Youth Programs, Inc. and the Local Development Company. Ms. Gosling has served as a member of the Community Mental Health Board and the Southeast Michigan Council of Governments (SEMCOG).

Hilliard L. Hampton (1994). Mr. Hampton is the Mayor of the City of Inkster. He also has twenty-eight years with Wayne County government. He currently serves as Sergeant with the Wayne County Sheriff's Department, where he is Supervisor of Community Justice. He has a Bachelor of Arts degree from Wayne State University in Mass Communications and has also received extensive training and certification in law enforcement.

John E. Johnson (2003). Mr. Johnson is an attorney and serves as Deputy Executive Director and Chief Operating Officer for the Legal Aid & Defender Association, Inc. in Detroit. Past employers include Wayne County Neighborhood Legal Services, the National Consumer Law Center, the UAW Legal Services Plans and the National Association for the Advancement of Colored People (NAACP), where he has served as Executive Director. Mr. Johnson also serves as chair of the Michigan Coalition for Human Rights, Wayne County Economic Development Corporation, Wayne County Brownfield Redevelopment Authority, and Detroit NAACP Legal Redress Committee and Predatory Lending Task Force. He is a past president of the Wolverine Bar Association, a 2nd vice president of the NAACP Michigan State Conference and a member of the State Bar of Michigan's Character and Fitness Committee and Access to Justice Task Force. Mr. Johnson received his undergraduate degree from Howard University, Washington D. C. and his Juris Doctorate from Valparaiso University School of Law, Valparaiso, Indiana.

Gregory Terrell (2003). Mr. Terrell is a Certified Public Accountant, and Managing Director and founder of Gregory Terrell & Company, a certified accounting firm founded in 1983. Mr. Terrell was previously an Audit Manager for Arthur Andersen LLP, and Manager of Accounting Policy & Research for Unysis. He currently serves on the Board of Directors of Charity Motors. He has also served on the boards of One Stop Capital Shop, the Lula Belle Stewart Center, the Accounting Aid Society and the National Association of Black Accountants. He has received numerous awards for service provided to civic and professional organizations. Mr. Terrell is a member of the American Institute of Certified Public Accountants, the Michigan Association of Certified Public Accountants and the National Association of Black Accountants - Detroit Chapter. He graduated cum laude with a Bachelor of Arts degree in Accounting from Dillard University of New Orleans, LA.

Carla Walker-Miller (2000). Ms. Walker-Miller is the President of Walker-Miller Energy Services, a distributor of power transmission and distribution equipment manufactured for use by electric utilities. She holds a Bachelor of Science Degree in Civil Engineering from Tennessee State University.

William G. Westrick (2000). Mr. Westrick was President of the engineering firm of Anderson, Eckstein and Westrick, Inc., and served as a member of the Board of Directors. He is a member of the Southern Michigan Water and Sewer Utilities Association. He serves on the Board of Directors of the Macomb County Traffic Association and the Northeast Water and Sewer Superintendent Association. Previously he was employed by the Macomb County Road Commission for nearly 10 years, first as a Project Engineer in charge of design and construction of individual projects, and finally as the Design and Construction Engineer, coordinating road and bridge projects. Mr. Westrick has a Bachelor of Science Degree in Civil Engineering from the University of Detroit and a Master of Science Degree in Civil Engineering from Wayne State University. He is a Registered Professional Engineer in the State of Michigan.

The Board appoints, with the approval of the Mayor, a director and deputy director who serve at the pleasure of the Board and are responsible for day to day operations of the Department.

Management and Personnel

The Department's budget for Fiscal Year 2005 provides funding for 3,399 positions, of which 1,086 positions are classified as strictly Sewer System and 226 positions are classified as strictly Water System. The remaining 2,087 positions are budgeted in the administrative and support divisions, which provide service to both the Sewage and Water Systems. The cost associated with these positions is allocated to the two systems either on the basis of actual time spent on projects or on estimates developed by the Department. The Department estimates that approximately 40% to 50% of the time allocation of the work force in these areas is attributable to the Sewage Disposal System. The Department's budget for Fiscal Year 2005 reflects reduced staffing as a result of the Department's performance improvement initiatives.

In December 2002, the Department was re-organized into five operating groups: Engineering, Assets Maintenance, Financial Services, Wastewater Operations, and Water Supply Operations. Each of the operating groups is headed by an Assistant Director. The Department is also reviewing its customer service activities and reorganizing its Commercial Operations Group to allow for improved functioning.

Victor M. Mercado, Director. Mr. Mercado was named Director of the Detroit Water and Sewerage Department on June 12, 2002. Mr. Mercado brings with him more than 25 years of experience in both the public and private sectors. He previously served as Vice President of Thames Water North America, and President and General Manager of Thames Water Puerto Rico (1999-2002); Vice President and General Manager of United Water Delaware and President of United Water Bethel and United Water Virginia (1997-1999); Chief of Emergency Construction for the Department of Environmental Protection in New York City (1996-1997); and Director of Operations for the Jamaica Water Supply Company in Jamaica, New York (1989-1996). Mr. Mercado has considerable experience in distribution and

transportation, construction, and the electric and gas industries. He holds a Bachelor of Science degree in Economics and Industrial Management from the City University of New York.

Gary Fujita, P.E., Deputy Director. Appointed Deputy Director in November 2002, Mr. Fujita has served as Interim Deputy Director since January 2002 and as Assistant Director of Wastewater since 1993. He has a Bachelor of Science degree in Civil Engineering from Wayne State University. He is a Registered Professional Engineer and holds a Class "A" Wastewater Treatment Operator's license. Mr. Fujita has been with the Department since 1972 and has also served as Chief Sewerage Plant Engineer. Mr. Fujita has considerable experience in engineering design, construction of major pipelines and related facilities, planning, wastewater treatment, industrial pretreatment, and combined sewer overflow control planning.

Louis Jarvis, Assistant Director - Asset Management. Mr. Jarvis was named Assistant Director in May 2004. Previously, Mr. Jarvis served as Process Quality Control Manager. He has worked in the Department since 2002. Mr. Jarvis brings with him more than 16 years experience in team building and employee development in the water and wastewater industry in both the public and private sectors. He previously served as Water and Wastewater Compliance Officer in Leesburg, Virginia; as Water and Wastewater Superintendent in New York City; and as Transmission Distribution Manager with Jamaica Water Supply Company, serving Queens and Long Island. Mr. Jarvis attended Cornell and Troy State Universities.

Awni Qaqish, P.E., Assistant Director - Office of Program Management. Mr. Qaqish is responsible for the Capital Improvement Program Management Group, Office of Program Management, Safety and Document Management. He is a Registered Professional Engineer. Previously, Mr. Qaqish served as the Assistant Director of Engineering Services. Before coming to the Department in 1980, Mr. Qaqish worked with consulting engineering firms and governmental agencies in Utah, Wyoming, Nebraska, and overseas with the government of Jordan. Mr. Qaqish has extensive experience in planning, design, construction and management of water and wastewater projects. Mr. Qaqish holds a Bachelor of Science degree in Civil Engineering from Utah State University. Mr. Qaqish's awards include the 1996 Outstanding Civil Engineer award from the Michigan Section of the American Society of Civil Engineers, the 1998 Zone II Government Engineer of the Year award from the American Society of Civil Engineers, the 1999 Outstanding professional Engineer award from the Michigan Society of Professional Engineers and the 2000 Leadership award from the Design-Build Institute of America.

James George, Assistant Director - Financial Planning Division. An Assistant Director since June 1999, Mr. George was selected for his current position in May 2001. He has experience with the City of Detroit in areas of Budget, Accounting, Cash Management, and Contract Administration. Mr. George holds Bachelor and Master's degrees in Accounting and is a candidate for Certified Public Accountant. He currently serves as a member of the Finance Committee of the American Water Works Association.

Louise Lieberman, Assistant Director - Wastewater Services. Ms. Lieberman was appointed Assistant Director in April 2003. Prior to her appointment, Ms. Lieberman served within the Department as Chief Sewage Plant Engineer. Ms. Lieberman has been with the Department more than 25 years in various professional capacities. She holds a Bachelor of Science in Chemical Engineering from the University of Michigan and a Masters in Library Science from Wayne State University. She has been a member of various professional organizations and has served on the Michigan Department of Environmental Quality's Board of Examiners for Municipal Operators for ten years.

Pamela Turner, Assistant Director - Water Supply Operations. Ms. Turner was named Assistant Director in April 2003. Prior to her selection Ms. Turner served as Water Quality Division Manager. She has worked in the Department since 1977. Ms. Turner holds a Bachelor of Science degree in Environmental Science and a Masters in Public Administration from the University of Michigan. Ms. Turner has served on the Michigan Department of Environmental Quality Technical Advisory Committee

EXHIBIT 7

1978 Rate Settlement
Agreement

(2)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff and
Counter-Defendant,

-vs-

Civil Action No.
771100

STATE OF MICHIGAN,

Defendant and Counter-
Plaintiff and Cross-
Plaintiff,

-vs-

THE CITY OF DETROIT, a municipal
corporation, THE DETROIT WATER &
SEWERAGE DEPARTMENT,

Defendant and
Cross-Defendants,

-vs-

All Communities and Agencies Under
Contract with the City of Detroit
for Sewage Treatment Services.

SETTLEMENT AGREEMENT

This is an agreement of settlement between the City of Detroit and Thomas S. Welsh, Commissioner of the Department of Public Works, Macomb County, Michigan, acting for and on behalf of the County of Macomb, George W. Kuhn, Oakland County Drain Commissioner, Oakland County, Michigan, the County of Wayne, by the undersigned their respective representatives.

WHEREAS, the parties hereto are each parties in the above-captioned litigation, and are subject to the court's order entered September 9, 1977, concerning the sewage treatment rates adopted by the Detroit City Council on August 3, 1977, and the making and disposition of objections thereto by the parties, and

WHEREAS, objections have been filed by certain of the parties, and a panel of Masters appointed by the Court has conducted a trial upon such objections, and has rendered to the Court a Report and Recommendations, dated May 1, 1978 (hereafter, referred to as the "Masters' Report"), and

WHEREAS, the City of Detroit has filed objections to the Masters' Report, and the parties objecting to the aforesaid rates have filed a motion for adoption of the Masters' Report, and

WHEREAS, the parties hereto desire to avoid the delays and uncertainties attendant with further litigation and to resolve and settle their differences by amicable agreement,

NOW THEREFORE, the parties agree as follows:

1. Definitions. As used herein, the following terms shall have the following definitions:

- A. "1974 Rate Study" shall mean the Report on Sewage Rates, prepared by the Detroit Metro Water Department in December, 1974, introduced in evidence before the Masters as Exhibit 14.

B. "1977 Rate Study" shall mean the Report on Wastewater Utility Revenue Requirements, Costs of Service and Charges, prepared by Black & Veatch of Michigan in June, 1977, and introduced in evidence before the Masters as Exhibit 9.

C. "Differential Rate Of Return" shall mean the practice, technique or methodology employed in the 1974 Rate Study and the 1977 Rate Study, under which a rate of return on capital asset rate base is charged to customers residing or located within the City of Detroit, on the one hand, and customers residing or located without the City of Detroit, on the other, at a different percentage level. This term shall not include any uniformly applied ratemaking methodology or technique which directly assigns or allocates costs to different customer classes on the basis of use of different facilities or which recognizes differences in the cost of the service provided.

D. "DWSD" means the City of Detroit and the Detroit Water and Sewerage Department, and any department or agency of the City of Detroit engaged in rendering sewage service under the contracts listed in Exhibit A hereto.

E. "Contracting Parties" means the governments, government agencies and all other suburban customers listed in Exhibit A hereto, other than DWSD.

F. "Fiscal year" means the period beginning on July 1 and ending on the next subsequent June 30.

"Fiscal 1978" means the fiscal year beginning July 1, 1977 and ending June 30, 1978, and similarly for other fiscal years.

G. "Coverage" means the excess of revenues required to meet the coverage test over revenue requirements determined without respect to the coverage test. "Coverage Test" means the requirement imposed by Section 10 of Ordinance 517-E of the City of Detroit which provides that in the year of issuance of revenue bonds of standing equal to those presently outstanding, estimated net revenues shall be equal to at least one and one-half (1 1/2) times the largest amount of combined principal and interest to fall due in any future operating year on any bonds then payable out of the net revenues of the system, including such additional bonds then being issued.

H. "Transportation Charge" means the aggregate of all costs assigned or allocated to contracting

parties served by the Macomb-Oakland Interceptor which are not costs incurred for service in common with other customers, including all costs of operation and maintenance, depreciation, and, to the extent rates are based on a rate of return or other charge based on plant value, the cost resulting from application of such charge or rate to the interceptor and related equipment.

2. Effect of Settlement Agreement. This Settlement Agreement shall be consummated by amendments to the existing sewage treatment contracts between DWSD, on the one hand, and the respective parties listed on Exhibit A hereto. To the extent that this settlement agreement conflicts with or amplifies any of said agreements with respect to rates and charges for sewage treatment service, it shall control the interpretation of said agreements and the rights and dealings of the parties. Hereafter, all rates for provision of sewage treatment service to the contracting parties, for the duration of the respective terms of such agreements and any renewals thereof, except as may hereafter be agreed by the parties in writing, shall be adopted only in conformance with this Agreement. The amended contracts shall adopt the rate making principles contained in this Agreement.

Nothing herein shall be construed as an agreement that sewage or waste water treatment rates to the contracting parties shall be established other than in conformity with all applicable laws and regulations of the United States and of the State of Michigan, and the parties expressly agree

that all rates adopted effective January 1, 1980 and thereafter for the providing of sewage treatment service to all customers shall be in conformance with the requirements of the United States Public Law 92-500, 33 USCA 1251 et seq, as amended, and all applicable regulations adopted thereunder, except to the extent that the application of such laws and regulations is being contested in good faith.

3. Rates - September 1, 1977 through December 31, 1979. For the period beginning September 1, 1977 and ending December 31, 1979, rates shall be instituted and collected pursuant to the following provisions:

A. DWSD has collected since September 1, 1977, and will continue to collect through the conclusion of fiscal year 1978, rates set by resolution of the Board of Water Commissioners dated July 8, 1977, and resolution of the City Council of the City of Detroit dated August 3, 1977.

B. In fiscal 1979, and with respect to sewage service rendered on and after June 1, 1978, DWSD shall charge and bill the contracting parties at the rates set by resolution of the Board of Water Commissioners dated July 8, 1977, and the resolution of the City Council of the City of Detroit dated August 3, 1977, adjusted to exclude therefrom the collection of any differential rate of return between

customers residing or located in the City of Detroit and customers residing or located outside the City of Detroit. Such adjustment shall consist of the reduction of the rates to the contract parties to accomplish a reduction of revenues in the amount of \$2,944,700, based upon the same estimated sewage flows as were used for the establishment of rates to the contract parties in the 1977 rate study.

- C. In the period commencing July 1, 1979 and ending December 31, 1979, and with respect to sewage service rendered on and after June 1, 1979, DWSJ shall charge and bill the contracting parties at the rates established by resolution of the Board of Water Commissioners dated July 8, 1977, and the resolution of the City Council of the City of Detroit dated August 3, 1977, adjusted as follows:

(1) The rates shall be adjusted to exclude therefrom the collection of any differential rate of return between customers residing or located in the City of Detroit and customers residing or located outside the City of Detroit. Such adjustment shall consist of the reduction of the rates to the contract parties to accomplish a reduction of revenues in the amount of \$887,900; and

(2) Such rates shall further be adjusted to all customers, within and without the City of Detroit, to produce no differential rate of return and to produce an estimated surplus over the revenue requirements of the system, including coverage, of no more than \$2 million for the period July 1, 1979 through December 31, 1979.

4. Credit for Revenue Surpluses. Revenue Surpluses received by the Detroit Water and Sewerage Department in fiscal 1978 and 1979, and in the period July 1, 1979 - December 31, 1979, shall be credited to customers in accordance with Section I, B, 9 (Surplus Revenue Corrections) of the Masters Report with the following adjustments:

A. Attached hereto as Exhibit B, Schedules 1 and 2, are two schedules which set forth the mechanism by which surplus revenues will be determined. They are set forth for the sake of example, and are subject to determination of the actual results of operations for each of the periods set forth on the schedules, which determination shall be made on an unaudited basis according to consistent application of the accrual accounting principles ordinarily employed in maintaining the accounts of the Sewage Disposal Fund and used to produce the DWSO financial statements set forth in the audit report of Peat, Marwick & Mitchell for fiscal 1977.

B. The determination of surplus revenues shall be established as set forth above with respect to fiscal 1978, by August 15, 1978, with respect to fiscal 1979, by August 15, 1979, and with respect to the period July 1, 1979 through December 31, 1979, by February 15, 1980. Surplus revenues so determined shall be credited to customers, as follows:

- (1) The total credit for customers within the City of Detroit will be apportioned among them based on the relative monetary amount billed to each customer in the period in which the surplus occurred. Customers in the City of Detroit shall receive credits due them with respect to fiscal year 1978, by a single credit to each customer, to be applied to that customer's bill rendered in the month of January, February or March, 1979. With respect to fiscal year 1979, the credit to Detroit customers shall be made by application to bills rendered in January, February or March, 1980. With respect to the period July 1, 1979 - December 31, 1979, customers within the City of Detroit shall receive a single credit due them, by application to bills rendered in July, August or September, 1980.
- (2) The aggregate credit to customers without the City of Detroit shall be apportioned among them ratably with their billed sewage

flow for the period to which such credit is related. Customers without the City of Detroit shall receive credits due them on account of fiscal year 1978 surpluses by crediting of such credits in equal amounts to bills rendered from September 1, 1978 through June 30, 1979. Credits to customers without the City of Detroit for the fiscal year 1979

shall be credited in equal amounts to bills rendered to them from September 1, 1979 through June 30, 1980. Credits to the customer without the City of Detroit for the period July 1, 1979 - December 31, 1979 shall be credited in equal amounts to bills rendered to them from March 1, 1980 through December 1, 1980.

- C. In determining the surplus revenues for fiscal year 1978, Detroit may charge against current user charges \$9,219,000, less non-operating income accrued in fiscal 1978 except for earnings of the Bond and Interest Redemption Fund, for long-term capital improvements.
- D. In determining the level of surplus revenues for fiscal years 1978 and 1979, in each year, \$4 million may be deducted from the total

surplus calculated hereunder, and added to working capital accounts of the sewage disposal fund.

- E. Except as expressly stated in this subsection, surplus revenues during the fiscal years 1978, 1979 and the period July 1, 1979 - December 31, 1979 shall be determined in accordance with the provisions of this Agreement.

5. Future Ratemaking. Commencing with the period beginning January 1, 1980, and for the remaining terms of the contracts set forth in Exhibit A hereto, as such terms may be further extended pursuant to the terms of such contracts or by agreement of the parties, the following principles shall govern the establishment and adoption of rates for sewerage service to DMSD customers:

- A. Revenue Requirements. Revenue requirements shall be based upon the finances required to meet all operating, maintenance, capital requirements including debt financing and coverage, and any obligations imposed by law, and shall reflect not only recent cost experience but also a recognition of the reasonably estimated future cost levels during the period for which the rates are being established.

B. Maximum Debt Financing. Detroit shall obtain capital funds for the expansion, renewal and reconstruction of common use or solely suburban use major capital assets or improvements from the issuance of revenue bonds, to the maximum extent possible together with maximum use of coverage monies generated thereby.

C. Depreciation. User charges shall not reflect a charge for the depreciation of physical assets, which together with a rate of return and provision for operation and maintenance expense would generate revenues in excess of system revenue requirements including coverage.

D. Uniform Allocations of Costs Incurred. The recovery of costs incurred by the system shall be accomplished through the institution of rates which assign, allocate and apportion such costs to all ratepayers on the basis of principles uniformly applicable to all, it being the intention of the parties that such rates (whether designed on the utility or cash basis) will, as nearly as is practical, recover from each customer class the respective costs of providing service regardless of the ratepayer's location. In particular:

(1) If rates are based upon a system of charging a percentage rate of return on net

asset or capital structure rate base, (through the use of the so-called utility basis of rate making) there shall be no differential in the rate of return charged to customers residing or located within the City of Detroit and customers residing or located without the City of Detroit. Nothing herein contained shall prohibit DWSD from designing its rates on the so-called cash basis, effective January 1, 1980 and thereafter..

(2) If rates for the transportation charge to customers served by the Oakland-Macomb interceptor are based upon the utility basis with a percentage rate of return, such rate of return shall be the same as the rate of return charged to other customers of the system. Nothing contained herein shall prohibit the City of Detroit from employing the cash basis of ratemaking on rates effective January 1, 1980 and thereafter, including rates for customers served by the Oakland-Macomb interceptor.

(3) Should the cash basis be used in any future rate study, the allocation of debt service costs to all customers or facilities shall be based upon the system weighted average interest rate at the time.

E. Future Rate-making Information. Hereafter, commencing with the rate study currently being undertaken by Messrs. Camp, Dresser & McKee and Coopers & Lybrand, pursuant to Paragraph I B of the consent judgment entered herein on September 14, 1977, (effective September 9, 1977), whenever DWSJ shall undertake any study which may result in the revision of rates, including any study relating to industrial cost recovery charges, user charges, or other matters relating to the requirements of P. L. 92-500, 33 U.S.C.A. 1251 et seq, as amended, it shall notify the appropriate agents of Oakland, Wayne and Macomb Counties, and its other contract customers of such study, and shall, during the course of any such study, make available, upon request, to such contract customers, their agents, consultants and attorneys, any interim or preliminary reports and final reports prepared in the course of such study.

In conjunction with furnishing the aforesaid reports, the City of Detroit and its consultants at the request of the contracting parties will have a conference with the contracting parties and representatives in order to explain and discuss the reports

being provided. The requesting party shall reimburse the DWSD for any out-of-pocket costs incurred in meeting such request. Nothing contained herein shall require the City of Detroit to undertake any activity which may impede it in complying with the requirements of the consent judgment dated September 14, 1977 or other orders of the Court entered pursuant to P. L. 92-500, 33 U.S.C.A. 1251, et seq, as amended. In addition, such presentation will be done in a manner, place, and time mutually convenient to all of the parties involved including the City of Detroit's consultants.

F. For fiscal years 1978 and 1979, the period July 1, 1979 - December 31, 1979, and for all ratemaking periods thereafter, DWSD shall furnish to Macomb and Oakland Counties a statement of the transportation charge included in any rate under study or adopted, reflecting a breakdown of all costs included therein, and the rate per thousand cubic feet resulting from such charge.

6. The Court shall retain jurisdiction of the parties through December 31, 1980 to hear all disputes concerning refunds of surplus revenues and the implementation of these minutes of settlement.

7. The attorney fees, witness fees, consulting fees, and other expenses actually incurred by Macomb County, Oakland County and Wayne County in the prosecution of their

objections to the rates, including all such fees and expenses incurred through the completion of the calculation of credits due in fiscal 1979 with respect to fiscal 1978 surplus revenues, shall be reimbursed from the sum of all credits to be paid to all customers with respect to fiscal 1978. Such reimbursement shall be made by check drawn upon the DWSD, payable directly to the respective counties.

Annexed hereto as Exhibit C is a schedule of attorney fees and expenses to be reimbursed, incurred through June 30, 1978.

The cost of such reimbursement shall be deducted ratably from credits due all customers with respect to revenue surpluses derived from operations in fiscal 1978.

8. Schedules 1 and 2 (Exhibit B attached hereto) set forth the best present estimate of the City of Detroit of the anticipated surplus revenues for fiscal 1978 under the formula agreed upon herein and a determination of maximum debt financing for the projected capital improvement program.

9. The County of Oakland and DWSD shall, by appropriate pleadings and other instruments, consent to withdrawal by Oakland County of its right to the remand pursuant to the decision of the Michigan Court of Appeals dated February 7, 1978 and the Judgment of the trial court dated September 16, 1976, shall be reinstated by appropriate stipulation. It is agreed by the City of Detroit that the sewage treatment rates in effect and future rates shall be established pursuant to the principles agreed to herein and to the extent that

the judgment of the trial court and the decision of the Court of Appeals conflict with this settlement agreement, they shall be held for naught.

10. It is agreed that this settlement agreement is limited to sewage or waste water treatment rates and shall have no effect upon water service rates to any customer.

11. Payment for indirect benefits or services. Commencing with fiscal year 1979, and with respect to each fiscal year for which rates are set thereafter, following the computation of rates for customers residing or located within the City of Detroit and customers residing or located without the City of Detroit pursuant to the principles set forth in this settlement agreement, such rates shall be further adjusted by deducting from the revenues to be charged customers within the City of Detroit and adding to the revenues to be charged customers without the City of Detroit, and making appropriate adjustments of the rates for sewage service to be charged to such customers, an amount determined as follows:

- A. For the fiscal year 1979, such amounts shall be the sum of \$1 million. For each fiscal year thereafter, such amount shall be increased by 5%, determined upon a compounded basis. For example, the amount for fiscal 1980 shall be the sum of \$1,050,000. For fiscal 1981, this amount shall be the sum of \$1,102,500, and similarly for succeeding fiscal years.

B. This payment shall be made, and rates so adjusted as a payment to reflect the cost of indirect benefits or services provided by the City of Detroit to DWSD for common use facilities within the City of Detroit, such as police and fire protection, the risk of tort liability, the loss of tax base that the City loses as a result of the Department's tax exemption, and the fact that the suburbs receive sewage treatment without having to devote any of their land to a tax free utility.

C. In the event that the City of Detroit shall at any time hereafter render billings or accounting statements for indirect services to the DWSD such as police and fire protection, risk of tort liability, loss of tax base or any other type of contribution in lieu of taxes with the effect that such billings or statements become part of the DWSD budget for ratemaking purposes, then the amount of such charges allocated or apportioned to the contracting customers shall be deducted from the amount determined pursuant to subsection 11(A) above, and shall in no event exceed the amount determined pursuant to subsection 11(A) above.

D. DWSB may continue to include in its rates charges for direct services which the City currently renders and bills to DWSB. Such "direct services" shall be limited to the kind of services historically provided by offices, departments or agencies of the City of Detroit such as various kinds of licenses and permits, electricity, steam, water, paving, vehicles, and rubbish pickup; the Ombudsman, the cost of which will be allocated between the customers within the City of Detroit and the customers without the City of Detroit based upon the proportionate number of complaints or inquiries by each such class of customers; and those which were included in the DWSB budget for fiscal 1978

No additional charges may be made for "direct services" provided by other or additional City offices, departments and/or agencies without the prior agreement of the contracting parties. Such agreement shall not be unreasonably denied or delayed should it appear that the particular service or services result in a legitimate, direct benefit to the system and its customers.

E. The amount charged to the suburbs for payment for indirect benefits or services set forth in Paragraph 11(A) above shall be allocated among suburban customers in

the same manner in which treatment costs are allocated and billings for such amount shall commence with the first billing to the suburbs rendered in fiscal 1979.

F. The \$1,000,000 credit to customers within the City of Detroit for fiscal year 1979 shall be accomplished by an additional credit to bills rendered in January, February or March 1979.

12. The funds now held in the escrow account established by the Court's order dated September 9, 1977, shall (after payment of the fees and expenses of the Masters herein, to be approved as to amount by the Court) be released and returned to the City of Detroit, Water & Sewerage Department.

EXHIBIT A

1. Oakland County by its Drain Commissioner and Department of Public Works.
2. County of Macomb by its designated County Agency.
3. County of Wayne by its Board of Public Works, Board of Water Commissioners, and Road Commission.
4. City of Allen Park.
5. City of Center Line.
6. City of Dearborn.
7. City of Farmington
8. City of Grosse Pointe.
9. City of Grosse Pointe Farms.
10. City of Grosse Pointe Park.
11. City of Hamtramck.
12. City of Highland Park.
13. City of Harper Woods.
14. City of Melvindale.
15. Redford Township.
16. Macomb Township

EXHIBIT B

SCHEDULE 1

DETERMINATION OF MAXIMUM DEBT FINANCING FOR
PROJECTED CAPITAL IMPROVEMENT PROGRAM

Line No.	1977-78	1978-79	July 1, 1979- Dec. 31, 1979
	Revenue Requirements		
1	Operation & Maintenance Expense 35,400,000	54,607,700	32,794,000
2	Existing Debt Service 5,265,400	5,227,300	2,608,500
3	Proposed Debt Service -	3,195,500	2,628,000
4	Total Debt Service 5,265,400	8,422,800	5,236,500
5	Debt Service Reserve 262,009	842,000	524,000
	Major Capital Require- ments		
6	Local Share of Financing 9,219,000	49,095,000	17,012,000
7	Less: Bond Funds -	46,500,000	15,000,000
8	Non-Operating Revenues 1,000,000	1,000,000	500,000
9	Revenue Financed Capital 8,219,000	1,595,000	2,512,000
10	Working Capital 4,000,000	4,000,000	-
	Total Revenue Requirements (Lines (1+4+5+9+10)) 53,146,409	69,467,500	41,066,500
	Coverage Requirement Maximum Future Debt Service	9,619,400	10,974,800
	Coverage - 50%	4,808,200	5,487,400
	Total	14,424,600	16,462,200
	Operation & Maintenance Total Revenues to Meet Coverage Requirement	54,608,000	65,588,000
		69,032,600	82,050,200
			41,025,100

Note:

Maximum debt financing will result in the lowest annual revenue requirement. If more bonds are sold coverage will control requiring greater revenue. If fewer bonds are sold, greater cash financing of capital improvement will result in increased annual revenue requirements. For fiscal year 1978-79 total revenues must equal 69,032,600 to meet coverage requirements. For the first 6-months of fiscal 1980 \$41,025,100 in revenues are required to meet coverage (82,050,200 divide 2 = 41,025,100).

SCHEDULE 2

COMPARISON OF PROJECTED REVENUES WITH
COVERAGE REQUIREMENTS FOR MAXIMUM DEBT FINANCING

Line No.	1977-78		1978-79		July 1, 1979-(1) December 31, 1979		July 1, 1979-(2) December 31, 1979	
	1	Revenues Under Proposed Rates	61,028,900	75,451,900	46,382,800	37,876,900		
2	Less: Differential in Rate of Return	0	2,944,700	887,900	1,495,400			
3	Total Revenues Available To Meet Coverage Requirements	<u>61,028,900</u>	<u>72,507,200</u>	<u>45,494,900</u>	<u>36,381,500</u>			
4	Total Coverage Requirement	0	69,032,600	41,025,100	41,035,100			
5	Revenue Excess in Meeting Coverage		<u>3,474,600</u>	<u>4,469,800</u>	<u>(4,653,600)</u>			
	Total Funds Available to Meet Revenue Requirements						36,381,500	
6	Operating Revenues	61,028,900	72,507,200	45,494,900				
7	Less Revenue Requirement	<u>53,146,409</u>	<u>69,467,500</u>	<u>41,066,500</u>	<u>41,066,500</u>			
8	End of Year Balance	<u>7,882,491</u>	<u>3,039,700</u>	<u>4,428,400</u>	<u>(4,685,000)</u>			

(1) Projected revenues under rates scheduled to become effective July 1, 1979 and reflecting reduction of suburban rate of return.

(2) Projected revenues under continuation of fiscal 1978-79 rates.

EXHIBIT "C"

Nacomb County

Expenses

Bodman, Longley & Dahling
Blomberg, Snapp & Anderson

\$59,467.11
\$ 8,825.00

\$68,292.11

Oakland County

Whitman, Requardt & Associates
Davidson, Gotshall & Kohl
(William P. Hampton)

\$17,436.26

\$68,292.11

\$85,728.37

Wayne County

Wayne County Board of Public Works
Arthur Anderson and Co.

\$35,000.00

\$ 3,670.00

\$38,670.00

EXHIBIT 8

AFFIDAVIT OF BART FOSTER

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

BART FOSTER, being first duly sworn, deposes and says as follows:

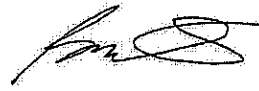
1. I am currently employed as a the President of The Foster Group, a consulting firm that provides financial and management advice to publicly owned utilities and other similar entities. I have a Bachelor of Science degree in Mechanical Engineering from the University of Kansas in 1983 and a Master's degree in Business Administration and Finance from the University of Kansas in 1985. Attached hereto as Exhibit A is a copy of my background and experience as a financial and rate consultant to municipally-owned water and wastewater utilities.
2. If sworn as a witness, I am competent to testify concerning the matters set forth below.
3. I have been engaged as a water and wastewater financial and rate consultant to the Detroit Water and Sewerage Department since 1985. Since 1992, I have been principally responsible for DWSD's water and wastewater rate studies.
4. In the course of my work for the City of Detroit, I have become familiar with the contracts between the City of Detroit and its suburban wholesale customers, including contracts with Wayne, Oakland and Macomb counties. I am also familiar with the terms of prior rate settlement agreements.
5. At the request of DWSD, I designed wastewater treatment rates to be effective on all bills rendered on or after August 1, 2005. Included in these rates was a provision to amortize an estimated construction cost of \$35 million related to repairs to the collapse of the Oakland Macomb Interceptor System near 15 Mile Road and Hayes Road. The annual revenue requirement associated with this

amortization and included in these rates was \$3 million, which was directly assigned to Macomb County.

6. The rates I designed have been approved by both the Board of Water Commissioners and the City Council for the City of Detroit.
7. In my opinion, Detroit requires the revenues to be derived from these rates to meet its ongoing operation and maintenance expenses and to finance its current capital improvement program.
8. In my opinion, the subject rates are consistent with the contracts between Detroit and its suburban wholesale customers; consistent with prior rate settlement agreements; and consistent with generally accepted wastewater ratemaking principles as modified by the prior settlement agreements.
9. At the request of DWSD, I have investigated the impact of these rates on Macomb County. A summary of the results of my investigation are illustrated by the attached Exhibit B, which compares the effective revenue required of Macomb County for FY 2004-05 and FY 2005-06. My analysis indicates that the effective increase to Macomb County associated with the \$3 million amortization revenue requirement is approximately 10.5%. However, other elements of Macomb County's allocated revenue requirement experienced very moderate increases, and some experienced decreases. As a result, the overall impact of the FY 2005-06 rates on Macomb County County is approximately 8.3%.
10. This impact is independent of the effects of the FY 2003-04 Lookback, which will be implemented with the FY 2005-06 rates. Macomb County will receive a credit during FY 2005-06 totaling approximately \$912,000.

11. The overall rate increase to the suburban wholesale customer class for FY 2005-06 was approximately 3.0%.
12. Macomb County's rate increase for the just completed fiscal year (FY 2004-05) was approximately 2.0%, compared to the suburban wholesale customer class average of approximately 4.5%.

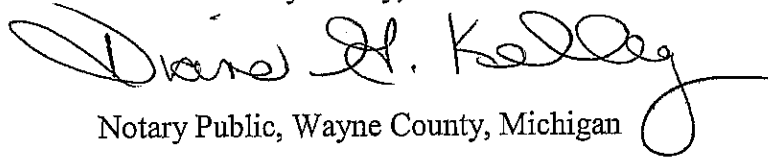
Further Affiant sayeth not.



BART FOSTER

Subscribed and sworn to before

me this 29th day of July, 2005.



Notary Public, Wayne County, Michigan

My Commission Expires: 03-16-2012

D1\209620.1
ID\ RJM

DIANE G. KELLEY
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Mar 16, 2012
ACTING IN COUNTY OF Oakland

EXHIBIT 8-A



THE FOSTER GROUP

P.O. BOX 26282
LEAWOOD, KS 66225
TEL: (913) 345-1410
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THE FOSTER GROUP, LLC
BART FOSTER, PRESIDENT
CELL: (913) 530-6240
BFOSTER@FOSTERGROUP.LLC.COM

The Foster Group offers financial and engineering management consulting services to a broad customer base, specializing in services for municipal utility clients in the United States. Our principal experience includes: managing financial planning, cost of service, and rate design studies for water and wastewater utilities; preparation of Consulting Engineer's Reports in conjunction with issuance of municipal water and sewer revenue bonds; development of other feasibility reports; design of financial management information systems; consulting assistance regarding contractual and other relationships amongst municipalities, and expert witness services in utility litigation matters.

The Foster Group maintains cooperative arrangements with several other professional service firms, large and small, to facilitate effective delivery of a wide variety of specialized consultative services.

The President of The Foster Group is Mr. Bart Foster, who has a lengthy career in providing strategic consulting services to municipal entities. Mr. Foster previously served as a director of a large consulting practice in an executive capacity, ultimately responsible for all management consulting services to municipal clients in the United States. His comprehensive experience includes: managing financial planning, cost of service, and rate design studies for water and wastewater utilities; preparation of Consulting Engineer's Reports in conjunction with issuance of municipal water and sewer revenue bonds; development of other feasibility reports; design of financial management information systems; consulting assistance regarding contractual and other relationships amongst municipalities, and expert witness services in utility litigation matters. Mr. Foster possesses expertise in the use of technology for economic, financial planning, program management, and presentation applications. Mr. Foster's combined technical, financial, and computer skills have proven well suited to address the challenges facing municipally owned utilities.

Representative Experience

Miscellaneous Services, Detroit, Michigan

Serves as business advisor and financial and rate expert for extensive financial planning and management consulting assistance for the Detroit Water & Sewerage Department. Specific projects have included general consultation regarding financial management issues, expert witness testimony in matters related to water and sewer rate disputes, assistance in addressing customer community issues, preparation of consulting engineer's reports for several bond prospectuses, development of long-term financial plans and planning procedures, consultation regarding cost of service allocation and rate design methodologies, assistance with improving accounting policies and procedures, development and implementation of several financial management systems, participation in the Department's long-term CSO

control planning efforts, development of specifications for a capital improvement program financial tracking system, and establishment of recommended standard operating procedures and strategic plans for capital improvement programs.

Expert Witness Services and Other Advisory Services, Kalamazoo, Michigan

Serves as business advisor for extensive financial planning and management consulting assistance for the City of Kalamazoo Department of Public Utilities. Provides consulting advice to the Utilities Director, the City Manager and the Wastewater Utility Advisory Board, made up of representatives of contractual wholesale customers and retail customers outside the City limits as well as City staff. Past assignments have included successful expert witness services in wastewater rate arbitration processes.

Financial and Rate Consulting Services, Ann Arbor, Michigan

Served as Executive in Charge of business advisory services to the City of Ann Arbor as it investigated modifications to the cost recovery practices of its Storm Water Utility. Key issues included development of user fees that reflect robust cost of service principles and meet strict legal guidelines in the State of Michigan.

Expert Witness Services, Bay County, Michigan

Successfully served as Executive-in-Charge for expert witness services provided to the County Department of Public Works in water rate disputes with contractual customers.

Expert Witness Services, Holland, Michigan

Successfully served as Executive-in-Charge for expert witness services provided to the City's Utilities Department in water rate disputes with contractual customers.

Financial and Rate Consulting Services, Wyoming, Michigan

Served as Executive-in-Charge and business advisor for financial planning and utility rate consulting assistance for the City of Wyoming. Key issues have included development of strategic financial plans for the Utilities aggressive long-term capital improvement programs and consultation on new service contracts with contractual customer communities.

Financial and Rate Consulting Services, Grand Rapids, Michigan

Served as as Executive-in-Charge and business advisor for utility rate consulting assistance for the City of Grand Rapids. Key issues have included implementation of new cost allocation models among the City's contract communities, meetings with EPA regarding the City's user charge system, and development of a new basis for industrial surcharge rates.

Wastewater Services, Allegheny County Sanitary Authority, Pittsburgh, Pennsylvania

Served as Executive-in-Charge of a wastewater rate study for 83 wholesale communities, including Pittsburgh, in addition to a financial feasibility study for a revenue bond sale targeted to fund the initial phases of a billion dollar capital improvement program.

Water Rate Consulting Services, Cincinnati, Ohio

Served as Principal-in-Charge for financial and water rate consulting services for Cincinnati Water Works. Key issues of included development of financial plans that incorporate goals of the Water Works strategic business plan and expansion to new service areas.

Water and Sewer Rate Consulting Services, Columbus, Ohio

Served as Executive-in-Charge for financial and water rate consulting services for the City of Columbus Public Utilities Department. Key issues have included development of implementation plans for recommended changes in cost of service allocations, specifically regarding service provided to outside City customer classes, and the development of implementation plans for alternative methods of treating infiltration/inflow cost responsibility.

Education

B.S., Mechanical Engineering, University of Kansas, 1983

M.B.A., Finance, University of Kansas, 1985

Registered Professional Engineer: Kansas

Affiliations

AWWA, WEF

Publications/Presentations

"Show Me the Money," published in *Water Environment & Technology*, October 2002.

"Capital Financing Strategies," presented at the 2002 AWWA/WEF Joint Management Conference, March 2002.

"An Integrated Partnering Approach to Determining Cost Responsibility For Detroit's Investment in Combined Sewer Overflow Facilities," published in *Government Finance Review*, June 2000.

"Rolling Down the River," published in *Technology Century*, October 1997.

"Selling Utility Financing Decisions," presented at the AWWA Annual Conference and Expo in Toronto, Canada, June 26, 1996.

"Utility Financial Policy," presented at the Michigan Section American Water Works Association's Annual Conference in Traverse City, Michigan, September 12, 1995.

"Modeling Financial Success," presented at the Water Environment Federation/American Water Works Association's Joint Management Conference in Tulsa, Oklahoma, February 14, 1995.

"Financing and Cost Allocation of CSO Control Systems in a Major Metropolitan Area," presented at the WEF Annual Conference and Exposition in Anaheim, California, October 7, 1993.

April 8, 2005

Page 4

"A Computerized Approach to Capital Program Management," presented at the AWWA Computer Conference in Nashville, Tennessee, April 14, 1992.

"Utility Financial Planning and Rate Design by Computer," published in *Public Works*, October 1990.

EXHIBIT 8-B

Exhibit B
Summary of DWSD Rates / Charges to Macomb County
FY 2004-05 vs. FY 2005-06

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
	Units	2005 Charge	2005 Rev Req't	2006 Charge	2006 Rev Req't	Variance	% Variance	% Impact on Revenue Req'ts	
			(1) * (2)		(1) * (4)	(5) - (3)	(6)/(3)	(6)/(3 Line 10)	
1	Commodity - \$/Mcf	2,200,000	10.20	22,440,000	10.21	22,462,000	22,000	0.10%	0.08%
	Fixed (\$/mo)								
2	Wet Weather Flow Related	12	56,644	679,727	70,092	841,108	161,381	23.7%	0.6%
3	DWSD Wet Weather Facilities	12	19,845	238,134	33,272	399,266	161,132	67.7%	0.6%
4	Macomb Specific (OMI Allocation) (a)	12	170,141	2,041,692	89,410	1,072,923	(968,769)	-47.4%	-3.4%
5	Macomb Specific - Amortized RSA (b)	12	96,982	1,163,781	96,982	1,163,781	0	0.0%	0.0%
6	Macomb Specific - Garfield Int (c)	12	158,333	1,900,000	158,333	1,900,000	0	0.0%	0.0%
7	Subtotal Fixed		501,945	6,023,334	448,090	5,377,078	(646,256)	-10.7%	-2.3%
8	SUBTOTAL			28,463,334		27,839,078	(624,256)	-2.2%	-2.2%
9	Macomb Specific - 15 & Hayes 2004 (d)	12	0	0	250,000	3,000,000	3,000,000	N/A	10.5%
10	TOTAL			28,463,334		30,839,078	2,375,744	8.3%	8.3%

(a) Macomb's share of costs allocated in the rate model to the Oakland / Macomb Interceptor
 (b) Macomb specific costs related to the Oakland / Macomb Interceptor as stipulated in various Rate Settlement Agreements
 (c) Amortization of estimated costs of constructing the Garfield Interceptor
 (d) Amortization of estimated costs of repairs associated with the 2004 collapse

In The Matter Of:
In Re: City of Detroit, Michigan

Bartlett D. Foster
July 09, 2014



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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Min-U-Script® with Word Index

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: _____) Case No. 13-53845
CITY OF DETROIT, MICHIGAN)
) Chapter 9
Debtor)
_____) Hon. Steven W. Rhodes

The Deposition of BARLETT D. FOSTER,
Taken at 150 W. Jefferson Avenue, Suite 2500,
Detroit, Michigan,
Commencing at 4:30 p.m.,
Wednesday, July 9, 2014,
Before Melinda S. Moore, CSR-2258.

Page 3

1 ARTHUR H. RUEGGER
2 Salans FMC SNR Denton
3 1221 Avenue of the Americas
4 New York, New York 10020
5 212.768.6881
6 arthur.ruegger@dentons.com
7 Appearing on behalf of the
8 Official Committee of Retirees
9 of the City of Detroit.

Page 2

1 APPEARANCES:
2
3 RAECHEL M. BADALAMENTI (P64361)
4 Kirk, Huth, Lange & Badalamenti, PLC
5 19500 Hall Road
6 Suite 100
7 Clinton Township, Michigan 48038
8 586.412.4900
9 rbadalamenti@khlblaw.com
10 Appearing on behalf of the Macomb Interceptor
11 Drain Drainage District.
12
13 IRENE BRUCE HATHAWAY (P32198)
14 M. MISBAH SHAHID (P73450)
15 Miller Canfield Paddock & Stone, PLC
16 150 W. Jefferson Avenue
17 Suite 2500
18 Detroit, Michigan 48226
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20 hathaway@millercanfield.com
21 shahid@millercanfield.com
22 Appearing on behalf of the City of
23 Detroit and the Witness.
24
25

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1 Detroit, Michigan
 2 Wednesday, July 9, 2014
 3 4:30 p.m.
 4 BARLETT D. FOSTER,
 5 was thereupon called as a witness herein, and
 6 after having first been duly sworn to testify to
 7 the truth, the whole truth and nothing but the
 8 truth, was examined and testified as follows:
 9 **EXAMINATION**
 10 **BY MS. BADALAMENTI:**
 11 Q. Mr. Foster, my name is Raechel Badalamenti. I
 12 represent Macomb Interceptor Drainage District,
 13 Macomb County, with respect to a claim that's
 14 been filed against the City of Detroit. Are you
 15 aware of the nature of that claim?
 16 **A. A bit, yes.**
 17 Q. What do you know about it?
 18 **A. It was a claim that amounts charged to Macomb for**
 19 **purchase of the district from DWSD should be**
 20 **adjusted for some items that I'm not entirely**
 21 **familiar with.**
 22 Q. Are you aware that the City of Detroit asserted a
 23 claim against certain contractors and
 24 subcontractors with respect to the same contract
 25 that's in issue in Macomb's claim against

Page 6

1 Detroit?
 2 **A. I'm aware.**
 3 Q. Are you aware that there was a settlement of some
 4 of those claims?
 5 **A. I am aware.**
 6 Q. What information do you have about the claims
 7 that Detroit asserted against contractors and
 8 subcontractors?
 9 **A. I'm sorry. Could you ask it again.**
 10 Q. Sure. What is your -- the extent of your
 11 knowledge about the claims that Detroit asserted
 12 against contractors and subcontractors?
 13 **A. I don't have a great deal of knowledge about the**
 14 **specific claims.**
 15 Q. What is your knowledge of the settlements?
 16 **A. I'm aware of the amounts of the settlements for**
 17 **certain of the contractors. I'm not intimately**
 18 **aware of the nature of the settlements.**
 19 Q. Were you involved in the negotiations of those
 20 settlements?
 21 **A. I was not.**
 22 Q. Did you learn about those settlements in
 23 preparation for your deposition here, or in the
 24 bankruptcy proceeding, or as part of something
 25 else?

Page 7

1 **A. Part of something else.**
 2 Q. When do you think you learned about that?
 3 **A. First learned of the nature of the settlements**
 4 **over a year ago probably. I don't recall specific**
 5 **dates.**
 6 Q. In what context?
 7 **A. My role as an advisor to the Detroit Water and**
 8 **Sewerage Department deals with events that impact**
 9 **the financial planning for the department. I**
 10 **became aware that there were to be receipts of**
 11 **funds as a result of the settlements. That's how**
 12 **I became aware of it.**
 13 Q. We agreed before I asked you my first question
 14 that you would produce an updated CV for yourself
 15 in lieu of asking about all your technical
 16 expertise. So forgive me if I go backwards and I
 17 ask, then, about some of your roles for DWSD.
 18 Your role as an advisor to the DWSD,
 19 how long have you held that position?
 20 **A. I have been engaged as a consultant to DWSD either**
 21 **through my firm or through the firm I used to be**
 22 **an officer with on a fairly regular basis since**
 23 **1986.**
 24 Q. Are you an advisor in this capacity for any other
 25 municipalities?

Page 8

1 **A. Yes.**
 2 Q. Which ones?
 3 **A. Long list. My current principal clients include**
 4 **DWSD, City of Kalamazoo, Michigan, water -- or**
 5 **public utilities, City of Lee Summit, Missouri,**
 6 **public utilities, the Village of Bedford Park,**
 7 **Illinois. The CV will have a number of other**
 8 **listings that there just isn't any current work**
 9 **going on that comes to mind.**
 10 Q. Okay. Have you been a witness for the City of
 11 Detroit with respect to any claims it's filed or
 12 that have been filed against it in the last five
 13 or so years?
 14 **A. No.**
 15 **MS. HATHAWAY:** I assume he testified as
 16 a witness. I mean, he may not even know if he was
 17 put on a witness list, for example.
 18 **BY MS. BADALAMENTI:**
 19 Q. Testified or prepared a report?
 20 **A. No.**
 21 Q. Who is it or what is the title of the person that
 22 you interact with at the DWSD?
 23 **MS. HATHAWAY:** Currently?
 24 **BY MS. BADALAMENTI:**
 25 Q. Currently.

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1 **A. The project manager of the engagement that I have**
 2 **with DWSD is the chief financial officer,**
 3 **Nicolette Bateson. I would not say that that**
 4 **limits my interaction with people at DWSD.**
 5 Q. Right. Your role as an advisor to the DWSD, is
 6 that pursuant to contract?
 7 **A. It is.**
 8 Q. What are you paid?
 9 **A. The current arrangement between my firm and DWSD**
 10 **has an annual fee of \$750,000.**
 11 Q. Is there a provision -- is there a cap on the
 12 amount of time that that covers?
 13 **A. Not contractually, no.**
 14 Q. Have you ever been paid in a one-year time frame
 15 in excess of 750,000?
 16 **A. My firm --**
 17 Q. That's what I mean.
 18 **A. Not for the current contract. There are other**
 19 **services that occasionally are contracted under**
 20 **different arrangements that may have resulted in a**
 21 **slightly higher annual fee.**
 22 Q. In 2004 what were you doing for DWSD?
 23 **A. I'd ask you to be a little more precise. 2004 was**
 24 **a year of transition for my profession.**
 25 Q. Were you involved -- let me put it this way: I

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1 have a number of look-back reports that you
 2 prepared for the City of Detroit. What years did
 3 you do such reports?
 4 **A. Either through my former employer or through my**
 5 **firm, I have been involved in preparing such**
 6 **look-back reports for all years inclusive from**
 7 **1985 through 2012. Those would be fiscal years by**
 8 **the DWSD definition.**
 9 Q. And those reports are not something that is still
 10 being prepared; is that correct?
 11 **A. That is correct.**
 12 Q. Is there a new process that's used --
 13 **A. There is.**
 14 Q. -- annual review. What is that process?
 15 **A. In a very simplified manner, the department and**
 16 **its contractual customers for the sewage disposal**
 17 **system have arrived at a new way of doing things,**
 18 **a rate simplification initiative that was adopted**
 19 **by the Board of Water Commissioners last December**
 20 **that negates the need for these annual look-backs.**
 21 Q. Did that impact your contractual rate with DWSD?
 22 **A. No.**
 23 Q. When you told me that 2004 was a year of
 24 transition, did you say for your profession?
 25 **A. For my firm, yes.**

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1 Q. How so?
 2 **A. In April of 2004 I left employment of Black &**
 3 **Veatch where I was a senior vice president, and**
 4 **started an independent consulting practice, The**
 5 **Foster Group.**
 6 Q. Did DWSD go with you when you made the transition
 7 or was there a time period where they stayed with
 8 your former firm?
 9 **A. The contract with Black & Veatch was extended for**
 10 **a period, and then was assigned to my firm.**
 11 Q. So what was that -- was it a period of weeks or
 12 months?
 13 **A. I don't recall specifically.**
 14 Q. Was the assignment in 2004?
 15 **A. Yes, it was.**
 16 Q. In your capacity as an advisor, are you made
 17 aware of contracts that are being entered into or
 18 projects that are ongoing for DWSD?
 19 **A. In general.**
 20 Q. Tell me what details would you find out about as
 21 a contract is being entered into, if any.
 22 **MS. HATHAWAY: Objection, overbroad.**
 23 **BY MS. BADALAMENTI:**
 24 Q. You can answer.
 25 **A. I know.**

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1 **One of my roles is to review and advise**
 2 **on financing of capital programs. To the extent**
 3 **that there is a major contract as part of the**
 4 **overall -- the department's overall capital**
 5 **program, understanding how the cash flow -- the**
 6 **projected cash flow of that specific contract**
 7 **would impact the financing requirements of the**
 8 **department would be something that I would**
 9 **research, be made aware of, utilize in preparing**
 10 **advice.**
 11 Q. Are you familiar with DWSD Contract 1368
 12 involving Inland Waters?
 13 **A. I'm aware that that was the contract with Inland**
 14 **Waters, yes.**
 15 Q. Were you made aware of that contract at the time
 16 it was awarded?
 17 **A. No, I was not.**
 18 Q. Were you aware of any of the amendments to that
 19 contract at the time they were awarded?
 20 **A. No, I was not.**
 21 Q. When did you first become aware of CS-1368?
 22 **A. Specifying that I don't know I was aware of**
 23 **CS-1368 as being the vehicle, I was made aware**
 24 **that when the Interceptor collapse at 15 Mile and**
 25 **Hayes or thereabouts, that that was -- that Inland**

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1 was being asked to head up the repair efforts.
 2 Q. Did you find that out after work had begun or
 3 after work was completed? When did you learn
 4 about it?
 5 **A. After it had begun.**
 6 Q. You learned that Inland was heading up the
 7 repairs. Did you learn there was any amendments
 8 to the contracts related to those repairs?
 9 **A. No.**
 10 Q. In the course of doing any look-back report, did
 11 you become more familiar with the terms of 1368
 12 or Inland's work at the sinkhole?
 13 **A. Not with contract terms, no.**
 14 Q. You never saw 1368 or the amendments?
 15 **A. I did not.**
 16 Q. Is that standard, you would never really receive
 17 the City of Detroit contract with a contractor?
 18 **A. As a general rule, I'm less interested in the**
 19 **contract and the specifics of the contract than in**
 20 **the overall cost of the project.**
 21 Q. So with respect to -- give me a general scenario.
 22 Not talking about CS-1368 or any particular
 23 project, but you're consulted because there is a
 24 major undertaking by the DWSD being contemplated
 25 or being performed already, and you're consulted

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1 because it's going to impact the, you know,
 2 capital of DWSD. What types of things are you
 3 asked to advise on?
 4 **A. For instance, the department generally produces a**
 5 **five-year capital agenda. One of the tasks in my**
 6 **agreement with them -- my arrangement with the**
 7 **department is I help design strategic financing**
 8 **plans to fund that capital program at large, made**
 9 **up of a number of different projects and**
 10 **contracts, when it's appropriate to fund projects**
 11 **with revenues as opposed to seeking revenue bonds,**
 12 **debt financing capital, things along those lines,**
 13 **that's one scope item that they rely on advice**
 14 **from my firm.**
 15 Q. Do you ever advise on the reasonableness or
 16 unreasonableness of charges on a construction
 17 project?
 18 **A. I do not.**
 19 Q. Do you ever advise on reasonableness or
 20 unreasonableness of certain invoices in
 21 connection with a construction project?
 22 **A. I do not.**
 23 Q. That being said, you did no such review of any of
 24 the invoices or submissions by the contractors
 25 with respect to the sinkhole repair; is that

Page 15

1 fair?
 2 **A. I'm sorry, can you repeat.**
 3 Q. You have never reviewed any of the invoices,
 4 then, that were submitted in connection with
 5 1368?
 6 **A. Never have.**
 7 Q. At some point, though, do you get involved in the
 8 discussions that are ongoing about Macomb
 9 County's purchase of the Macomb Interceptor
 10 systems. Are you familiar with that?
 11 **A. Yes.**
 12 Q. Do you know when you were first made aware that
 13 those negotiations were taking place?
 14 **A. Not specifically.**
 15 Q. Do you know if they occurred over, you know, a
 16 one-year time period? A five-year time period?
 17 **A. My first recollection -- well, I don't know when**
 18 **they initiated. I know that my involvement in**
 19 **conversations with the transfer of the MID and the**
 20 **OMID was lengthy, culminated in the final**
 21 **agreements and the transfer. It would not**
 22 **surprise me if that process spanned four years.**
 23 Q. Do you remember some of the reasons why it took
 24 so long to negotiate the terms of that, or was it
 25 technical disputes, debt adjustment disputes?

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1 What were the nature of the disputes?
 2 **A. I don't know that I would attempt to characterize**
 3 **them.**
 4 Q. What things were you involved in trying to
 5 resolve or advise DWSD on?
 6 **A. An understanding of how to research the financial**
 7 **records of DWSD in order to arrive at the**
 8 **calculated provisions of the original agreement**
 9 **between Macomb and DWSD.**
 10 Q. The purchase price?
 11 **A. Yes.**
 12 Q. What went into that -- well, let me ask you this:
 13 Did you actually go through those financial
 14 records to arrive at that calculated purchase
 15 price or did you advice DWSD on how to do so?
 16 **A. Both.**
 17 Q. Who at DWSD were you working with?
 18 **A. A number of people.**
 19 Q. Do you remember their names?
 20 **A. We relied on information provided by the**
 21 **engineering division, which was headed by**
 22 **Mr. Shukla at the time, I believe. We relied on**
 23 **information provided by the accounting division --**
 24 **various people heading up that division during**
 25 **this period. We relied on information provided**

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1 by -- in our own records, having done financial
 2 analysis for the department. We relied on
 3 information provided by Macomb County, and we
 4 relied on information provided by other advisors
 5 to DWSD who were reviewing the Macomb Interceptor
 6 system. Probably others, but those are the
 7 principal data sources of our initial analysis.
 8 Q. Would those other advisors be NTH Consultants?
 9 A. Yes.
 10 Q. Anybody else?
 11 A. Not that comes to mind, no.
 12 Q. And in the -- you relied on that information.
 13 Did you rely on documents or did you rely on
 14 information from these departments? In other
 15 words, did you speak with people and ask them
 16 about various things or did you just get
 17 documents?
 18 A. Both.
 19 Q. Who from engineering would be your contract?
 20 A. Mr. Shukla.
 21 Q. What do you remember discussing with Mr. Shukla?
 22 A. Asked Mr. Shukla for -- back up -- made an inquiry
 23 of the department as to what level of investment
 24 did it have in the facilities that were being
 25 considered for transfer.

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1 Q. And what did Mr. Shukla tell you?
 2 A. Mr. Shukla provided a document -- I can see it. I
 3 don't recall specifically -- a document and a map
 4 that had the engineering database -- engineering
 5 division of DWSD, their database of all the
 6 contracts that were used to construct that --
 7 those facilities, and what their records had as
 8 the contract price for those facilities.
 9 Q. Did Mr. Shukla provide you the technical
 10 information regarding the assets or did he just
 11 provide you the contract documents?
 12 A. Define technical information for me as you see it.
 13 Q. The location of certain assets that would be sold
 14 or acquired.
 15 A. Yes. There was a map and identified -- labeled
 16 map with the various contracts and assets.
 17 Q. So there would be -- you can picture it so, what
 18 you're picturing is a map that defined the system
 19 that was going to be sold and there were, I
 20 imagine, notations to parts of the system where a
 21 particular contract would be related to a
 22 project -- a construction project that would have
 23 been undertaken?
 24 A. Exactly right.
 25 Q. About how many contracts would you say were

Page 19

1 delineated on that map? And you can estimate it.
 2 I don't expect you to have an exact number.
 3 A. 20, 25.
 4 Q. And the value of those contracts, then, would
 5 have gone into your analysis; is that true?
 6 MS. HATHAWAY: Are you talking about
 7 contracts or the asset value?
 8 MS. BADALAMENTI: I'm talking about the
 9 contracts.
 10 THE WITNESS: The contracts -- the
 11 contracts -- the reported contract value by
 12 engineering was one of the aspects that went into
 13 our analysis, yes.
 14 BY MS. BADALAMENTI:
 15 Q. You just said "the reported contract value," so
 16 did you actually get the documents? Did you get
 17 the contract or --
 18 A. No.
 19 Q. You just saw it identified on a map by contract
 20 number, I assume?
 21 A. Yes.
 22 Q. And there was an amount associated with that
 23 contract?
 24 A. Yes.
 25 Q. Was there a general description of what was

Page 20

1 undertaken pursuant to a particular contract?
 2 A. Very general.
 3 Q. Okay. Do you remember anything about the
 4 notation for the 15 Mile and Hayes Contract 1368?
 5 A. At the time we started this, I don't believe there
 6 was anything on that map for 1368.
 7 Q. At what point in time did the map get updated to
 8 include --
 9 A. I don't believe the map ever got included to
 10 include 1368. The cost associated with the
 11 repairs were not something that came with the
 12 original engineering analysis, because by
 13 recollection, it was an ongoing project when we
 14 started the conversation and the analysis.
 15 Q. Okay. So the reported contract values that are
 16 on this map are used for what purpose in your
 17 analysis of calculating price?
 18 A. To establish the investment that DWSD had made in
 19 all of the assets irrespective of -- in effect,
 20 prior to the collapse at 15 and Hayes and all
 21 appurtenances and whatnot.
 22 Q. Are you -- are you provided with any description
 23 of the actual structures by engineering?
 24 A. To the extent that the actual description is
 25 limited to an interceptor, a pumping station, a

Page 21

1 meter pit, a meter, that's the extent -- and size,
 2 that's the extent of what would be in our records.
 3 Q. Did that information go into your analysis as
 4 well?
 5 A. Just the general labeling of the assets. Yes,
 6 general description labeling of the assets.
 7 Q. Separate and apart from that map, we talked a
 8 little bit about information that came later,
 9 including the information about 1368. So without
 10 being specific, what sorts of information came to
 11 you aside from that map that went into your
 12 calculation?
 13 A. So we also queried, as I mentioned, the accounting
 14 division to see what their records showed as being
 15 investments in those assets.
 16 Q. And what information did you get from accounting?
 17 A. The book value of the same assets.
 18 Q. Did that book value account for those
 19 investments --
 20 A. Yes.
 21 Q. -- already?
 22 So did you perform, then, an analysis
 23 independent of that to come up with a value?
 24 A. We used both of those sources of data and relied
 25 on those sources of data to make an initial

Page 22

1 determination of what DWSD's investment in those
 2 assets were.
 3 Q. And what was your determination?
 4 A. It's as represented in some of the exhibits. I
 5 don't have it in front of me.
 6 Q. Okay. I'll pull them out shortly here. Did any
 7 other information other than what engineering
 8 gave you and accounting gave you go into that
 9 analysis?
 10 A. Yes. Towards the end of the analysis, as NTH was
 11 doing some inspection work, which effectively was
 12 capital investment into the system, we relied on
 13 information from NTH as to what those amounts
 14 were.
 15 Q. Anything else that went into the analysis?
 16 A. With respect to determining what the DWSD
 17 investment in those facilities was?
 18 Q. Right.
 19 A. Not that I recall.
 20 Q. To determine or propose -- back up.
 21 To assist DWSD in negotiating a
 22 purchase price with Macomb, do you do anything
 23 else besides determine the investment?
 24 A. Yes.
 25 Q. What else do you do?

Page 23

1 MS. HATHAWAY: Did he do or do you do?
 2 You want actually what he did in this particular
 3 instance, right?
 4 MS. BADALAMENTI: Right.
 5 THE WITNESS: We were made aware of the
 6 general construct of the intended purchase price,
 7 and probably consulted -- no, definitely consulted
 8 on the applicability of that general construct,
 9 and then were requested to complete an analysis
 10 of -- additional analysis in order to kind of
 11 determine the purchase price.
 12 BY MS. BADALAMENTI:
 13 Q. So when you said the construct of the purchase
 14 price, what do you mean?
 15 A. Our understanding that the original arrangement
 16 for transfer of the asset was to set the purchase
 17 price at a term -- a defined term in the agreement
 18 of system debt. System debt was defined in the
 19 agreement as the investment that DWSD has made in
 20 the facilities being transferred less whatever
 21 amounts that Macomb had paid in sewer rates that
 22 were associated with principal -- not interest,
 23 but principal on debt service that was allocated
 24 to those assets. That was the general construct
 25 of the deal for the purchase price.

Page 24

1 Q. At the time that you are initially consulted
 2 with, has there already been a determination that
 3 there are certain Macomb-only projects that will
 4 be -- that were assessed in the rates a certain
 5 way and that will or will not be passed along
 6 with the purchase price a certain way?
 7 MS. HATHAWAY: Object to the form of
 8 the question. It's vague.
 9 THE WITNESS: I don't understand your
 10 question. I'm sorry.
 11 BY MS. BADALAMENTI:
 12 Q. Was there -- I guess let me ask it this way: You
 13 were involved in the rate calculations at the
 14 time for DWSD; is that the true?
 15 A. True.
 16 MS. HATHAWAY: When you say "at the
 17 time," what time are we talking about now?
 18 BY MS. BADALAMENTI:
 19 Q. The four-year time period that -- I guess the
 20 beginning of the 4-year time period that you're
 21 calculating the system debt.
 22 During that time period you were
 23 involved in determining the rates, correct?
 24 A. That's correct.
 25 Q. And you would determine the rates for Macomb?

Page 25

1 **A. The wholesale rates -- wholesale sewer rates**
 2 **charged by DWSD to Macomb, yes.**
 3 Q. What would go into that analysis?
 4 **A. Well, there's a rather rigorous analysis for the**
 5 **DWSD sewer rates that establishes wholesale**
 6 **charges -- cost allocations and wholesale charges**
 7 **for all the contract customers of DWSD, including**
 8 **Macomb. Macomb and to a lesser extent the Clinton**
 9 **Oakland District of Oakland County were the only**
 10 **wholesale customers that there were facilities**
 11 **that DWSD owned, built -- financed, built, owned**
 12 **and operated specifically for the benefit of one**
 13 **contract customer. All the other county contract**
 14 **customers had built their own interceptor systems.**
 15 **The original arrangement with Detroit and Macomb**
 16 **and the Clinton Oakland District of Oakland County**
 17 **was that Detroit would finance, construct, own and**
 18 **operate what's now the Macomb Interceptor**
 19 **District, and so in the rate design, there needed**
 20 **to be a direct assignment of the costs associated**
 21 **with that -- those facilities to Macomb. That was**
 22 **part of the rate design at the time.**
 23 Q. So the -- when you say that you're going to
 24 determine the investment made by DWSD less the
 25 amounts Macomb paid by the rate, you would know

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1 what Macomb was paying towards what debt; would
 2 that be a fair assessment? You would already
 3 have that information?
 4 **A. That was part of the annual evaluation of rates,**
 5 **yes.**
 6 Q. So the rest of what you told me is that there
 7 would be some debt service that was allocated to
 8 Macomb. That would be that debt service that was
 9 allocated to Macomb previously? In other words,
 10 it didn't change for purposes of this analysis?
 11 It was what Macomb was already allocated?
 12 **MR. RUEGGER:** I'll object to the form
 13 of that.
 14 **MS. HATHAWAY:** Me, too.
 15 **BY MS. BADALAMENTI:**
 16 Q. Let me ask it a different way. Your analysis of
 17 the investment made by the DWSD less the amounts
 18 Macomb paid by its rates didn't change the rate
 19 or the allocation that Macomb was already paying;
 20 it just calculated what Macomb had paid to date?
 21 Is that a better way of asking it?
 22 **A. I'm struggling with the way that you characterize**
 23 **it. I don't think I can confirm exactly what you**
 24 **said the way that you said it.**
 25 Q. Well, tell me how did you then determine at the

Page 27

1 time that you were going to set the system debt
 2 what Macomb had paid via its rates towards
 3 principal, not interest, on the debt service that
 4 was allocated.
 5 **A. We reviewed the construct of the rates that had**
 6 **been charged going all the way back to the**
 7 **mid-80s, and did a retrospective analysis of how**
 8 **much of that rate was associated with principal on**
 9 **each one of those -- of the bonds that were**
 10 **allocated to the Macomb-specific assets.**
 11 Q. Okay. So to answer that question, did you need
 12 any additional information -- information that
 13 you did not already have or get from engineering
 14 or accounting to come up with that analysis?
 15 **A. The only additional information we needed was**
 16 **rate -- records of rate analyses through the**
 17 **years, much of which was already in our**
 18 **possession.**
 19 Q. Okay. Did you have any discussions with the
 20 contract department of the City of Detroit for
 21 any of the information that you need to make this
 22 calculation of system debt? Contracts and grants
 23 department, to be more specific?
 24 **A. I don't believe so. I don't recall any specific**
 25 **conversations with contracts and grants.**

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1 Q. Did you have any conversations with the director
 2 of the DWSD?
 3 **MS. HATHAWAY:** At any time about
 4 anything?
 5 **BY MS. BADALAMENTI:**
 6 Q. About calculating the system debt. Did you talk
 7 to whoever was the director at the relevant time
 8 that you're calculating the system debt?
 9 **A. Yes.**
 10 Q. Which director or directors would have been in
 11 place?
 12 **A. Victor Mercado and Pam Turner.**
 13 Q. What would you have spoken to Mr. Mercado about
 14 with regard to calculating the system debt?
 15 **A. Initially just understanding the principles of the**
 16 **constructs of the deal, making sure that this**
 17 **definition of system debt was what the parties had**
 18 **intended when they made the deal, providing**
 19 **updates on -- as requested on the course of the**
 20 **analysis as we went through the various aspects of**
 21 **it.**
 22 Q. Were you ever asked or did you ever perform any
 23 analysis of the award of any DWSD contracts or
 24 any of the projects that were identified to you
 25 as part of the system debt analysis?

Page 29

1 A. No.

2 Q. Did you ever have any discussions about those

3 contracts with Mr. Mercado?

4 A. No.

5 Q. Did you have occasion to speak to Mr. Kilpatrick

6 at the time you were calculating system debt?

7 A. I'd ask you to an little more specific.

8 Q. During the four-year time frame that you were

9 calculating the system debt, did you have any

10 conversation with Mr. Kilpatrick about the DWSD

11 contracts?

12 A. No.

13 Q. Or projects?

14 A. No.

15 Q. Or the calculation or the information that was

16 given to you to calculate the system debt?

17 A. No.

18 Q. Okay. There was, as I understand it, preliminary

19 analysis that changed over time with respect to

20 that system debt calculation; is that a fair

21 statement?

22 A. That's a fair statement.

23 Q. What information were you given along the way

24 that resulted in those changes? Was it with

25 respect to ongoing projects or something else?

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1 A. With respect to the system debt portion of the

2 calculation of the purchase price, it was the

3 information that evolved through the years. One,

4 there was ongoing projects; two, there were

5 investigations into originally reported figures

6 and concerns as to whether or not those originally

7 reported figured either needed to be split out

8 into pieces that didn't apply to the Macomb

9 Interceptor or that include other contracts that

10 portions should be allocated; so it was basically

11 due diligence on both the original cost investment

12 in the system and then also in going back on some

13 of the rate calculations and recognizing some

14 unique circumstances to reallocate the principal

15 piece of it.

16 Q. Were you involved with the changes that were made

17 because there had been improvements that were

18 being charged as part of the rates that had not

19 actually been constructed and vice versa?

20 A. Yes.

21 Q. Did your analysis change as a result of that

22 information or was it going forward that rates

23 that would change as a result of that analysis?

24 A. That analysis emerged from our due diligence that

25 I described, and in effect became the first of a

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1 series of adjustments to the definition of system

2 debt and purchase price.

3 Q. Who brought to everyone's attention the fact that

4 there were these -- I think they're referred to

5 as phantom improvements in some of the documents.

6 A. I don't know that I would attribute credit per se

7 to one party. There were ongoing diligence

8 conversations between representatives of DWSD,

9 myself included, and representatives of Macomb

10 County. Mr. Craig Hupp probably coined the

11 phrase, who's an advisor to Macomb County --

12 probably coined the phase "phantom projects."

13 Q. Your second sort of category was concerns

14 regarding originally reported figures. Is this

15 the allocation of something as Macomb-only or

16 not-Macomb-only project? Is that what you're

17 referring to, or is it something different?

18 A. That's -- the way that you characterize it is

19 generally accurate. For instance -- well, for

20 example, there may have been a contract that had a

21 task -- one task which was specific to the Macomb

22 Interceptor system and another task was something

23 else, and so part of our diligence, we had to make

24 that separate on the allocation.

25 Q. With regard to the first category, the ongoing

Page 32

1 contracts, do you remember how many there were?

2 A. I would say less than five, but that's based on

3 memory.

4 Q. And to the best of your recall, 1368 was one of

5 these?

6 A. Yes.

7 Q. Was it 1368 or the 1368 sinkhole repair that was

8 ongoing?

9 A. To be honest, it was the cost of the sinkhole

10 repairs, our initial -- I don't know that -- our

11 inquiries as to the cost of the sinkhole repairs

12 did not start with 1368. It started with what are

13 the cost of sinkhole repairs, and we were getting

14 updates from accounting on what the total cost

15 was.

16 Q. So, in other words, is it your understanding the

17 costs hadn't been calculated or the work was

18 ongoing?

19 A. The latter.

20 Q. That the work was ongoing?

21 A. Yes.

22 Q. By the time that the acquisition agreement is

23 finalized, about how long before that are you

24 finally given, if ever, the indication that the

25 Contract 1368 was completed?

1 **A. The final number on 1368 sinkhole repairs was**
2 **established a fair amount of time -- I don't**
3 **know -- a year before the final agreement was**
4 **reached. A year at least, I would say. Any other**
5 **ongoing contracts did not include the sinkhole**
6 **repair beyond that time.**
7 Q. The totals you were given for that sinkhole
8 repair are something that's specifically
9 referenced in the schedules as opposed to
10 something that went into your calculation of
11 system debt; is that a fair statement?
12 **A. I don't understand the distinction you're drawing.**
13 Q. You told me that you calculated system debt by a
14 specific mathematical method, right?
15 **A. Okay.**
16 Q. And my question is: Did the analysis of charges
17 on 1368 go into that same analysis?
18 **A. The total charges on the sinkhole repair defined**
19 **by 1368 was an input to the calculation.**
20 Q. Okay. Do you remember who provided you with the
21 information -- what that final number was?
22 **A. It would have been the DWSD accounting division.**
23 Q. And what did they give you when they give you a
24 total like that? Is it a sheet of paper? A
25 final pay estimate? What is it that you would

1 **A. We wanted to make sure we understood the**
2 **capitalized interest piece and what went into the**
3 **internal cost piece.**
4 Q. Do you remember what the internal cost was?
5 **A. I can picture a schedule, but my recollection is**
6 **that the total book value for the repairs was in**
7 **the low \$60 million range, and that of that --**
8 **roughly \$3 million was internal cost and roughly**
9 **\$4 million was capitalized interest, which left a**
10 **net of \$56 million or so as being the contractual**
11 **amounts for that project. That's just from**
12 **memory. I haven't looked at it for a while.**
13 Q. That's pretty good. You're pretty close. The
14 documents -- the actual acquisition agreement
15 references a \$54 million number. Do you know how
16 it went from 56 to 54?
17 **A. Not without looking back at things, no.**
18 Q. Okay. What is it that you would need to look at
19 so I don't put a bunch of things in front of you
20 that you don't need to see, because I know you
21 have a plane to catch.
22 **A. There are Exhibit 3.8 and I'm sure that there are**
23 **somewhere in your records additional calculations**
24 **that support that.**
25 Q. Were you ever questioned as part of a criminal

1 receive?
2 **A. The records I got -- the records we received from**
3 **accounting would generally indicate total amount**
4 **on the fixed asset books separated by contractual**
5 **services costs or construction contract cost, and**
6 **then other indirect costs such as internal labor**
7 **cost, allocated overheads, and capital interest --**
8 **capitalized interest, those type of things. There**
9 **would be four or five fields leading up to a total**
10 **investment figure.**
11 Q. Are those documents you received in connection
12 with this calculation something that you still
13 have?
14 **A. I don't know.**
15 Q. In any event, was there anything unusual or
16 different about the calculation that you were
17 provided on 1368 different than any other time
18 you had gotten information from DWSD?
19 **A. No.**
20 Q. Did you question anybody about the information or
21 was it just input into your calculation?
22 **A. It was input into the calculation. We did make**
23 **inquiries to fully understand the nature of what**
24 **was being reported.**
25 Q. What types of inquiries?

1 investigation in connection with the work you
2 performed for DWSD?
3 **A. Can you repeat the question.**
4 Q. Were you ever questioned by federal investigators
5 in connection with your work?
6 **A. I was not.**
7 **MS. BADALAMENTI:** Let's mark this as 1.
8 **MARKED FOR IDENTIFICATION:**
9 DEPOSITION EXHIBIT 1
10 5:18 p.m.
11 **BY MS. BADALAMENTI:**
12 Q. I've put in front of you -- and we'll just go
13 through them as quickly as possible, but I put in
14 front of you what appears to be a report dated
15 February 6, 2007 from The Foster Group. Do you
16 recognize the document?
17 **A. Yes.**
18 Q. What was this document prepared for?
19 **A. This document was related to negotiations on the**
20 **transfer of the Macomb Interceptor District to**
21 **Macomb County that I would characterize were part**
22 **of negotiations for adjustments to the system debt**
23 **as defined by the original construct of the deal.**
24 Q. So I see in here as Exhibit 3 15 Mile and Hayes
25 Repairs. I see that \$56,861,900 as a total. Is

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1 that the total you were provided?
 2 **A. That is the -- this is 2007. My belief is that**
 3 **that is the net contractual cost of the repairs**
 4 **which would not include the capitalized interest**
 5 **nor the internal cost that we mentioned a few**
 6 **minutes ago, yes.**
 7 Q. Okay. So -- and the footer on the bottom is
 8 dated 1/29 of 2007. So by that time you would
 9 have had the total project cost?
 10 **A. I believe so. I would not want to be definitive**
 11 **about that without looking through records, but I**
 12 **believe so.**
 13 Q. Okay. So then the negotiations surrounding
 14 Macomb's purchase would have begun prior to -- at
 15 least prior to this February 6, 2007 letter?
 16 **A. Correct.**
 17 Q. Do you know how much prior to this letter?
 18 **A. I do not. I could speculate, but I could not be**
 19 **precise.**
 20 Q. What would you approximate? If you can
 21 approximate --
 22 **A. 2005 at the earliest, likely 2006.**
 23 Q. Were you involved at all in the litigation case
 24 that was ongoing before Judge Feikens with
 25 respect to some of these issues?

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1 **A. Yes.**
 2 Q. Did you ever appear in court?
 3 **A. Yes.**
 4 Q. Did you give testimony in that case?
 5 **A. I did not give sworn testimony in that case.**
 6 Q. What was your purpose for appearing in court?
 7 **A. Less formal status conferences, asked questions of**
 8 **progress on negotiations that were being overseen**
 9 **by the judge on various matters, participated in**
 10 **work groups that the judge effectively**
 11 **established.**
 12 Q. Did you ever have occasion to discuss the ongoing
 13 projects like 1368 with anyone from Macomb,
 14 including Greg Hupp?
 15 **A. Yes.**
 16 Q. What did those discussions entail?
 17 **A. Mr. Hupp was the lead negotiator and analyst on**
 18 **behalf of Macomb County into determining system**
 19 **debt and the purchase price.**
 20 Q. And so you would have conversations with him that
 21 were in relation to calculating the system debt
 22 or something else?
 23 **A. Yes, to the system debt, and yes to other things**
 24 **as well.**
 25 Q. Were you ever questioned by anybody from Macomb,

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1 including Mr. Hupp, on the arm's-length nature of
 2 any of the underlying contracts or transactions?
 3 **A. I don't understand the question. I'm sorry.**
 4 Q. Were you ever asked about the legitimacy of any
 5 of the projects undertaken by DWSD?
 6 **A. No.**
 7 Q. Did you overhear Macomb and anyone from Detroit
 8 have a conversation about the legitimacy or
 9 arm's-length nature of those contracts?
 10 **A. I don't recall ever remember hearing anything of**
 11 **the sort.**
 12 Q. Okay. I was produced a stack of documents that I
 13 was pointed to for purposes of this deposition
 14 last night, and I'm going to walk through some of
 15 those documents.
 16 **MS. HATHAWAY:** Can we go through some
 17 of the documents. Some of the ones that he gave
 18 us, I wasn't sure whether or not they were
 19 privileged. So I think you have them all, but
 20 just on the off chance you don't, we should
 21 probably go through the others later. We don't
 22 have to do it now.
 23 **MS. BADALAMENTI:** If there are
 24 documents that --
 25 **MS. HATHAWAY:** I don't know if you have

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1 them or not is the problem because this was done
 2 at the same time as things were being Bated, so --
 3 **MS. BADALAMENTI:** I'd rather have them
 4 now while he's here.
 5 **MS. HATHAWAY:** I've just handed you a
 6 stack. They are not Bated. Some of them you may
 7 have. Some of them I didn't have. Some of them
 8 we weren't sure whether or not they were
 9 privileged because the way they were addressed.
 10 **BY MS. BADALAMENTI:**
 11 Q. Mr. Foster, have you prepared a declaration in
 12 connection with these proceedings?
 13 **A. I believe so.**
 14 **MS. HATHAWAY:** Let me take -- I am
 15 preparing a declaration. I haven't asked him to
 16 sign anything.
 17 **THE WITNESS:** I'm sorry. I may have
 18 misspoke. Please define these proceedings.
 19 **BY MS. BADALAMENTI:**
 20 Q. Have you been provided with any document that
 21 constitutes a draft declaration by you, whether
 22 you signed it or not, in connection with the
 23 claim by Macomb or the bankruptcy proceeding?
 24 **A. No. I misspoke earlier. I thought you were**
 25 **referring to the negotiations on the purchase**

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1 price.
 2 Q. Okay. You did in that context provide some sort
 3 of declaration or affidavit?
 4 A. I did.
 5 Q. Do you remember who asked you to do that?
 6 A. Dykema Gossett, either Marilyn Peters or Mark
 7 Jacobs.
 8 **MARKED FOR IDENTIFICATION:**
 9 DEPOSITION EXHIBITS 2-5
 10 5:27 p.m.
 11 **BY MS. BADALAMENTI:**
 12 Q. I've marked a document that was just handed to me
 13 as Exhibit 2. I'm going to probably need to walk
 14 through it here with you. Do you recognize this
 15 document?
 16 **MS. HATHAWAY:** There's a whole bunch of
 17 things in here, so -- it isn't just one document.
 18 **MS. BADALAMENTI:** I mean, it's stapled.
 19 The court reporter has marked it. Do you want me
 20 to identify it a different way?
 21 **MS. HATHAWAY:** They're documents I
 22 produced to you now. It is not a document.
 23 **THE WITNESS:** I recognize the
 24 compilation that is stapled here, yes.
 25 **BY MS. BADALAMENTI:**

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1 Q. Okay. The document is a memorandum with a number
 2 of schedules and tables attached to it. Would
 3 you agree with that characterization?
 4 **MS. HATHAWAY:** I'm just going to object
 5 because --
 6 **MS. BADALAMENTI:** I don't need to argue
 7 with you. Object. Put it on the record. Let's
 8 go. We don't have a lot of time.
 9 **MS. HATHAWAY:** Objection. You've
 10 mischaracterized the statement what the document
 11 is. It is a multitude of documents, not one.
 12 **MS. BADALAMENTI:** Okay.
 13 **THE WITNESS:** Is there a question?
 14 **BY MS. BADALAMENTI:**
 15 Q. Yes. Do you agree with me that what you're
 16 looking at is a memorandum with a number of
 17 schedules and tables attached?
 18 A. Yes.
 19 Q. Have you ever seen the memorandum section, not
 20 the schedules and tables?
 21 A. Yes.
 22 Q. When do you believe you had a occasion to see the
 23 memorandum?
 24 A. It's dated July 27, 2009. My suspicion is that I
 25 had the opportunity to review it then or shortly

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1 thereafter.
 2 Q. Okay. Do you recall the tables and schedules
 3 that are attached to it having been attached to
 4 the memorandum when you received or reviewed it?
 5 A. I have seen these before.
 6 Q. Do you remember them being attached or part of
 7 what you received?
 8 **MS. HATHAWAY:** Which ones?
 9 **MS. BADALAMENTI:** All of them.
 10 **THE WITNESS:** The -- I cannot answer
 11 that as definitively because some of these tables
 12 that are attached are work product of Bodman LLP
 13 and so marked. Some of the tables that are
 14 attached are work product originally of my firm
 15 and so marked with handwritten notes on them that
 16 I suspect to be Mr. Hupp's as he prepared his
 17 commentary.
 18 **BY MS. BADALAMENTI:**
 19 Q. So that was going to lead me to my next question.
 20 When you say "work product" and "so marked," is
 21 the marking that you're referring to near the
 22 bottom of the page -- it has your logo and it
 23 says The Foster Group?
 24 A. Yes.
 25 Q. Okay. And similarly, where we see a Bodman LLP

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1 notation in the bottom right corner of the page,
 2 that would be an indication that Bodman prepared
 3 what we're looking at?
 4 A. Yes.
 5 Q. Do you know how you received this document?
 6 A. This document?
 7 Q. I'm sorry, the memorandum.
 8 A. The table -- I can answer with respect -- I am
 9 fairly confident that Mr. Hupp would have shared
 10 his tables with me via e-mail and sought my
 11 opinion on whether his calculations as he was
 12 putting them together for his diligence were
 13 accurate.
 14 Q. Okay. How about the memorandum? Do you know how
 15 you received that? The same way or some other
 16 way?
 17 A. I couldn't tell you.
 18 Q. Okay.
 19 A. I don't know. I do recall seeing it. Whether or
 20 not it was handed in a meeting, shared by
 21 e-mail --
 22 Q. The calculations that Craig Hupp and Bodman
 23 prepared and shared with you, did you agree with
 24 his analysis or not?
 25 A. I don't believe the answer to that question is as

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1 simple as you make it out to be.
 2 Q. I doubt that it is, actually. So let me ask you:
 3 Can you -- is there a general answer to what you
 4 disagree with? And then we can talk about some
 5 of the things maybe you didn't disagree with or
 6 vice versa.
 7 **A. Mr. Hupp is a very analytical and inquisitive**
 8 **gentleman in addition to being a lawyer. He took**
 9 **the principal role in performing diligence on**
 10 **behalf of Macomb County the original calculations**
 11 **that were made regarding system debt. As part of**
 12 **his diligence he brought to the table observations**
 13 **on different ways to look at certain of these**
 14 **items, some of which through the negotiation**
 15 **process we ultimately agreed with and made, if not**
 16 **absolute adjustments, adjustments in our**
 17 **calculations, others of which we convinced Mr.**
 18 **Hupp that the original calculations were the most**
 19 **appropriate way to reflect things.**
 20 Q. And that would be with respect to what we called
 21 phantom improvements? What else would be
 22 included? Or, I'm sorry, would that be part of
 23 what we talked about as phantom improvements?
 24 **A. The answer is yes, but the timing of this**
 25 **particular volley, if you will, and other**

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1 **conversations, I don't know that I could represent**
 2 **this memorandum as being definitive as to what led**
 3 **to that. There were constant conversations going**
 4 **on looking at some of this information through the**
 5 **negotiation process.**
 6 Q. Okay. I am looking at a page in that. The top
 7 of it reads "Table B Debt Reconciliation Table."
 8 Line item 10 has the 54,577,052 total contract
 9 cost per Foster 2009 as one of the items in the
 10 schedule. Do you see that there? It would be
 11 10-F?
 12 **A. I'm sorry, 10-F? I'm -- oh, the 54,500,000, I see**
 13 **that number, yes.**
 14 Q. And that column F is total contract cost per
 15 Foster 2009. Do you know what that is referring
 16 to?
 17 **MS. HATHAWAY:** Is that 9 or 8.
 18 **THE WITNESS:** It's 2009. So later on
 19 in this package, the first page after something
 20 handwritten tab 2, there is an exhibit entitled
 21 Table 1 - Investment Costs of DWSD OMI Assets.
 22 **BY MS. BADALAMENTI:**
 23 Q. I found tab 3 but I can't find tab 2: Okay.
 24 Table 1, okay.
 25 **A. Line 30, CS-1358 15/Hayes repairs, the 54 million**

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1 **number that Mr. Hupp refers to in this schedule is**
 2 **showing up under the Contract Cost column.**
 3 Q. Okay. So this is the 2009 -- looks like there's
 4 two pages. Would that be right, this page here
 5 that's Bates marked DET Claim No. 3683-267?
 6 **MS. HATHAWAY:** He's not looking at the
 7 Bates number copy.
 8 **THE WITNESS:** That's fine.
 9 **BY MS. BADALAMENTI:**
 10 Q. And another one that's marked 268. Do those two
 11 pages go together?
 12 **A. If you're talking about Table 1, page 1 of 2 and**
 13 **page 2 of 2, yes, they go together.**
 14 Q. Okay. And then in the next -- on that Table B,
 15 the next in column I, we see total asset costs
 16 per Foster of over 60 million. Does that come
 17 from a particular place within this package?
 18 **A. Same exhibit I pointed you to previously with**
 19 **total cost in the far right-hand column.**
 20 Q. Okay. Is this -- this is marked preliminary --
 21 your Table 1 investment cost schedule is marked
 22 preliminary. Did that 15 Mile and Hayes repair
 23 number change?
 24 **A. I don't recall.**
 25 Q. If it did, would we expect to see a different

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1 investment cost table like this?
 2 **A. Yes.**
 3 Q. Do you recall DWSD giving you a different number
 4 originally than what you ended up with?
 5 **A. I don't recall.**
 6 Q. The accounting department is what it would appear
 7 to be referring to?
 8 **A. I don't recall.**
 9 Q. Table 2-A, which is Bates stamped Detroit's page
 10 270, this is something that you prepared,
 11 correct?
 12 **A. I'm trying to catch up to you. I'm sorry.**
 13 **MR. SHADID:** I don't think he's looking
 14 at a Bates-stamped copy.
 15 **MS. HATHAWAY:** He's not.
 16 **MS. BADALAMENTI:** Actually you're -- so
 17 you're right. I'm looking at a different package.
 18 Do you have another package like that so I can
 19 stop losing him?
 20 **MS. HATHAWAY:** That's what I handed
 21 you.
 22 **MS. BADALAMENTI:** I marked it.
 23 **MS. HATHAWAY:** I have four copies.
 24 Sorry. Everybody gets a copy.
 25 **MS. BADALAMENTI:** Sorry about that.

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1 **MR. SHADID:** Parts of this have been
 2 previously produced to you.
 3 **MS. BADALAMENTI:** I agree.
 4 **MS. HATHAWAY:** That's why I kept saying
 5 this document, we're looking at something
 6 different. That's not all one thing.
 7 **BY MS. BADALAMENTI:**
 8 Q. Okay. So you are -- okay. Going back to Table
 9 1, the page 1 of 2 and 2 of 2 that we were
 10 talking about --
 11 **A. Right.**
 12 Q. -- there's handwriting on the document that was
 13 marked. Is that your handwriting?
 14 **A. It is not.**
 15 Q. Do you know whose handwriting it is?
 16 **A. I don't know. I would suspect that it's**
 17 **Mr. Hupp's since it's included as part of his**
 18 **commentary.**
 19 **MR. SHADID:** Can I add something? In
 20 the produced copy, that handwriting was redacted
 21 because we believed it was Mr. Jacobs', so if you
 22 don't see it on the Bates-labeled copy, that's
 23 why.
 24 **MS. BADALAMENTI:** And it's not
 25 Mr. Jacobs'?

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1 **MR. SHADID:** According to the
 2 witness -- we believed it was, as we were rushing
 3 to get you stuff yesterday, but --
 4 **MS. BADALAMENTI:** Based on Mr. Foster,
 5 do you --
 6 **MR. SHADID:** It may not be.
 7 **MS. BADALAMENTI:** Okay.
 8 **BY MS. BADALAMENTI:**
 9 Q. On page 2 of 2 there's the same handwriting
 10 again. That's not yours?
 11 **A. No, it's not.**
 12 Q. Do you remember receiving the documents with this
 13 handwriting?
 14 **A. No, I do not.**
 15 Q. Was this a package that you provided to counsel
 16 in this case?
 17 **A. These tables were provided to -- not -- no. These**
 18 **were not -- I don't recall providing these tables**
 19 **to counsel in this case, no.**
 20 Q. Do you recall providing this memorandum to
 21 counsel in this case?
 22 **A. No. Mr. Hupp's memorandum, no, I do not.**
 23 Q. You had indicated that there was also information
 24 that came from DWSD's other consultants, being
 25 NTH. What types of information did NTH provide

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1 to you?
 2 **A. I'll refer you back to the second page of Table 1.**
 3 Q. Okay.
 4 **A. The last three line items, 56,57, 58, the contract**
 5 **costs there, shown up in that column, I believe**
 6 **those amounts were provided by NTH, my suspicion**
 7 **is confirmed by whoever's note this is as noting**
 8 **NTH work, need clarification, some other note I**
 9 **can't read.**
 10 Q. Did NTH provide anything else with respect to the
 11 due diligence performed as part of the
 12 acquisition?
 13 **A. Anything beyond -- to my knowledge, NTH provided**
 14 **nothing other than estimated costs of their**
 15 **ongoing work on the OMI.**
 16 Q. The package of schedules that are attached here,
 17 how would those have been given by you to DWSD
 18 separate and apart from Mr. Hupp having attached
 19 them here? Do you recall how you provided or who
 20 you provided them to?
 21 **A. I do not recall.**
 22 Q. As I understand it, there were several meetings
 23 where you and Mr. Jacobs and Mr. Walters and Mr.
 24 Hupp all discussed these issues?
 25 **A. Yes.**

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1 Q. And the purchase price?
 2 **A. Yes.**
 3 Q. What sort of things did you provide other than
 4 these tables to Mr. Hupp?
 5 **MS. HATHAWAY:** Did he personally?
 6 **MS. BADALAMENTI:** Yeah.
 7 **THE WITNESS:** There would have been
 8 similar analytical work product.
 9 **BY MS. BADALAMENTI:**
 10 Q. Was -- did Mr. Hupp ask for anything in
 11 particular to be done or analyzed by you?
 12 **A. Through the negotiation process, the folks that**
 13 **were working on the negotiations, including Mr.**
 14 **Hupp, all asked for additional understanding,**
 15 **review of the calculations and the data that went**
 16 **into the calculations.**
 17 Q. Did you speak with anyone on behalf of Macomb
 18 other than Craig Hupp?
 19 **A. There were other parties that were involved from**
 20 **time to time. There were also parties from**
 21 **Oakland County that were involved from time to**
 22 **time.**
 23 Q. Other than anyone from Craig Hupp's office is
 24 what I probably should have said. Did you speak
 25 to anyone on the Macomb side of things?

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1 **A. My recollection is that Mr. Misterovich -- Bill**
 2 **Misterovich was occasionally involved in the**
 3 **conversations. Early on Mr. Ken Bonnin would have**
 4 **been involved in the conversations, although I**
 5 **think he retired very early on. Mr. Marrocco was**
 6 **in a couple meetings where the overall topic was**
 7 **being discussed. Beyond that, I don't recall**
 8 **anybody specifically from Macomb County that was**
 9 **involved in meetings that I attended.**
 10 Q. Would those meetings have been at the courthouse
 11 or somewhere else, or both?
 12 **A. The vast majority of those meetings would have**
 13 **been either in Mr. Hupp's office or DWSD.**
 14 Q. Okay.
 15 **A. Or Mr. Jacobs' office. Excuse me.**
 16 Q. And who attended those meetings on behalf of
 17 Detroit, or DWSD?
 18 **A. For the bulk of the negotiation discussions,**
 19 **Mr. Jacobs and I represented DWSD.**
 20 Q. Did Mr. Walters attend?
 21 **A. Mr. Walter would have been a regular but not**
 22 **always participant on behalf of the city Law**
 23 **Department.**
 24 Q. Anyone else from DWSD?
 25 **A. Not as a core group, no.**

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1 Q. Did Mr. Mercado have occasion to attend any of
 2 those meetings?
 3 **A. Mr. Mercado did not attend any of the detail**
 4 **meetings, no --**
 5 Q. Okay.
 6 **A. -- to my recollection.**
 7 Q. The document that I've marked as Exhibit 3 is a
 8 document entitled Schedule 3.8. Do you recognize
 9 that document?
 10 **A. I do.**
 11 Q. What do you recognize that to be?
 12 **A. This is the summary exhibit included in the**
 13 **Oakland Macomb Interceptor portion of the transfer**
 14 **of that part of the asset to the Oakland Macomb**
 15 **Interceptor District.**
 16 Q. Was there a separate agreement with respect to
 17 the Oakland versus the Macomb acquisitions?
 18 **A. Yes.**
 19 Q. Do you know which one was accomplished first?
 20 **A. The Oakland.**
 21 Q. Was the same formula used to calculate the OMI
 22 purchase price?
 23 **A. The same general principle was used to calculate**
 24 **the system debt portion of the purchase price.**
 25 Q. What else went into the calculation on the OMI

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1 end of things?
 2 **A. There were a number of adjustments to the system**
 3 **debt purchase price for both the OMI piece and the**
 4 **Macomb piece that were negotiated towards the tail**
 5 **end of the process.**
 6 Q. And the document that we've marked as Exhibit 4
 7 would deal with the due diligence in connection
 8 with the OMI purchase?
 9 **MS. HATHAWAY:** Do you have extra copies
 10 of that one?
 11 **MS. BADALAMENTI:** Yes. You gave me the
 12 whole package. You gave me the package.
 13 **THE WITNESS:** This is what was --
 14 **MS. BADALAMENTI:** I did the same thing.
 15 I was looking for another one from you, but I've
 16 got it.
 17 **THE WITNESS:** Yeah, I recognize the
 18 memo. Is there a question?
 19 **BY MS. BADALAMENTI:**
 20 Q. I see the 15 Mile and Hayes 2004 repair costs in
 21 some of the tables that are attached.
 22 **A. Right.**
 23 Q. Why is that referenced as part of the OMI
 24 transaction or due diligence?
 25 **A. The core analysis was.**

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1 **MS. HATHAWAY:** I have to stop you for a
 2 second. This was my mistake. The tables were
 3 supposed to be included but the memo was
 4 privileged. Could I get that back.
 5 **MS. BADALAMENTI:** From Foster to
 6 Jacobs?
 7 **MS. HATHAWAY:** Yeah.
 8 **MS. BADALAMENTI:** Is privileged?
 9 **MS. HATHAWAY:** Yeah.
 10 **MS. BADALAMENTI:** Two pages?
 11 **MS. HATHAWAY:** Yeah. These were
 12 supposed to be removed. There may be another one
 13 like that. It was a copying mistake. I
 14 apologize.
 15 **MR. RUEGGER:** March 12, 2009?
 16 **MS. HATHAWAY:** Yeah. It's the same
 17 with the February 27th. That was supposed to come
 18 out, too. If you could take that out, too, I
 19 would appreciate it.
 20 **MR. RUEGGER:** Just the memo?
 21 **MS. HATHAWAY:** Just the memo.
 22 **MR. RUEGGER:** Not the schedules?
 23 **MS. HATHAWAY:** Not the schedules.
 24 **MS. BADALAMENTI:** Do we have them all?
 25 You have four pages from me?

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1 MS. HATHAWAY: Right. That's what
 2 happens when you're in a hurry.
 3 MS. BADALAMENTI: We're in a hurry, all
 4 right. No doubt about that.
 5 MS. HATHAWAY: I apologize. My fault.
 6 I lost the question.
 7 BY MS. BADALAMENTI:
 8 Q. The was: Why is the 15 Mile and Hayes repairs
 9 referenced in the OMI analysis?
 10 A. The OMI -- the Oakland portion of the OMI closing
 11 had an allocated share of the common portion of
 12 the OMI going to Oakland -- the Oakland element,
 13 so in order to understand that allocation, we
 14 needed to have all these projects listed to just
 15 summarize the entire calculations. The repairs as
 16 noted on Schedule 3.8 were not the repairs to the
 17 Macomb Interceptor, 1368 costs. 1368 costs were
 18 not included anywhere in the OMI purchase price.
 19 Q. And what schedule would I see that at?
 20 A. Schedule 3.8, Exhibit 3.
 21 Q. Okay. The document that we've marked as
 22 Exhibit 5, which I think -- do you have it now?
 23 Exhibit 5 appears to me to be another description
 24 of the OMI allocation?
 25 A. Yes.

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1 Q. And Exhibit A is Summary of Assets Allocated to
 2 Macomb County?
 3 A. Yes.
 4 Q. Who gave you the information to determine whether
 5 or not 1368 went to Macomb County or the OMI?
 6 A. This exhibit which carries a date of
 7 February 2006, I believe, is the first summary of
 8 the analysis towards getting to system debt. Your
 9 question about -- so, I'm sorry, can you please
 10 reask your question.
 11 Q. So my question is: Who gave you the information
 12 from which you determined the 15 Mile and Hayes
 13 repairs are a Macomb-only versus an OMI project?
 14 A. I don't know who gave me that information. The
 15 premise of the entire operating scenario for the
 16 Oakland Macomb Interceptor when DWSD owned and
 17 operated it was all costs east of the connection
 18 to the corridor Interceptor were Macomb only, and
 19 all other costs were combined Macomb and the
 20 Clinton Oakland District; so by definition, since
 21 the collapse was east of the connection on the
 22 corridor, it had always been treated as a
 23 Macomb-only responsibility.
 24 Q. Okay. There is included in the documents that
 25 were provided to me a listing of Interceptor

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1 sewer contracts. It was marked as Detroit's
 2 pages 281 through 286.
 3 MARKED FOR IDENTIFICATION:
 4 DEPOSITION EXHIBIT 6
 5 5:56 p.m.
 6 BY MS. BADALAMENTI:
 7 Q. I'm going to go back and include page 287,
 8 because I think it goes with it. So I'm looking
 9 at Detroit pages 281 to 287. I wonder if you've
 10 seen those pages before?
 11 A. Yes.
 12 Q. What are -- how did you come across those pages?
 13 A. This -- I don't know that I recognize the last
 14 page, but the -- and I may. The first six pages
 15 are the report that was provided to me by DWSD
 16 engineering as a -- along with a map that we
 17 talked about earlier that identified each of the
 18 contracts and projects that were constructed by
 19 DWSD for the Macomb Interceptor system.
 20 Q. At some point during the negotiations there is --
 21 there's a global settlement discussion -- is the
 22 term, I think, used throughout documents. Do you
 23 know what I'm referring to when I talk about a
 24 global settlement?
 25 A. I do.

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1 Q. What is your understanding of the basis for the
 2 parties to discuss a global settlement? Let me
 3 ask it a different way. That's a terrible
 4 question.
 5 Did you understand there to be some
 6 open disputes between the parties at the time
 7 after which you calculated the system debt?
 8 A. I'm aware of the negotiations between DWSD and
 9 principally the three counties, Macomb, Oakland
 10 and Wayne on several items of dispute that led to
 11 the global settlement.
 12 Q. And what was the global settlement, as you
 13 understood?
 14 A. There were a number of disputes that were
 15 effectively -- I suppose if it was done today it
 16 would be called a grand bargain -- that the
 17 parties under Judge Feikens' leadership decided it
 18 was a good idea to resolve several lingering
 19 disputes in one document which became the 2008
 20 global settlement, and I don't recall all the
 21 specifics, but part of the claim was the radio
 22 system that Detroit had built and DWSD used, and
 23 there was an aspect of cost that Macomb had paid
 24 for the Macomb Interceptor over the years through
 25 the rates.

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1 Q. Did you review that settlement agreement before
2 it was entered into?
3 **A. Yes, I did.**
4 Q. Did you help prepare it?
5 **A. I did.**
6 Q. There was a letter of intent that was executed in
7 connection with the purchase or the settlement
8 agreement. Did you help prepare that?
9 **A. I don't recall.**
10 Q. What new information, if any, went into your
11 preparation of the settlement agreement?
12 **MS. HATHAWAY:** Object to the form of
13 the question. He didn't prepare the settlement
14 agreement. He said he helped.
15 **THE WITNESS:** I'd ask you to define new
16 information.
17 **BY MS. BADALAMENTI:**
18 Q. Did you need any new information about the
19 contracts, the projects? Did you recalculate the
20 system debt? Or did you simply look at the
21 tables and schedules that you had already
22 calculated and incorporate that information?
23 **A. My recollection is that we did not make any**
24 **material changes to the system debt portion of the**
25 **purchase price, but rather the global settlement**

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1 **affected adjustments to the system debt that then**
2 **became part of the purchase price. That had**
3 **nothing to do with the original premise of system**
4 **debt.**
5 Q. Okay. Was it an agreed upon calculation of that
6 amount? First of all, what was that amount? Do
7 you remember -- the global settlement amount?
8 **A. The global settlement had several facets to it. I**
9 **believe on recollection that the effect to the**
10 **Macomb Interceptor purchase price was an offset**
11 **from system debt in the neighborhood of \$17**
12 **million dollars.**
13 Q. And what was the total of system debt, if you can
14 remember?
15 **A. Approximate figures, I think the system debt**
16 **cost -- system debt calculation was \$107 million,**
17 **and after an offset of roughly \$17 million, got**
18 **down to 91 million -- \$90 million and change.**
19 Q. Was that calculated price agreed upon by
20 everybody? In other words, at the point in time
21 that that is the total debt you're calculating,
22 does Macomb dispute that that's the total? Or
23 does the global settlement or the offset of 17
24 million go to something else?
25 **MS. HATHAWAY:** Object to the form of

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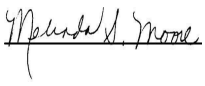
1 the question.
2 **THE WITNESS:** I don't understand the
3 question.
4 **BY MS. BADALAMENTI:**
5 Q. Was there a dispute with your calculation of
6 system debt by Macomb that you know of?
7 **A. During the negotiations for the global settlement**
8 **agreement?**
9 Q. Yes.
10 **A. Not that I recall.**
11 Q. Did you assist in preparing the letter of intent?
12 I think you said you don't recall.
13 **A. I don't recall.**
14 Q. Do you know if it was ever executed, the letter
15 of intent?
16 **A. I don't know what the letter of intent is that**
17 **you're referring to.**
18 Q. Okay. Did you assist in preparing the Macomb
19 acquisition agreement that's dated September 2nd,
20 2010?
21 **A. I was asked to review and comment on certain**
22 **aspects of it.**
23 Q. Did you prepare any portions of the schedules or
24 tables that get attached to that acquisition
25 agreement?

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1 **A. Yes, I did.**
2 Q. Which ones? And I'll give you a copy here that I
3 think is the complete document.
4 **A. There's a Schedule 3.8 that I prepared, and I**
5 **believe there are -- there are a couple of**
6 **exhibits that are -- there are schedules in**
7 **Exhibit A to this agreement that I prepared.**
8 Q. All of them or some of them?
9 **A. All of them. And I believe that there is one**
10 **other schedule -- I'm sorry, Exhibit A is the**
11 **whole thing. There's a -- the last four pages of**
12 **this document -- last four pages are work product**
13 **that I prepared, and I believe there's one other**
14 **exhibit in here that I prepared but I'm not**
15 **finding it right now. Apparently I'm mistaken.**
16 **MS. BADALAMENTI:** Let's mark that since
17 he referred to some of the pages.
18 **MARKED FOR IDENTIFICATION:**
19 **DEPOSITION EXHIBIT 7**
20 **6:05 p.m.**
21 **BY MS. BADALAMENTI:**
22 Q. In Exhibit 7, the acquisition agreement, did you
23 have any input into the language of the agreement
24 itself other than your contribution with the
25 tables?

1 A. Yes.
 2 Q. What section did you contribute to?
 3 A. Likely the definitions of system debt, the
 4 language describing the purchase price, the
 5 adjustment of sewage disposal -- sewer disposal
 6 rates after acquisition. Those implementation
 7 issues that related to how rates would be
 8 computed.
 9 Q. What is the nature of the -- what have you been
 10 asked about with respect to the preparation of a
 11 declaration in this case? In other words, what
 12 is the subject matter of the declaration that
 13 you're preparing?
 14 MS. HATHAWAY: I think any discussions
 15 we had with him I'm going to insert a privilege.
 16 MS. BADALAMENTI: I think I asked that
 17 so as to give rise to privilege.
 18 BY MS. BADALAMENTI:
 19 Q. Have you provided any documents to counsel in
 20 support of a declaration?
 21 A. I have not.
 22 Q. In the course of these negotiations and the
 23 computation of the system debt, did you provide
 24 any documents to Macomb or Craig Hupp other than
 25 the schedules that we see attached to some of the

1 documents that were marked as exhibits today?
 2 A. Most likely I did that were different versions of
 3 the same documents that would not have been
 4 anything materially different other than -- we
 5 went through this for three years trying to
 6 calculate the system debt; so I'm quite confident
 7 Mr. Hupp and I shared tables of similar nature
 8 with evolving numbers in them.
 9 Q. Okay. Would those be something that when
 10 discovery opens in this case you would have in a
 11 file somewhere that we could obtain?
 12 A. I don't -- it's possible.
 13 Q. Okay.
 14 A. It was seven years ago.
 15 Q. Okay.
 16 MS. BADALAMENTI: I don't think I have
 17 anything else.
 18 MS. HATHAWAY: No questions.
 19 (The deposition was concluded at 6:07 p.m.
 20 Signature of the witness was not requested by
 21 counsel for the respective parties hereto.)
 22
 23
 24
 25

1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF MACOMB)
 5
 6 I, MELINDA S. MOORE, certify that this
 7 deposition was taken before me on the date
 8 hereinbefore set forth; that the foregoing
 9 questions and answers were recorded by me
 10 stenographically and reduced to computer
 11 transcription; that this is a true, full and
 12 correct transcript of my stenographic notes so
 13 taken; and that I am not related to, nor of
 14 counsel to, either party nor interested in the
 15 event of this cause.
 16
 17
 18
 19
 20 
 21
 22 MELINDA S. MOORE, CSR-2258
 23 Notary Public,
 24 Macomb County, Michigan
 25 My Commission expires: September 6, 2016

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant

Civil Action No. 77-71100

Honorable John Feikens

vs.

STATE OF MICHIGAN,

Defendant and Cross-Plaintiff
And Cross-Defendant,

vs.

**CITY OF DETROIT, a municipal corporation, and
DETROIT WATER AND SEWERAGE DEPARTMENT**

Defendant and Cross-Plaintiff,

vs.

**ALL COMMUNITIES AND AGENCIES UNDER
CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES**

et al

U.S. DIST. COURT
EAST DIST. MICH.
DETROIT, MI 482
05 JUN 27 AM 10:08
FILED

**MACOMB COUNTY'S MOTION
FOR PRELIMINARY INJUNCTION**

Anthony V. Marrocco, Macomb County Public Works Commissioner, as County Agency for the Macomb County Wastewater Disposal System, moves for entry of an order to show cause and a preliminary injunction against the City of Detroit and the Detroit Water and Sewerage Department.

This motion is based on Macomb County's Complaint and its Brief in Support of this motion, all filed together.

Macomb County has requested DWSD's concurrence in the relief requested, through DWSD's counsel and at a meeting of both clients and counsel that occurred April 14, 2005. Neither DWSD nor its counsel have responded to those requests, making this motion necessary.

WHEREFORE, Macomb County prays that this Court enter its Order Directing DWSD to show cause why the Court should not order that:

1. Pending resolution of Macomb's Complaint, DWSD shall not impose on Macomb County the \$3 million charge it proposes for Fiscal Year 2005-2006, relating to the 2004 collapse of a portion of the Oakland-Macomb Interceptor, and shall not impose on Macomb County any charge relating to that collapse exceeding \$300,000 per year.

2. As an alternative to ¶ 1, pending resolution of Macomb's Complaint, DWSD shall charge the \$3 million charge to the Emergency Repair and Replacement Fund, pending determination of the cause(s) of the 2004 collapse.

3. DWSD shall forthwith file with the Court a written report to the Court summarizing and detailing (a) the maintenance and inspection, repair and refurbishing activities in the Oakland-Macomb Interceptor undertaken by DWSD since rendition of the Army Corps Report of 1980 and (b) DWSD's current and future program of inspection and preventive maintenance and other measures to prevent additional collapses in the Oakland-Macomb Interceptor.

4. DWSD shall promptly provide to the Court and all parties a report of its investigation(s), if any, of the cause of the 2004 collapse. In the event that DWSD has made no investigation, such investigations shall be made, in a fashion consistent with the investigations made by the Army Corps of Engineers in 1980, at DWSD's cost.

5. Macomb County requests that the Court convene an independent study of the condition of the entire Interceptor with the purpose of identifying all sections of the Interceptor which are at risk for failure and recommending a program of inspection and maintenance intended to prevent any additional failures,

Respectfully Submitted,

BODMAN LLP

By: 

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James A. Smith (P20667)

Sarah Williams (P67510)

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Attorneys for Macomb County

June 21, 2005

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant

**Civil Action No. 77-71100
Honorable John Feikens**

vs.

STATE OF MICHIGAN,

Defendant and Cross-Plaintiff
And Cross-Defendant,

vs.

**CITY OF DETROIT, a municipal corporation, and
DETROIT WATER AND SEWERAGE DEPARTMENT**

Defendant and Cross-Plaintiff,

vs.

**ALL COMMUNITIES AND AGENCIES UNDER
CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES**

et al

At a session of said Court held
the _____ day of June, 2005,
present the Hon. John Feikens,
United States District Judge

ORDER TO SHOW CAUSE

Anthony V. Marrocco, Macomb County Public Works Commissioner, has filed a rate challenge complaint and moved for entry of an order to show cause and a preliminary injunction

against the City of Detroit and the Detroit Water and Sewerage Department, with supporting brief and proof of service on DWSD's counsel.

NOW THEREFORE, IT IS ORDERED that the City of Detroit and the Department of Water and Sewerage appear before this Court on _____, 2005, to show cause why the Court should not order that:

1. Pending resolution of Macomb's Complaint, DWSD shall not impose on Macomb County the \$3 million charge it proposes for Fiscal Year 2005-2006, relating to the 2004 collapse of a portion of the Oakland-Macomb Interceptor, and shall not impose on Macomb County any charge relating to that collapse exceeding \$300,000 per year.

2. As an alternative to ¶ 1, pending resolution of Macomb's Complaint, DWSD shall charge the \$3 million charge to the Emergency Repair and Replacement Fund, pending determination of the cause(s) of the 2004 collapse.

3. DWSD shall forthwith file with the Court a written report to the Court summarizing and detailing (a) the maintenance and inspection, repair and refurbishing activities in the Oakland-Macomb Interceptor undertaken by DWSD since rendition of the Army Corps Report of 1980 and (b) DWSD's current and future program of inspection and preventive maintenance and other measures to prevent additional collapses in the Oakland-Macomb Interceptor.

4. DWSD shall promptly provide to the Court and all parties a report of its investigation(s), if any, of the cause of the 2004 collapse. In the event that DWSD has made no investigation, such investigations shall be made, in a fashion consistent with the investigations made by the Army Corps of Engineers in 1980, at DWSD's cost.

5 Counsel for Macomb County shall promptly serve a copy of this Order on
Counsel for DWSD.

John Feikens, United States District Judge

OK
cc

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant

Civil Action No. 77-71100

Honorable John Feikens

vs.

STATE OF MICHIGAN,

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Defendant and Cross-Plaintiff,

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CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES

et al

_____ /

MACOMB COUNTY'S BRIEF IN SUPPORT
OF PRELIMINARY INJUNCTION

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RECEIVED
JUN 27 2005

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

FILED
JUN 27 2005

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

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- Exhibit 1. The 1967 Detroit/Macomb Contract
- Exhibit 2. 1982 Rate Settlement (excerpts) (approved July 21, 1982)
- Exhibit 3. Smith, Hinchman and Grylls Associates, Design Report For Repair of Romeo Interceptor (March 1980) (excerpts)
- Exhibit 4. 1980 Rate Settlement (filed August 26, 1980) (excerpts)
- Exhibit 5. Letter from W. Carney, DWSD, to K. Bonin, Macomb County (Sept. 19, 1986)
- Exhibit 6. Letter from DWSD Director Beckham to DWSD Board (December 11, 1980)
- Exhibit 7. DWSD Board Minutes (February 6, 1980)
- Exhibit 8. Statement by Macomb County Public Works Commissioner Anthony V. Marrocco to Detroit City Council (February 10, 2005)
- Exhibit 9. Letter, Anthony Marrocco to Victor Mercado (November 16, 2004)
- Exhibit 10. Order Re: Macomb County's Amended Petition Re: Oakland-Macomb Interceptor Break (March 7, 1980)
- Exhibit 11. U.S. Army Corps of Engineers, 15 Mile Road/Edison Corridor Sewer Tunnel Failure Study (September 1980)
- Exhibit 12. Hearing Transcript (November 5, 1980)
- Exhibit 13. Jenny Engineering, Interim Report Upon Inspection of Sewer Tunnel Built Under Contract No. PCI-7 (June 1981)
- Exhibit 14. Jenny Engineering, Interim Report Upon Inspection of Sewer Tunnel Built Under Contract No. PCI-12A (June 1981)
- Exhibit 15. DWSD Website, Macomb Interceptor Information Page (August 30, 2004) (www.dwsd.org/projects/update_0830.htm)
- Exhibit 16. DWSD Website, Macomb Interceptor Information Page (November 12, 2004) (www.dwsd.org/projects/update_1112.htm)
- Exhibit 17. AWWA Water Rates Manual M1 (4th ed.) (excerpts)
- Exhibit 18. Second Amended Consent Judgment (August 3, 2000)
- Exhibit 19. Order Re Mathematical Model (February 22, 1991)
- Exhibit 20. 1999 Rate Settlement Agreement (excerpts)
- Exhibit 21. Letter, Morgan Guaranty Trust Company to DWSD (November 14, 1980)
- Exhibit 22. The Foster Group, Report on FY 2005-06 Sewer Rates and FY 2003-04 Look-Back Adjustments (March 2005) (excerpts)

STATEMENT OF ISSUES PRESENTED

1. DWSD proposes to charge Macomb County \$3 million in FY 2006 and potentially as much as or more than \$5.5 million in FY 2007 and later years, to pay for repairs to the Oakland-Macomb Interceptor. The repairs of a 2004 break were required because of negligent construction overseen and accepted by DWSD and negligent inspection and repair of the construction defects by DWSD. May DWSD charge Macomb for the consequences of DWSD's errors and fault?

2. DWSD could have avoided the 2004 break by prudent management but failed to do so. May DWSD charge the cost of imprudent investment to Macomb or does the prudent investment rule for utilities, applicable in Michigan, forbid that charge?

3. Does the proposed charge to Macomb violate the Detroit-Macomb contract?

4. Does the proposed charge to Macomb alone violate a 1980 Rate Rule adopted by the Board of Water Commissioners, that remained in place when the 2004 break occurred?

5. Can DWSD charge Macomb twice for the same facility when the necessity of rebuilding it is entirely DWSD's fault?

CONTROLLING AUTHORITIES

Missouri ex rel Southwestern Bell Tel Co. v. Public Service Comm., 262 U.S. 276, 290 (n.1) (1923)

Gulf States Utilities Co. v. Louisiana Public Service Comm., 578 So. 2d 71 (La. 1991), *cert denied*, 502 U.S. 1004 (1991)

Union Carbide Corp. v. Public Service Commission, 431 Mich. 135, 149; 428 N.W.2d 322 (1988)

Triple E. Produce Corp. v Mastranardi Produce, 209 Mich. App. 165, 174, 530 N.W. 2d 772 (1995), *lv. dn.*, 450 Mich 897, 899, 541 N.W. 2d 772 (1995)

Association of Businesses Advocating Tariff Equity v. Michigan Public Service Comm., 208 Mich. App. 248, 527 N.W. 2d. 533 (1994), *lv. den.* 450 Mich. 890 (1995)

Consumers Power Co. v. Mich. Pub. Svc. Comm., 196 Mich. App. 687, 493 N.W. 2d 494 (1992)

In re Detroit Edison Co., 24 P.U.R.4th 362 (Mich. Pub. Svc. Com.) (1978)

American Water Works Association Water Rates Manual (4th ed.)

**MACOMB COUNTY'S BRIEF IN
SUPPORT OF PRELIMINARY INJUNCTION**

SUMMARY

Macomb County¹ challenges one component of the sewage rates set by Detroit for Fiscal Year 2005/2006 – a \$3 million annual charge allocated to Macomb County alone. DWSD asserts that this charge is made to finance repairs of a 2004 collapse of the Oakland-Macomb Interceptor and a massive sinkhole which destroyed 15 Mile Road. Macomb County asserts that Detroit and only Detroit must pay the costs of restoring the interceptor and the road surface. Macomb asks the Court to issue a preliminary injunction (1) forbidding DWSD from imposing the entire cost of repairs upon Macomb and (2) requiring that DWSD either spread those costs to the entire system and all customers or charge them to its Emergency Repair and Replacement Fund. The injunction should continue until the 2004 collapse can be investigated and the parties and the Court can be equipped with facts concerning the collapse, its causes and its costs.

A preliminary injunction is proper here because:

1. The last peaceable, uncontested status among the parties was a rate system adopted by the Detroit Water Board in 1980 in which extraordinary costs of major repairs and improvements were spread to all customers on a common to all basis.
2. The collapse would have been avoided if DWSD had heeded its engineers' 1981 advice that collapses were inevitable unless careful monitoring and preventative maintenance were conducted on an ongoing basis.

¹ Macomb County Public Works Commissioner Anthony V. Marrocco, serves as County Agency for of the Macomb County Wastewater Disposal District.

3. The Court has previously exercised its jurisdiction over rate disputes to impose temporary orders requiring that costs be spread common to all until fact investigations could be made and completed.

4. DWSD's Emergency Repair and Replacement fund is adequate to defray the charge imposed on Macomb alone for the period necessary to make investigation and resolve the issue by judicial decision, if necessary.

I

FACTS

Detroit City Council in March, 2005, over Macomb's strong protest, adopted sewerage rates for the 2005/2006 fiscal year which impose on Macomb County the annual amortization of \$30,000,000 in repairs that DWSD has incurred to address the failure and collapse of the Oakland Macomb Interceptor under 15 Mile Road near Hayes Road in Sterling Heights.² That annual charge is \$3,000,000 from Macomb in the fiscal year beginning July 1, 2005. DWSD has informed Macomb that total repair costs are in excess of \$53,000,000, so the rate will nearly double in 2006/2007. Because the cost of the repairs is amortized over 30 years, if DWSD has its way Macomb will ultimately pay over \$100,000,000 to DWSD as a result of the sewer collapse.

A. The Macomb-Detroit Contract.

The 1967 service contract between Macomb and Detroit, (Ex. 1) obligates Detroit to build, own and maintain the Oakland-Macomb Interceptor. The Interceptor was built in the late

² The 1982 Rate Settlement requires that all major repairs be paid through debt and amortized over 30 years. Ex. 2, 1982 Rate Settlement (excerpts), ¶ 6. It is Macomb's understanding that DWSD has recently undertaken borrowing consistent with that settlement to cover the costs incurred to repair the 2004 collapse.

1960s and early 1970s as a continuous project. It runs from 8 Mile Road to 15 Mile Road in the Edison Corridor, in Warren and Sterling Heights. At 15 Mile Road, the interceptor splits into two arms extending east and west along 15 Mile Road. The Contract provides that Detroit will own the interceptor in perpetuity, Contract § 21, and that only DWSD may maintain it. *Id.* Detroit must “save harmless [Macomb] from all liability, claims, suits, actions, or cause of action for damages for injuries, including death, or otherwise by reason of the construction work.” *Id.* Macomb claims that the 2004 collapse resulted from original construction defects and Detroit’s failure to heed the lessons taught by earlier collapses. The 2004 collapse site is between the 1978 and 1980 collapses and is traceable to the same conditions.

B. The First Collapse.

On July 29, 1978, a collapse was discovered in the vicinity of 15 Mile and Hayes in a section of the interceptor known as PCI-12A, evidenced by serious buckling and settlement of the south lane of 15 Mile Road. Ex. 3, Smith, Hinchman and Grylls Associates, Design Report for Repair of Romco Arm Interceptor (March 1980) (“SH&G Report”), p. I-1. Claerhout Brothers, a contractor engaged by the City of Fraser, was at work at Haycs/15 Mile, dewatering soils in preparation for installation of a new connection to the interceptor. The 1978 collapse was commonly attributed to Claerhout’s activities. The SH&G Report states that the damaged section of tunnel was filled with loose fine sand and silt, *id.* at II-2, II-4, and that in the area of the collapse groundwater had carried those materials into the tunnel. *Id.* at II-4, II-5. These observations, when considered in the context of the subsequent Corps of Engineers and Jenny Engineering reports discussed below, suggest that the root cause of the sewer failure leading to the 1978 collapse was not Claerhout Brothers’ activities, although the dewatering may have contributed to the actual collapse.

The repairs took over three years to carry out. The costs of repair were estimated in 1981 to be in excess of \$34,400,000 in 1981 dollars (the equivalent of \$65,200,000 today³). Ex. 4, 1980 Rate Settlement (excerpts), ¶ 2. Macomb bore a large share of the temporary repair costs, but that share was capped at \$12.4 million. Ex. 4, § 2(c). The remaining temporary repair costs were borne by all customers. *Id.* The permanent repair costs were borne largely by federal and state grants and by a recovery from Claerhout Brothers' insurer. A portion of the permanent repair costs was borne by Macomb under an agreement which capped the portion allocated to Macomb at \$4.4 million. Ex. 4. Macomb's share actually worked out to less than \$2 million. Ex 5, Sept. 19, 1986 letter from W. Carney, DWSD, to K. Bonin, Macomb County.

C. The Second Collapse.

In January, 1980, a trio of collapses was discovered in the interceptor in the Edison Corridor. Two were partial. One was complete. The 1980 collapses were south and downstream of 15 Mile Road, in a section of the interceptor known as PCI-7. This repair was estimated in 1980 to cost at least \$19,500,000 (\$37,000,000 in current dollars), Ex. 6, Letter from DWSD Director Beckham to DWSD Board (Dec. 11, 1980), and took at least 2 years to complete.

D. The 1980 Rate Rule

In February, 1980, immediately after discovery of the Edison Corridor collapses, the Detroit Board of Water Commissioners resolved that the costs of the 1980 interceptor collapse and all future "extraordinary costs incurred in connection with water and sewer mains, water intake facilities and the sewage treatment plant, be borne by users of the entire system without

³ Based on the U.S. Army Corps of Engineers, Civil Works Construction Cost Index System (updated through September 30, 2004), Table A-2.

reference to where a problem might have occurred.” Ex. 7, DWSD Board Minutes (February 6, 1980), p. 11.

In December 1980, DWSD management submitted to the Water Board a rate proposal that conformed with the February 1980 Resolution. It apportioned the costs of repair to all customers of the system, a rate increment of 10¢ per mcf. DWSD’s Director explained to the Water Board that the 1980 collapse differed from the 1978 collapse because the 1980 collapse was “caused by natural forces.” Ex. 6, Beckham Letter. Director Beckham stated:

“Based on our analysis of the facts and also in recognition of the position expressed by the Board in February, 1980, shortly after the damage was discovered, it is our recommendation that this expense be allocated on a system-wide basis. I recommend that the Board take action affirming this recommendation.” *Id.*

The Water Board approved that “system-wide” allocation.

Wayne County challenged that decision. The parties tried that issue in this case in 1981 but, before any decision by this Court, they reached a negotiated settlement (Ex. 2, the 1982 Rate Settlement) that lifted part *but not all* of the cost from Wayne County and redistributed it to all other customers, adding 1¢ per MCF to their rates. That rate adjustment has continued to the present day and will continue until the bonding to cover those repairs is repaid in full.

E. The Third Collapse and New Rates.

In August 2004, a massive sinkhole developed on 15 Mile Road, adjacent to the 1978 collapse. DWSD took prompt action to bypass the collapse, but did not engage in any competitive bidding of final repair work and did not confer with Macomb or any other customer about potential cost-saving measures. Ex. 8, Statement by Macomb County Public Works

Commissioner Anthony V. Marrocco to Detroit City Council (February 10, 2005). DWSD says that the cost of repair is at least \$53,000,000.

Since the 2004 collapse, Macomb asked DWSD for information concerning the cause of the new collapse, but has been given none. Ex. 9. Letter, Anthony Marrocco to Victor Mercado, (November 16, 2004). By comparison, in 1980, the Court ordered DWSD to share all information about the 1980 collapse and to provide access to the Edison Corridor site during the repair process. Ex. 10, Order Re: Macomb County's Amended Petition Re: Oakland-Macomb Interceptor Break (March 7, 1980).

DWSD management ignored and violated the Water Board's 1980 Rule when it set the 2005/2006 rates. DWSD did not spread the 2004 extraordinary costs "system-wide" as required by the 1980 Rule, and as it did in connection with the 1980 collapse. Instead, DWSD imposed *all costs* of the new collapse on Macomb alone, effectively requiring Macomb to hold DWSD harmless and turning the Contract on its head. DWSD's rate presentation merely asserted that it was treating the 2004 collapse as it had treated the 1978 collapse, a statement completely at odds with the true situation – DWSD does not propose to use grant funds to pay for a large part of the cost of the repair, DWSD does not propose to cap Macomb's contribution towards the cost of the repair, and DWSD does not propose to allocate the remaining costs to all customers.

F. The Cause of the Collapses.

The 1980 collapse shed substantial doubt on the parties' assumption that Claerhout Brothers alone caused the 1978 collapse. Indeed, the SH&G Report for the repair of the 1978 collapse noted the presence of fine soils in the collapsed interceptor and attributed it to the action

of groundwater in carrying soils into the interceptor, Ex. 3, SH&G Report, pp. II-4,5, the same circumstances which caused the 1980 collapse.

The concern raised by the 1980 collapse was so great that the Court invited the Army Corps of Engineers to investigate. EPA joined in the request. The Corps concluded that the second group of collapses resulted solely and "inevitably" from defects in the original construction of the interceptor which were not caught by DWSD before it accepted the construction work. Those defects in concrete pouring permitted groundwater carrying fine sands and soils to leak into the interceptor, eroding its support and leading to its collapse. As the interceptor began to fail, the cracks opened wider and the flow of groundwater and fine soils into the tunnel increased, exacerbating the failure. Excerpts from the Corps Report, September 1980, are attached as Ex. 11. The Corps Report became the subject of a hearing at which its authors were examined.⁴

The Corps Report stated that the contractor who constructed the original Interceptor had created "open joints" and "cold pours" which permitted water to leak into the interceptor.⁵ The Corps Report found that concrete was poured in "substantial placement lengths," of "generally 105 ft." These placement lengths "directly increased the potential for cold joints in the concrete liner. This potential was frequently realized due to the late arrival of concrete trucks and plugged concrete drop pipes, resulting in pour delays." *Id.*, Finding 107.c., p. 181.

⁴ Army Corps witness Hoff, Mitchell and Albert were simultaneously sworn and testified about various matters. The transcript is attached as Ex. 12, Transcript (Nov. 5, 1980).

⁵ Leaks can occur in concrete tunnels where concrete from a prior pour or placement of concrete has cured sufficiently that the next pour of concrete does not bond to it. This may be done intentionally as a matter of design, creating an "open joint," or may occur because of unintended delays in making the new pour, creating a "cold pour."

While the interceptor was being tunneled, the surrounding soil was dewatered. Mitchell, Ex. 12, p. 17. For most of the tunnel, except a short segment, no seepage was noted during construction. Corps Report, ¶¶ 51, 53, pp. 44-45. DWSD inspected the construction while the dewatering pumps still operated. Albert, Ex. 12, p. 18. DWSD inspected the contractor's work on PCI-7 on July 12, 1972, Corps Report, ¶ 14, p. 11. The dewatering wells were still running then and were operated until early to mid August. *Id.*, ¶ 51, p. 44, *Id.*, Table 6. After inspection, the dewatering ceased and ground water was permitted to rise around the interceptor. *Id.* The "distress actually began immediately following construction as soon as the groundwater level was sufficiently high to initiate piping of soil through open construction and cold joints." Ex. 11, Finding 109, p. 183.

The Corps found that "[s]tratification of the glacial lake deposits along the tunnel showed uniformly fine to medium graded beach sand unit along the base of the tunnel." *Id.*, Finding 107.e, p. 181.

"[F]ine to medium sands, silty sands, and silts from the site were susceptible to piping through small crack openings under water pressures of less than 2 psi, but the uniformly graded fine to medium sands were *highly* susceptible to piping under water pressures of less than 1 psi." *Id.*, Finding 107.f, p. 181 [emphasis in original].

"Staining in construction joints and from cold joints indicated leakage through these joints. Evidence of sand infiltration through construction joints and cold joints was found during field work." *Id.*, Finding 107.i, p. 182.

"As material piped into the tunnel, the tunnel lost bottom and side support," *Id.*, Conclusion 108.f, p. 183.

The Corps Report concluded:

"* * * This piping took place over a significant period of time. As greater loss of support occurred, the concrete liner deformed, the cracks opened wider, and more soil was allowed to pipe into the tunnel. These events progressed until the

distress was manifested by the crack pattern found, and by total collapse at Distressed Area No. 1 and partial collapse at Distressed Area No. 3." *Id.*, Conclusion 109, p. 183.

Corps witness Mitchell stated that, given the conditions observed in the interceptor, the piping of fines into the interceptor was "inevitable." Ex. 12, p. 26.

The Corps "didn't make any condition survey or we did not look for other disturbed areas outside of the section we were charged with." *Id.*, p. 15. Witness Mitchell described how to find other problem sections:

"Two things: a mapping of the interior of the tunnel to locate all joints that are not water-tight; and then a detailed mapping of the soil profile outside of the tunnel to pinpoint co-locations of open joints and piping material.

Q. "Do you happen to be able to tell me whether your core drillings and observations from those done by the City of Detroit before the construction was done, indicate that there are other areas along this section you have studied which have pipeable silts near the locus of the interceptor?"

A. "Yes. We will expect this would be just about anywhere you would have the lake bed deposits." *Id.*, p. 16.

DWSD retained Jenny Engineering Corp., a nationally recognized tunnel design firm from the East Coast, to carry out an inspection along the lines of the Corps' recommendation. That inspection confirmed the Corps' testimony – there were many more leaky sections with similar problems posing similar risks.

In June, 1981, Jenny Engineering reported on "PCI-7," the segment in the Edison Corridor where the 1980 collapses had occurred. Jenny Engineering found that there were 177 leaks in that segment and that leaking water "contained soil particles." Ex. 13, Jenny Engineering, Interim Report Upon Inspection of Sewer Tunnel Built Under Contract PCI-7 (June 1981), p. 7-5-2. Jenny Engineering's unqualified opinion was that "Leakage of soil particles into

the tunnel will eventually lead to failure of the tunnel lining.” *Id.* Jenny Engineering further warned that: “Structures overhead will settle and be damaged by a tunnel failure, or eventually by the loss of ground outside the tunnel.” *Id.* Jenny Engineering recommended grouting all cracks, an effective means of preventing the leaks that would otherwise doom the tunnel. *Id.*

Also in June, 1981, Jenny Engineering issued a similar report on segment PCI-12A, the eastern extension along 15 Mile Road where the 1978 and 2004 collapses occurred. That report concluded that the segment “is located in various combinations of sand, gravel and silt with very little clay in the downstream half.” Ex. 14, Jenny Engineering, Interim Report Upon Inspection of Sewer Tunnel Built Under Contract PCI-12A (June 1981). The downstream half includes the site of the 2004 collapse. Again, Jenny Engineering’s unqualified opinion was that “Leakage of soil particles into the tunnel, although not serious at present, will eventually lead to failure of the tunnel lining.” *Id.*, p. 12A-5-2. Again, Jenny Engineering made the point that a tunnel failure would cause structures overhead to settle and be damaged. *Id.* Jenny Engineering again recommended grouting to prevent the leaks and soil intrusion. In this section, groundwater is 20’ to 30’ above the top of the tunnel.⁶ Ex. 14, Figure 12A-2.

The SH&G Report in March, 1980 made this same point in discussing whether a new tunnel should be used to replace the 1978 collapsed section.

“Although an unreinforced section [of tunnel] has sufficient strength and is often used, it is very sensitive to distortion and cracking should the loading on the section become unbalanced. The possibilities of this occurring in the replacement tunnel should be considered. Changes in loading usually result from losses of ground in the immediate zone of the tunnel. This can be caused by future

⁶ The Corps observed “piping” of soils through cracks in the tunnel at groundwater pressures below 1 psi. Ex. 11, Corps Report, ¶ 71, p. 109. Groundwater twenty feet above the top tunnel would exert more than 9 psi on the tunnel.

construction near the tunnel or by groundwater carrying surrounding soils into the tunnel through cracks or poor joints (piping)...[T]he fine surrounding soils are very susceptible to piping. Piping would result in a progressive loss of earth and would ultimately cause failure." Ex. 3, SH&G Report, pp. III-4, 5.

DWSD has apparently concluded that the 2004 collapse occurred in the manner predicted by the Corps, Jenny Engineering and SH&G. DWSD explains the 2004 collapse as being the result of a break of undetermined origin and size, leading to leakage into the sewer, which carried soil into the sewer, eroding support for the sewer and leading to its collapse. Ex. 15, DWSD Website, Macomb Interceptor Information page, August 30, 2004. The explanation is completely consistent with the conclusion of the Corps, Jenny Engineering and SH&G that collapse is the inevitable result of cracks permitting leakage into the sewer, causing failure to progress from small leaks to large cracks to complete collapse. Accordingly, it appears likely that the 2004 collapse has a common cause with the 1980 and 1978 collapses, was predicted and thus avoidable.

In summary, DWSD's failure to inspect to make sure the interceptor was constructed properly in the first instance and its subsequent failure after the 1980 collapse to monitor the interceptor in order to detect signs of the inevitable collapse predicted by the Corps, Jenny Engineering and SH&G, are the direct causes of the 2004 collapse. These causes were under DWSD's control because it had exclusive control over the design of the tunnel, inspection of construction, and inspection and preventative maintenance after construction.

ARGUMENT

1. Summary

Macomb County seeks a preliminary order requiring the Board to abide by its 1980 Rate Rule until such time as the Board has demonstrated a factual and legal basis for allocating costs

of the repair on some other principled basis consistent with established ratemaking principles and standards and with the Contract. The relief requested will preserve the *status quo ante* of recovering the cost of such unusual and extensive repairs on the basis of a common to all allocation.

As an alternative, Macomb County asks the Court to direct that those costs be defrayed from the Emergency Repair and Replacement Fund, putting the cost on no customer until the issues are resolved.

The standard for a preliminary injunction is straightforward.

“The issuance of a preliminary injunction is governed by Fed.R. Civ. P. 65. There are four factors to be balanced when considering a motion for a preliminary injunction: ‘(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.’ *Rock and Roll Hall of Fame & Museum, Inc. v. Gentile Prods.*, 134 F.3d 749, 753 (6th Cir. 1998). The plaintiff carries the burden of persuasion. *Leary v. Daeschner*, 228 F. 3d. 729, 739 (6th Cir. 2000) citing *Lujan v. National Wildlife Fed’n*, 497 U.S. 871, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990).” *Michigan Rehabilitation Clinic Incorporated, P.C. v. City of Detroit*, 310 F. Supp. 2d 867, 869 (E.D. Mich 2004).

2. **Likelihood of Success**

Macomb County will prevail in this dispute if it can show that DWSD may not charge the cost of the repair to its suburban customers under established ratemaking principles or the Contract. Facts known to date support the very strong likelihood that the 2004 collapse was the result of construction defects which were identified by the Corps and Jenny Engineering in 1980 and 1981, from which they and SH&G predicted future failures at any location where water carrying fine soils was permitted to leak into the tunnel. If DWSD did not continue an active and ongoing program after 1981 to identify and correct leaks into the tunnel, then it guaranteed

tunnel collapses would occur. Well accepted ratemaking principles provide that a utility may not pass on to its customers the costs of imprudent decisions made by the utility. What could be more imprudent than a utility, after two extensive tunnel collapses, failing to heed its engineers' unequivocal predictions that further expensive collapses were certain to occur unless monitoring and precautionary measures were taken? In addition, the Contract places the burden on Detroit to bear the risk and liability from defective tunnel construction from which the current collapse surely proceeded. Accordingly, there is a strong likelihood that Macomb will prevail in this rate dispute.

(a) It Is Likely The Collapse Was Caused By DWSD's Negligent Failure To Prevent Groundwater Leaks And To Take Recommended Preventative Measures.

This is not merely a matter of *res ipsa loquitur*, although that doctrine alone would justify Macomb's complaint. DWSD has ignored Macomb's questions whether DWSD has investigated the cause of the 2004 collapse. However, some things are known. First and foremost, collapses were predicted as certain by the Corps, Jenny Engineering and SH&G unless leaking areas of the tunnel identified in Jenny Engineering's Report and any new leaks were grouted. Second, a substantial part of the ground around the interceptor simply disappeared, leaving a large sinkhole. It could have gone but one place, into the sewer. Third, there was sand in the area, reflective of glacial lake beaches, as stated in the Corps Report and as reported in soil profiles in the SH&G Report. Fourth, the presence of sand in the collapsed tunnel is confirmed by DWSD's report that "crews are removing a mixture of sand and sludge from the portion of the interceptor to be repaired." Ex. 16, DWSD Website, Macomb Interceptor Information page (November 12, 2004). Finally, there were no contractors interfering with the interceptor, nor were there any

earthquakes. These facts point to leaking of groundwater into the tunnel, eroding supporting soil into the interceptor until collapse occurred.

The history of this interceptor teaches that the problems identified by the Corp, Jenny Engineering and SH&G could not be ignored. Once a leak develops, failure and a collapse can occur within a few years (in less than 6 years in the case of the 1978 collapse).

The only entity with authority and control over the interceptor is Detroit. No other party had the power to inspect or maintain it. No other party could determine whether problems like those discovered in 1980 existed on 15 Mile Road, or do something about them. A predicted but preventable collapse occurred, in all likelihood through DWSD's fault and inaction.

If the DWSD is at fault for the collapse, may it pass the cost of the repair on to its customers? For the reasons which follow, the answer is "No!"

(b) DWSD May Not Recover From Its Suburban Customers Costs Incurred Because Of Its Mismanagement.

(i) The Costs of the Repair Are Not Chargeable To the Ratepayers Because It Was Imprudent of DWSD to Fail to Act To Prevent The 2004 Collapse.

Because utilities like DWSD exercise something akin to monopoly power, courts and ratemaking bodies have adopted rules of law to protect consumers from gouging and improvident expenditures by the utility. Utilities are not permitted to behave willy nilly nor may they operate carte blanche on the credit of their customers.

One of the basic principles of ratemaking intended to protect consumers is the rule of prudent investment. That rule permits a utility to recover from its customers prudent and reasonable costs of assets and activities designed to serve those customers but bars the recovery

of unreasonable or imprudent costs. When a utility incurs unreasonable or imprudent costs, it must absorb them itself and may not recover from its customers.

The prudence standard originated from Justice Brandeis' dissent in *Missouri ex rel Southwestern Bell Tel Co. v. Public Service Comm.*, 262 U.S. 276, 290 (n.1) (1923):

"The term 'prudent investment' is not used in a critical sense. There should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown."

The primary justification for the imposition of the prudent investment standard against utility companies is that:

"The principle of prudence has developed in part to counterbalance the monopoly power of public utilities. As one Public Service Commission has observed: 'If a competitive enterprise tried to impose on its customers costs from imprudent actions, the customers could take their business to a more efficient provider. A utility's ratepayers have no such choice. A utility's motivation to act prudently arises from the prospect that imprudent costs may be disallowed'" *Gulf States Utilities Co. v. Louisiana Public Service Comm.*, 578 So. 2d 71, 85, n6 (La. 1991), *cert denied*, 502 U.S. 1004 (1991) (citations omitted).

As explained in the "Water Rates" Manual of the American Water Works Association, municipal utilities are analogous to public utilities in this regard. "A government owned utility may be considered to be the property of the citizens within the city. Customers within the city are owner customers, who must bear risks and responsibilities of utility ownership. Outside-city customers are non-owner customers and, as such, bear a different responsibility for costs than do owner customers." Ex. 17, AWWA Water Rates Manual (4th ed.), pp. 22-23. The effect of the prudent investment rule is to place the risk of loss from mismanagement and failure to safeguard

physical assets on the owner customers who can affect the composition of the "Board" of the utility just like shareholders in a publicly owned utility – through the election process.

Several decisions have characterized a utility's obligation to its ratepayers as a duty. *Georgia Power Co. v. Georgia Public Service Comm.*, 396 S.E.2d 562, 569 (Ga. Ct. App.), *cert den.* 1990 Ga. LEXIS 483 (Oct. 23, 1990) ("The concept of prudence implies a standard or duty of care owed to others."); *Re Union Electric Co.*, 66 P.U.R. 4th 202 at 214(1985) ("[A] standard of reasonable care requiring due diligence is appropriate for determining whether [a utility's] actions during the course of the project were prudent."). See also, the MPSC's holding in the *ABATE* and *Detroit Edison* cases *infra*.

The rule of prudent investment has been adopted and applied in Michigan. In *Association of Businesses Advocating Tariff Equity v. Michigan Public Service Comm.*, 208 Mich. App. 248, 527 N.W. 2d. 533 (1994), *lv. den.* 450 Mich. 890 (1995) ("*ABATE*"), Consumers Power appealed the MPSC's conclusion that although Consumers Power Company's decision to build a nuclear plant at Midland was not imprudent when made, its subsequent decision to continue construction after serious problems arose was imprudent. Because costs incurred (totaling over \$1.3 billion) after the decision to continue in July 1980 could have been avoided by prudent measures, the Court of Appeals affirmed the MPSC's decision that they could not be recovered from ratepayers. Consumers Power absorbed that cost.

The conclusion of the MPSC, as summarized and quoted with approval by the Court of Appeals, has application here:

"In its opinion, at 199-202, the PSC explained that from July 2, 1980, Consumers adopted a path that was virtually certain to fail and was unduly influenced by its

relationship with Dow at the expense of its obligations to ratepayers.

'By early 1980, Consumers' management and Board of Directors knew or should have known that construction of the Midland plant was not going well. They knew or should have known as they faced critical decisions in 1980 that the probability of success was unacceptably low. Although the Commission recognizes the company's duty to its shareholders, it also had a duty to its ratepayers. Consequently, prudence would have required Consumers' management to recommend and the Board of Directors to approve at the July 2, 1980 meeting a decision to alter their strategy of continuing at all costs to try to meet the Dow drop-dead date without adequate consideration of the company's duty to its ratepayers. The path chosen by the company was so risky that it had by then become clear that it was virtually certain to fail at enormous cost to the company's ratepayers or investors or both.'" *Id.* at 254, 255.

For similar decisions disallowing billions in improvident continuing expenses in power plant construction, see also, *Gulf States Utilities Co. v Louisiana Public Service Comm.*, 578 So. 2d 71 (La. 1991), *cert denied*, 502 U.S. 1004 (1991), where the court approved of the commission's disallowance of the utility company's \$1.4 billion of continuing costs related to the construction of a nuclear power plant. *Id.* at 93-97. In affirming that the utility company acted imprudently in continuing the project, the court stated that "the inquiry encompasses a public utility's continuation of an investment as well as its decision to enter into that investment ... and requires the utility to respond prudently to changing circumstances or new challenges that arise as a project progresses." *Id.* at 85. In *Entergy Gulf States, Inc. v. Public Utility Comm. of Texas*, 112 S.W.3d 208 (Tex. App. 2003), *petition for review den.*, 2004 Tex. LEXIS 795 (Sept. 10, 2004), the court in affirming the disallowance of \$1.453 billion in imprudently incurred expenses to complete a nuclear power plant stated the standard of prudence as:

"The exercise of judgment and the choosing one of that select range of options which a reasonable utility manager would exercise or choose in the same or

similar circumstances given the information or alternatives available at the point in time such judgment is exercised or option is chosen." *Id.* at 210, n2.

The rule of prudent investment applies to all of a utility's operations, not just expenditures on plant. *See. In re Detroit Edison Co.*, 24 P.U.R.4th 362 (Mich. Pub. Svc. Com.) (1978) ("[P]ublic utility has a duty to ratepayers to conduct its business in a reasonable, thoughtful manner so as to subject the ratcpayers to as little frivolous expense as possible."); *Union Carbide Corp. v. Public Service Commission*, 431 Mich. 135, 149; 428 N.W.2d 322 (1988) ("The commission acted properly in preventing Consumers from passing on to ratepayers any additional fuel expenses incurred while operating the Kam generating' units out of economic order." ("Economic order" means placing on-line units with the cheapest fuel costs first. 431 Mich. at 139, n. 1.)); *Consumers Power Co. v. Mich. Pub. Svc. Comm.*, 196 Mich. App. 687, 493 N.W. 2d 494 (1992) (Court upheld MPSC order disallowing \$38.5 million paid by utility to settle claims under imprudent "take or pay" fuel contract.)

Utility companies are routinely denied their requests for increases in their rate base where the expenses claimed are deemed either imprudently incurred or excessive. In *Iowa-Illinois Gas and Electric Co. v Iowa State Commerce Comm.*, 412 N.W.2d 600, 603-04 (Ia. 1987), the court affirmed a \$14.3 million disallowance, stating that "the utility's consumers should not be required to absorb parts of the ... investment which later events have proved unnecessary and excessive." *Id.* at 608.

Excessive costs which are the product of bad management will be disallowed as imprudent. In *Entergy Gulf States, Inc. v. Louisiana Public Service Comm.*, 726 So. 2d 870, 880 (La. 1999), the court stated that "inadequate and unreasonable management practices," causing various outages, "furnish a proper basis for a finding of imprudence," when it approved the

disallowance of \$34.24 million in charges. The court criticized the practices as a “longstanding pattern of overriding poor management practices which ... were pervasive, affecting all levels of plant operation.” *Id.* In *Georgia Power Co. v. Georgia Public Service Comm.*, 396 S.E.2d 562, 565 (Ga. Ct. App. 1990), *cert den.*, 1990 Ga. LEXIS 483 (Ga. Oct. 23, 1990), the court approved of the commission’s disallowance of \$951 million of the utility company’s requested increase in the rate base. The court found that there was evidence to support the finding of imprudent management; specifically, the court noted that the evidence established the existence of improper construction practices as well as computer and other technical problems. *Id.* at 572. “If the subcontractor ... or the supplier ... was contractually or negligently responsible for the delays, the Company has remedies against those parties and that loss need not be visited upon the ratepayers.” *Id.* at 573. Likewise, the Missouri Public Service Commission disallowed as imprudent \$384 million in costs associated with construction of a power plant that were the result of a failure to adequately integrate the construction and engineering schedules, a failure to correctly assess the remaining amount of work to be completed until very late in the project, and a failure to fully implement an effective cost accounting system. *Re Union Electric Company*, 66 P.U.R. 4th 202, 228 (1985)(excerpts attached).

The courts have emphasized that the prudent investment rule is not applied with hindsight but based on what the utility knew at the time of the decision.

“The standard by which management action is to be judged is that of reasonableness under the circumstances, given what was known or should have been known at the time the decision was made or the action was taken.” *Georgia Power Co.*, 396 S.E.2d at 569

In *ABATE*, the Court of Appeals held that the decision to continue with construction after July 1980 was imprudent based on what Consumers knew at that time it decided to continue the project.

“The construction problems in the past gave little reason to believe that there would be few or no problems in the future, a necessary circumstance for success under the schedule [for continued construction] adopted by Consumers. All of these facts and circumstances were known to Consumers in July 1980. The PSC’s decision [in refusing to authorize rates to cover such costs] was not based on hindsight.” 208 Mich. App. at 264.

Hindsight is no issue here. By mid 1981, DWSD had 20/20 foresight. Three engineering experts had advised it that leakage into the sewer in areas of silty, sandy or fine soils would lead inevitably to sewer failure. DWSD clearly recognized the risk of repeated tunnel failures and retained Jenny Engineering to inspect and advise on the entire system. Jenny Engineering’s inspection confirmed the worst; without vigilance and ongoing preventative measures, further failures were certain to occur because of the original construction defects or any leaks in areas of fine or sandy soils. In these circumstances, prudence dictated ongoing regular inspections because the 1978 and 1980 failures made clear that serious failure could occur in just a few years. Failure to inspect frequently and then address identified problems created a real risk that a leak in progress could turn into a failure before it could be caught by infrequent inspection. And that chicken came home to roost in 2004.

Macomb does not dispute that it has an obligation to pay for assets that serve Macomb. But Macomb has done that once. Detroit designed and built the Oakland Macomb Interceptor with an intended useful service life of 100 years⁷ but failed to perform initial inspections

⁷ Interceptors and regulators are depreciated over an estimated useful life of 100 years. DWSD Sewage Disposal Fund Financial Statements, June 30, 2004 and 2003, Note 1(b), p. 6.

required to achieve that service life. Per the Contract, Macomb has paid to amortize the cost of the Interceptor. No contract and no rule of ratemaking obliges Macomb to pay *twice* for the same asset, or to pay for costs that could have been avoided by proper construction and subsequent maintenance and routine inspection. It is up to the system owner to maintain its assets to achieve their full service life and to bear the loss of replacing plant which fails untimely due to improper design, construction and/or maintenance.

There is prior precedent in this case for barring DWSD from passing on to any of its ratepayers the consequences and costs of its mismanagement of the system. In the late 1990s, DWSD failed to operate its plant to meet effluent limitations after nearly 20 years of court oversight and the expenditure of hundreds of millions of dollars. This Court was so concerned it convened a special citizens task force to report on the causes of DWSD's permit violations. MDEQ imposed a \$1,575,000 civil penalty including enforcement and oversight costs on DWSD. The Second Amended Consent Decree expressly provides that the penalty not be paid by DWSD's suburban customers. Ex. 18, Second Amended Consent Judgment, p. 9.

(ii) It Is Likely That Macomb's Objection to the Dispute Rate will Prevail on a Cost of Service Approach.

A second principal of ratemaking is that ratepayers be charged in proportion to the costs incurred to provide them service. See generally, Ex. 17, AWWA, Manual Water Rates, Ch. 2. It is this principle which supports, for example, establishment of a rate to Macomb and Clinton-Oakland sufficient to cover the capital cost of the Oakland Macomb Interceptor. On the other hand, and by comparison, the \$1,575,000 penalty imposed on DWSD by USEPA in 2000 was not prompted by serving any customer but arose from mismanagement of the treatment plant. No demand for service placed on the system by a customer prompted that penalty. Accordingly,

the Second Amended Consent Decree appropriately bars DWSD from recouping that civil penalty from the suburban ratepayers.

The Board's 1980 rate policy is generally consistent with this principle and DWSD's proposed rate with regard to the 2004 collapse is inconsistent. Although it is appropriate for a customer to pay for the initial cost of a capital improvement, the customer is entitled to a sound, working asset. Director Beckham's insurance analogy indicates appropriately that unexpected failures, not caused by a customer, are best seen as a cost to the system and appropriately, but not necessarily, charged as common to all. The latest tunnel collapse was not caused by demand on or use of the interceptor by Macomb, but instead by inadequate design and construction and a failure of preventative maintenance.

(iii) DWSD Is Obligated Under the Contract To Hold Macomb Harmless for DWSD's Failure to Insure the Tunnel Was Properly Built.

Under the Contract, DWSD agreed to hold Macomb harmless against "any and all" liabilities and claims for injuries, including death, or otherwise, arising out of the construction of the interceptor. Ex. 1, § 21. Words like "all" and "any" are interpreted to provide the "broadest possible indemnification." *Triple E. Produce Corp. v Mastranardi Produce*, 209 Mich. App. 165, 174, 530 N.W. 2d 772 (1995), lv. dn., 450 Mich 897, 899, 541 N.W. 2d 772 (1995). DWSD also has a contractual obligation to maintain the interceptor and has breached its contract if it fails to do so – as it appears it has so failed. Although the last and most direct proximate cause of the 2004 collapse is likely to be DWSD's failure to carry out a preventative maintenance program, a fair reading of the Corps' 1980 report indicates that the proximate cause reaches back 30 years - the tunnel design was ill-considered for sections of tunnel passing through saturated fine or sandy soils, and poor construction practices were not caught and corrected by DWSD

before the interceptor was accepted by DWSD and placed into service. Hence, the repair costs arise out of the construction of the interceptor and Macomb has the right to be held harmless from them. DWSD attempts to turn that obligation on its head by having Macomb hold it harmless in the guise of ratemaking from the consequences of its mismanagement.

(iv) The Preliminary Relief Requested Is Consistent With DWSD Policy and Court-ordered Relief in Prior Disputes.

The rate proposed by DWSD violates the Water Board rule adopted in 1980. DWSD cannot change the rules after the fact. DWSD has undertaken numerous rate and rate-related studies since adoption of its policy in February 1980. Macomb is unaware of any study or rate readjustment which has been recommended to DWSD to support a revision of its policy. If it wishes to change its ratemaking policies on a going forward basis, it may do so prospectively so long as it is in conformance with other applicable ratemaking principles. It is another thing to do so retroactively.

In addition to the treatment of the 1980 collapse, there is other precedent for a common to all approach to extraordinary capital expenses. In 1990, DWSD faced substantial costs to design, install and operate storm flow metering facilities and computer modeling programs. That work was needed to design facilities to prevent combined sewer overflows ("CSOs") from interceptors in Detroit that carried sewage and storm flow from retail and wholesale customers.

The Court deferred consideration of all rate challenges related to the study until the monitoring could be done and information needed to understand the storm flows could be gathered. During that period of data collection, the Court ordered that monitoring costs be allocated common to all, subject to the right of any party to assert later that they should be reallocated. Ex. 19, *Order re Mathematical Model* (February 22, 1991). The Order was

extended by three supplemental orders while the investigation went on. In 1999, those measuring and modeling costs were confirmed as common to all under the 1999 Rate Settlement Agreement reached by the parties' partnering efforts with previous DWSD management and approved by the Court. The 1991 preliminary order was a common sense way to set rates and allow the facts to emerge while harming no customer. Macomb's present request for a preliminary order will serve the same end.

The 1999 Rate Settlement Agreement, Ex. 20, provides another example - costs associated with design and construction of combined sewer overflow control facilities inside Detroit, the largest capital program in recent years, are first pooled together and then the total pooled cost is apportioned to all customers in various negotiated percentages, regardless which interceptor(s) or CSO basins(s) serves those customers. Thus costs of these major CSO facilities are borne by all customers, regardless of their location. Accordingly, a cost overrun in the construction of a CSO facility serving flows from just one suburban customer or presumably a catastrophic repair of that facility, will be added to the pool cost and borne by all customers according to their negotiated percentages, even though the specific facility prompting the costs increase serves the flows of just one customer.

3. **Relative Harm**

The \$3 million annual charge proposed for 2005/2006 to Macomb is the equivalent of \$1.36 per mcf and is likely to double the next year, when the full \$53 million begins to be amortized. For comparison, Macomb's commodity rate, computed without that charge, is \$10.21/mcf. The imposition of an immediate \$1.36 and perhaps double that next year is drastic and unwarranted, and will disrupt the budgets of Macomb's constituent communities.

To cite a recent comparison, the 1999 Settlement Agreement, § 11, Ex. 20, dealt with a situation in which adjustments resulting from the newly measured storm flows and allocations of CSO costs would have imposed a drastic burden on Detroit retail ratepayers. To alleviate that problem, a ten-year phased adjustment was worked out, in which suburban ratepayers paid some of the Detroit increases in the early years, with Detroit customers scheduled to repay those amounts in later years through phased increases. The stated purpose of § 11 of the Agreement was "to avoid dramatic fluctuations in rate increases or decreases to all customers of the system."

Macomb County ratepayers are in jeopardy of just such dramatic fluctuations. They face a nearly 15% increase this year and a likely 30% increase next year. They have demonstrated that the new increase is not their fault, nor the fault of any third party. They have demonstrated a substantial likelihood of proving that the fault lies entirely with DWSD, from original construction to failure to inspect and maintain. When Macomb prevails in these proofs, its rate will immediately drop and it will be owed a refund for any amounts collected, while Detroit customers will have to bear a large increase.

In contrast to imposing an increase of \$1.36/mcf on Macomb alone, spreading the costs during the pendency of this dispute consistent with DWSD's long established "common-to-all" policy would impact other customers by only 14¢/mcf - on the order of a 1% increase. The harm to Macomb clearly outweighs the harm to others.

As an alternative, the interim annual amortized cost could be charged to the Emergency Repair and Replacement Fund. This Fund had its origins in the aftermath of the 1980 collapse and was created for precisely this kind of situation. DWSD's advisors, Morgan Stanley, recommended that DWSD create a "funded reserve for extraordinary repairs and replacements."

Ex. 21, Letter, Morgan Stanley to DWSD (November 14, 1980), p. 2. Now, the Fund is maintained at 15% of annual revenue requirements. Ex. 22, Foster Report, p. 10. Based on the revenue requirements for FYs 2005 and 2006, the Fund exceeds \$28 million. Resort to the Emergency Repair and Replacement Fund would harm no customer before this matter is resolved, and avoid the harm to Macomb that would come from rapidly fluctuating rates.

4. **Public Interest**

The Water Board made a legislative declaration of the public interest in 1980, when it resolved that extraordinary costs of repair after major disasters to interceptors, water mains, water treatment plants and sewage treatment plants should be charged to all customers, regardless where the damage occurs. The AWWA recognizes that in allocating costs between inside-city and outside city customers, factors other than direct costs of service (such as facilities required, ownership and risk) can be considered in setting rates Ex. 17, AWWA, Water Rates Manual, p. 19. The Water Board resolution specifically mentions the 1980 interceptor collapse in Macomb County as such a major disaster. The 2004 collapse is another.

When DWSD prepared rates for the 1980 costs, its Director, Charles Beckham, wrote to the Water Board. He observed that this type of expense could be covered by insurance.

“If the Department would insure for this type of damage, the cost of insurance would be a system-wide costs as there would be no way to tell in advance where a break might occur. Since we are, in effect, self-insured, the cost of such a break should be spread in the same way as the insurance would have been. That is, on a system-wide basis.” Ex. 6, Beckham letter.

The Director’s letter pointed out that a charge to Macomb and Clinton Oakland alone would cost them \$1.21/mcf. Allocation to all would cost 10¢/mcf.

This dramatic parallel demonstrates that the public interest is served by a preliminary order spreading the cost to all users. The relative cost per mcf, to Macomb and to the system, is close today to what it was in 1980. Then, DWSD followed the directive of the Water Board. Now, it does not.

CONCLUSION

This Court should enter a preliminary injunctive order requiring DWSD during the pendency of this proceeding to either recover the cost of the 15 Mile sewer collapse repairs on a common to all basis consistent with existing ratemaking policy adopted by DWSD's Board, or to fund the amortized cost of the repair from the Emergency Repair and Replacement Fund. Macomb has made an initial demonstration that it is likely to prevail on the merits because DWSD's mismanagement probably caused the collapse and ratemaking law requires the utility's owner (that is, the City of Detroit) and not the ratepayers to bear the costs arising out of mismanagement.

Respectfully Submitted,

BODMAN LLP

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June 21, 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant,

Civil Action No. 77-71100
Honorable John Feikens

vs.

STATE OF MICHIGAN,

Defendant and Cross-Plaintiff
And Cross-Defendant,

vs.

CITY OF DETROIT, a municipal corporation, and
DETROIT WATER AND SEWERAGE DEPARTMENT

Defendant and Cross-Plaintiff

vs.

ALL COMMUNITIES AND AGENCIES UNDER
CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES

et al.

U.S. DIST. COURT
EAST DIST. MICH
DETROIT, MICH

05 JUN 27 AM 10:07

FILED

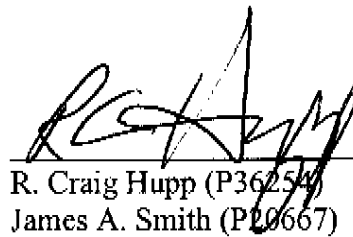
NOTICE OF HEARING

NOTICE OF HEARING

Macomb County's Motion for a Preliminary Injunction affecting the imposition of the City of Detroit's 2005/2006 sewer rates will be brought on for hearing at a time and place to be set by the Court.

BODMAN LLP

By:



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In The Matter Of:

City of Detroit, Michigan

R. Craig Hupp

July 14, 2014



Bingham Farms/Southfield • Grand Rapids
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Min-U-Script® with Word Index

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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6 In re:) Case No. 13-53845
7 CITY OF DETROIT, MICHIGAN)
8) Chapter 9
9 Debtor)
10) Hon. Steven W. Rhodes

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12

13 The Deposition of R. CRAIG HUPP,
14 Taken at 21777 Dunham Road,
15 Clinton Township, Michigan,
16 Commencing at 8:10 a.m.,
17 Monday, July 14, 2014,
18 Before Melinda S. Moore, CSR-2258.

19
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23
24
25

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10 (Exhibits attached to transcript.)

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1 **A. Yes.**

2 Q. So you know you have to answer verbally. The

3 court reporter can't take down non-verbal

4 gestures.

5 **A. Yes.**

6 Q. Would you tell us your educational background.

7 **A. I have a bachelor of science in mechanical**

8 **engineering from the University of Virginia. I**

9 **have a master's degree in engineering science from**

10 **the University of New South Wales, a law degree**

11 **from Wayne State, and a graduate certificate in**

12 **dispute resolution from Wayne State.**

13 Q. When did you first start practicing as an

14 attorney?

15 **A. I was admitted to the bar in February or March of**

16 **1984.**

17 Q. And who --

18 **A. It would have been a little later than that. It**

19 **would have been May of '84. Bar exam was in**

20 **February.**

21 Q. I understand you work at Bodman?

22 **A. I've worked at Bodman my entire career.**

23 Q. Okay. And what area are you in?

24 **A. I practice in two practice groups,**

25 **environmental -- the environmental practice group**

Page 6

1 Clinton Township, Michigan

2 Monday, July 14, 2014

3 8:10 a.m.

4 (Mr. Ruegger not present at 8:10

5 a.m.)

6 R. CRAIG HUPP,

7 was thereupon called as a witness herein, and

8 after having first been duly sworn to testify to

9 the truth, the whole truth and nothing but the

10 truth, was examined and testified as follows:

11 **MR. WATSON:** Let the record reflect

12 that this will be a deposition taken pursuant to

13 Notice, to be used for all purposes appropriate

14 under the applicable rules.

15 **EXAMINATION**

16 **BY MR. WATSON:**

17 Q. Mr. Hupp, I'm going to ask you a series of

18 questions. If you don't understand the question,

19 you want me to rephrase it or anything of that

20 nature, please let me know and I'll try to

21 accommodate you. Otherwise, I will assume that

22 you've heard the question and are responding to

23 it. Okay?

24 **A. Yes.**

25 Q. Have you ever been deposed before?

Page 8

1 **and the litigation practice group.**

2 Q. What are your main focuses in the environmental

3 practice group? What do you do?

4 **A. There's three general activities. There's general**

5 **counseling of corporate clients mostly on almost**

6 **any possible question under environmental law. I**

7 **do a lot of work with banks when environmental**

8 **issues arise in loan agreements or workouts or**

9 **foreclosures, and do a certain amount -- not much**

10 **lately of environmental litigation, typically**

11 **over -- under the various statues and hazardous**

12 **waste laws, cost recovery, and the like.**

13 Q. In this matter, you know there are a couple loan

14 agreements at issue, the settlement agreement and

15 an acquisition agreement. You have experience in

16 drafting such agreements?

17 **A. I have experience in drafting parts of such**

18 **agreements, but not agreements as a whole.**

19 Q. How long have you done work for Macomb County?

20 **A. My first assignment for Macomb County was probably**

21 **1998 or 1999.**

22 Q. And have you worked continuously for them since

23 then?

24 **A. Yes.**

25 Q. What are the types of legal work you've done for

Page 9

1 Macomb County?

2 **A. Our firm has represented the Office of Public**

3 **Works since 1977 on matters related to DWSD rates**

4 **and the county's contract for wastewater services.**

5 **That continues through today. I have handled --**

6 **provided environmental advice on a bunch of**

7 **environmental issues as they have arisen for the**

8 **department, wetlands, soil sedimentation issues.**

9 **With others I've been involved in several lawsuits**

10 **involving construction claims, at least one**

11 **lawsuit to recover environmental cleanup costs,**

12 **you know. There have certainly been other matters**

13 **but that kind of gives you a general picture, I**

14 **hope.**

15 **Q. Have you been involved in representing Macomb**

16 **County in what we've referred to in this**

17 **litigation as the Feikens case?**

18 **A. Yes.**

19 **Q. What types of things have you done in that**

20 **Feikens case?**

21 **A. First and foremost the Feikens case was filed in**

22 **1977. And that became the litigation or the place**

23 **or the forum -- forum, I guess, where disputes**

24 **over rates and charges from Detroit mostly got**

25 **played out. That's something that arose as soon**

Page 10

1 **as the 1977 case was filed. And thereafter there**

2 **were occasions when one or more of the wholesale**

3 **customers challenged some aspect of the charges in**

4 **state court. Detroit removed it to federal court.**

5 **Judge Feikens made clear he believed those**

6 **disputes belonged in his court. He made that**

7 **point often enough by 1982 or 1983 that thereafter**

8 **nobody tried to go to state court, because they**

9 **were just going to end up in front of Judge**

10 **Feikens.**

11 **And so most -- until actually the**

12 **global settlement in 2008, most -- any significant**

13 **rate dispute wound up playing out in front of**

14 **Judge Feikens through contested motions or other**

15 **sorts of matters. In addition, often under the**

16 **court's oversight or whatever, in various periods**

17 **of history, the court became involved in**

18 **overseeing and attempting to rectify DWSD**

19 **management with the objective of having DWSD be**

20 **able to comply with the Clean Water Act; and that**

21 **would involve wholesale customer involvement in**

22 **the process in terms of consent decrease intended**

23 **to accomplish management reforms, disputes over**

24 **whether certain sorts of projects need to comply**

25 **with the law could go ahead over various reasons.**

Page 11

1 **At one point there was various ancillary disputes**

2 **that would arise in the case. It just -- and then**

3 **ultimately at the time of Judge Feikens's**

4 **retirement and the transfer to Judge Cox, the**

5 **larger question of restructuring DWSD governance**

6 **and getting DWSD separated from Detroit, which was**

7 **a process that counties weren't very much involved**

8 **with continued, and sort of the regional authority**

9 **negotiations that have gone over the last year**

10 **have been a part of that continuum. So there's**

11 **been this -- over the 35 plus years, there's been**

12 **a very broad type of activities that occurred in**

13 **that case.**

14 **Q. Now, one thing I think I heard you say is that**

15 **after a point it became pretty clear that if an**

16 **entity like Macomb had a dispute with DWSD, that**

17 **would be heard in federal court before Judge**

18 **Feikens?**

19 **A. Yeah. That wasn't universally true. If it**

20 **involved rates and charges or the management of**

21 **DWSD, that was certainly the case. That was the**

22 **case up until Judge Feikens's retired. There were**

23 **other cases -- Macomb County had a dispute with**

24 **Detroit over some potential damage to a Macomb**

25 **County facility, and that case proceeded in state**

Page 12

1 **court, for example. But if it involved rates and**

2 **charges or anything like that, one way or the**

3 **other, it would wind up in front of Judge Feikens.**

4 **Q. Are you familiar with a settlement agreement, I**

5 **think, that was actually dated May 2009 between**

6 **Macomb and Detroit and Oakland counties, perhaps**

7 **other entities?**

8 **A. I am.**

9 **Q. And what was your involvement in that settlement**

10 **agreement, if any?**

11 **A. I represented with others -- I'm sure there were**

12 **other lawyers at Bodman. I was the principal**

13 **lawyer involved. I represented Macomb County**

14 **Office of Public Works in a negotiation of that**

15 **settlement agreement and its documentation.**

16 **MR. WATSON: I'm going to get this one**

17 **marked. It's been marked before, but I didn't**

18 **bring the exhibits from the other dep. Maybe**

19 **we'll just mark that as Hupp Exhibit 1.**

20 **MARKED FOR IDENTIFICATION:**

21 **DEPOSITION EXHIBIT 1**

22 **8:20 a.m.**

23 **BY MR. WATSON:**

24 **Q. Mr. Hupp, you've been handed what's been marked**

25 **as Hupp Exhibit 1. Is that the settlement**

1 agreement between City of Detroit, DWSD, Macomb
 2 County, Oakland County, Wayne County?
 3 **A. Yes. I'm not sure if it has all of the exhibits**
 4 **attached to it, but the main body of this is**
 5 **the -- this is the agreement, yes.**
 6 Q. Were you involved in drafting this agreement?
 7 **A. Yes.**
 8 Q. Were you the principal drafter of the agreement,
 9 or do you know who was the principal drafter was?
 10 **A. My recollection is this was very much of a joint**
 11 **effort by all of the attorneys for the various**
 12 **parties were very actively involved in drafting**
 13 **this.**
 14 Q. Who else was involved? First let's say the
 15 attorneys.
 16 **A. For the City of Detroit, it would have been Mark**
 17 **Jacobs, Bob Walters. For Oakland County, it would**
 18 **have been Joe Colaianne, C-o-l-a-i-a-n-n-e, who**
 19 **was in-house counsel for the Office of Water**
 20 **Resources Commissioner, Oakland County. And**
 21 **Jaye -- excuse me -- Jaye, J-a-y-e, Quadrozzi,**
 22 **Q-u-a-d-r-o-z-z-i, outside counsel for Oakland**
 23 **County. For Wayne County, it would have been**
 24 **Patrick McCulloch and -- who was outside counsel,**
 25 **and Lavonda Jackson who was assistant Wayne County**

1 **Before that it was Anthony Adams, and before that**
 2 **it was Victor Mercado or somebody -- I mean,**
 3 **Mercado was gone by the time we were working on**
 4 **this.**
 5 Q. Do you know when Mercado left? Was it 2008?
 6 2009?
 7 **A. He left in the June of 2008.**
 8 Q. June of 2008. I note that this settlement
 9 agreement has a court caption on it. Were the
 10 negotiations supervised by the court and
 11 encouraged by the court? Why was the court
 12 involved in this?
 13 **A. Anything of this -- because it resolved disputes,**
 14 **quite a number of them -- there's a list of them**
 15 **in one of the attachments of all of the disputes.**
 16 **This became known as the global settlement. And**
 17 **there's a list in here somewhere. Exhibit C is a**
 18 **list of all of the matters pending before Judge**
 19 **Feikens that this global settlement resolved. So**
 20 **there are a variety of motions and orders and**
 21 **opinions, et cetera that were resolved. And,**
 22 **again, as I mentioned before, his court had become**
 23 **the forum for all disputes over rates and charges,**
 24 **DWSD management and the like.**
 25 **At some point -- in further answer to**

1 **corp counsel, and then on my side -- on the Macomb**
 2 **County side of the table were myself. I don't**
 3 **recall specifically who else within Bodman would**
 4 **have looked at this. And then Mr. Misterovich**
 5 **wearing his lawyer's hat for Macomb County.**
 6 Q. As far as the client representatives for Macomb
 7 County and DWSD, can you identify those
 8 individuals.
 9 **A. From Macomb County, ultimately I reported to**
 10 **Commissioner Marrocco. On a kind of a day**
 11 **reporting basis, it was to Mr. Misterovich, his**
 12 **chief deputy, and Mr. James Pistilli, who was the**
 13 **-- I don't remember his title exactly, but he**
 14 **effectively chief engineer for wastewater**
 15 **services. I don't think that particular title had**
 16 **been created at that point.**
 17 Q. What about for DWSD?
 18 **A. It would have inside DWSD Bob Walters and**
 19 **occasionally other representatives of DWSD**
 20 **management, but in this time period, there was a**
 21 **shifting through maybe three or four**
 22 **individuals -- or in this time period, Mr. Mercado**
 23 **had left, and Ms. Pamela Turner was interim**
 24 **director, so as of the fall -- as of the kind of**
 25 **spring of 2009, it would have been Pamela Turner.**

1 **your question, at some point Judge Feikens**
 2 **appointed Mr. Timothy O'Brien to serve as kind of**
 3 **a facilitator, and Mr. O'Brien orchestrated the**
 4 **discussions that generated a settlement in**
 5 **December of 2008 that did not get formally entered**
 6 **as a settlement agreement with the court until May**
 7 **of 2009, but the agreement was reached in December**
 8 **of 2008.**
 9 Q. I take it that this agreement was intended to
 10 resolve all pending disputes between, among
 11 others, DWSD and Macomb?
 12 **A. No. That's not correct.**
 13 Q. Were there disputes between the two that it
 14 didn't resolve that you're aware of?
 15 **A. Yes.**
 16 Q. What were those?
 17 **A. There were a variety of rate-related disputes. In**
 18 **fact, that's why there is a specific**
 19 **enumeration -- why the parties put together a**
 20 **specific enumeration of what was getting resolved**
 21 **was there were other things pending. I know I'd**
 22 **have a hard time listing them right now, but**
 23 **Macomb County had a variety of more mundane rate**
 24 **disputes then pending, and I'd be virtually**
 25 **certain Oakland County had some stuff -- excuse**

1 me, some concerns as well that were not addressed
 2 by this.
 3 Q. Well, let's look at exhibit -- you say Exhibit C
 4 was the list of matters resolved.
 5 A. Generally, yes.
 6 Q. And I'm looking down Exhibit C, and I see the
 7 name Infrastructure Management Group. Are you
 8 familiar with that entity? What is that?
 9 A. It is my understanding that the Infrastructure
 10 Management Group was a consulting firm of some
 11 sort retained by DWSD, I believe, at the urging of
 12 the court to oversee the DWSD contracting process.
 13 Q. As I understand it, it oversaw contracts over
 14 \$500,000. Do you recall that?
 15 A. I don't have that level of information personally
 16 about what their task was.
 17 Q. Did you ever have any dealings with them?
 18 A. No.
 19 Q. I'm looking at the next page, No. 5, interceptor
 20 collapse.
 21 A. Yes.
 22 Q. And it resolves apparently a motion for
 23 reconsideration. What was that about?
 24 A. In February of -- Macomb County had filed a
 25 proceeding in the 1977 case challenging its

1 project, and the debt service cost -- annual debt
 2 service cost to the project is then put in the
 3 rates to the class of customers served by the
 4 project. So in the case of an interceptor or any
 5 other facility that would serve only Macomb
 6 County, if DWSD borrowed money to construct a
 7 facility, the debt service associated with that
 8 project as tracked by DWSD's accounting system
 9 would be put in DWSD -- excuse me -- would be put
 10 in Macomb County's rates and nobody else's.
 11 And there was one and then it turned
 12 out two projects where, from Macomb County's point
 13 of view, the manner in which DWSD was calculating
 14 and attributing the debt service to Macomb County
 15 was incorrect and inconsistent with long-standing
 16 understandings and agreements as to how the
 17 capital cost would be recovered.
 18 Basically to make it simple, Detroit
 19 borrowed the money at 5%, and then charged -- they
 20 were charging Macomb County about 7 to 7-1/2%.
 21 Q. Had there been a formal agreement between Detroit
 22 and Macomb County pinning down the interest rate
 23 at 5% or whatever percent it was?
 24 A. I believe the answer to that is yes. I believe it
 25 was set forth in the rate setting protocols that

1 liability for the costs incurred by DWSD in
 2 repairing a sewer collapse that occurred in August
 3 of 2004. In February of 2007, sua sponte, without
 4 notice to the parties, Judge Feikens issued an
 5 order dismissing Macomb County's claims with
 6 prejudice. Macomb County moved for
 7 reconsideration of that order, apparently,
 8 according to this, on April 6, 2007.
 9 Q. And so this global settlement resolved that
 10 dispute in full?
 11 A. I think a fair answer was we thought so at the
 12 time. It's been clear since it didn't.
 13 Q. How so?
 14 A. Well, there's this matter that I'm being deposed
 15 in today and I know Macomb County has had two
 16 lawsuits pending over those costs that remain in
 17 court.
 18 Q. And then it says "Interceptor interest rate."
 19 What was the dispute about in regard to
 20 interceptor interest rate?
 21 A. Under Detroit's rate setting procedures, as far as
 22 I know, at least since mid-1970s, the cost of
 23 capital projects are recovered in the rates by --
 24 depending on the project, determining what
 25 customer classes are served by the capital

1 Detroit and its wholesale customers had developed
 2 and agreed to over the years.
 3 Q. Let me ask this because I'm not sure my
 4 understanding is correct. As I understood, there
 5 had been a formal agreement that had pretty much
 6 expired. Detroit and Macomb had not reached a
 7 new agreement. Detroit was charging the 7% or so
 8 that Macomb felt was too high. Is that how it
 9 happened?
 10 A. No.
 11 Q. How did it happen that Detroit charged the 7% or
 12 7-1/2%, whatever it was?
 13 A. I could never figure out what prompted Detroit to
 14 do that. It was clearly inconsistent with all
 15 practices.
 16 Q. Nevertheless, the matter was settled?
 17 A. The matter was settled.
 18 Q. Okay. Let's look at a few of the provisions of
 19 the acquisition agreement.
 20 MS. BADALAMENTI: Of Exhibit 1 or the
 21 acquisition agreement?
 22 MR. WATSON: I'm sorry, the settlement
 23 agreement. Thank you.
 24 THE WITNESS: If we could go off the
 25 record briefly.

Page 21

1 (Off the record at 8:35 a.m.) eye
 2 (Back on the record at 8:35 a.m.)
 3 **BY MR. WATSON:**
 4 Q. Looking at -- on the second page, 1 A 4, it says?
 5 **A. I don't believe I have the document you're looking**
 6 **at. Is this the settlement agreement?**
 7 Q. Yeah, the settlement agreement?
 8 **A. What page?**
 9 Q. Second page, 1-A(iv).
 10 **A. Okay.**
 11 Q. It reads "All disputes and claims between the
 12 parties related to costs for repairs and
 13 renovation of the interceptor sewers listed in
 14 Exhibit 1 of Exhibit D of this agreement." And I
 15 was wondering if the interceptor -- 15 Mile Road
 16 interceptor collapsed -- interceptor that
 17 collapsed was one of those.
 18 **MS. BADALAMENTI:** I'm going to object.
 19 There isn't an Exhibit 1 to Exhibit D, and there
 20 hasn't been a version of this document that we've
 21 seen. But you can go ahead.
 22 **MR. WATSON:** I might not have brought
 23 it. And you don't remember offhand if -- let's
 24 see here. Let's have that marked Exhibit 2.
 25 **MARKED FOR IDENTIFICATION:**

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1 DEPOSITION EXHIBIT 2
 2 8:37 a.m.
 3 **BY MR. WATSON:**
 4 Q. You've been handed, Mr. Hupp, what's been marked
 5 Exhibit 2. And my understanding is that that's
 6 the same Letter of Intent that's attached to this
 7 settlement agreement, but that happens to have
 8 the Exhibit 1 to Exhibit D. If you could take a
 9 look at Exhibit 1 to Exhibit D.
 10 **MS. BADALAMENTI:** You want him to look
 11 at Exhibit 1 of your marked Exhibit 2?
 12 **MR. WATSON:** Right.
 13 **MS. BADALAMENTI:** Because there is no
 14 Exhibit 1 to Exhibit D on Exhibit 1, right?
 15 **MR. WATSON:** Well, Exhibit D, I think,
 16 is Exhibit 2 -- Deposition Exhibit 2.
 17 **BY MR. WATSON:**
 18 Q. If you could confirm that those two documents are
 19 the same. And then look -- as far as Exhibit 2,
 20 look at Exhibit 1 to Exhibit 2, and my question
 21 is whether or not the sewer that collapsed is
 22 listed amongst those.
 23 **MS. BADALAMENTI:** That was a lot of
 24 questions, but --
 25 **BY MR. WATSON:**

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1 Q. Do you understand the question at all?
 2 **MS. BADALAMENTI:** Let me do it this
 3 way: I'm going to place a continuing objection to
 4 any question that suggests that Exhibit 1 was
 5 attached as Exhibit D for the settlement agreement
 6 that we've marked here as Exhibit 1. But subject
 7 to that objection, you can go ahead and answer.
 8 **BY MR. WATSON:**
 9 Q. So I guess the first task I have assigned to you
 10 is if you could confirm that Exhibit D of the
 11 settlement agreement is the same as the
 12 Exhibit 2, Letter of Intent.
 13 **A. Obviously without reviewing them word for word, I**
 14 **can't say whether they're identical or not. They**
 15 **appear to be the same. They have the same**
 16 **document number on the first lower right corner of**
 17 **the first page. So, again, they appear to be the**
 18 **same, but I have not done a literal word-for-word**
 19 **comparison.**
 20 Q. If you could look at Exhibit 2, which at the top
 21 says "Letter of Intent," correct?
 22 **A. Yes.**
 23 Q. And if you would look at Exhibit 1 to Exhibit 2,
 24 Exhibit 1 reads "Oakland-Macomb Interceptor
 25 System Property to Be Transferred." What I'm

Page 24

1 trying to figure out is the sewer that collapsed,
 2 is that amongst the properties listed in this
 3 Exhibit 1?
 4 **A. Yes, it is.**
 5 Q. Okay. If you would go back to the settlement
 6 agreement, Hupp Deposition Exhibit 1, I'm looking
 7 at what's marked at the bottom as 3 of the
 8 settlement agreement. It's actually page 4 as
 9 I'm counting, but it says 3 at the bottom.
 10 **A. Yes.**
 11 Q. And section B reads in part "The parties, in
 12 complete satisfaction of the 2004 collapse
 13 claims," and then it goes on, and it talks about
 14 an amount of \$17,050,000. What was the
 15 \$17,050,000 for? Do you know?
 16 **A. It's as stated in that sentence, Macomb had**
 17 **asserted a challenge to the liability for the 2004**
 18 **collapse. I forget what the dispute over the 2006**
 19 **repairs were. And they had challenged the manner**
 20 **in which Detroit was calculating interest rate on**
 21 **the 2004 collapse cost as well as on another**
 22 **interceptor project, so they had asserted a**
 23 **variety of claims stating they were being either**
 24 **overcharged or charged for things that they**
 25 **shouldn't be liable for, and ultimately all those**

1 **claims were -- resulted in a judgment in Macomb**
 2 **County's favor of \$17,050,000.**
 3 Q. And I guess the logical question becomes: An
 4 adjustment to what?
 5 **A. As collectively the documents indicate, as part of**
 6 **settling these and other claims that Oakland and**
 7 **Macomb County had, with some ancillary adjustments**
 8 **to Wayne County as well, these claims and Oakland**
 9 **County's claims would get settled, and in**
 10 **consideration for that, Oakland County and Macomb**
 11 **County would take over the interceptor system**
 12 **north of 8 Mile Road, and they would reimburse**
 13 **Detroit for the outstanding debt being charged in**
 14 **the rates for those assets being transferred to**
 15 **the two counties or an entity to be created by**
 16 **those counties.**
 17 Q. Okay. So as I understand, the basic agreement
 18 the parties were working on, if we just focus on
 19 Macomb County, is that Macomb County would
 20 purchase the Macomb Interceptor system by paying
 21 Detroit the amount of debt on the system?
 22 **A. The transaction to begin with, as reflected in the**
 23 **settlement agreement, was really more of a unitary**
 24 **transaction in the sense that I don't believe**
 25 **until December of 2008, when this agreement really**

1 answer to the extent it does not do so.
 2 **THE WITNESS:** Thank you. What I think
 3 is important to recognize is that this document
 4 entered in court in May of -- May 18, 2009, these
 5 documents were done in the form you see them
 6 essentially in December of 2008. The delay
 7 between reaching the settlement as reflected in
 8 these documents and entry with the court was
 9 because in that time period, there was a question
 10 as to whether the other parties in the 1977 case
 11 required notice or not, because this was a
 12 settlement agreement in the 1977 case, and in the
 13 1977 case, all of DWSD's wholesale customers, of
 14 whom there are 17 are parties. So between
 15 December and May, there was initial conference
 16 with the court about what's the procedure for
 17 entering this settlement agreement, and
 18 ultimately, if memory serves me, there was -- I
 19 don't know whether there was a notice and show
 20 cause or just a general notice of the parties that
 21 they could file objections. So even though this
 22 is a May settlement agreement, these documents
 23 represent the parties' thinking in December.
 24 What I can tell you, by May, by the
 25 time this went to court, the decision had been

1 **was done, that Oakland and Macomb County had**
 2 **decided how the assets being transferred would be**
 3 **owned. I think that at that time the possibility**
 4 **had not been eliminated that the counties would**
 5 **put together just one entity to own all of the**
 6 **assets, which could have been done. There were**
 7 **plenty of state statutes that could have been done**
 8 **that way. And it was at some time after the**
 9 **settlement in December of 2008 that Wayne and**
 10 **Oakland County decided they will own a joint**
 11 **entity called the Oakland-Macomb Interceptor Drain**
 12 **Drainage District, and these assets would be**
 13 **transferred to a Macomb Interceptor Drain Drainage**
 14 **District.**
 15 Q. What about the time of the settlement agreement?
 16 Was it still under consideration to go to this
 17 one -- I think you said unitary system -- or had
 18 it been decided at this time, by May 2009, that
 19 there would be is sort of two systems -- I call
 20 it the OMI system -- and the Macomb system?
 21 **MS. BADALAMENTI:** I'm going to object
 22 to the extent that the question calls for him to
 23 divulge privileged information. It's my
 24 understanding neither county has waived their
 25 privilege. Certainly Macomb has not. You can

1 made to have two entities, and steps were underway
 2 to create the OMI.
 3 **BY MR. WATSON:**
 4 Q. Okay. Are you aware when the initial
 5 negotiations started for the purchase by Macomb
 6 or maybe a joint entity of the Macomb Interceptor
 7 system? When did that -- when did that -- those
 8 negotiations first start? And this sort of
 9 documents that the parties intended something
 10 like that to be done. Do you recall when those
 11 negotiations first started taking place?
 12 **A. There was an attempt at settlement in the**
 13 **2006-2007 time frame to which Macomb was the only**
 14 **customer -- wholesale customer party.**
 15 Q. Was there --
 16 **A. That settlement came to naught when Judge Feikens**
 17 **dismissed Macomb County's claims; thereafter no**
 18 **settlement was possible, because the judge had**
 19 **said Macomb County is out of court. It was about**
 20 **probably sometime -- so that's the spring of 2007.**
 21 **I think sometime in the spring of 2008 Judge**
 22 **Feikens appoints Tim O'Brien as a facilitator to**
 23 **attempt to get matters resolved. Macomb County's**
 24 **motion for rehearing was still pending a year**
 25 **later. And obviously Macomb still had all sorts**

1 of rights of appeal.
 2 Shortly after Mr. O'Brien -- it's my
 3 recollection shortly after Mr. O'Brien's
 4 introduction into the discussions, he raised the
 5 possibility that settlement might go better if
 6 Macomb -- if Oakland County were involved, and
 7 there was an attempt to accomplish a global
 8 settlement of all of the things that are listed on
 9 Exhibit C to the settlement agreement. In fact,
 10 history proved that Mr. O'Brien had found a
 11 correct formulation, because once the discussion
 12 was broadened to cover all of these disputes, the
 13 parties were able to work forward to a resolution.
 14 And once Oakland County became part of the mix,
 15 then the question was, well, if Macomb is going to
 16 take this set of interceptors, but Oakland and
 17 Macomb share these other interceptors here, why
 18 don't you, the two counties, take all of them.
 19 And the counties agreed to do that, and sometime
 20 later figured out who would -- you know, what
 21 entities would then manage them.
 22 But that's basically the genesis of the
 23 settlement that came to be. We started with
 24 Mr. O'Brien, and -- sometime in the spring of
 25 2008, and by December had gotten to what the

1 decision. Furthermore, by that time there were
 2 other disputes going hot and heavy like the
 3 interest rate dispute, which any prior
 4 understanding of the -- what to do about the 2004
 5 collapse didn't include. So when things get
 6 restarted, the effort was let's get everything
 7 settled. And meanwhile, something we haven't
 8 touched on, the 800 megahertz radio dispute that's
 9 mentioned on Exhibit 2 to the settlement
 10 agreement, that, again, was a dispute by the
 11 wholesale customers that involved 30 to
 12 \$50 million, and was obviously a huge issue as
 13 well.
 14 So there was essentially a fresh start
 15 after February of 2007.
 16 Q. Okay. O'Brien gets in, there are new
 17 negotiations, and eventually resulted in this
 18 settlement agreement which you say was reached
 19 primarily by December of '08, but documented or
 20 signed here in May of 2009?
 21 A. It was entered with the court in May of 2009.
 22 Q. Okay.
 23 A. But the court was informed in December of 2008
 24 that a settlement had been reached, and I believe
 25 the drafts of all of these documents which are --

1 settlement agreement says.
 2 Q. Now, I was told by someone that early on there
 3 had been, like in 2006 or 2007, some type of
 4 handshake agreement between Mr. Marrocco and
 5 Mr. Mercado that Macomb would purchase the system
 6 by assuming the debt on the system. Were you
 7 aware of anything like that?
 8 A. Yes.
 9 MS. BADALAMENTI: I'm going to object
 10 to that question to the extent that it calls for
 11 him to divulge privileged information of the
 12 county.
 13 BY MR. WATSON:
 14 Q. Were you around for any type handshake agreement
 15 like that? Did you witness that?
 16 A. I was aware of it. I didn't witness it.
 17 Q. Any idea of when that might have occurred?
 18 A. Late summer/early fall of 2006.
 19 Q. But apparently that was pretty much scuttled by
 20 the Feikens decision. And then things got
 21 resurrected, you were saying, spring 2008 or so,
 22 and then that led to what eventually became the
 23 deal?
 24 A. Yes. Well, whatever had been understood to exist,
 25 you know, went out the window with Judge Feikens'

1 were essentially identical to these documents were
 2 provided -- were certainly done by the parties,
 3 and I think they were provided to the court as a
 4 matter of information in December of 2008.
 5 Q. And turn to page 6 of the agreement. 6-B
 6 contains an integration clause. Were you
 7 involved in drafting that clause and assisting it
 8 be placed in this agreement?
 9 A. I have no recollection who specifically wrote this
 10 clause or where it came from. It was certainly
 11 reviewed by all of the attorneys that looked at
 12 this, and --
 13 Q. Okay. And going to the next page, I see it's --
 14 there is a signature of Pam Turner. Do you see
 15 that?
 16 A. Yes.
 17 Q. Was she involved in the negotiations at all?
 18 A. I don't recall. It would have been -- I'm just
 19 trying to remember dates. Victor Mercado left in
 20 June. Anthony Adams was appointed as either
 21 director or interim director. He served until
 22 sometime in the fall. And then between that point
 23 and December, I think -- I think by December --
 24 I'm not sure. Ms. Turner might have been interim
 25 director by December. I think she probably was.

1 I don't remember meetings with her where
 2 substantive matters were negotiated or discussed.
 3 Q. In negotiating the agreement, is it accurate to
 4 say that the primary negotiators were the
 5 attorneys for the parties?
 6 A. That was my impression of -- only partially
 7 correct. I would say on the DWSD side Mark Jacobs
 8 and Bob Walters were very active. For this
 9 agreement, Bart Foster was not -- was involved
 10 when it came to negotiating dollars. On the
 11 county side there was really kind of -- my
 12 impression, was a team of people where the lawyers
 13 were working very closely with either their
 14 principal client, the commissioner, or their
 15 senior engineering people. Certainly the
 16 legalese, you know, ultimately was a matter for
 17 the lawyers involved, but the overall agreements
 18 were the product of very active involvement by, on
 19 the county side, all of the counties.
 20 Q. So Misterovich and Marrocco were actively
 21 involved for Macomb County?
 22 A. My regular contact was Mr. Misterovich. I
 23 certainly met with Commissioner Marrocco when
 24 there were big decisions to be made. And then
 25 there were, I'd say, their engineering staff at

1 purpose is plain from reading it. It was an
 2 attempt to state the terms of the deal in more
 3 detail than what the consent judgment --
 4 settlement agreement itself said. So I think the
 5 idea was the settlement agreement will cover all
 6 of the matters that are being settled, and it will
 7 have attachments to it to lay out some of the
 8 details, like what are the facilities and so on.
 9 Q. In this case we filed -- both sides filed witness
 10 lists, and both sides listed on their witness
 11 list, I believe, 30(b)(6) witnesses, and we
 12 listed two for 30(b)(6), the Macomb County
 13 witness or attorney most knowledgeable about the
 14 allegations of the Complaint filed by Macomb in
 15 Macomb Circuit Court, but what might be
 16 applicable here, the Macomb County corporate
 17 representative who could talk about the
 18 acquisition agreement. Do you know -- have you
 19 been designated as Macomb's 30(b)(6) witness who
 20 can talk about the acquisition agreement?
 21 A. I don't know.
 22 MR. WATSON: Raechel, is Craig the guy
 23 for that?
 24 MS. BADALAMENTI: I think the response
 25 to those 30(b)(6) notices were objections by

1 Macomb and the other counties that had detailed
 2 knowledge of the systems themselves that was
 3 important in this whole process.
 4 Q. Was there any discussion during the negotiations
 5 that you can recall in regard to the
 6 reasonableness of the cost of the repairs paid by
 7 DWSD to cover the sewer collapse? Was that part
 8 of any negotiations you were in?
 9 A. I believe that -- I'm not sure -- that the
 10 Complaint we filed with Feikens certainly
 11 challenged Macomb's liability for the costs of the
 12 collapse. I don't recall whether there were
 13 specific allegations that, even if they were
 14 liable, the project cost too much. That certainly
 15 was a concern that at various times was expressed
 16 to DWSD as the discussions proceed.
 17 Q. Who expressed that?
 18 A. I couldn't tell you today.
 19 Q. Why was the Letter of Intent attached?
 20 Let me strike that and ask you: What
 21 was the purpose of this Letter of Intent, if you
 22 know?
 23 A. It was to -- I believe it was not prepared at
 24 Macomb's request, to my recollection. Someone
 25 thought there should be one. And I think its

1 myself and Mr. Brilliant. They're overbroad and
 2 outside and exceed the scope of what the court has
 3 permitted as limited discovery for purposes of
 4 this proceeding and evaluation of Macomb's claim
 5 at this time. Subject to those objections, our
 6 indication was that Mr. Misterovich and Mr. Hupp
 7 would be able to answer the questions that you
 8 might have, but you will recall that they were
 9 offered as witnesses prior to that 30(b)(6)
 10 notice.
 11 BY MR. WATSON:
 12 Q. Regardless of that, I'm going to ask you a few
 13 questions about the acquisition agreement.
 14 A. Sure.
 15 MARKED FOR IDENTIFICATION:
 16 DEPOSITION EXHIBIT 3
 17 9:04 a.m.
 18 BY MR. WATSON:
 19 Q. All right. I have it in front of me --
 20 MS. BADALAMENTI: Can I ask, because
 21 are you suggesting -- a lot of these documents
 22 have gone back and forth in the course of
 23 questioning. Are you going to ask him if this is
 24 the entire document including all the schedules or
 25 are you suggesting it is?

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1 **MR. WATSON:** No, I'm not suggesting it
 2 is. My understanding is when that document was
 3 executed, there were -- I don't know -- hundreds
 4 of pages of documents that accompanied it. I
 5 think that copy he's got might have a few of the
 6 exhibits attached to it, but certainly not all the
 7 documents that were reviewed on the same date it
 8 was signed or at the closing when it was signed.
 9 **MS. BADALAMENTI:** Okay.
 10 **BY MR. WATSON:**
 11 Q. Are you familiar with the document, Mr. Hupp?
 12 **A. Yes.**
 13 Q. And it says "Macomb Acquisition Agreement" near
 14 the top, does it not?
 15 **A. Yes.**
 16 Q. Did you play any role in drafting that document?
 17 **A. I assisted in drafting this document.**
 18 Q. Who else drafted it?
 19 **A. This was a combined effort of a number of**
 20 **attorneys, Mark Jacobs -- Bob Walters actually did**
 21 **the first draft, I think. Mark Jacobs and I wound**
 22 **up being the -- this document went from the Dykema**
 23 **word-processing system to the Bodman**
 24 **word-processing system, back to Bodman. But in**
 25 **addition, certainly lawyer representatives of the**

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1 **clients were involved and commented, added and**
 2 **subtracted to it as the document went along.**
 3 **(Mr. Ruegger present at 9:07**
 4 **a.m.)**
 5 **BY MR. WATSON:**
 6 Q. I'm looking at 25 of 25.
 7 **A. Yes.**
 8 Q. And I see the signatures on the document appear
 9 to be William Misterovich and Darryl Latimer.
 10 Are you familiar with those two gentlemen?
 11 **A. I know Mr. Misterovich.**
 12 Q. What about Latimer?
 13 **A. I know Mr. Misterovich. I know Mr. Latimer.**
 14 Q. How involved was Mr. Latimer in negotiating this?
 15 **A. I have no recollection of Mr. Latimer's**
 16 **involvement, keeping in mind that this document --**
 17 **97 percent of this document was negotiated as part**
 18 **of the first OMI transaction, and it was the**
 19 **understanding of the parties at the time that was**
 20 **done that the document would then be the basic**
 21 **model for the Macomb transaction as well, but**
 22 **mostly a change of name and change of list of**
 23 **assets. So in the time period that the work --**
 24 **most of the work was done on this document, I**
 25 **don't think Mr. Latimer was -- he might have been**

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1 **deputy director at this time period, but certainly**
 2 **in the first go around on this document for the**
 3 **OMI transaction, I have no recollection of**
 4 **Mr. Latimer being involved.**
 5 Q. Did you recommend that Misterovich go ahead or
 6 Macomb County enter into this agreement?
 7 **A. I recommended that this agreement appeared to**
 8 **comport with what Macomb County was seeking to**
 9 **accomplish in the deal, and that it reflected the**
 10 **terms and concerns of the client, so I recommended**
 11 **the document. The client itself obviously had**
 12 **made the decision about whether to do the deal or**
 13 **not.**
 14 Q. As I understand, the broad parameters of the
 15 agreement was that basically Macomb would assume
 16 the debt on the system as a purchase price and
 17 there would be certain amounts deducted from that
 18 system debt.
 19 **A. The correct characterization is that Macomb County**
 20 **would pay to DWSD the amount of outstanding debt**
 21 **on the capital projects that were being**
 22 **transferred. It was not assuming any debt.**
 23 Q. Okay. Thank you. And as I understand the debt
 24 on the system, at one time it was something like
 25 \$116 million? Do you recall what the debt was on

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1 that system?
 2 **A. That's obviously a question of at what point in**
 3 **time.**
 4 Q. Okay.
 5 **A. At what point in time are you asking about the 116**
 6 **million?**
 7 Q. Do you recall when it was 116 million, the point
 8 of time it was at that amount?
 9 **A. I don't remember 116 million one way or the other,**
 10 **but keep in mind, capital projects got done and**
 11 **debt went up. Capital projects got paid off and**
 12 **the debt went down. So that number moved all over**
 13 **the place.**
 14 Q. Okay.
 15 **MARKED FOR IDENTIFICATION:**
 16 **DEPOSITION EXHIBIT 4**
 17 **9:11 a.m.**
 18 **THE WITNESS:** All right. I have the
 19 exhibit in front of me.
 20 **BY MR. WATSON:**
 21 Q. You've been handed what's marked Exhibit 4,
 22 Mr. Hupp. Can you tell us what that is.
 23 **A. That's Schedule 3.8 to the Macomb Acquisition**
 24 **Agreement. It's titled Computation of Purchase**
 25 **Price as of June 30, 2010, and sets out the agreed**

1 upon debt for the assets being transferred that
 2 had debt associated with them, plus a summary of a
 3 variety of adjustments to that debt to reach an
 4 adjusted final price as of June 30, 2010.
 5 Q. Okay. In regard to adjustments, I see about
 6 three-fourths of the way down, maybe a little
 7 more, the global settlement says \$17,050,000.
 8 That was the biggest adjustment, was it not?
 9 A. The reason I can't answer that question the way
 10 you ask it is there were a variety of adjustments
 11 of these various projects in order to get to this
 12 table. I'll make up a number. DWSD might have
 13 said we think the debt on PCI 45 is \$30 million,
 14 and after they were pressed for better records or
 15 whatever, they might have said it turns out the
 16 number is really \$20 million. So there's a bunch
 17 of adjustments in the debt that don't appear here.
 18 As reflected in adjustments specifically showing
 19 on this page, the global settlement is the
 20 largest -- is probably the largest adjustment.
 21 Q. I'm looking at two lines under that \$17,050,000,
 22 the \$870,252.
 23 A. Yes.
 24 Q. And it says "Balance of OMI/Macomb Miscellaneous
 25 Rate Settlement." Do you see that?

1 accepted, and then that -- at that point in time
 2 the outstanding debt on the OMI assets was roughly
 3 \$2.2 million. The OMI system didn't have any
 4 cash. So if we took 2.2 of the 3 million and
 5 applied it to the OMI deal, the OMI deal could
 6 close without paying any cash. So 2.2 of 3.0 was
 7 attributed to the OMI deal, and the balance was
 8 set aside and it was applied here.
 9 Q. The 870,252?
 10 A. Right. That's what's left of a \$3 million
 11 settlement. The other thing I will note, so it's
 12 clear -- and I don't know whether it applies to
 13 this Schedule 3.8 or the 3.8 on the OMI deal, but
 14 there was a revised schedule issued six months
 15 after one of the two closings that had a
 16 subsequent adjustment that affected this credit,
 17 and I don't -- and so for that reason I can't
 18 testify today that this Schedule 3.8 is the actual
 19 "final" final schedule or not. The final
 20 adjustment moved about -- I don't know -- 100, 200
 21 grand, so it wasn't a material amount. So for the
 22 record I want that clear.
 23 Q. Is it fair to say that the parties did extensive
 24 negotiation back and forth before arriving at the
 25 adjusted final price of 89,996,704?

1 A. I do.
 2 Q. Do you recall what that was about?
 3 A. Yes.
 4 Q. What was it?
 5 A. That is a catchall. There were -- again, moving
 6 back to recognizing that the OMI deal and the
 7 Macomb deal were part and parcel of what started
 8 out as a global joint settlement, and in working
 9 through an equivalent schedule in the OMI deal,
 10 which closed roughly 10 months before this, there
 11 were a variety of rate disputes, and there was a
 12 dispute over some meter charges that Detroit said
 13 should be part of the rates, and -- part of the
 14 price, and Oakland-Macomb said no, they shouldn't.
 15 And at the end of the day, that dispute went up to
 16 the week of the closing, if not the day before the
 17 closing on the OMI deal. It was under a very
 18 tight time schedule. And at the end, to resolve
 19 all of those things, DWSD made a proposal that
 20 here's all of these objections, they pertain to a
 21 block of meters, some of which are going to
 22 Macomb, some of which are going to go to OMI.
 23 There's a number of these other rate disputes, so
 24 I'll tell you what, why don't we just give you
 25 another \$3 million credit on the price. That was

1 A. Partly negotiation, partly just verification of
 2 Detroit's debt figures.
 3 Q. As I understand, prior to signing the acquisition
 4 agreement, Macomb was entitled to secure
 5 documents, whatever documents it wanted from
 6 Detroit in regard to the system, ask whatever
 7 questions it wanted, inspect portions of the
 8 system if it desired to do so. Is that accurate?
 9 Could Macomb have done all those things if it
 10 wanted to?
 11 A. Only partially.
 12 Q. What part's not accurate?
 13 A. The part is that Detroit -- DWSD's financial
 14 system for much of this stuff was and to a certain
 15 extent even today is in significant disorder.
 16 From what I know about DWSD's financial system
 17 from dealing with it as Macomb's attorney for a
 18 long time, I don't think Macomb County would have
 19 been able to independently audit at least these
 20 debt prices. Bart Foster, their expert who's done
 21 their rate work for 30 years -- Bart couldn't do
 22 it. It took a year to just get these numbers on
 23 3. It took more than a year. I doubt Macomb
 24 County would ever have been able to get into those
 25 numbers and figure them out.

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1 Q. Did Macomb ask to look at any DWSD documents? Do
 2 you know?
 3 A. We did not. Well, I mean, in what context?
 4 Q. Well, in --
 5 A. There had been discovery in the lawsuits obviously
 6 seeking cost documents focused on -- focused on
 7 the collapse. We had certainly acquired documents
 8 over time related to the interceptor collapse. As
 9 part of verifying the debt numbers, we certainly
 10 had asked for a certain amount of backup
 11 documentation. So we certainly had asked for
 12 some. In some cases we got what we asked for and
 13 some cases the answer was we haven't got it or we
 14 can't give it to you or whatever; we never got a
 15 response.
 16 Q. Did you ever ask for anything that DWSD had that
 17 they didn't turn over to you or give you a copy
 18 of?
 19 A. I couldn't answer that question today given the
 20 long tortured history of these negotiations and so
 21 on and so forth. I have a suspicion if I went
 22 back and looked at discovery requests, I'd say,
 23 you know, I don't think they really gave us
 24 everything we asked for, which is typical of
 25 everybody when they look at discovery requests.

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1 Q. Did Macomb inspect the system at all before it
 2 purchased it?
 3 A. I don't know.
 4 Q. Was it entitled to if it wanted to?
 5 A. Yes.
 6 Q. Did you have any questions of DWSD or anyone at
 7 Macomb have questions of DWSD that were asked but
 8 were not answered before the purchase?
 9 A. I would say in trying to get to the bottom of the
 10 debt, which was the piece that I mostly dealt
 11 with, the answer is I did not get satisfactory
 12 answers to many things, and ultimately had to
 13 reach the conclusion that DWSD did not have the
 14 kind of records that would permit conclusive
 15 determination of debt for various projects, and,
 16 in fact, that's represented -- you can see it, for
 17 example, on Schedule 3.8, halfway down the page
 18 under section C, there's a line that says "Meter
 19 Credit" -- "Meter Credit MC-S-1 (estimated)
 20 400,000" bucks. That's the case where we knew
 21 there was work done on meter MC-S-1. Under the
 22 rate agreement, Macomb County, and under our
 23 contract, Macomb County was not liable for the
 24 cost of that work. DWSD had contracted for that
 25 work as part of a much larger contract for which

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1 customers were liable. The conclusion was that
 2 there was no way to figure out exactly how much of
 3 that contract was spent on MC-S-1 as opposed to
 4 other work that could be charged. Ultimately
 5 after discussion with people on both sides, a
 6 guesstimate was prepared that, well, I don't know,
 7 that repair probably cost something in the order
 8 of \$400,000, but -- and I only offer that to you
 9 as a very specific example shown on this schedule.
 10 We had that kind of discussion with a variety of
 11 these projects. This table represents -- I don't
 12 know -- a hundred hours -- couple hundred hours of
 13 trying to get to the bottom of -- even if DWSD
 14 could figure out whether they built certain
 15 projects or not, because they call projects by
 16 different names. So, no, I never was -- nobody at
 17 Oakland and Macomb were ever fully satisfied that
 18 these numbers were exactly right in their complete
 19 totality. It was very frustrating.
 20 Q. There were a lot of compromise on a lot of
 21 different issues, it sounds like.
 22 A. There certainly was to get to a number.
 23 Q. Did you get the feeling that DWSD, the folks you
 24 were dealing with there, were trying to take
 25 unfair advantage or cheat Oakland or Macomb

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1 County, or was it the situation where their
 2 records were just not really very good and a
 3 precise answer could not be secured, or do you
 4 know?
 5 MS. BADALAMENTI: I'm just going to
 6 object to foundation. Calls for him to speculate
 7 on the motives of Detroit.
 8 BY MR. WATSON:
 9 Q. Do you have any impression one way or the other
 10 on that?
 11 A. The longer I dealt with DWSD, the more I became
 12 concerned that they could not -- they were not
 13 organized internally to accurately keep track of
 14 costs, I guess would be my answer, regardless of
 15 whatever the motives were on the other side of the
 16 table. There were problems back in the DWSD
 17 accounting area.
 18 Q. I'm looking at page 6 of 25. The system was sold
 19 as is?
 20 A. 6 of 25?
 21 Q. Yeah.
 22 A. Which line?
 23 Q. Under 2.5 Macomb System. The first sentence
 24 reads "The Macomb System shall be conveyed by
 25 seller to purchaser in 'as is' physical

1 condition, with no additional warranties, express
 2 or implied, with respect to the physical
 3 condition of the Macomb system." Then it goes
 4 on. Do you see that language?
 5 **A. Yes.**
 6 Q. Was it your understanding that the system was
 7 being sold as is?
 8 **A. Yes.**
 9 Q. Do you recall any discussion during these
 10 acquisition agreement negotiations about the
 11 reasonableness of the cost of repairs? Was that
 12 a matter --
 13 **A. This is a discussion with Detroit?**
 14 Q. With Detroit. First I'll ask, did you have any
 15 such discussion with Detroit?
 16 **A. I don't have a recollection one way or the other.**
 17 Q. Do you recall anyone else having a discussion
 18 with Detroit?
 19 **MS. BADALAMENTI:** I'm going to object
 20 to the extent it calls for you to divulge
 21 privileged information. Other than that, you can
 22 answer.
 23 **THE WITNESS:** I recall a meeting -- I
 24 forget whether it was before or after we filed --
 25 Macomb County filed their challenge between -- at

1 information it felt was necessary for it to
 2 assure itself that the deal it was entering into
 3 was a good one for Macomb?
 4 **MS. BADALAMENTI:** I'm going to object.
 5 I think that's a mischaracterization in terms of
 6 the document, but you can go ahead.
 7 **BY MR. WATSON:**
 8 Q. Well, you don't even have to answer. Let's go to
 9 page 12 of 25. I'll withdraw that question.
 10 **A. I'm looking at 12 of 25.**
 11 Q. 4.5 Due Diligence. First sentence talks about
 12 Macomb acknowledging that it's being afforded the
 13 opportunity to conduct due diligence. Did Macomb
 14 have that opportunity?
 15 **A. Within a variety of the limitations I've already**
 16 **described to you, and certainly on the financial**
 17 **front, that was, as a practical matter a limited**
 18 **ability. I would note for the record in this time**
 19 **period DWSD didn't even have a complete audit, so**
 20 **auditors couldn't complete their due diligence and**
 21 **do the audit for DWSD in this time period.**
 22 Q. Then I'm going to page 18 of 25, section (b),
 23 which is a little puzzling. It starts off "This
 24 agreement may be terminated by Macomb County in
 25 writing on or before January 1, 2010 if it shall

1 the Macomb County Office of Public Works offices,
 2 so 2005, I'm guessing is the year. And I don't
 3 know whether it was a meeting after we filed a
 4 motion or a motion intending to head off the
 5 motion challenging the cost, at which Commissioner
 6 Marrocco and various staff were present, and at
 7 which Mercado and staff and probably lawyers were
 8 present, of which Macomb County aired its concern
 9 about the project and its cost and reasonableness
 10 or unreasonableness of asking Macomb County to pay
 11 for the system.
 12 **BY MR. WATSON:**
 13 Q. Was that before or after Macomb sued about that?
 14 **A. I don't remember now. That's the thing. I can't**
 15 **put those -- I don't remember before or after.**
 16 Q. But that suit was resolved by the 2009 settlement
 17 agreement?
 18 **A. Yeah, that got resolved. You know, we had a**
 19 **number of settlement conferences with Judge**
 20 **Feikens. I don't have a specific recollection,**
 21 **but it would not surprise me if Macomb County's**
 22 **concerns were not aired vigorously by Commissioner**
 23 **Marrocco.**
 24 Q. Was Macomb County entitled to back out or not
 25 sign this agreement if it couldn't secure the

1 not have been satisfied in its sole discretion
 2 with the results of Macomb County's continuing
 3 due diligence investigations of the Macomb
 4 system." Do you see that language?
 5 **A. I do.**
 6 Q. And did Macomb have the opportunity to back out
 7 if it was not satisfied?
 8 **A. That's what the language appears to say.**
 9 Q. Were you ever called to testify before the grand
 10 jury?
 11 **A. What grand jury?**
 12 Q. The grand jury investigating the Ferguson,
 13 Kilpatrick, Miller, Mercado potential wrongdoing
 14 at the City of Detroit?
 15 **A. I was not.**
 16 Q. Do you know whether any Macomb employees were
 17 interviewed by the FBI or U.S. Attorney's Office
 18 or testified before the grand jury?
 19 **A. I have no knowledge.**
 20 Q. At some point did you become aware of the grand
 21 jury investigation?
 22 **A. Yes.**
 23 Q. And do you know when that was?
 24 **A. No.**
 25 Q. Was it before the indictment that hit the papers

1 in December 2010?

2 **A. Yes.**

3 Q. And do you know what was the -- your awareness --

4 what do you know about that?

5 **MS. BADALAMENTI:** About what?

6 **BY MR. WATSON:**

7 Q. The grand jury investigation. What's your

8 understanding of the subject matter of the

9 investigation?

10 **A. My understanding was, I guess, whatever I might**

11 **have gotten from the Free Press, that there was a**

12 **corruption probe.**

13 Q. Were you aware Ferguson and Kilpatrick were

14 friends?

15 **A. I have no idea. At some point that was part of**

16 **the newspaper coverage.**

17 Q. So your information is just the newspaper?

18 **A. Whatever I read in the Free Press.**

19 Q. Was there ever any discussion about that

20 corruption and potential corruption in Detroit

21 during the negotiations?

22 **A. I don't recall one way or the other.**

23 Q. Do you recall that there was a settlement

24 agreement -- settlement and release of certain

25 rate disputes executed at the time of the

1 **MR. WATSON:** Because we mentioned it, I

2 should mark that and have him identify it. I

3 don't plan to question him about it.

4 **MARKED FOR IDENTIFICATION:**

5 DEPOSITION EXHIBIT 5

6 9:34 a.m.

7 **BY MR. WATSON:**

8 Q. Let me hand you what's been marked Hupp

9 Exhibit 5. Is that the Macomb Interceptor

10 Acquisition Settlement and Release of Certain

11 Rate Disputes agreement?

12 **A. Yes, it is.**

13 Q. I'm looking at the last page. It appears to be

14 signed by Misterovich and Latimer. Are those the

15 two individuals who signed the acquisition

16 agreement?

17 **A. Yes.**

18 Q. And as far as you recall, was this settlement

19 agreement signed at the same time as the

20 acquisition agreement?

21 **A. Yes, it was.**

22 Q. Did you read the Complaint filed by Macomb County

23 in Macomb Circuit Court against the City of

24 Detroit?

25 **A. I don't believe I have read it.**

1 acquisition agreement?

2 **A. For MID? For Macomb? Yes.**

3 Q. What was the purpose of that?

4 **A. I think the purpose was two-fold. One, it was --**

5 **biggest thing was to memorialize as best possible**

6 **all of the things that were getting settled,**

7 **because as the settlement agreement, I believe, or**

8 **Letter of Intent reflects, there were a variety --**

9 **and actually the acquisition agreement reflects**

10 **there were a number of pending rate disputes, and**

11 **the transaction was going to affect rates going**

12 **forward. And so the purpose of the agreement was**

13 **to document both what -- to try to concisely state**

14 **what was being settled as well as to try to**

15 **explain how the settlements would affect the rates**

16 **that Detroit was going to set thereafter for**

17 **Macomb County, how they were going to calculate**

18 **the rates now that these assets weren't in the**

19 **rates anymore.**

20 Q. As far as you know, did that settlement and

21 release agreement resolve all of the disputes you

22 knew about between Detroit and Macomb? Was there

23 any disputes outstanding that you were aware of?

24 **A. Based on the facts as we knew them then, I don't**

25 **think so.**

1 Q. Okay. Were you consulted prior to the filing of

2 this Complaint?

3 **A. I was not.**

4 **MARKED FOR IDENTIFICATION:**

5 DEPOSITION EXHIBIT 6

6 9:36 a.m.

7 **BY MR. WATSON:**

8 Q. Let me hand you, Mr. Hupp, what's been marked

9 Exhibit 6. That appears to be an affidavit

10 signed by you filed in United States federal

11 district court.

12 **A. Yes.**

13 Q. Do you recall this affidavit?

14 **A. Yes.**

15 Q. Were you asked to prepare it?

16 **A. Yes.**

17 Q. Did you actually draft this or was it drafted for

18 you?

19 **A. I don't -- I think -- my memory is a little hazy**

20 **on that. I think a draft came to me and I edited**

21 **it, but I'm really not sure enough to really**

22 **answer that conclusively, but I'm pretty sure**

23 **that's what the sequence was.**

24 Q. Do you recall that in the federal district court

25 case Judge Cleland decided that the tort claims

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1 arising out of the potential fraudulent
 2 activities pertaining to the sewer collapse
 3 repair belonged to Detroit rather than Detroit?
 4 **A. I'm aware of that.**
 5 Q. And in your affidavit, I believe you state that
 6 had the tort claims -- the gist of it, as I
 7 recall, had these tort claims been considered,
 8 the parties would have decided through the
 9 acquisition agreement to -- that they would
 10 belong to Macomb?
 11 **MS. BADALAMENTI:** I'm not sure I
 12 understand the question. Are you asking him what
 13 he discussed with his client or are you asking him
 14 to read from the affidavit?
 15 **MR. WATSON:** No. Let me rephrase the
 16 question.
 17 **BY MR. WATSON:**
 18 Q. Number one, the tort claims such as the claims
 19 asserted in federal district court, as I
 20 understand, were never brought up or considered
 21 during the negotiation of the settlement
 22 agreement.
 23 **A. I have no recollection of them coming up.**
 24 Q. And in your affidavit you basically state, had
 25 they come up, you have little doubt that the

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1 parties would have agreed that they should go to
 2 Macomb as opposed to Detroit?
 3 **A. That was my opinion of that hypothetical in -- two**
 4 **years ago.**
 5 Q. Now, as an experienced attorney, doesn't Judge
 6 Cleland's decision resolve the issue in regard to
 7 the tort claims?
 8 **MS. BADALAMENTI:** I'm going to object.
 9 It calls for a legal conclusion. He's not here in
 10 his capacity to evaluate the decisions in that
 11 case.
 12 **THE WITNESS:** I don't have an opinion.
 13 I know that case is still going and the right of
 14 appeal is going. I can give you a quote from a
 15 former partner and jurist, if that would help.
 16 **BY MR. WATSON:**
 17 Q. No. I'll ask you after the deposition. Let me
 18 talk to counsel here.
 19 (Off the record at 9:39 a.m.)
 20 (Back on the record at 9:56 a.m.)
 21 **MR. WATSON:** I have no further
 22 questions.
 23 **MS. BADALAMENTI:** I just have a couple
 24 questions.
 25 **MARKED FOR IDENTIFICATION:**

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1 DEPOSITION EXHIBIT 7
 2 9:56 a.m.
 3 **EXAMINATION**
 4 **BY MS. BADALAMENTI:**
 5 Q. I've marked as Exhibit 7, Mr. Hub, a document
 6 titled Minutes of the Due Diligence Coordination
 7 Meetings. This is a revision, and looks like it
 8 is dated 3/19/09, and has written "Draft" in the
 9 background of the document. Do you recognize
 10 this document?
 11 **A. I do.**
 12 Q. Did you prepare or play a role in preparing this
 13 document?
 14 **A. I did. I probably prepared it.**
 15 Q. What was it prepared for?
 16 **A. Basically this was to serve the function -- it**
 17 **states it's minutes. The county had a team of**
 18 **people looking at the transaction and asking**
 19 **various questions and the like. It fell to me**
 20 **probably because I was the one with the secretary**
 21 **as part of the collective group, to do the**
 22 **minutes. And so this reflects, it looks like --**
 23 **for the top meetings, this would have been with**
 24 **what I'll call it at this point in time -- you**
 25 **know, we're all together. We're working through**

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1 **the global settlement that was reached in December**
 2 **of 2008, and now we're in January through March of**
 3 **2009. We're working through the details. And**
 4 **this reflects meetings between representatives of**
 5 **the counties on one side, Oakland and Macomb, and**
 6 **DWSD on the other that would have occurred on**
 7 **these dates, January 29th, March 12th and**
 8 **March 18th.**
 9 Q. So this document refers to due diligence items.
 10 There was due diligence being undertaken by
 11 Macomb and Oakland County?
 12 **A. Yes.**
 13 Q. Taking you to page 8 of this document, the
 14 paragraph 29 indicates that as part of the due
 15 diligence, Macomb and Oakland are looking for the
 16 city to "Describe any regulatory complaints or
 17 notices of violations issued on Detroit or DWSD
 18 in the past 5 years arising out of or related to
 19 the operation of the facilities." Do you see
 20 that?
 21 **A. I do.**
 22 Q. And then italics --
 23 **MR. WATSON:** Can you tell me where are
 24 you with that?
 25 **MS. BADALAMENTI:** 29.

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1 **MR. WATSON:** 29?
 2 **BY MS. BADALAMENTI:**
 3 Q. In italics are the names Jacobs and Walter. Why
 4 are those names italicized there?
 5 **A. The intent was to try to indicate in some cases**
 6 **the answer we got, the other cases who would**
 7 **follow up to get the information. The front of**
 8 **this says "Notes from January 29 are in italics."**
 9 **I have -- my recollection is the county team put**
 10 **together a list of questions numbering through 34,**
 11 **35 or whatever, and at the meeting with DWSD, we'd**
 12 **go through the questions, and italics reflected**
 13 **what occurred on January 29th, and then other**
 14 **typeface to indicate subsequent.**
 15 **So I believe the reference to Jacobs**
 16 **and Walter after No. 29 was at that first meeting**
 17 **in January, Jacobs and Walter, one or the other of**
 18 **them, two lawyers from Detroit, would get back**
 19 **with the answer to that question.**
 20 Q. And underneath those two names not italicized is
 21 the word "none." What would that be there for?
 22 **A. That would be their answer that, in fact, there**
 23 **were no regulatory complaints or notices.**
 24 Q. The next paragraph 30 asks the city to "Describe
 25 any civil claims asserted or threatened in the

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1 past 5 years arising out of the operation of the
 2 facilities which have been asserted against
 3 Detroit/DWSD or of which Detroit has knowledge."
 4 Do you see that?
 5 **A. Yes.**
 6 Q. And the italicized names there are "Jacobs &
 7 Walter will address." Would that have come,
 8 again, from the January meeting?
 9 **A. Yes, that would reflect their commitment to come**
 10 **back and answer that question.**
 11 Q. And there are three claims that are identified
 12 here in response to paragraph 30 in
 13 non-italicized font. That would be information
 14 that was provided then from Jacobs and Walters
 15 during the March meetings; is that correct?
 16 **A. Yes, it certainly came from them, and that matches**
 17 **the meetings on March 12th and 18, yes. That's**
 18 **when they would have gotten back. And then this**
 19 **was kind of -- I think it's apparent this was a**
 20 **document that just kind of grew with -- just got**
 21 **edited. Every time we got more information or had**
 22 **a meeting, the document would get amended to**
 23 **reflect subsequent information. So that's**
 24 **information they would have responded to in March.**
 25 Q. So then taking you to paragraph 32, 32 asks the

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1 city to "Describe any facts of which DWSD or
 2 Detroit is aware which would give rise to or
 3 support a claim against any contractor or other
 4 person arising out of or related to the
 5 facilities and state whether such claim [has]
 6 been asserted." Do you see that?
 7 **A. I do.**
 8 Q. And, again, italicized "Jacobs & Walter will
 9 address." That would have, again, been
 10 information provided during the January meetings?
 11 **A. Yes. That would reflect the fact they said we'll**
 12 **follow up and get you an answer to this.**
 13 Q. The non-italicized language underneath there, it
 14 indicates "DWSD is not aware of any known,
 15 threatened or pending claims other than those
 16 identified in ITEM 30." Do you see that?
 17 **A. I do.**
 18 Q. That would come from Jacobs and Walters, then,
 19 from the March meetings; is that correct?
 20 **A. That's correct. My guess with that wording,**
 21 **that's -- actually that looks like that would have**
 22 **been their wording, but maybe not. So, yes. And**
 23 **I would just -- in further answer to your**
 24 **question, sometimes the answer to this information**
 25 **might have come back by way of e-mail, so I**

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1 **couldn't testify here today that that was provided**
 2 **at a meeting as opposed to at a subsequent**
 3 **communication, but there would have been a**
 4 **subsequent communication where they got back to me**
 5 **and said we're not aware of any known threat or**
 6 **pending claims.**
 7 Q. And they would be Jacobs and Walters on behalf of
 8 DWSD?
 9 **A. That is correct.**
 10 Q. At any point prior to execution of the
 11 acquisition agreement did anybody from Detroit
 12 inform you that there was an ongoing criminal
 13 investigation into the irregularities in DWSD
 14 construction contracts?
 15 **MR. RUEGGER:** Objection to form.
 16 **THE WITNESS:** I have no recollection of
 17 anybody from DWSD saying that.
 18 **BY MS. BADALAMENTI:**
 19 Q. If such an investigation had been going on and
 20 DWSD had notice, was that the information you
 21 were looking for in response to those three
 22 paragraphs that are identified in this due
 23 diligence memo?
 24 **MR. RUEGGER:** Objection, form.
 25 **MR. WATSON:** I'll object, counselor,

1 speculation. Object to form.
 2 **MR. RUEGGER:** Misstates the document.
 3 **THE WITNESS:** That certainly would have
 4 been among the things that we wanted to find out
 5 about and prompted that question.
 6 **BY MS. BADALAMENTI:**
 7 Q. Is it your understanding that if Macomb would
 8 have been informed of such information, it would
 9 not have executed the acquisition agreement on
 10 the terms and for the price that it did?
 11 **MR. RUEGGER:** Objection, form.
 12 **MR. WATSON:** Object, form, calls for
 13 speculation.
 14 **THE WITNESS:** I do not believe it would
 15 have -- the lawyers' advice would have been stop
 16 and get to the bottom of this. And I guess I
 17 can't tell you what Commissioner Marrocco's
 18 opinion would be because that's privileged.
 19 **BY MS. BADALAMENTI:**
 20 Q. The documents that have been put in front of you,
 21 the Letter of Intent, the Settlement Agreement,
 22 the Acquisition Agreement, is it your opinion
 23 that any of these documents seek or require that
 24 DWSD affirmatively represent whether or not there
 25 are any such investigations or claims?

1 **or rate-related matters contains an untrue**
 2 **statement of a material fact or omits to state a**
 3 **material fact required to be stated therein or**
 4 **necessary to make the statements made, in the**
 5 **context in which made, not false or misleading."**
 6 **And if Detroit were aware that there was fraud in**
 7 **the costs associated with the 2004 collapse,**
 8 **certainly as a lawyer I would have advised my**
 9 **client that that was material.**
 10 Q. The last question I have is with respect to
 11 Exhibit 7. I don't think I asked you. I will
 12 represent to you that this document was produced
 13 by the City of Detroit in connection with this
 14 proceeding that your deposition was requested in.
 15 Do you know how the City of Detroit would have
 16 obtained your memorandum?
 17 **A. My general approach with this document was it**
 18 **started out as a document with a list of items and**
 19 **questions that would have come from the team to**
 20 **Detroit. We would have met. I would have**
 21 **created, as kind of a recording secretary, an**
 22 **update, and then I would have circulated it to**
 23 **everyone at the meeting, both on the county side**
 24 **and Detroit side, with a transmittal e-mail --**
 25 **transmittal certainly would have been by e-mail**

1 **MR. RUEGGER:** Objection to form, no
 2 foundation.
 3 **MR. WATSON:** I'll join.
 4 **THE WITNESS:** In fact, I believe that
 5 the city did undertake obligations to disclose.
 6 In the settlement agreement -- excuse me. In the
 7 acquisition agreement, I believe, there is a
 8 representation by Detroit that they have not made
 9 any material misstatements or withheld any
 10 information that would be material to the
 11 evaluation of the asset being acquired, and that's
 12 what I'm looking for. I've looked at a number of
 13 these documents before this deposition. Paragraph
 14 4.5 on page 12 of 25, in the Hupp Exhibit 3,
 15 Macomb Acquisition Agreement, at the top of --
 16 that's not it. I'm sorry. That pertains to
 17 Macomb's knowledge.
 18 **BY MS. BADALAMENTI:**
 19 Q. Let me see if -- are you referring to either
 20 paragraphs 3.7 or 3.8 of the agreement?
 21 **A. Yes. It's 3.8. Thank you. The 3.8, the last**
 22 **sentence provides "None of the written data or**
 23 **information furnished or made available to Macomb**
 24 **County by Detroit as part of the due diligence**
 25 **process with regard to system debt or other debt**

1 **with a note that says "Please review my notes from**
 2 **the meeting. Advise as to whether there's any**
 3 **corrections or additions." And that was my**
 4 **routine practice, and so I would expect that**
 5 **that's what I did with this, and if this was**
 6 **actually produced by Detroit, then I think that**
 7 **indicates that drafts went back and forth**
 8 **according to my usual practice.**
 9 **MS. BADALAMENTI:** I don't have any
 10 other questions.
 11 RE-EXAMINATION
 12 **BY MR. WATSON:**
 13 Q. I've got a few follow-up. Looking at paragraph
 14 29 of Hupp Exhibit 7, are you aware of any
 15 regulatory complaints or notices of violations
 16 issued on Detroit or DWSD in the past five years
 17 prior to, I guess, early 2009?
 18 **MS. BADALAMENTI:** Are you asking if
 19 he's aware now?
 20 **BY MR. WATSON:**
 21 Q. Yeah, are you aware now? Were you aware then?
 22 Are there any, to your knowledge?
 23 **A. This would be the period 2004 to 2009, roughly. I**
 24 **don't know. I wasn't tracking the violations, if**
 25 **there was environmental complaints. I think**

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1 **that's why we were asking the question.**
 2 Q. Are you aware of any violations? Because this
 3 says "None." Are you aware that's an untrue
 4 statement?
 5 **A. Even as I sit here today, I don't know whether**
 6 **that's true or untrue.**
 7 Q. Going to 30, it says "Describe any civil claims
 8 asserted or threatened in the past 5 years," and
 9 it goes on and they list three. Are you aware of
 10 any claims in addition to those three?
 11 **A. At what time period?**
 12 Q. Well, are you aware now or were you aware back
 13 then when DWSD listed the three?
 14 **A. As of the date of the transaction, I was not aware**
 15 **of any other civil claims. I don't know whether**
 16 **there are any today that are applicable. I don't**
 17 **know whether the -- like, for example, the**
 18 **corruption stuff qualifies as civil claim or not,**
 19 **but we certainly weren't aware of those claims**
 20 **then. I certainly wasn't.**
 21 Q. All right. Then it says No. 32, "Describe any
 22 facts of which DWSD or Detroit is aware which
 23 would give rise to or support a claim against any
 24 contractor or other person arising out of or
 25 related to the facilities and state whether such

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1 claim has been asserted." Do you see that
 2 language?
 3 **A. I do.**
 4 Q. And then the response was "DWSD is not aware of
 5 any known, threatened or pending claims other
 6 than those identified in item 30." Do you know
 7 whether or not that was a true statement, that
 8 DWSD was not aware of any known, threatened or
 9 pending claims other than those identified in 30?
 10 **A. I don't know what DWSD's knowledge was at that**
 11 **time.**
 12 Q. Back in 2009 were you aware of any ongoing
 13 irregularities that DWSD should have reported but
 14 didn't?
 15 **MS. BADALAMENTI:** Was he aware then?
 16 Is that what you're asking?
 17 **MR. WATSON:** Yeah, back in 2009.
 18 **THE WITNESS:** No.
 19 **BY MR. WATSON:**
 20 Q. We talked about -- or you testified about
 21 paragraph 3.8.
 22 **A. In what document, sir?**
 23 Q. That was in the acquisition agreement, page 11 of
 24 25.
 25 **A. 3.8?**

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1 Q. Yeah.
 2 **A. Yes.**
 3 Q. And then I believe you focused on the last
 4 sentence, which reads: "None of the written data
 5 or information furnished or made available to
 6 Macomb County by Detroit as part of the due
 7 diligence process with regard to system debt or
 8 other debt or rate-related matters contains an
 9 untrue statement of a material fact or omits to
 10 state a material fact required to be stated
 11 therein or necessary to make the statements made,
 12 in the context in which made, not false or
 13 misleading." As you sit here today, do you know
 14 whether or not Detroit breached that provision?
 15 **A. I don't know one way or the other as a matter of**
 16 **fact.**
 17 Q. Is it fair to say that you don't know back in
 18 2009, when these statements were made, what the
 19 knowledge of Detroit was?
 20 **A. That's correct.**
 21 **MR. WATSON:** That's all I've got.
 22 **MS. BADALAMENTI:** That's it.
 23 (The deposition was concluded at 10:16 a.m.
 24 Signature of the witness was not requested by
 25 counsel for the respective parties hereto.)

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1 **CERTIFICATE OF NOTARY**
 2 **STATE OF MICHIGAN)**
 3 **) SS**
 4 **COUNTY OF MACOMB)**
 5
 6 **I, MELINDA S. MOORE, certify that this**
 7 **deposition was taken before me on the date**
 8 **hereinbefore set forth; that the foregoing**
 9 **questions and answers were recorded by me**
 10 **stenographically and reduced to computer**
 11 **transcription; that this is a true, full and**
 12 **correct transcript of my stenographic notes so**
 13 **taken; and that I am not related to, nor of**
 14 **counsel to, either party nor interested in the**
 15 **event of this cause.**
 16
 17
 18
 19
 20
 21
 22 **MELINDA S. MOORE, CSR-2258**
 23 **Notary Public,**
 24 **Macomb County, Michigan**
 25 **My Commission expires: September 6, 2016**

In The Matter Of:
City of Detroit

Mark D. Jacobs
July 11, 2014



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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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6 In re:) Case No. 13-53845
7 CITY OF DETROIT, MICHIGAN)
8) Chapter 9
9 Debtor)
10) Hon. Steven W. Rhodes
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12
13 The Deposition of MARK D. JACOBS,
14 Taken at 150 W. Jefferson, Suite 2500,
15 Detroit, Michigan,
16 Commencing at 3:29 p.m.,
17 Friday, July 11, 2014,
18 Before Melinda S. Moore, CSR-2258.
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23
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1 Q. Is Mr. Franzinger general counsel for Dykema?
2 **A. No, he is not.**
3 Q. Okay. You're an attorney, sir, but I don't know
4 your past. I know that you were involved in
5 these transactions. Have you given a deposition
6 before?
7 **A. No.**
8 Q. God, you're a lucky one. Well, I'll give you the
9 basic rules, but I'm pretty sure you know them.
10 This young lady to the right is going to take
11 down everything you say. Since we're both
12 lawyers, we have the propensity to know where the
13 other guy is going. I'll do my best not to talk
14 over you if you could do the same for me. It
15 would make her life a lot easier. All the
16 answers have to be verbal. Uh-huh and huh-uhs
17 don't do very well. And certainly, sir, if I ask
18 you any question you don't understand -- and that
19 is bound to happen sooner or later -- just let me
20 know and I'll be happy to rephrase it. Fair
21 enough?
22 **A. Fair enough. Just try to make the questions as**
23 **clear as possible.**
24 Q. I'll do my best. Can you give us a little bit of
25 your educational background, college, law school,

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1 Detroit, Michigan
2 Friday, July 11, 2014
3 3:29 p.m.
4 MARK D. JACOBS,
5 was thereupon called as a witness herein, and
6 after having first been duly sworn to testify to
7 the truth, the whole truth and nothing but the
8 truth, was examined and testified as follows:
9 **EXAMINATION**
10 **BY MR. ADDIS:**
11 Q. Sir, can you state your name and professional
12 address for the record, please.
13 **A. Mark Jacobs, 400 Renaissance Center, Detroit,**
14 **Michigan 48243.**
15 Q. And are you affiliated with the firm Dykema
16 Gossett at that location?
17 **A. Yes, I am.**
18 Q. And are you a partner at Dykema Gossett?
19 **A. Yes.**
20 Q. You have counsel here with you; is that correct?
21 **A. That's correct.**
22 Q. And the identity of counsel is?
23 **A. Jerome Watson --**
24 Q. Okay.
25 **A. -- and my partner, Robert Franzinger.**

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1 things likes that?
2 **A. I graduated from the University of Michigan in**
3 **1975 with a degree in zoology and anthropology. I**
4 **graduated from the University of Michigan School**
5 **of Public Health in 1978 with a degree in**
6 **environmental science. I graduated from**
7 **University of Detroit Law School in 1988.**
8 Q. Okay. And is there a special area that you
9 practice in?
10 **A. I practice environmental law.**
11 Q. Okay. Now, for somebody who does not practice
12 environmental law, can you explain what that
13 entails.
14 **A. The practice of environmental law can involve many**
15 **different things depending on the individual**
16 **practitioner. My work involves many transactional**
17 **matters, mergers and acquisitions, real estate**
18 **transactions, and other types of transactions. It**
19 **also involves defending typically companies or**
20 **individuals who are the subject of state or**
21 **federal environmental enforcement actions. I**
22 **represent developers seeking to obtain**
23 **environmental permits for developments. I handle**
24 **water and sewer rate matters for the Detroit Water**
25 **and Sewer Department.**

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1 Q. If nothing else, my curiosity, when you say you
 2 handle rate matters, is that disputes over rates
 3 or the setting of rates, or both?
 4 **A. Both.**
 5 Q. During your practice -- have you been with Dykema
 6 Gossett during your entire law practice?
 7 **A. Yes, I have.**
 8 Q. When did you first become involved with
 9 representing the City of Detroit in any capacity?
 10 **A. To the best of my recollection, around 1989.**
 11 Q. And was it always the Detroit Water and Sewer
 12 Department or were there other departments?
 13 **A. It was always the Detroit Water and Sewer**
 14 **Department.**
 15 Q. Sir, I don't think it's any surprise that the --
 16 we're here largely about the acquisition from the
 17 Detroit Water and Sewer Department by the Macomb
 18 Interceptor Drain Drainage District of the Macomb
 19 portion of the Detroit sewerage system in Macomb
 20 County, which I think has been described here
 21 previously as north of 8 Mile. I'm sure it goes
 22 in other directions also. All right?
 23 Sir, when, to your knowledge, did
 24 negotiations first begin for Macomb to purchase
 25 the system?

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1 **A. Do you mean the negotiations of the transactional**
 2 **document or the overall deal?**
 3 Q. Let's start overall and then we'll go to the
 4 document.
 5 **A. Sometime in 2005 -- I'm not real good with dates**
 6 **-- or 2006 DWSD's former director Victor Mercado**
 7 **and Macomb County, whatever his title is, Tony**
 8 **Marrocco, discussed the possibility of Macomb**
 9 **County acquiring the Macomb portion of the**
 10 **Oakland-Macomb Interceptor.**
 11 Q. How did you become aware of that discussion?
 12 **A. I think one of the first discussions may have**
 13 **occurred in chambers in Judge Feikens' chambers,**
 14 **so I may have been present.**
 15 Q. So I can assume by that answer that you were
 16 involved in the Feikens litigation -- what we'll
 17 call the Feikens litigation?
 18 **A. I was.**
 19 Q. Okay. And what was your involvement in the
 20 Feikens litigation?
 21 **A. Do you want the history back to the beginning?**
 22 Q. As briefly as you can state it so that we
 23 understand, that would be enough for me.
 24 **A. When I first got involved in 1989, the State of**
 25 **Michigan had issued a national pollutant discharge**

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1 **elimination system to the Detroit Water and Sewer**
 2 **Department's wastewater treatment plant. That**
 3 **contained a number of new and onerous requirements**
 4 **that would have involved in excess of 4 or**
 5 **\$5 billion to comply with. We filed an**
 6 **administrative appeal of the permit, and we also**
 7 **filed a petition with Judge Feikens to take**
 8 **jurisdiction over the permit. And so we spent the**
 9 **next roughly five years fighting over that permit.**
 10 **And then over the years, there have**
 11 **been just multiple different assignments involving**
 12 **everything from construction litigation to**
 13 **disputes -- I did not -- not as a litigator --**
 14 **rate disputes that came up almost annually with**
 15 **wholesale customers, efforts by the Detroit Water**
 16 **and Sewer Department to do things required by the**
 17 **NPDS permit that were interfered with by third**
 18 **parties that we had to deal with, notably the Army**
 19 **Corps of Engineers, and many, many other different**
 20 **capacities. The assignments have been more**
 21 **numerous than I could even begin to recall.**
 22 Q. All right. So at some point in time, now that we
 23 know what your involvement has been -- and it's
 24 been broad ranged; would that be fair to say? --
 25 you became aware that Macomb and Detroit were

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1 willing to talk about a purchase of the Macomb
 2 portion of the system; is that correct?
 3 **A. I'm not sure I understand the question.**
 4 Q. Okay. At some point -- I think you said it was
 5 about 2005 or '06 you became aware Mr. Mercado
 6 and Mr. Marrocco were talking about a Macomb
 7 purchase of the system, correct?
 8 **A. That is correct.**
 9 Q. Okay. Was there a time or a date in which you
 10 were officially brought into or involved in those
 11 discussions?
 12 **A. I suppose I got involved in the Macomb discussions**
 13 **sometime after Oakland County acquired the**
 14 **Clinton-Oakland portion -- the Clinton-Oakland and**
 15 **the Edison Corridor portion of the Oakland-Macomb**
 16 **Interceptor District. Actually it was the**
 17 **Oakland-Macomb Interceptor Drain Drainage District**
 18 **that acquired the Oakland portion.**
 19 Q. Okay.
 20 **A. After that transaction closed, we shortly**
 21 **thereafter commenced discussions on the Macomb**
 22 **piece.**
 23 Q. Okay. When you said you commenced discussions,
 24 who did you commence discussions with?
 25 **A. It was largely the same team of people that were**

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1 involved in the negotiation of the Oakland portion
 2 of the Oakland-Macomb Interceptor with the
 3 exception of the Oakland specific representatives.
 4 Q. Okay. By that I mean what people were you
 5 talking to from Macomb?
 6 A. Principal representatives of Macomb County on
 7 those discussions were Craig Hupp, their outside
 8 attorney at Bodman, and Bill Misterovich, chief
 9 deputy something something from the county who's
 10 also a lawyer, and perhaps one or more of their
 11 technical/engineering people. I don't recall
 12 exactly who all was involved.
 13 Q. Now we're to the part of the formal discussions.
 14 How did the formal negotiations begin from your
 15 side of the table? By that I mean, so I can make
 16 my question clear, did you put together a list of
 17 information that you wanted or a due diligence
 18 list of some sort?
 19 A. The discussions were led by Macomb County. As the
 20 purchaser, they were the ones asking for
 21 information. We weren't offering up information.
 22 Q. Okay. So you would respond to their requests
 23 when you thought it was appropriate?
 24 A. Correct.
 25 Q. Okay. Do you know, sir, what type of information

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1 or can you recall what kinds of information they
 2 requested and you provided?
 3 A. The business terms of the transaction that were
 4 agreed to between Tony Marrocco and Victor Mercado
 5 was that the purchase price would be equal to the
 6 outstanding principal balance on the bonds
 7 allocated to the assets that comprise the Macomb
 8 system. And it was that financial information
 9 that Macomb County asked DWSD to provide.
 10 Q. Okay. And did DWSD provide that information to
 11 them?
 12 A. They did.
 13 Q. Okay. What time frame are we talking here?
 14 A. I don't recall exactly when the Oakland-Macomb --
 15 the Oakland system closed, but it was from within
 16 months of that closing through the closing of the
 17 Macomb transaction, which I think was
 18 September 2010.
 19 Q. We have an acquisition agreement signed
 20 September 2, 2010. Is that --
 21 A. That sounds correct.
 22 Q. That sounds correct to you?
 23 MR. ADDIS: Are we just continuing to
 24 number the --
 25 MR. WATSON: Yeah, I assume we will

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1 for --
 2 **MARKED FOR IDENTIFICATION:**
 3 DEPOSITION EXHIBIT 11
 4 3:43 p.m.
 5 **BY MR. ADDIS:**
 6 Q. Sir, I've handed you what's entitled an
 7 Interceptor Transfer Due Diligence Information
 8 List, which says "Revision 1/23/09" on it. Do
 9 you recognize this document?
 10 A. No, I don't.
 11 Q. Okay. You don't believe you've seen this
 12 document before?
 13 A. Not that I recall.
 14 Q. Okay. So this is not a document that you
 15 prepared?
 16 A. No, it is not. Looking at the footer on the
 17 document, it appears to have been generated by Mr.
 18 Hupp.
 19 Q. Okay. Sir, I want to be clear. Did Mr. Hupp
 20 ever sit down and discuss this document with you,
 21 perhaps without giving it to you? Had you seen
 22 it before in his possession?
 23 A. The topics covered by this due diligence
 24 information list were discussed at length between
 25 the parties. It appears to be a document that

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1 perhaps was provided to Detroit directly.
 2 Certainly I would have none of this information.
 3 Q. Sir, as I understand it, you believe you
 4 discussed, at least with this brief review of it,
 5 many of the matters contained in this list -- in
 6 this exhibit, correct?
 7 A. That's correct.
 8 Q. With Mr. Hupp?
 9 A. With Mr. Hupp and others.
 10 Q. And Mr. Misterovich?
 11 A. Yes.
 12 Q. And representatives of DWSD, were they --
 13 A. Yes.
 14 Q. Discuss those matters with you?
 15 A. Yes.
 16 Q. When you were negotiating, for lack of a better
 17 term, and communicating or doing both with
 18 Mr. Misterovich and/or Mr. Hupp, who was acting
 19 with you? Were there members of DWSD, either
 20 Mr. Mercado or others that were involved with you
 21 in those negotiations?
 22 A. I don't recall exactly who participated in the
 23 meetings on a day-to-day basis, but Bob Walter and
 24 myself were there as the lawyers, and there may
 25 have been various administrative representatives

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1 **from time to time. I don't recall who was in the**
 2 **director's seat at that time. It may have been**
 3 **Pam Turner. I don't recall. But I don't believe**
 4 **that Victor was in office at that point.**
 5 Q. Let me just interrupt, if I may, because I want
 6 to keep a timeline. When the discussions first
 7 start, it was Victor Mercado and Marrocco in
 8 informal discussions, correct?
 9 **A. Correct.**
 10 Q. And then they made some informal agreement as to
 11 how they were going to set the price attached to
 12 the debt, correct?
 13 **A. Correct.**
 14 Q. So far I've got it right, okay. And then at some
 15 point in time when official discussions started,
 16 which included you and Mr. Misterovich and Mr.
 17 Hupp and Mr. Walter -- and Mr. Mercado was not
 18 ever involved in those?
 19 **A. I believe so, no.**
 20 Q. Okay.
 21 **A. I also omitted Bart Foster, who was DWSD's**
 22 **financial advisor and rate consultant who was the**
 23 **primary spokesperson for DWSD on the numbers.**
 24 Q. Okay. Before we go to just the acquisition
 25 agreement, in your position of helping DWSD over

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1 these years providing them counsel, were you
 2 aware of other issues other than just this
 3 purchase -- other issues that existed between
 4 Macomb and Detroit; is that correct?
 5 **A. What do you mean by other issues?**
 6 Q. Well, did they often have issues over rates?
 7 **A. Yes, they did.**
 8 Q. Okay. Over interest rates?
 9 **A. Interest rates, yes.**
 10 Q. Over 800 mega hertz radio system?
 11 **A. Yes, they did.**
 12 Q. Okay. Didn't they have -- in other words, were
 13 you aware that they had a number of disputes?
 14 **A. I am aware of that, yes.**
 15 Q. All right. And these disputes were, of course,
 16 subjects for Judge Feikens from time to time,
 17 correct?
 18 **A. They were often before Judge Feikens.**
 19 Q. In your representation of DWSD at any time, did
 20 you ever give them any advice regarding any
 21 criminal matters?
 22 **A. No, I did not.**
 23 Q. Did you have somebody in your firm advise DWSD on
 24 any criminal matters?
 25 **A. No, we did not.**

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1 Q. Up until even today, from when you first started
 2 representing them to today, have you or your firm
 3 ever handled any criminal matters for DWSD?
 4 **A. No, we have not.**
 5 **MR. WATSON:** I'll object to foundation.
 6 You can answer if you can.
 7 **THE WITNESS:** The answer is no.
 8 **BY MR. ADDIS:**
 9 Q. I'm assuming you do not practice criminal law?
 10 **A. I do not.**
 11 Q. Okay. Now, you mentioned to me earlier that you
 12 guys would meet and many times not everybody
 13 would be at every meeting, so sometimes it would
 14 be Misterovich by himself, sometimes Misterovich
 15 with others, with Hupp. I'm assuming there would
 16 be times where it would be just you and Mr. Hupp?
 17 **A. There were different people at different times. I**
 18 **don't believe that Misterovich would have appeared**
 19 **without Craig Hupp being present.**
 20 Q. Okay. Give me a time frame. How often did these
 21 negotiations take place, these meetings, no
 22 matter who was there?
 23 **A. I can't really recall. It was intermittent in the**
 24 **early stages. As we got closer and closer to the**
 25 **closing date, it was at least weekly.**

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1 Q. Okay. And the early stages began, again? It's
 2 been a long day.
 3 **A. Sometime after the closing of the Oakland portion**
 4 **of the overall interceptor system.**
 5 **MR. ADDIS:** Does anybody know when that
 6 was? Give me an approximate date.
 7 **MS. BADALAMENTI:** Not long before ours,
 8 maybe '09.
 9 **BY MR. ADDIS:**
 10 Q. About '09, she says. Would that make sense to
 11 you? I won't hold you to it.
 12 **A. It's certainly a ballpark number that I would work**
 13 **with.**
 14 Q. We can look it up, when did they close. And then
 15 after that Mr. Marrocco and his crowd began to
 16 pursuing buying their section of it?
 17 **A. That's correct.**
 18 Q. And it finally culminated in September 2010 with
 19 an agreement, correct?
 20 **A. That's correct.**
 21 Q. Okay. Now, I don't know what we did with your
 22 exhibits, but -- right here. We've had these
 23 previously marked. Exhibit 5 is the acquisition
 24 agreement. Can you describe to me, sir, the
 25 process by which this agreement was hammered out.

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1 By that I mean did somebody --

2 **MR. ADDIS:** Exhibit 6. I apologize.

3 **BY MR. ADDIS:**

4 Q. Negotiations take place. We've established that.

5 And then eventually an acquisition agreement is

6 put together and laid on paper. What I'm

7 interested in is the process of how this

8 acquisition agreement was written and approved.

9 By that -- let me ask the first question. Did

10 someone submit a first draft?

11 **A. The first draft was the Oakland transactional**

12 **document, because with limited exceptions, other**

13 **than the purchase price, the Macomb acquisition**

14 **agreement mirrors the Oakland acquisition**

15 **agreement.**

16 Q. And do we know who put together the Oakland

17 acquisition agreement?

18 **A. It was the same group of parties.**

19 Q. Okay. That would include you?

20 **A. Me.**

21 Q. Was Mr. Hupp involved in that?

22 **A. Yes, he was.**

23 Q. Okay. And Mr. Hupp represented who? Oakland?

24 **A. The Oakland Macomb Interceptor Drain Drainage**

25 **District, I believe. I don't believe he was there**

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1 **for Oakland specifically.**

2 Q. I understand. Okay. Anybody else in that

3 process?

4 **A. Oakland may have had its other attorneys involved.**

5 **Oh, Joe Colaianne from the Water Resource**

6 **Commissioner's Office was a lawyer. John**

7 **McCulloch was involved. Those were the principal**

8 **players for Oakland County.**

9 Q. Okay. By the time we got down to the signing

10 date of this acquisition agreement, did you ever

11 compare this acquisition agreement side by side

12 to the Oakland agreement?

13 **A. Not that I recall.**

14 Q. Okay. Do you know whether Mr. Hupp had done

15 that?

16 **A. I would have no idea.**

17 Q. Okay. Or Mr. Misterovich?

18 **A. I wouldn't know.**

19 Q. Okay. So it's fair to say that the Oakland

20 agreement as a model was used for this agreement?

21 **A. To the best of my recollection, the only things**

22 **that were changed were the things that were**

23 **specific to Macomb County that were not specific**

24 **to Oakland County.**

25 Q. Okay. Negotiations started in, we believe, '09,

Page 23

1 consummated with this agreement in September of

2 '10. During that period of time, sir, were you

3 ever made aware of DWSD employees being

4 investigated by either federal or state

5 authorities?

6 **A. I don't recall whether I had heard anything about**

7 **that during this period of time.**

8 Q. Okay. Did any of the DWSD employees -- I always

9 forget Pam's last name.

10 **A. Pam Turner.**

11 Q. Did Pam Turner ever report to you that she had

12 been told by some of her employees that they had

13 been questioned by the U.S. Attorney's Office?

14 **A. No, she did not.**

15 Q. Had you ever been told by Mr. Walters that he was

16 made aware that some of the DWSD officials and

17 employees had been questioned by the U.S.

18 Attorney's Office?

19 **A. I don't believe he ever discussed it with me.**

20 Q. Okay. I'm going to jump ahead, and we may come

21 back to some other things. There comes a time

22 that everybody meets in a room and signs this

23 document. Sir, can you tell me who was in that

24 room on September 2nd, 2010.

25 **A. Craig Hupp and myself, the persons who signed the**

Page 24

1 **document. There were several Bodman lawyers who**

2 **prepared many of the business-related documents,**

3 **assistants of various types from Bodman who were**

4 **helping assemble exhibits, myself, Bob Walter.**

5 Q. Okay.

6 **A. And possibly others.**

7 Q. All right. At some point in time we know that

8 Victor Mercado left and then we know that Pam --

9 I forgot her name again.

10 **A. Pam Turner.**

11 Q. Pam Turner left, and Darryl Latimer, the deputy

12 director, if you agree with this, was pretty much

13 left in charge. Would that be an accurate

14 statement?

15 **A. You know, I don't recall who was in the driver's**

16 **seat after Pam stepped down, but he would probably**

17 **have been the most senior man standing.**

18 Q. Okay. Same term he used. Had you worked with

19 Mr. Latimer before?

20 **A. Yes.**

21 Q. Okay. Had you worked with him extensively or

22 just a few matters? How would you describe it?

23 **A. Intermittently on miscellaneous minor items over**

24 **the years.**

25 Q. Okay. There came a time when Mr. Latimer was in

Page 25

1 that room with you to sign that document. Before
 2 he signed that document, did you sit down with
 3 him and go over that document paragraph by
 4 paragraph?
 5 **A. I did not.**
 6 Q. Okay. Did you give him a general explanation of
 7 what this document was about?
 8 **A. Yes.**
 9 Q. Okay.
 10 **A. At least I let him know what the business -- what**
 11 **the purchase price was.**
 12 Q. Okay.
 13 **MR. WATSON:** Can I -- hold on. Let me
 14 talk to my counsel here for a second.
 15 **MR. ADDIS:** Okay.
 16 (Off the record at 3:57 p.m.)
 17 (Back on the record at 4:00 p.m.)
 18 **MR. WATSON:** Brief statement: We
 19 didn't assert any privilege the last couple of
 20 questions. I think we got right to the edge,
 21 maybe even a little bit over, but that's as far as
 22 I'm going to let him go in regard to the
 23 discussions he had with Mr. Latimer where Macomb
 24 County wasn't present.
 25 **MR. ADDIS:** Well, I think -- and I

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1 understand your position. But I think the
 2 backdrop of that question was they were all in the
 3 room to sign these documents, okay, and so I'm not
 4 sure privilege would attach when everybody was in
 5 the room.
 6 **MR. WATSON:** To the extent you're
 7 asking questions of what he told Latimer in
 8 general discussions with everyone at the table, I
 9 think you're right. One-on-one discussions with
 10 Latimer or with Latimer and other Detroit
 11 officials, I plan to assert the privilege.
 12 **MR. ADDIS:** Okay. I understand,
 13 Jerome. Thanks.
 14 **BY MR. ADDIS:**
 15 Q. Sir, you understand that your counsel has
 16 asserted the privilege for any private
 17 conversations that you had with your clients?
 18 **A. I do.**
 19 Q. Okay. And so we're going to honor that. I may
 20 not agree, but we're going to honor it and move
 21 forward with those ground rules. If I come close
 22 to stepping on them, you can feel free to stop
 23 me. I'm sure Jerome will beat you to it, but in
 24 case he doesn't.
 25 However, let's go back to where we're

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1 all in the room, okay? While everybody is in that
 2 room, did Mr. Latimer express any questions or
 3 comments regarding the contents of the agreement?
 4 **A. I don't recall any conversation specifically with**
 5 **or from Darryl Latimer.**
 6 Q. Okay. Generally?
 7 **A. I don't recall anything.**
 8 Q. Okay. Did you witness or did you see Mr. Latimer
 9 reading the document?
 10 **A. I don't remember.**
 11 Q. Do you know whether your co-counsel at the time,
 12 Mr. Walters, or brother counsel, Mr. Walters,
 13 spent any time with Mr. Latimer away from that
 14 meeting room?
 15 **A. I wouldn't know.**
 16 Q. But on the day the signing took place -- let's
 17 talk about that day. Where did the signing take
 18 place?
 19 **A. In a conference room at Bodman's offices at Ford**
 20 **Field.**
 21 Q. Okay. And about what -- do you remember what
 22 time of day?
 23 **A. Sometime during that September 2nd, whatever. I**
 24 **don't remember what time of day it was.**
 25 Q. Okay. How long did the process take?

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1 **A. I don't really recall. I could guess three or**
 2 **four hours.**
 3 Q. Okay. During that three or four hours what was
 4 discussed at the table?
 5 **A. We were trying to just assemble all the documents**
 6 **that went into this package.**
 7 Q. Which means not only the agreement which had
 8 pretty much been -- I'm assuming the agreement
 9 had already been provided, correct -- an
 10 agreement without attachments?
 11 **A. On the day of closing no negotiations were taking**
 12 **place.**
 13 Q. So an agreement was there, but there were a
 14 number of exhibits and attachments that had to be
 15 added to it, correct?
 16 **A. That's correct.**
 17 Q. All right. And so you and Mr. Walters and Mr.
 18 Hupp and Mr. Misterovich and whoever else was
 19 there. You mentioned another couple gentlemen.
 20 You were assembling and may I assume agreeing on
 21 which documents should be properly attached?
 22 **A. We were just making sure they were already there.**
 23 **It was already understood what was going to be**
 24 **attached.**
 25 Q. It had all been agreed up, but putting it

1 together was a matter that took some time?
 2 **A. Yes.**
 3 Q. Okay. And I take it, then, that the agreement
 4 was not signed until all of the exhibits were
 5 attached or was it signed first by Mr. Latimer,
 6 who then left, and the rest of the work was done,
 7 if you recall?
 8 **A. I don't recall.**
 9 Q. Do you recall if Mr. Latimer ever was shown the
 10 exhibits or attachments?
 11 **A. I don't remember. I know the only things he saw**
 12 **were the things that he had to sign. Otherwise,**
 13 **it wouldn't have been presented to him.**
 14 Q. Was there ever any discussion -- prior to the
 15 execution of this agreement, was there ever any
 16 discussion as to whether or not Mr. Latimer had
 17 the authority to sign it?
 18 **A. I don't recall any discussions on that subject.**
 19 Q. Okay. Do you know whether your office or Mr.
 20 Hupp's office or Mr. Misterovich's office or any
 21 of the lawyers' offices had contact with either
 22 the mayor's office or, if Judge Feikens was still
 23 in charge, either Judge Feikens or Judge Cox's
 24 office as to whether or not that gentleman had
 25 the authority to sign that agreement?

1 sign it?
 2 **A. I have no idea.**
 3 Q. Okay. Did you tell him he had the authority to
 4 sign it?
 5 **A. I wouldn't have the knowledge to tell him that.**
 6 Q. Okay. Do you know whether Mr. Hupp issued an
 7 opinion to him as to whether he had the authority
 8 to sign?
 9 **A. I doubt it.**
 10 Q. Okay. You don't recall him saying --
 11 **A. I don't recall.**
 12 Q. Okay. I want to take you to certain paragraphs,
 13 and you may or may not have knowledge of this, so
 14 we'll find out. On the acquisition agreement,
 15 page 2 of 25, paragraph 1.10, do you know who
 16 authored this paragraph?
 17 **A. I don't know who authored it. I know that Macomb**
 18 **County wanted knowledge to be based on knowledge**
 19 **of people who would presumably have some actual**
 20 **knowledge about the physical condition of the**
 21 **assets that were being conveyed.**
 22 Q. Okay.
 23 **A. And so these were the people that DWSD designated**
 24 **as having such knowledge.**
 25 Q. Okay. DWSD said that these people here, meaning

1 **MR. FRANZINGER:** You should only answer
 2 that question with respect to non-clients.
 3 **MR. ADDIS:** I agree. I understand.
 4 **THE WITNESS:** Could you rephrase that
 5 question.
 6 **BY MR. ADDIS:**
 7 Q. Yeah, I wish I could. Let me try it again.
 8 That's fair enough. We're all sitting around
 9 and, was there ever any discussion between the
 10 lawyers, not with clients, between the lawyers as
 11 to whether or not Mr. Latimer had the requisite
 12 authority to sign this contract and make it
 13 binding?
 14 **MR. FRANZINGER:** Between the lawyers
 15 for the respective parties --
 16 **MR. ADDIS:** Yes.
 17 **MR. FRANZINGER:** -- as opposed to, for
 18 example, Mr. Jacobs and Mr. Walter?
 19 **MR. ADDIS:** Between the respective
 20 parties.
 21 **THE WITNESS:** I don't recall any such
 22 discussion. Quite frankly, he showed up; I
 23 assumed he had the authority to sign it.
 24 **BY MR. ADDIS:**
 25 Q. Okay. Do you know who told him to show up and

1 -- and I'll quote. One is the director, correct?
 2 **A. Yes.**
 3 Q. Okay. At that time, however, DWSD didn't have a
 4 director, did it?
 5 **A. I'm not sure.**
 6 **MR. WATSON:** I'm going to object to the
 7 form of the question. We're not really sure when
 8 this language was drafted.
 9 **MR. ADDIS:** Well, I'm not sure that was
 10 the testimony. Let me ask it. If I'm lacking
 11 foundation, I'll try to build one.
 12 **BY MR. ADDIS:**
 13 Q. Do you know when this language was drafted and
 14 when did all the parties assent to it prior to
 15 signature?
 16 **A. I do not. This could have been a carryover from**
 17 **the prior transaction. It most likely was.**
 18 Q. Okay. Do you know who supplied the -- I notice
 19 that in this paragraph regarding Detroit's
 20 knowledge it lists director, assistant
 21 corporation counsel assigned to DWSD matters, and
 22 assistant chief of engineering or engineering
 23 support manager, Craig Stanley. I know that
 24 Mr. Stanley is the only guy directly named in
 25 this thing. Do you know the genesis of that?

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1 **A. I do not recall.**
 2 Q. Okay. So it would be fair to say you don't know
 3 if Macomb requested that it be Craig Stanley or
 4 DWSD offered him up?
 5 **A. Correct.**
 6 Q. Do you know who Craig Stanley is?
 7 **A. I do not.**
 8 Q. Had you ever worked with him before?
 9 **A. Never met the man.**
 10 Q. Do you know whether anybody ever talked to
 11 Mr. Stanley about whether he wanted the
 12 responsibility of being the keeper of Detroit's
 13 knowledge?
 14 **A. I do not.**
 15 Q. I want to take you to page 11 of 25, paragraph
 16 3.7, entitled Litigation. And I'm going to just
 17 read it for the record. "Except as set forth in
 18 Schedule 3.7 hereto, there is no action, suit or
 19 proceeding pending or, to Detroit's knowledge,
 20 threatened against or affecting Detroit before
 21 any governmental entity in which there is a
 22 reasonable possibility of an adverse decision
 23 which could have a material adverse effect upon
 24 the ability of Detroit to perform its obligations
 25 under this agreement or which in any manner

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1 questions the validity of this agreement."
 2 Sir, at the time -- either prior to or
 3 at the actual time of signing this, did anybody in
 4 the room ask Mr. Latimer if he had any such
 5 knowledge?
 6 **A. I don't believe anybody asked them that.**
 7 Q. As of the date of this signing, were you aware --
 8 strike that.
 9 Was Mr. Latimer the only DWSD employee
 10 at that meeting?
 11 **A. At which meeting?**
 12 Q. At the signing itself.
 13 **A. I don't recall.**
 14 Q. Can you tell me which -- can you tell me whether
 15 anybody within the City of Detroit other than
 16 their counsel did a full review of this
 17 acquisition agreement before signing?
 18 **A. I'm not sure who reviewed it.**
 19 Q. Did anybody ever communicate to you that they
 20 reviewed it?
 21 **MR. FRANZINGER:** Objection. You
 22 shouldn't disclose any discussions you had with
 23 your client.
 24 **THE WITNESS:** I don't recall. My --
 25 for what it's worth, I believe that this

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1 acquisition had to be approved by the Detroit
 2 Water Board, so there presumably was some review
 3 at that level, but I want -- I didn't appear
 4 before them. I don't know how they -- how or
 5 where or when they addressed this.
 6 **BY MR. ADDIS:**
 7 Q. Okay. I want to take you to paragraph 5.3, sir,
 8 Litigation and Claims. And this is on 14 of 25.
 9 I'm sorry. I should have told you that first.
 10 And, again, reading for the record, "Detroit
 11 shall promptly inform the Macomb County and MID
 12 in writing of any claims of which Detroit is or
 13 becomes aware that are or might reasonably be
 14 expected to become the subject of litigation
 15 affecting the Macomb system or the transactions
 16 contemplated by this agreement."
 17 Now, sir, using that as a foundation,
 18 did there come a time, sir, when you became aware
 19 that DWSD employees were being questioned by the
 20 FBI, a grand jury, or the U.S. Attorney's Office
 21 regarding the practices of DWSD?
 22 **MR. FRANZINGER:** Again, you should not
 23 disclose any conversations that you had with the
 24 client or that are based upon knowledge that you
 25 had based on discussions you had with your client.

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1 **MR. WATSON:** And I'll object to the
 2 foundation of the question, too.
 3 **THE WITNESS:** In any event, I don't
 4 recall any specific conversations with anybody
 5 about those activities. I heard rumors just like
 6 everybody else. I don't know where I heard them,
 7 how I heard them, but I just heard scuttlebutt.
 8 There was no one-on-one conversations with anybody
 9 about that subject.
 10 **BY MR. ADDIS:**
 11 Q. Okay. When you heard these rumors or
 12 scuttlebutt, okay, as you call it -- and I
 13 understand how that goes through any office --
 14 did you consider whether or not a written
 15 notification of at least these rumors should have
 16 been sent to Macomb County under paragraph 5.3?
 17 **A. The knowledge I had about the scope of that
 18 investigation was so vague and general there was
 19 no way it could have alerted me to that -- any
 20 connection between that investigation and this
 21 transaction.**
 22 Q. So the answer is you did not?
 23 **A. I suppose that's the answer. I can't remember the
 24 question exactly.**
 25 Q. 1.13 on page 2 of 25, Global Settlement

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1 Agreement, were you familiar, sir, with the
 2 Global Settlement Agreement?
 3 **A. Yes, I was.**
 4 Q. Were you familiar with what subjects that Global
 5 Settlement Agreement applied to?
 6 **A. Yes.**
 7 Q. What were those subjects that it applied to?
 8 **A. Well, at the time I was very familiar with it,**
 9 **even though it had been a few years, but today**
 10 **sitting here today, I could only try to remember.**
 11 **Interest rates, 800 megahertz radio, and a**
 12 **gentleman's agreement, the Letter of Intent to**
 13 **consummate these transactions.**
 14 Q. And was that Global Settlement Agreement, sir,
 15 something that was reached in conjunction with
 16 the Feikens case?
 17 **A. Yes.**
 18 Q. Were you part of those negotiations in front of
 19 Judge Feikens -- or might not have been in front
 20 of him, but under the control of Judge Feikens
 21 that led to that Global Settlement Agreement?
 22 **A. Yes.**
 23 Q. And as a result of that Global Settlement
 24 Agreement, certain actions were applied to the
 25 pricing of this acquisition agreement; is that

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1 correct?
 2 **A. One of the issues addressed in the Global**
 3 **Settlement Agreement was carried forward as a**
 4 **credit on the purchase price.**
 5 Q. Okay. And which one do you believe that was?
 6 **A. That was the roughly \$17 million interest rate**
 7 **dispute resolution.**
 8 Q. So the \$17 million that I've seen on that
 9 sheet --
 10 **A. Yes.**
 11 Q. -- and now that you've seen is for that interest
 12 rate dispute resolution, correct?
 13 **A. Correct.**
 14 Q. Thank you.
 15 (Mr. Ruegger not present at 4:18
 16 p.m.)
 17 **MARKED FOR IDENTIFICATION:**
 18 **DEPOSITION EXHIBIT 12**
 19 **4:18 p.m.**
 20 **BY MR. ADDIS:**
 21 Q. Sir, I'm showing you what has been now marked as
 22 Exhibit 12, and I believe that that is from that
 23 agreement that we talked about, the Global
 24 Settlement Agreement. What I mean is what is in
 25 there under the term "global settlement," about

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1 three-quarters of the way down, says, as you can
 2 see, \$17,050,000, correct?
 3 **A. I see that, yes.**
 4 Q. Yes. And that is a recording, so to speak -- a
 5 written recording of what you just testified to
 6 as the settlement money for the interest rate
 7 dispute, correct?
 8 **A. That's correct.**
 9 Q. And that's what that reflects?
 10 **A. That's correct.**
 11 Q. Thank you. When did you first become aware of an
 12 investigation into Mr. Kilpatrick, Ferguson
 13 and/or Mercado?
 14 **A. You know, I really don't remember when I first**
 15 **heard about it. Like I said, it was just stuff I**
 16 **heard on the street. When it happened, I really**
 17 **couldn't tell you.**
 18 Q. Were you ever contacted by either the Department
 19 of Justice, U.S. Attorney's Office, the FBI or
 20 anybody regarding any knowledge you might have of
 21 the operations of DWSD?
 22 **A. No.**
 23 Q. And to this day you have not been?
 24 **A. I have not been.**
 25 Q. Did any of the employees of the city -- of DWSD

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1 ever supply you with copies of their subpoenas to
 2 appear before grand juries?
 3 **A. They did not. As I said, I never spoke to anybody**
 4 **about it.**
 5 Q. Okay. So basically what you're telling me is you
 6 have had absolutely no contact with DWSD
 7 employees regarding the investigation of DWSD and
 8 the subsequent prosecution of Kilpatrick, et al.?
 9 **A. Well, that's two different questions.**
 10 Q. Okay.
 11 **A. I never talked to anybody at DWSD about the**
 12 **investigation. Once the trial started, yeah,**
 13 **everybody was talking about it.**
 14 Q. I agree with that. My point was this: Were you
 15 ever asked, approached or offer anybody any
 16 advice or counsel regarding those issues raised
 17 in U.S. vs. Kilpatrick regarding contracts of
 18 DWSD?
 19 **A. Absolutely not.**
 20 Q. Okay. That takes care of a large number.
 21 Going back to the \$17 million
 22 settlement, were you involved in those
 23 negotiations?
 24 **A. I was involved in the negotiation of the 800**
 25 **global settlement -- what was called the Global**

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1 **Settlement Agreement. The \$17 million, as with**
 2 **all the numbers, are numbers that were generated**
 3 **by financial people. It was what it was.**
 4 Q. All right. I want to take you to paragraph --
 5 page 6 of 25, paragraph 2.4, under Article II,
 6 the Purchase and Sale. Were you, sir, involved
 7 in the negotiation of that particular paragraph,
 8 which talks about assignment of warranty and
 9 guarantee rights?
 10 **A. I was around when this topic was discussed.**
 11 Q. Okay. Was it -- did your firm author the first
 12 draft of paragraph 2.4 or was it Mr. Bodman or
 13 Mr. Misterovich?
 14 **MR. WATSON:** Object to the form of the
 15 question. You can answer, if you can.
 16 **MR. ADDIS:** If he know.
 17 **THE WITNESS:** Just to make this easy,
 18 all the provisions of this agreement, like this
 19 one, were things addressed -- subjects that Macomb
 20 County wanted, so they originated with Macomb
 21 County. They said they wanted all these things.
 22 They proposed language. There may have been some
 23 negotiation, but all of these sorts of provisions
 24 originated with Macomb.
 25 **BY MR. ADDIS:**

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1 Q. Okay. And I'll accept that as your answer, sir,
 2 but do you remember any specific discussion about
 3 2.4? Was there any warranty or guarantee or
 4 right that Detroit specifically refused to give
 5 up?
 6 **A. I'm not aware there was anything we refused to**
 7 **give up.**
 8 Q. Okay. Thank you. I'm taking my time moving
 9 through this so we can limit our time at this
 10 table.
 11 There has been, sir, I believe -- are
 12 you aware, sir, that there has been litigation
 13 commenced by MIDD against Inland?
 14 **A. I've heard that there was some claims against the**
 15 **contractors. I didn't know who in particular the**
 16 **claims were against.**
 17 Q. In the course of your representation of the City
 18 of Detroit, did you have cause to interact with
 19 Inland?
 20 **A. I only had one interaction with Inland in my**
 21 **professional career working for DWSD. I went out**
 22 **to the site of the sewer collapse and there were**
 23 **some Inland guys there, who I may have met. That**
 24 **was the one and only time I ever had contact with**
 25 **anyone from Inland.**

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1 Q. What caused you to go to the DWSD -- to the site
 2 of the sewer collapse?
 3 **A. I don't remember what took us out there. I think**
 4 **it was just to see it.**
 5 Q. Okay. That was long before this negotiation
 6 process of this agreement, correct?
 7 **A. When was the collapse? '04? '03?**
 8 Q. '04.
 9 **A. I think I just wanted to see it.**
 10 Q. Okay.
 11 **A. It was quite a sight.**
 12 Q. Those of us who lived near it tried to avoid it.
 13 **A. Then you know it was quite a sight.**
 14 Q. It was quite a sight.
 15 **MR. ADDIS:** If you give me five minutes
 16 here, please.
 17 (Off the record at 4:29 p.m.)
 18 (Back on the record at 4:42 p.m.)
 19 **BY MR. ADDIS:**
 20 Q. When I tell you that I have just one question for
 21 you, I mean it. All right. I started to tell
 22 you about some ongoing litigation outside of this
 23 particular litigation. Have you been asked by
 24 any party to provide information regarding or
 25 testimony -- information or testimony regarding

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1 MIDD vs. Inland pending in U.S. federal court?
 2 **A. I have not.**
 3 **MR. ADDIS:** I'm all done.
 4 **MR. WATSON:** No questions.
 5 (The deposition was concluded at 4:43 p.m.
 6 Signature of the witness was not requested by
 7 counsel for the respective parties hereto.)
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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF MACOMB)
5

6 I, MELINDA S. MOORE, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing
9 questions and answers were recorded by me
10 stenographically and reduced to computer
11 transcription; that this is a true, full and
12 correct transcript of my stenographic notes so
13 taken; and that I am not related to, nor of
14 counsel to, either party nor interested in the
15 event of this cause.

16
17
18
19
20 

21
22 MELINDA S. MOORE, CSR-2258
23 Notary Public,
24 Macomb County, Michigan
25 My Commission expires: September 6, 2016

CLOSED,APPEAL,reassigned

**U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:77-cv-71100-SFC**

USA, et al v. Det City, et al
Assigned to: District Judge Sean F. Cox
Demand: \$0
Case in other court: USCA, 07-01605/1607

Date Filed: 05/06/1977
Date Terminated: 03/27/2013
Jury Demand: None
Nature of Suit: 893 Environmental
Matters
Jurisdiction: U.S. Government Plaintiff

U.S. Court of Appeals - Sixth Circuit,
11-02517/11-02569
U.S. Court of Appeals - Sixth Circuit,
12-01210
U.S. Court of Appeals - Sixth Circuit,
12-01250
U.S. Court of Appeals - Sixth Circuit,
13-01004
U.S. Court of Appeals - Sixth Circuit,
13-01708

Special Master

F. Thomas Lewand
TERMINATED: 02/07/2011

represented by **F. Thomas Lewand**
Bodman
1901 St. Antoine Street
6th Floor
Detroit, MI 48226
313-259-7777
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TERMINATED: 02/03/2011
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

George G. Kemsley
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TERMINATED: 02/03/2011
ATTORNEY TO BE NOTICED

Special Master

represented by

03/09/2006	<u>1897</u>	ORDER Approving Contract Extension for Infrastructure Management Group. Signed by Honorable John Feikens. (CCoh,) (Entered: 03/09/2006)
03/10/2006	<u>1898</u>	OBJECTION to <u>1890</u> Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free) <i>Report and Recommendation of Special Master Dated February 22, 2006</i> by Wayne, County of. (Attachments: # <u>1</u> Exhibit A)(McCauley, Patrick) (Entered: 03/10/2006)
03/10/2006	<u>1899</u>	[FILING ERROR - WRONG EVENT SELECTED- DOCUMENT TITLED RESPONSE] REPLY to <u>1890</u> Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free) <i>Response to Report of Special Master</i> by Macomb, County of. (Hupp, R.) Modified on 3/13/2006 (SMar,). (Entered: 03/10/2006)
03/10/2006	<u>1900</u>	[FILING ERROR - R18 EXHIBITS-LABELING] PETITION <i>Challenging DWSD Sewer Rates re Garfield Extension and 15 Mile Repair Interest Rates</i> by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits Index of Exhibits# <u>2</u> Exhibit Exhibit 1# <u>3</u> Exhibit Exhibit 2# <u>4</u> Exhibit Exhibit 3# <u>5</u> Exhibit Exhibit 4# <u>6</u> Exhibit Exhibit 5# <u>7</u> Exhibit Exhibit 6# <u>8</u> Exhibit Exhibit 7# <u>9</u> Exhibit Exhibit 8# <u>10</u> Exhibit Exhibit 9)(Hupp, R.) Modified on 3/13/2006 (SMar,). (Entered: 03/10/2006)
03/10/2006	<u>1901</u>	[FILING ERROR - R18 EXHIBITS; LABELING] PETITION <i>Challenging DWSD Sewer Rates re Emergency Radio System</i> by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1# <u>3</u> Exhibit 2# <u>4</u> Exhibit 3# <u>5</u> Exhibit 4# <u>6</u> Exhibit 5# <u>7</u> Exhibit 6)(Hupp, R.) Modified on 3/13/2006 (SMar,). (Entered: 03/10/2006)
03/13/2006	<u>1902</u>	OBJECTION to <u>1895</u> <i>Request for Order Approving Contracts</i> by Oakland Cnty. (Miller, Donald) (Entered: 03/13/2006)
03/13/2006	<u>1903</u>	OBJECTION to <u>1890</u> Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free) <i>The February 22, 2006 Report and Recommendations Of Special Master</i> by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Exhibit A 800 MHz Redio System Questions From Suburban Wholesale Customer Meeting Of September 28, 2005)(Peters, Marilyn) (Entered: 03/13/2006)
03/13/2006	<u>1904</u>	OBJECTION to <u>1890</u> Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free) by Oakland Cnty. (Attachments: # <u>1</u> Index of Exhibits Exhibit Index# <u>2</u> Exhibit A - Cost Allocation Based on Projected Airtime# <u>3</u> Exhibit B - Oakland County's March 13, 2006 Evaluation of Special Master Report)(Miller, Donald) (Entered: 03/13/2006)
03/13/2006	<u>1905</u>	RESPONSE to <u>1890</u> Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free), Report (Free) <i>February 22, 2006 Report and Recommendations of Special Master</i> by Western Township Utilities Authority. (Barbieri, Charles) (Entered: 03/13/2006)
03/14/2006	<u>1906</u>	

		OBJECTION to <u>1895</u> Request <i>For Order Approving Contracts</i> by Wayne, County of. (McCauley, Patrick) (Entered: 03/14/2006)
03/20/2006	<u>1907</u>	OPINION and ORDER Regarding Macomb County's Petition Challenging DWSD Sewer Rates Re Emergency Radio System. Signed by Honorable John Feikens. (CCoh,) (Entered: 03/20/2006)
03/20/2006	<u>1908</u>	ORDER Formalizing Screening of Special Master as to Interceptor Interest Rates Dispute. Signed by Honorable John Feikens. (CCoh,) (Entered: 03/20/2006)
03/20/2006	<u>1909</u>	RESPONSE to <u>1903</u> Objection, by Wayne, County of. (McCauley, Patrick) (Entered: 03/20/2006)
03/20/2006	<u>1910</u>	REQUEST for Further Briefing from DWSD on Contracts WS-650, WS-657, WS-651, WS-623 and DWS-812C by April 21, 2006. (CCoh,) (Entered: 03/20/2006)
03/21/2006	<u>1911</u>	NOTICE of Joinder/Concurrence in <u>1909</u> Response (Free) filed by Wayne, County of, by Oakland Cnty (Miller, Donald) (Entered: 03/21/2006)
03/22/2006	<u>1912</u>	OPINION AND ORDER denying in part the portion of <u>1876</u> Oakland County's Motion for Reconsideration seeking a status conference to discuss the work of the regional committee, and the other portions of the motion remain outstanding. - Signed by Honorable John Feikens. (CCoh,) (Entered: 03/22/2006)
03/27/2006	<u>1913</u>	MEMORANDUM OPINION Regarding Mercado Contract Request. Signed by Honorable John Feikens. (CCoh,) (Entered: 03/27/2006)
03/27/2006	<u>1914</u>	SCHEDULING ORDER for Macomb County's Petition Regarding Interceptor Interest Rate Dispute: Responses: 4/7/2006; Replies: 4/28/2006. Signed by Honorable John Feikens. (CCoh,) (Entered: 03/27/2006)
03/27/2006	<u>1915</u>	OPINION and ORDER Deciding <u>1902</u> Objection to Extension of Infrastructure Management Group Contract through Dec. 31, 2006. The Oakland County Objections to the IMG Contract extension are DENIED. Signed by Honorable John Feikens. (CCoh,) (Entered: 03/27/2006)
03/27/2006	<u>1916</u>	NOTICE TO APPEAR: ATTORNEY-ONLY Scheduling Conference Re:the remaining issue in Oakland County's Motion for Reconsideration (the Raftelis Report) set for 4/25/2006 10:00 AM before Honorable John Feikens. (CCoh,) (Entered: 03/27/2006)
03/30/2006	<u>1917</u>	NOTICE of Filing Reports by the Infrastructure Management Group Relating to Contracts WS-623 and DWS-812 signed by Honorable John Feikens (LHack,) (Entered: 03/31/2006)
03/31/2006		Minute Entry -Settlement Conference Re: Interceptor Dispute held on 3/31/2006 before Honorable John Feikens. Detroit and Macomb County to return for a Status Conference set for 6/27/2006 10:00 AM. (CCoh,) (Entered: 04/03/2006)
03/31/2006	<u>1918</u>	Letter from Detroit City Council re: Opposition to an Increase in Salary. (CGre,) (Entered: 04/03/2006)

04/06/2006	<u>1919</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (CGre,) (Entered: 04/07/2006)
04/06/2006		Minute Entry -Status Conference held on 4/6/2006 before Honorable John Feikens. The parties will report back to the court on 4/25/2006 after 10:00 a.m.. Detroit/DWSD will supply their rationale to the suburbs no later than 4/13/2006. (CCoh,) (Entered: 04/10/2006)
04/07/2006	<u>1920</u>	RESPONSE to re <u>1900</u> Petition, by <i>Macomb County Re Interest Rates</i> filed by Oakland Cnty. (Miller, Donald) (Entered: 04/07/2006)
04/07/2006	<u>1921</u>	[Filing Error - R18 Exhibits; Labeling] RESPONSE to re <u>1900</u> Petition, <i>Challenging DWSD Sewer Rates Re Garfield Extension and 15 Mile Repair Interest Rates</i> filed by Detroit, City of. (Attachments: # <u>1</u> Index of Exhibits List of Exhibits# <u>2</u> Exhibit A# <u>3</u> Exhibit B# <u>4</u> Exhibit C# <u>5</u> Exhibit D) (Franzinger, Robert) Modified on 4/10/2006 (SMar,). (Entered: 04/07/2006)
04/20/2006	<u>1922</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (NHoll,) (Entered: 04/20/2006)
04/20/2006	<u>1923</u>	SUPPLEMENTAL BRIEF re <u>1895</u> Request For Order On Contracts WS-650, WS-657 WS-651 WS-623 and DWS-812C filed by Detroit, City of, Detroit Water and Sewerage Department. (Franzinger, Robert) (Entered: 04/20/2006)
04/25/2006		Minute Entry -Status Conference held on 4/25/2006,Re: Raftelis Report and Radio Contract before Honorable John Feikens. Status Conference Re: Radio Contract set for 6/19/2006 10:00 AM before Honorable John Feikens. Re: Raftelis Report: Expert Witness Depositions will be taken on June 7 & 8, 2006 at 10:00 a.m. continuing to 3:00 p.m. in Judge Feikens Courtroom. (Court Reporter Marie Metcalf) (CCoh,) (Entered: 04/26/2006)
04/28/2006	<u>1924</u>	REQUEST for Further Briefing Regarding Contract Approvals. Oakland Cnty and Detroit Water and Sewerage Department to indicate any opposition to a look-back as to the 2006-2007 allocation of WS-623; and that DWSD brief as to any key dates by which MDOT is scheduled to resurface streets related to the work in WS-623. Briefing shall be due by 5/10/2006. (CCoh,) (Entered: 04/28/2006)
04/28/2006	<u>1925</u>	OPINION and ORDER Regarding Standing. Signed by Honorable John Feikens. (CCoh,) (Entered: 04/28/2006)
05/01/2006	<u>1926</u>	AMENDED <u>1815</u> Notice of Appearance by Wayne, County of.(McCauley, Patrick) (Entered: 05/01/2006)
05/02/2006	<u>1927</u>	NOTICE of Change of Attorney Information by R. Craig Hupp on behalf of Macomb, County of. (Hupp, R.) (Entered: 05/02/2006)
05/03/2006	<u>1928</u>	NOTICE by Wayne, County of <i>Letter Directed to Judge Feikens</i> (McCauley, Patrick) (Entered: 05/03/2006)
05/04/2006	<u>1929</u>	OBJECTION to <u>1928</u> Notice (Other) <i>To Wayne County's Request To Participate In Discovery And Other Issues Re: Raftelis Report</i> by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Peters, Marilyn) (Entered: 05/04/2006)

05/05/2006	<u>1930</u>	RESPONSE to <u>1929</u> Objection, by Wayne, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1)(McCauley, Patrick) (Entered: 05/05/2006)
05/05/2006	<u>1931</u>	REPLY to Response re <u>1900</u> Petition, <i>Reply Brief re The Interest Rate Issue</i> filed by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1, Diagram of Oakland Macomb Interceptor# <u>3</u> Exhibit 2, Memorandum of Understanding dated August 1999 (the "MOU")# <u>4</u> Exhibit 3, DWSD Change Authorizations and Change Orders# <u>5</u> Exhibit 4, Letter from Marrocco to DeRiemaker (10/30/01)# <u>6</u> Exhibit 5, Letter, Bonin to DeRiemaker (8/27/2002)# <u>7</u> Exhibit 6, Memo, Wiggins to Gorden (4/23/98)# <u>8</u> Exhibit 7, DWSD Rate Spreadsheet (3/31/99)# <u>9</u> Exhibit 8, Memo, foster to Wiggins (1/17/01)# <u>10</u> Exhibit 9, Letter, Bonin to Wiggins (2/12/01)# <u>11</u> Exhibit 10, Letter, Chirolla to Bonin (3/20/01)# <u>12</u> Exhibit 11, 2003 Official Statement, 2nd page# <u>13</u> Exhibit 12, 2005 Official Statement, 2nd page# <u>14</u> Exhibit 13, Stannard Declaration# <u>15</u> Exhibit 14, The Foster Group's Report for FY2006/07 rates)(Hupp, R.) (Entered: 05/05/2006)
05/09/2006	<u>1932</u>	DECLARATION by John Joyner filed by Detroit, City of, Detroit Water and Sewerage Department.(Franzinger, Robert) (Entered: 05/09/2006)
05/09/2006	<u>1933</u>	DECLARATION by Bart Foster filed by Detroit, City of, Detroit Water and Sewerage Department.(Franzinger, Robert) (Entered: 05/09/2006)
05/10/2006	<u>1934</u>	RESPONSE to <u>1924</u> Request, <i>from Court for Further Briefing Regarding Contract Approvals</i> by Oakland Cnty. (Miller, Donald) (Entered: 05/10/2006)
05/10/2006	<u>1935</u>	NOTICE of Withdrawal of Attorney James A. Smith; G. Christopher Bernard and Kurt M. Brauer by Macomb, County of. (Hupp, R.) (Entered: 05/10/2006)
05/10/2006	<u>1936</u>	RESPONSE to <i>WAYNE AND OAKLAND COUNTIES' OBJECTIONS TO MAYOR KILPATRICK'S REQUEST FOR ORDER APPROVING CONTRACTS</i> filed by Detroit, City of. (Franzinger, Robert) (Entered: 05/10/2006)
05/10/2006	<u>1937</u>	SUPPLEMENTAL BRIEF re <u>1924</u> Request, <i>FOR FURTHER BRIEFING REGARDING CONTRACT APPROVALS</i> filed by Detroit, City of. (Franzinger, Robert) (Entered: 05/10/2006)
05/18/2006	<u>1938</u>	OPINION and ORDER Allowing Wayne County to Participate in Proceedings Regarding Raffelis Report. Signed by Honorable John Feikens. (CCoh,) (Entered: 05/18/2006)
05/18/2006		Minute Entry - Hearing held on 5/18/2006 Re: <u>1895</u> Request filed by the City of Detroit for order approving contracts subsequent to termination of special administratorship of DWSD before Honorable John Feikens. DISPOSITION: A written opinion will issue. Judge Feikens approved 5 contracts and asked for proposals for remedy of overcharge to suburbs. (Court Reporter Joan Morgan) (CCoh,) (Entered: 05/18/2006)
05/18/2006	<u>1939</u>	OPINION and ORDER re <u>1895</u> Request by the City of Detroit to approve 5 contracts with the DWSD. The 5 contracts are approved: WS-650; WS-657; WS-651; WS-623; and DWS-812C. DWSD is to report by 6/19/2006 on its proposed method of remedying the approximately \$500,000.00 overcharge to

		wholesale customers for contract WS-623. Signed by Honorable John Feikens. (CCoh,) (Entered: 05/18/2006)
05/22/2006	<u>1940</u>	SUPPLEMENTAL BRIEF re <u>1931</u> Reply to Response to Petition/Request/Application,,, <i>Re the Interest Rate Issue</i> filed by Detroit, City of. (Attachments: # <u>1</u> Index of Exhibits Index to City of Detroit's Objection# <u>2</u> Exhibit A: May 2, 2006 e-mail from Mr. Hupp to Mr. Jacobs# <u>3</u> Exhibit B: May 2, 2006 e-mail from Mr. Jacobs to Mr. Hupp)(Franzinger, Robert) (Entered: 05/22/2006)
05/22/2006	<u>1941</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (SMar,) (Entered: 05/24/2006)
05/24/2006	<u>1942</u>	MOTION To require the City of Detroit to file an answer to Macomb County's Rate Petition by Macomb, County of. (Hupp, R.) (Entered: 05/24/2006)
05/24/2006	<u>1943</u>	RESPONSE to <u>1940</u> Supplemental Brief, <i>Detroit's Objection to Macomb County's Brief</i> by Macomb, County of. (Hupp, R.) (Entered: 05/24/2006)
05/25/2006	<u>1944</u>	MOTION for Leave to File <i>Discovery Re 15 Mile Sewer Collapse</i> by Macomb, County of. (Attachments: # <u>1</u> Exhibit 1-DWSD Memo to Water Board)(Hupp, R.) (Entered: 05/25/2006)
05/30/2006	<u>1945</u>	TRANSCRIPT of Proceedings held on April 25, 2006 of Settlement Conference (SMar,) (Entered: 05/31/2006)
06/05/2006	<u>1946</u>	NOTICE by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department <i>Notice of Submission of Discovery Responses</i> (Peters, Marilyn) (Entered: 06/05/2006)
06/05/2006	<u>1947</u>	NOTICE by Oakland Cnty <i>of Submission of Discovery Response</i> (Miller, Donald) (Entered: 06/05/2006)
06/06/2006	<u>1948</u>	NOTICE by Macomb, County of <i>of filing</i> (Hupp, R.) (Entered: 06/06/2006)
06/06/2006	<u>1949</u>	ORDER Approving Business Leadership Group's Request for Public Sector Consultant's Assistance. Signed by Honorable John Feikens. (SMar,) (Entered: 06/07/2006)
06/06/2006	<u>1950</u>	ORDER Approving Business Leadship Group's Request for IMG Assistance under Current Contract. Signed by Honorable John Feikens. (SMar,) (Entered: 06/07/2006)
06/07/2006	<u>1951</u>	OBJECTION to <u>1944</u> MOTION for Leave to File <i>Discovery Re 15 Mile Sewer Collapse City of Detroit's Objection To Macomb County's Request For Discovery In Connetion With Planned Repairs Of The Interceptor</i> by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Peters, Marilyn) (Entered: 06/07/2006)
06/16/2006		Minute Entry -Settlement Conference - Re: Radio Contract (6/19,10:00) before Honorable John Feikens. Disposition: CANCELLED (CCoh,) (Entered: 06/16/2006)
06/16/2006	<u>1952</u>	

		TRANSCRIPT of Proceedings held on 6/7/2006 (BSoc,) (Additional attachment(s) added on 6/2/2009: # <u>1</u> Document Continuation) (SSro). (Entered: 06/16/2006)
06/16/2006	<u>1953</u>	TRANSCRIPT of Proceedings held on 6/8/2006 (BSoc,) (SSro). (Entered: 06/16/2006)
06/20/2006	<u>1954</u>	SCHEDULING ORDER Regarding all Disputes Currently in Litigation. Signed by Honorable John Feikens. (CCoh,) (Entered: 06/20/2006)
06/20/2006	<u>1955</u>	NOTICE of Change of Attorney Information by R. Craig Hupp on behalf of Macomb, County of. (Hupp, R.) (Entered: 06/20/2006)
06/20/2006	<u>1956</u>	SCHEDULING ORDER Regarding All Disputes Currently in Litigation. Signed by Honorable John Feikens. (CCoh,) (Entered: 06/21/2006)
06/27/2006	<u>1957</u>	STATEMENT of Oakland County's Position Regarding Remedy as to Contract WS-623 by Oakland Cnty. (Attachments: # <u>1</u> Exhibit A)(Miller, Donald) (Entered: 06/27/2006)
06/28/2006	<u>1958</u>	NOTICE by Wayne, County of re <u>1957</u> Statement <i>re Joinder in Oakland County's Position Regarding Remedy As To Contract WS-623</i> (McCauley, Patrick) (Entered: 06/28/2006)
07/31/2006	<u>1959</u>	ORDER denying <u>1944</u> Motion for Leave to File to File Discovery.- Signed by Honorable John Feikens. (CCoh,) (Entered: 08/01/2006)
07/31/2006		Minute Entry -Settlement Conference Re: Interceptor Dispute held on 7/31/2006 before Honorable John Feikens. Disposition: PROPOSAL MADE AND COUNSEL WILL BE CONTACTED IF ACCEPTED. (CCoh,) (Entered: 08/02/2006)
08/29/2006	<u>1960</u>	STIPULATION AND ORDER Rmedying Charges to Wholesale Water Customers Associated with Contract WS-623 Signed by Honorable John Feikens. (BSoc,) (Entered: 08/29/2006)
09/01/2006	<u>1965</u>	ORDER Approving Payment for Services of PSC. Signed by Honorable John Feikens. (CGre,) (Entered: 10/18/2006)
09/07/2006	<u>1961</u>	ORDER for Payment of Special Master Fees and Expenses. Signed by Honorable John Feikens. (SMar,) (Entered: 09/07/2006)
09/22/2006	<u>1962</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (SMar,) (Entered: 09/22/2006)
10/02/2006	<u>1963</u>	LETTER from Timothy O'Brien Regarding Work of Business Leadership Group.(CCoh,) (Entered: 10/02/2006)
10/17/2006	<u>1964</u>	ORDER REGARDING DEBT RESTRUCTURING, entered. Signed by Honorable John Feikens. (CCoh,) (Entered: 10/18/2006)
11/01/2006	<u>1966</u>	MOTION for Order <i>Clarifying Order Regarding Debt Restructuring</i> by Oakland Cnty. (Miller, Donald) (Entered: 11/01/2006)
11/06/2006	<u>1967</u>	

		RESPONSE to <u>1966</u> MOTION for Order <i>Clarifying Order Regarding Debt Restructuring Joinder in Oakland County's Motion</i> filed by Macomb, County of. (Hupp, R.) (Entered: 11/06/2006)
11/13/2006	<u>1968</u>	RESPONSE to <u>1966</u> MOTION for Order <i>Clarifying Order Regarding Debt Restructuring</i> filed by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Peters, Marilyn) (Entered: 11/13/2006)
11/20/2006	<u>1969</u>	REPLY to Response re <u>1966</u> MOTION for Order <i>Clarifying Order Regarding Debt Restructuring</i> filed by Oakland Cnty. (Miller, Donald) (Entered: 11/20/2006)
11/28/2006	<u>1970</u>	[FILING ERROR - RULE 18 - EXHIBITS MISSING NARRATIVE DESCRIPTION] MOTION to Compel <i>Discovery</i> by Oakland Cnty. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit) (Miller, Donald) Modified on 11/28/2006 (CGre,). (Entered: 11/28/2006)
11/30/2006	<u>1971</u>	ORDER Regarding Interceptor Repair Settlement Conference set for 12/14/2006 02:00 PM before Honorable John Feikens . Signed by Honorable John Feikens. (CCoh,) (Entered: 11/30/2006)
11/30/2006	<u>1972</u>	ORDER for Settlement Conference Regarding the Cost Allocation of the 800mhz radio contract set for 12/18/2006 10:00 AM before Honorable John Feikens . Signed by Honorable John Feikens. (CCoh,) (Entered: 11/30/2006)
11/30/2006	<u>1973</u>	ORDER Approving Payment for Services of PSC. Signed by Honorable John Feikens. (SMar,) (Entered: 12/04/2006)
12/01/2006	<u>1974</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (SMar,) (Entered: 12/04/2006)
12/01/2006	<u>1975</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (SMar,) (Entered: 12/04/2006)
12/07/2006	<u>1976</u>	SCHEDULING ORDER Regarding Interceptor Interest Rate Dispute and Settlement Conference set for 1/16/2007 10:00 AM before Honorable John Feikens .(see order for details) Signed by Honorable John Feikens. (CCoh,) (Entered: 12/07/2006)
12/08/2006	<u>1977</u>	MOTION for Order <i>Further Clarifying Role of Special Master</i> by Oakland Cnty. (Miller, Donald) (Entered: 12/08/2006)
12/08/2006	<u>1978</u>	REQUEST <i>Objection to Order of November 30, 2006 Approving Payment for Services of PSC</i> by Oakland Cnty. (Miller, Donald) (Entered: 12/08/2006)
12/12/2006	<u>1979</u>	MOTION for Protective Order by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit A January 5, 2006 Opinion and Order Denying Oakland County's Motion to Replace DWSD's Court Appointed Special Administrator# <u>3</u> Exhibit B March 20, 2006 Opinion and Order Re: Macomb County's Petition Challenging DWSD Sewer Rates Re: Emergency Radio System# <u>4</u> Exhibit C February 6, 2006 Order Regarding Special Master's Role# <u>5</u> Exhibit D Interrogatories# <u>6</u>

		Exhibit E Document Requests# <u>7</u> Exhibit F October 16, 2006 correspondence# <u>8</u> Exhibit G October 17, 2006 correspondence# <u>9</u> Exhibit H Scheduling Order of June 20, 2006# <u>10</u> Exhibit I Cost Allocation Analysis# <u>11</u> Exhibit J May 8, 2006 correspondence)(Peters, Marilyn) (Entered: 12/12/2006)
12/12/2006	<u>1980</u>	RESPONSE to <u>1970</u> MOTION to Compel <i>Discovery</i> filed by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Exhibit 1 The City of Detroit and Detroit Water and Sewerage Department's Motion For Protective Order and Brief in Support# <u>2</u> Index of Exhibits to Exhibit 1# <u>3</u> Exhibit A January 5, 2006 Opinion and Order Denying Oakland County's Motion to Replace DWSD's Court Appointed Special Administrator# <u>4</u> Exhibit B March 20, 2006 Opinion and Order Re macomb County's Petition Challenging DWSD Sewer Rates Re Emergency Radio System# <u>5</u> Exhibit C February 6, 2006 Order Regarding Special Master's Role# <u>6</u> Exhibit D Interrogatories# <u>7</u> Exhibit E Document Requests# <u>8</u> Exhibit F October 16, 2006 correspondence# <u>9</u> Exhibit G October 17, 2006 correspondence# <u>10</u> Exhibit H Scheduling Order of June 20, 2006# <u>11</u> Exhibit I Cost Allocation Analysis# <u>12</u> Exhibit J May 8, 2006 correspondence)(Peters, Marilyn) (Entered: 12/12/2006)
12/18/2006	<u>1981</u>	ORDER Regarding Radio Contract. Signed by Honorable John Feikens. (CCoh,) (Entered: 12/19/2006)
12/18/2006		Minute Entry -Settlement Conference held on 12/18/2006 Re: 800mhz Radio Contract before Honorable John Feikens. Disposition: NO PROGRESS (CCoh,) (Entered: 12/19/2006)
12/22/2006	<u>1982</u>	RESPONSE to <u>1979</u> MOTION for Protective Order filed by Oakland Cnty. (Miller, Donald) (Entered: 12/22/2006)
12/27/2006	<u>1983</u>	[FILING ERROR - WRONG DOCUMENT UPLOADED FOR INDEX OF EXHIBITS] MOTION for Reconsideration re <u>1981</u> Order <i>Regarding Radio Contract</i> by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit A 2/22/06 Report and Recommendation of Special Master (w/o exhibits)# <u>3</u> Exhibit B 12/18/06 Order Regarding Radio Contract)(Peters, Marilyn) Modified on 12/27/2006 (CGre,). (Entered: 12/27/2006)
12/27/2006	<u>1984</u>	INDEX of Exhibits by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department <i>to Motion For Reconsideration and/or Clarification of the December 18, 2006 Order Regarding Radio Contract.</i> (Peters, Marilyn) (Entered: 12/27/2006)
12/28/2006	<u>1985</u>	ORDER allowing responses to <u>1983</u> MOTION for Reconsideration re <u>1981</u> Order. Signed by Honorable John Feikens. (KGeha,) (Entered: 12/28/2006)
12/28/2006	<u>1986</u>	OPINION and ORDER adopting re <u>1890</u> Report of Special Master as to Two Contracts. Signed by Honorable John Feikens. (CGre,) (Entered: 12/28/2006)
12/28/2006	<u>1987</u>	

		ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (CGre,) (Entered: 12/28/2006)
01/04/2007	<u>1988</u>	RESPONSE to <u>1983</u> MOTION for Reconsideration re <u>1981</u> Order <i>Regarding Radio Contract</i> filed by Wayne, County of. (McCauley, Patrick) (Entered: 01/04/2007)
01/04/2007	<u>1989</u>	RESPONSE to <u>1983</u> MOTION for Reconsideration re <u>1981</u> Order <i>Regarding Radio Contract</i> filed by Oakland Cnty. (Miller, Donald) (Entered: 01/04/2007)
01/04/2007	<u>1990</u>	MEMORANDUM re <u>1981</u> Order <i>Wayne County's Brief Regarding Overcharge on 800 MHz Radio Contract</i> by Wayne, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1 - 9/5/03 Letter# <u>3</u> Exhibit 2 - 5/15/03 Memorandum of Understanding# <u>4</u> Exhibit 3 - DWSD Power Point Presentation# <u>5</u> Exhibit 4 - Radio System Questions# <u>6</u> Exhibit 5 - Cost Allocation Prepared by Butler Benton# <u>7</u> Exhibit 6 - Affidavit of Benton# <u>8</u> Exhibit 7 - Jacobs Letter of 4/13/06# <u>9</u> Exhibit 8 - DWSD's Cost Allocation# <u>10</u> Exhibit 9 (Part 1) - Oakland County's 5/23/06 Letter# <u>11</u> Exhibit 9 (Part 2) - Oakland County's 5/23/06 Letter# <u>12</u> Exhibit 10 - McCauley 10/18/06 Letter# <u>13</u> Exhibit 11 - City of Detroit's Financial Report 6/30/04# <u>14</u> Exhibit 12 - DOJ's 8/05 Operating Procedures with Maps# <u>15</u> Exhibit 13 - Michigan Senate Fiscal Agency State Police Trooper Count, March/April 2004# <u>16</u> Exhibit 14 - MI State Police Services Directory, 3/06)(McCauley, Patrick) (Entered: 01/04/2007)
01/04/2007	<u>1991</u>	RESPONSE to <u>1983</u> MOTION for Reconsideration re <u>1981</u> Order <i>Regarding Radio Contract</i> filed by Macomb, County of. (Hupp, R.) (Entered: 01/04/2007)
01/04/2007	<u>1992</u>	MEMORANDUM <i>Brief Regarding Radio Allocation</i> by Oakland Cnty. (Attachments: # <u>1</u> Index of Exhibits for Oakland County's Brief re Radio Allocation# <u>2</u> Exhibit Exhibit 1 - Excerpts from 2/10/98 Application# <u>3</u> Exhibit Exhibit 2 - 5/6/03 letter# <u>4</u> Exhibit Exhibit 3 - Customer Questions and Answers# <u>5</u> Exhibit Exhibit 4 - Memorandum of Agreement# <u>6</u> Exhibit Daddow Affidavit# <u>7</u> Exhibit Exhibit 6 -Senate Fiscal Agency Report)(Miller, Donald) (Entered: 01/04/2007)
01/04/2007	<u>1993</u>	MEMORANDUM re <u>1981</u> Order <i>Macomb County's Brief on Allocation of Detroit Radio System Costs</i> by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits Index of Exhibits# <u>2</u> Exhibit 1, Declaration Of Keith Bradshaw# <u>3</u> Exhibit 2, MPSCS Membership Agreement# <u>4</u> Exhibit 3, DWSD Power Point Presentation re 800 MHz Radio System (September 2005)# <u>5</u> Exhibit 4, DWSD, 800 Megahertz (MHz) Radio System: Questions from Suburban Wholesale Customer Meeting of September 28, 2005# <u>6</u> Exhibit 5, DWSD, Spreadsheet "DWSD Contract DWSD-846 Radio Quantities" (2004)# <u>7</u> Exhibit 6, DWSD, Beyond 2000 ? A Communication Solution for the City of Detroit ? 800 MHz Radio Frequency Application by the City of Detroit (February 10, 1998)# <u>8</u> Exhibit 7, DWSD, Sewer System Map# <u>9</u> Exhibit 8, Detroit/Macomb County 1967 Wastewater Disposal Agreement# <u>10</u> Exhibit 9, Detroit/Macomb County Amendment No. 3 to 1967 Wastewater Disposal Agreement# <u>11</u> Exhibit 10, Order re Service Contract Amendments (April 19,

		1982)# <u>12</u> Exhibit 11, 1978 Rate Settlement Agreement# <u>13</u> Exhibit 12, DWSD, Presentation, City of Detroit, DWSD (October 17, 1996)# <u>14</u> Exhibit 13, DWSD, Presentation, Application by the City of Detroit and Detroit Water and Sewer Department (July 16, 1996)# <u>15</u> Exhibit 14, DWSD, Response to Frequency Application (October 8, 1996)# <u>16</u> Exhibit 15, DWSD, Letter from Detroit re 800 MHz Radio Frequency Application (September 15, 1998)# <u>17</u> Exhibit 16, DWSD, Radio System Use Statistics# <u>18</u> Exhibit 17, DWSD, DWSD Fact Sheet, http://www.dwsd.org.about/dwsd_fact_sheet_7_28_2006.pdf # <u>19</u> Exhibit 18, The Foster Group Report on FY2006-07 Sewer Rates and FY2004-05 Look Back Adjustment (May 2006) (Tables 8, 29, 30)# <u>20</u> Exhibit 19, Allocation of Radio Cost Between Sewer Retail and Tier I Customers# <u>21</u> Exhibit 20, Summary of Radio Cost Allocation# <u>22</u> Exhibit 21, Region Twenty-One 821 MHz Plan (Undated)# <u>23</u> Exhibit 22, Letter, Chief McKinnon to Office of Information Technology Service c/o DWSD (January 17, 1997)# <u>24</u> Exhibit 23, Letter and Frequency Application to MPSFAC (September 11, 2003)# <u>25</u> Exhibit 24, Michigan/Detroit Integration Agreement# <u>26</u> Exhibit 25, Michigan/Detroit Memorandum of Understanding# <u>27</u> Exhibit 26, Letter, MDOT to Michigan Public Safety Frequency Advisory Committee re Reassignment of Two Radio Frequencies (December 16, 2004))(Hupp, R.) (Entered: 01/04/2007)
01/04/2007	<u>1994</u>	MEMORANDUM re <u>1981</u> Order <i>Regarding Allocation of Costs of the 800 MHz Radio System Project</i> by Detroit, City of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1, Field Declaration# <u>3</u> Exhibit 2, Foster Declaration) (Franzinger, Robert) (Entered: 01/04/2007)
01/08/2007	<u>1995</u>	ORDER Approving Payment for Service of PSC. Signed by Honorable John Feikens. (SMar,) (Entered: 01/09/2007)
01/16/2007		Minute Entry -Settlement Conference held on 1/16/2007 Re: Interceptor Repair and Interceptor Interest Rate. The parties agreed on a number and the general terms of a release of liability on the interceptor repair numbers. Briefing on the interest rate has been extended to 2/6/2007. before Honorable John Feikens. (CCoh,) (Entered: 01/17/2007)
01/23/2007	<u>1996</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (SMar,) (Entered: 01/23/2007)
01/25/2007	<u>1997</u>	SCHEDULING ORDER Regarding Rate Issues Raised in Raftelis Report. Signed by Honorable John Feikens. (Refer to image for dates)(CCoh,) (Entered: 01/25/2007)
01/31/2007	<u>1998</u>	SUPPLEMENTAL BRIEF re <u>1814</u> Response (Free) <i>Reaffirmation and Renewal of Oakland County's Position Regarding Macomb County Interceptor Repair Dispute</i> filed by Oakland Cnty. (Miller, Donald) (Entered: 01/31/2007)
02/01/2007	<u>1999</u>	STATEMENT of Reaffirmation and Renewal of Wayne County's Position Regarding Macomb Interceptor Repair Dispute by Wayne, County of. (McCauley, Patrick) (Entered: 02/01/2007)

02/06/2007	<u>2000</u>	ORDER Extending Infrastructure Management Group Contract. Signed by Honorable John Feikens. (CCoh,) (Entered: 02/06/2007)
02/07/2007	<u>2006</u>	ORDER Approving Payment for Services of PSC. Signed by Honorable John Feikens. (BSoc,) (Entered: 02/08/2007)
02/08/2007	<u>2001</u>	RESPONSE <i>Re: Garfield Extension and 15 Mile Repair Interest Rates</i> by Wayne, County of. (McCauley, Patrick) (Entered: 02/08/2007)
02/08/2007	<u>2002</u>	RESPONSE to re <u>1900</u> Petition, <i>City of Detroit's Brief Re: Macomb County's Petition Challenging DWSD Interest Rates Applied To The Costs of The Garfield Interceptor and 15 Mile Repairs</i> filed by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1 Correspondence from Macomb, Clinton and Shelby Townships to Macomb County# <u>3</u> Exhibit 2 12/13/96 Letter from Stephen Gorden to Board of Water Commissioners# <u>4</u> Exhibit 3 10/29/96 Correspondence from Anthony Marrocco to Stephen Gorden# <u>5</u> Exhibit 4 10/7/96 Macomb Cuntly Wastewater District Meeting Minutes# <u>6</u> Exhibit 5 12/20/96 Preliminary Engineering Report# <u>7</u> Exhibit 6 11/20/96 Meeting Summary: DWSD Garfield Interceptor# <u>8</u> Exhibit 7 12/17/96 Letter Agreement# <u>9</u> Exhibit 8 Correspondence dated 3/24/97, 6/13/97, 10/20/97 & 1/15/98 between Stephen Gorden of DWSD and Anthony Marrocco of Macomb# <u>10</u> Exhibit 9 Memorandum from Mr. Gorden dated 4/13/98# <u>11</u> Exhibit 10 7/20/98 Correspondence from Anthony Marrocco to Stephen Gorden# <u>12</u> Exhibit 11 August 1999 MOU# <u>13</u> Exhibit 12 Bid Schedule for PCI-45# <u>14</u> Exhibit 13 Preconstruction and Monthly Progress Meeting Minutes# <u>15</u> Exhibit 14 5/17/00 Memorandum from Bart Foster to Valeria Wiggins# <u>16</u> Exhibit 15 1/25/98 Correspondence from Anthony Marrocco to Stephen Gorden# <u>17</u> Exhibit 16 1/17/01 Memorandum from Bart Foster to Valeria Wiggins# <u>18</u> Exhibit 17 2/12/01 Correspondence from Kenneth Bonin to Valeria Wiggins# <u>19</u> Exhibit 18 3/20/01 Correspondence from Valeria Wiggins to Kenneth Bonin# <u>20</u> Exhibit 19 9/20/04 Correspondence from Victor Mercado to Anthony Marrocco# <u>21</u> Exhibit 20 1/13/05 Sign-in sheet and 1/12/05 Summary# <u>22</u> Exhibit 21 2/10/05 Statement of Anthony Marrocco# <u>23</u> Exhibit 22 2/17/05 Correspondence from Victor Mercado to Anthony Marrocco# <u>24</u> Exhibit 23 Portions of 1980 Rate Settlement Agreement, and Order Dismissing Rate Challenges# <u>25</u> Exhibit 24 3/11/05 Correspondence from Victor Mercado to Macomb County# <u>26</u> Exhibit 25 2/27/03 Inter-Office Memorandum to William Misterovich from Kenneth Bonin Re: Debt Service Summary prepared by Bart Foster# <u>27</u> Exhibit 26 Affidavit of Bart Foster# <u>28</u> Exhibit 27 Analysis of Direct and Indirect Costs of Debt Financing by The Foster Group)(Peters, Marilyn) (Entered: 02/08/2007)
02/08/2007	<u>2003</u>	MOTION for Summary Judgment <i>on Interest Rate Issues</i> by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 15 - Detroit Sewer Rate Ordinance# <u>3</u> Exhibit 16- 1980 Sewer Bond Official Statement# <u>4</u> Exhibit 17-1980 Sewer Bond Ordinance# <u>5</u> Exhibit 18 - 1986 Sewer Bond Ordinance# <u>6</u> Exhibit 19 - 1987 Sewer Bond Official Statement# <u>7</u> Exhibit 20-2001 Sewer Bond Official Statement# <u>8</u> Exhibit 21-2003 Sewer Bond Official Statement# <u>9</u> Exhibit 22-2006 Sewer Bond Official Statement# <u>10</u>

		Exhibit 23-Audited Financial Statements# <u>11</u> Exhibit 24-Feasibility Report of 8-4-2006# <u>12</u> Exhibit 25-Rate Notebook, FY2006-07# <u>13</u> Exhibit 26-The Foster Group Rate Notebook, FY2006-07# <u>14</u> Exhibit 27- The Foster Group Rate Report FY2005-06# <u>15</u> Exhibit 28- The Foster Group Rate Report, 2006-07# <u>16</u> Exhibit 29-The Foster Group, Rate Report FY2007-08# <u>17</u> Exhibit 30-DWSD, Macomb County Sewer Rate Calculation FY2007-08# <u>18</u> Exhibit 31-The Foster Group, Calculation & summary of Macomb County Direct Revenue Requirements, FY2007-08# <u>19</u> Exhibit The Foster Group, Summary of Allocated Amortization Costs# <u>20</u> Exhibit 33-Detrail of Annual Payments Assigned to Macomb# <u>21</u> Exhibit 34-Detail of Annual Fixed Payments Assigned to Macomb County# <u>22</u> Exhibit 35 - not used# <u>23</u> Exhibit 36 - Not used# <u>24</u> Exhibit 37-Construction Cost Recap, PCI-45, Garfield Interceptor# <u>25</u> Exhibit 38-Revenue Financed Capital Expenditures Chart, FYs 2004-2008# <u>26</u> Exhibit 39-Not used# <u>27</u> Exhibit 40-CDM, Detroit Sewer Rate Methodoogy# <u>28</u> Exhibit 41-1980-81 DWSD Budget# <u>29</u> Exhibit 42-Declaration of James A. Smith# <u>30</u> Exhibit 43-Declaration of James Pistilli# <u>31</u> Exhibit 44-Declaration of Nancy Ryan)(Hupp, R.) (Entered: 02/08/2007)
02/08/2007	<u>2004</u>	EXHIBIT <i>Continuation</i> re <u>2003</u> MOTION for Summary Judgment <i>on Interest Rate Issues</i> by Macomb, County of (Attachments: # <u>1</u> Exhibit 46- Allocation of Original Issue Total Bond Proceeds to Cost Function# <u>2</u> Exhibit 47- Allocation of Outstanding Original Issue Total Bond Proceeds to System Component# <u>3</u> Exhibit 48-Allocation of Original Issue Total Bond Proceeds to Single Customer Facilities# <u>4</u> Exhibit 49-FY2006-07 Debt Service Allocation# <u>5</u> Exhibit 50-Selected U.S. Interest Rates & Bond Yields:1965-2003# <u>6</u> Exhibit 51-Interest Surcharge Calculation# <u>7</u> Exhibit 52-DWSD, Request for Contract Amendment# <u>8</u> Exhibit 53-Detroit's Responses to Macomb's Discovery Requests# <u>9</u> Exhibit 54-Collected Garfield Documents# <u>10</u> Exhibit 55-Foster, Memo re DWSD Sewer Rate Model# <u>11</u> Exhibit 56-Documents re Rate Adjustment B3# <u>12</u> Exhibit 57-2005 Sewer Bond Official Statement# <u>13</u> Exhibit 58-Analysis of DWSD Debt Coverage Revenue Requirements)(Hupp, R.) (Entered: 02/08/2007)
02/08/2007	<u>2005</u>	REQUEST <i>to Exceed Page Limit on Macomb County's Motion for Summary Judgment re Interest Rate Issues</i> by Macomb, County of. (Hupp, R.) (Entered: 02/08/2007)
02/13/2007	<u>2007</u>	NOTICE of Change of Attorney Information by Patrick B. McCauley on behalf of Dearborn Heights, City of, Wayne, County of. (McCauley, Patrick) (Entered: 02/13/2007)
02/13/2007	<u>2008</u>	STIPULATION <i>to Voluntarily Dismiss Certain Claims Related to Raftelis Report Issues in Oakland County's September 26, 2005 Motion and in Macomb County's October 26, 2005 Joinder Therein</i> by Oakland Cnty. (Miller, Donald) (Entered: 02/13/2007)
02/14/2007	<u>2009</u>	RESPONSE to <u>2003</u> MOTION for Summary Judgment <i>on Interest Rate Issues</i> filed by Detroit, City of, Detroit Water and Sewerage Department, Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 28 Supplemental Affidavit of Bart Foster# <u>3</u> Exhibit 29 Macomb County's Response to the City of Detroit and Detroit

		Water and Sewerage Department's Discovery Requests on the Interest Rate Issue to Macomb County)(Peters, Marilyn) (Entered: 02/14/2007)
02/14/2007	<u>2010</u>	REPLY to Response re <u>2003</u> MOTION for Summary Judgment <i>on Interest Rate Issues</i> filed by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 59-February 8, 2007 Rate Protest Letter to Detroit City Council) (Hupp, R.) (Entered: 02/14/2007)
02/16/2007	<u>2011</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Judge John Feikens. (CGre) (Entered: 02/20/2007)
02/22/2007	<u>2012</u>	STIPULATED ORDER FOR SUBSTITUTION OF ATTORNEYS. Attorney Patrick B. McCauley for Wayne, County of added. Signed by Honorable John Feikens. (CGre) (Entered: 02/22/2007)
02/26/2007	<u>2013</u>	STIPULATION to Voluntarily Dismiss Certain Claims Related to Raftelis Report Issues in Oakland County's September 26, 2005 Motion and Macomb County's October 26, 2005 Joinder Therein. (CCoh) (Entered: 02/26/2007)
02/26/2007	<u>2014</u>	ORDER Regarding Rate Challenges Raised in Raftelis Report - re <u>2008</u> Stipulation. Signed by Honorable John Feikens. (CCoh) (Entered: 02/26/2007)
02/27/2007	<u>2015</u>	ORDER Requesting Further Briefing on Interceptor Interest Rate Dispute - due 3/15/2007. Signed by Honorable John Feikens. (CCoh) (Entered: 02/27/2007)
03/12/2007	<u>2016</u>	[STRICKEN 3/13/07] ORDER of Action by the Judicial Adjunct. Signed by Honorable John Feikens. (CCoh) Modified on 3/13/2007 (Greyerbiehl, C.). Additional attachment(s) added on 3/13/2007 (Greyerbiehl, C.). (Entered: 03/12/2007)
03/12/2007	<u>2017</u>	[STRICKEN 3/13/07] AMENDED ORDER [re <u>2016</u> Order] of Appointment of Judicial Adjunct. Signed by Honorable John Feikens. (CCoh) Modified on 3/13/2007 (Greyerbiehl, C.). Additional attachment(s) added on 3/13/2007 (Greyerbiehl, C.). (Entered: 03/12/2007)
03/13/2007	<u>2018</u>	ORDER to Strike Documents <u>2017</u> Order and <u>2016</u> Order. Signed by Honorable John Feikens. (CGre) (Entered: 03/13/2007)
03/13/2007	<u>2019</u>	ORDER of Appointment of Judicial Adjunct. Signed by Honorable John Feikens. (CCoh) (Entered: 03/13/2007)
03/13/2007	<u>2020</u>	ORDER of Appointment of Judicial Adjunct. [corrected] Signed by Honorable John Feikens. (CCoh) (Entered: 03/13/2007)
03/14/2007	<u>2021</u>	AFFIDAVIT OF JUDICIAL ADJUNCT (LHac) (Entered: 03/14/2007)
03/15/2007	<u>2022</u>	SUPPLEMENTAL BRIEF re <u>2015</u> Order <i>Brief in Response to Court Order Requesting Further Briefing on Interceptor Interest Rate Dispute</i> filed by Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 27 Analysis of Direct and Indirect Costs of Debt Financing by The Foster Group# <u>3</u> Exhibit 30 Exhibit 4 Revised-Summary Buildup of Recommended Interest Rate for Macomb-Specific Facilities) (Peters, Marilyn) (Entered: 03/15/2007)

03/15/2007	<u>2023</u>	SUPPLEMENTAL BRIEF re <u>2015</u> Order filed by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 59 - PCI-45 Schematic# <u>3</u> Exhibit 60-DWSD Asset Inquiry# <u>4</u> Exhibit 61-Supplemental Declaration of William Misterovich) (Hupp, R.) (Entered: 03/15/2007)
03/16/2007	<u>2024</u>	OBJECTION to <u>2023</u> Supplemental Brief <i>in Support of Motion for Summary Judgment on Interest Rate Issues</i> by Detroit, City of, Detroit Water and Sewerage Department. (Peters, Marilyn) (Entered: 03/16/2007)
03/20/2007	<u>2025</u>	(ORIGINAL ORDER STRICKEN, REMOVED AND REPLACED PER ORDER DATED 03/22/07) ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (BSoc) (Hamel, D.). Modified on 3/22/2007 (Entered: 03/21/2007)
03/22/2007	<u>2026</u>	ORDER to Strike <u>2025</u> Order for payment of special master's fees and expenses. Signed by Honorable John Feikens. (DHam) (Entered: 03/22/2007)
03/23/2007	<u>2027</u>	NOTICE AND ORDER of Referral of Interceptor Interest Rate Dispute to Judicial Adjunct. Signed by Honorable John Feikens. (CCoh) (Entered: 03/23/2007)
03/23/2007	<u>2028</u>	ORDER denying <u>1805</u> Petition filed by Macomb, County of Signed by Honorable John Feikens. (CCoh) (Entered: 03/23/2007)
03/23/2007	<u>2029</u>	OPINION and ORDER Regarding 800 mhz Radio Contract Cost Allocation - Conference set for 4/11/2007 02:00 PM before Honorable John Feikens regarding possible methods for repayment of the resulting \$24,070,000. Signed by Honorable John Feikens. (CCoh) (Entered: 03/23/2007)
03/31/2007	<u>2030</u>	ATTORNEY APPEARANCE: Valerie J.M. Brader appearing on behalf of Valerie J.M. Brader , <i>Judicial Adjunct</i> (Brader, Valerie) (Entered: 03/31/2007)
04/05/2007	<u>2031</u>	SPECIAL MASTER REPORT <i>Judicial Adjunct Report and Recommendation on Interceptor Interest Rate Dispute</i> by Valerie J.M. Brader (Brader, Valerie) (Entered: 04/05/2007)
04/05/2007	<u>2032</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 04/05/2007)
04/06/2007	<u>2033</u>	Ex Parte MOTION for Leave to File Excess Pages <i>to its Motion for Reconsideration</i> by Macomb, County of. (Hupp, R.) (Entered: 04/06/2007)
04/06/2007	<u>2034</u>	Ex Parte MOTION for Leave to File <i>Exhibit Under Seal in Traditional Manner</i> by Macomb, County of. (Hupp, R.) (Entered: 04/06/2007)
04/06/2007	<u>2035</u>	MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1 - July 26, 2005 Hearing Transcript# <u>3</u> Exhibit 2 - Declaration of R. Craig Hupp# <u>4</u> Exhibit 3 - DWSD FY 2007-08 Rate Season Schedule# <u>5</u> Exhibit 4 - Feb. 9, 2007 email correspondence# <u>6</u> Exhibit 5- Sewer Inspection Reports# <u>7</u> Exhibit 6 - DWSD Construction Contract Change Order# <u>8</u> Exhibit 7 - GDRSS Reports re Romeo Arm W. of Garfield (excerpts)# <u>9</u> Exhibit 8 - NTH, Report re Sewer Condition Investigation & Evaluation Romeo Arm,

		Oakland-Macomb Interceptor, PCI-12A# <u>10</u> Exhibit 9- 1980 Rate Settlement Agt.# <u>11</u> Exhibit 10- December 19, 2001 Asset Audit Report for Detroit Wastewater Treatment Plan & Collection System (excerpts)# <u>12</u> Exhibit 11 - December 21, 2000 Draft Scope of Work for Asset Audit# <u>13</u> Exhibit 12 - April 30, 2001 Scope of Work for Asset Audit# <u>14</u> Exhibit 13 - February 8, 2007 Confidential NTH Inspection Proposal P-20061010-D for Interceptor Inspection (filed separately under seal)# <u>15</u> Exhibit 14 - Declaration of William Misterovich# <u>16</u> Exhibit 15 - September 28, 1981 Trial Transcript (excerpts) (Hupp, R.) (Entered: 04/06/2007)
04/06/2007	<u>2036</u>	NOTICE by Macomb, County of re <u>2035</u> MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application <i>of Filing Exhibits in the Traditional Manner</i> (Hupp, R.) (Entered: 04/06/2007)
04/06/2007	<u>2037</u>	NOTICE by Macomb, County of re <u>2035</u> MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application <i>Amended Notice of filing exhibit under seal</i> (Hupp, R.) (Entered: 04/06/2007)
04/06/2007	<u>2038</u>	[CONFIDENTIAL FILED UNDER SEAL] EXHIBIT 13 re <u>2035</u> MOTION for Reconsideration re <u>2028</u> Order by Macomb, County of. (BSoc) (Entered: 04/09/2007)
04/09/2007	<u>2039</u>	AFFIDAVIT of Valerie J.M. Brader re <u>2021</u> Affidavit <i>Update</i> by Valerie J.M. Brader (Brader, Valerie) (Entered: 04/09/2007)
04/09/2007	<u>2040</u>	NOTICE by F. Thomas Lewand <i>of Supplemental Notice Regarding Information Barrier Established by Bodman LLP</i> (Kemsley, George) (Entered: 04/09/2007)
04/10/2007	<u>2041</u>	SUPPLEMENTAL BRIEF re <u>1977</u> MOTION for Order <i>Further Clarifying Role of Special Master</i> filed by Oakland Cnty. (Miller, Donald) (Entered: 04/10/2007)
04/11/2007		Minute Entry -Settlement Conference held on 4/11/2007, before Honorable John Feikens - Re: Radio Contract. Continued Settlement Conference set for 4/19/2007 10:00 AM before Honorable John Feikens (CCoh) (Entered: 04/17/2007)
04/17/2007	<u>2042</u>	ORDER Re: Judicial Adjunct Assistance Re: Radio Contract. Signed by Honorable John Feikens. (CCoh) (Entered: 04/17/2007)
04/17/2007	<u>2043</u>	NOTICE of Change of Electronic Filing Registration Information by Valerie J.M. Brader on behalf of Valerie J.M. Brader. (Brader, Valerie) (Entered: 04/17/2007)

04/17/2007	<u>2044</u>	NOTICE of Change of Electronic Filing Registration Information by Patrick B. McCauley on behalf of Wayne, County of. (McCauley, Patrick) (Entered: 04/17/2007)
04/18/2007	<u>2045</u>	ORDER regarding judicial adjunct acting as settlement master. Signed by Honorable John Feikens. (DHam) (Entered: 04/18/2007)
04/19/2007		Minute Entry -Settlement Conference not held on 4/19/2007 before Honorable John Feikens. Disposition: CANCELLED (CCoh) (Entered: 04/19/2007)
04/20/2007	<u>2046</u>	OBJECTION to <i>Continuation Of Role Of Judicial Adjunct</i> by Detroit, City of, Detroit Water and Sewerage Department. (Peters, Marilyn) (Entered: 04/20/2007)
04/20/2007	<u>2049</u>	ORDER for Payment of Speical Master's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 04/24/2007)
04/23/2007	<u>2047</u>	NOTICE OF APPEAL by Oakland Cnty re <u>2029</u> Memorandum Opinion & Order, Set Deadlines/Hearings,,. Fee Status: No Fee Paid. (Miller, Donald) (Entered: 04/23/2007)
04/23/2007	<u>2048</u>	Certificate of Service re <u>2047</u> Notice of Appeal. (SMar) (Entered: 04/23/2007)
04/26/2007	<u>2050</u>	[DOCUMENT FILED IS A JOINDER WITH DEFT CITY OF DETROIT'S OBJECTION <u>2046</u> OBJECTION to <u>2045</u> Order <i>Regarding Judicial Adjunct Acting as Settlement Master</i> by Oakland Cnty. (Miller, Donald) Modified on 4/26/2007 (Socia, B.). (Entered: 04/26/2007)
04/26/2007	<u>2051</u>	OBJECTION to <u>2045</u> Order <i>Regarding Judicial Adjunct acting as Settlement Master</i> by Macomb, County of. (Hupp, R.) (Entered: 04/26/2007)
04/30/2007	<u>2052</u>	ORDER Modifying Appointment of Judicial Adjunct re <u>2020</u> Order, <u>2027</u> Order, <u>2042</u> Order. Signed by Honorable John Feikens. (CCoh) (Entered: 04/30/2007)
04/30/2007	<u>2053</u>	MOTION ADOPT IN PART AND MODIFY IN PART ADJUNCTS REPORT AND RECOMMENDATION REGARDING INTERCEPTOR INTEREST RATE DISPUTE re <u>2031</u> Report of Special Master by Macomb, County of. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 62-Board of Water Commissioners Agenda of May 24, 2006# <u>3</u> Exhibit 63-DWSD Authorization Letter (Sept. 1, 2004)# <u>4</u> Exhibit 64-Combined Table 5 and 6) (Hupp, R.) (Entered: 04/30/2007)
05/04/2007	<u>2054</u>	ORDER OF REFERENCE TO CHIEF JUDGE BERNARD A. FRIEDMAN re <u>2050</u> Objection filed by Oakland Cnty. Signed by Honorable John Feikens. (CCoh) (Entered: 05/04/2007)
05/07/2007	<u>2055</u>	NOTICE OF APPEAL by Macomb, County of re <u>2029</u> Memorandum Opinion & Order, Set Deadlines/Hearings,,. Receipt No: 1144109 - Fee: \$ 455 - Fee Status: Fee Paid. (Hupp, R.) (Entered: 05/07/2007)
05/07/2007	<u>2056</u>	Certificate of Service re <u>2055</u> Notice of Appeal. (CGre) (Entered: 05/07/2007)

05/09/2007	<u>2057</u>	ORDER Approving Payment for Services of PSC. Signed by Honorable John Feikens. (CCoh) (Entered: 05/09/2007)
05/09/2007	<u>2058</u>	ATTACHMENT to <u>2057</u> Order. (SMar) (Entered: 05/10/2007)
05/14/2007	<u>2059</u>	RESPONSE to <u>2053</u> MOTION ADOPT IN PART AND MODIFY IN PART ADJUNCTS REPORT AND RECOMMENDATION REGARDING INTERCEPTOR INTEREST RATE DISPUTE re <u>2031</u> Report of Special Master MOTION ADOPT IN PART AND MODIFY IN PART ADJUNCTS REPORT AND RECOMMENDATION REGARDING INTERCEPTOR INTEREST RATE DISPUTE re <u>2031</u> Report of Special Master filed by Detroit, City of, Detroit Water and Sewerage Department. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 11 August 1999 MOU# <u>3</u> Exhibit 25 2/27/03 Inter-Office Memorandum to William Misterovich from Kenneth Bonin Re: Debt Service Summary prepared by Bart Foster# <u>4</u> Exhibit 27 Analysis of Direct and Indirect Costs of Debt Financing by The Foster Group# <u>5</u> Exhibit 28 Supplemental Affidavit of Bart Foster) (Peters, Marilyn) (Entered: 05/14/2007)
05/15/2007	<u>2060</u>	NOTICE by Macomb, County of re <u>2051</u> Objection <i>Withdrawal of Objection</i> (Hupp, R.) (Entered: 05/15/2007)
05/16/2007	<u>2062</u>	TRANSCRIPT of Miscellaneous Hearing held on 7/7/05. (Court Reporter: Suzanne Jacques) (Number of Pages: 10). (CGre) (Entered: 05/17/2007)
05/17/2007	<u>2061</u>	NOTICE by Oakland Cnty re <u>2050</u> Objection <i>Notice of Withdrawal</i> (Miller, Donald) (Entered: 05/17/2007)
05/24/2007	<u>2063</u>	NOTICE by Detroit, City of, Detroit Water and Sewerage Department re <u>2046</u> Objection <i>Withdrawal of Objections to Continuation of Role of Judicial Adjunct</i> (Peters, Marilyn) (Entered: 05/24/2007)
05/24/2007	<u>2065</u>	Appeal Fee received for <u>2047</u> Notice of Appeal filed by Oakland Cnty in the amount of \$455.00 - Receipt No. 39207. (LBeh) (Entered: 06/08/2007)
06/06/2007	<u>2064</u>	ORDER Concerning Further Settlement Discussions in the 800 MHZ Radio Contract Cost Allocation Case (a single dispute in the above-captioned case). Settlement Conference set for 6/19/2007 02:00 PM before Honorable John Feikens Signed by Honorable John Feikens. (CCoh) (Entered: 06/06/2007)
06/14/2007	<u>2066</u>	REQUEST for Clarification of the Role of Timothy O'Brien and for Reconsideration of the Court's Prohibition of Representation of the Parties by Counsel by Oakland Cnty. (Gotthelf, Beth) (Entered: 06/14/2007)
06/14/2007	<u>2067</u>	REQUEST Amended Request for Clarification of the Role of Timothy O'Brien and for Reconsideration of the Court's Prohibition of Representation of the Parties by Counsel by Oakland Cnty. (Gotthelf, Beth) (Entered: 06/14/2007)
06/19/2007		Minute Entry -Settlement Conference held on 6/19/2007 before Honorable John Feikens - this portion of the case re: Radio Contract will be referred to Judge Rosen for settlement discussions. (Court Reporter Larry Przybysz) (CCoh) (Entered: 06/20/2007)

06/21/2007	<u>2068</u>	Letter from Judge Feikens to Beth Gotthelf Re: Motion to Clarify the activities of the Business Leadership Group. (CCoh) (Entered: 06/21/2007)
06/21/2007	<u>2069</u>	ORDER Concerning the Holding of a Settlement Conference in the Dispute Concerning the Macomb County Interceptor Repair Costs and the Interceptor Interest Rate Dispute Settlement Conference set for 7/11/2007 10:00 AM before Honorable John Feikens Signed by Honorable John Feikens. (CCoh) (Entered: 06/21/2007)
07/05/2007	<u>2070</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (BSoc) (Entered: 07/09/2007)
07/05/2007	<u>2071</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens. (BSoc) (Entered: 07/09/2007)
07/11/2007	<u>2072</u>	RESPONSE to <u>2035</u> MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application MOTION for Reconsideration re <u>2028</u> Order on Petition/Request/Application filed by Oakland Cnty. (Gotthelf, Beth) (Entered: 07/11/2007)
07/11/2007		Minute Entry -Settlement Conference Re: the Macomb Interceptor dispute held on 7/11/2007 before Honorable John Feikens. (CCoh) (Entered: 07/11/2007)
07/13/2007	<u>2073</u>	NOTICE TO APPEAR: Settlement Conference set for 8/1/2007 10:00 AM before Honorable Gerald E. Rosen (LSau) (Entered: 07/13/2007)
07/19/2007	<u>2074</u>	MOTION for Reconsideration / <i>Renewed Motion for Clarification for Activities of the Business Group and Clarification of Court's June 21, 2007 Letter</i> by Oakland Cnty. (Gotthelf, Beth) (Entered: 07/19/2007)
07/19/2007	<u>2075</u>	MOTION for Reconsideration / <i>Second Supplement to Motion for Further Clarification of Role of Special Master, and Continuation of Objection to Activities of Special Master</i> by Oakland Cnty. (Gotthelf, Beth) (Entered: 07/19/2007)
07/25/2007	<u>2076</u>	MOTION Joinder in Oakland county's Renewed Motion for Clarification for Activities of the Business Group and Clarification of Court's June 21, 2007 letter by Wayne, County of. (McCauley, Patrick) (Entered: 07/25/2007)
07/30/2007	<u>2077</u>	ORDER of Designation. Signed by Honorable John Feikens. (SMar) (Entered: 07/30/2007)
07/31/2007	<u>2078</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens. (BSoc) (Entered: 08/01/2007)
08/01/2007		Minute Entry -Settlement Conference held on 8/1/2007 before Honorable Gerald E Rosen. Disposition: CONTINUED TO LATER DATE (LSau) (Entered: 08/06/2007)
08/02/2007	<u>2079</u>	ORDER from USCA re <u>2055</u> Notice of Appeal filed by Macomb, County of, <u>2047</u> Notice of Appeal filed by Oakland Cnty - Disposition: Appeals are

		dismissed sua sponte as premature. [Appeal Case Number 07-1605/1607]. (CGre) (Entered: 08/02/2007)
08/03/2007	<u>2080</u>	ORDER for Payment of Special Master Fees and Expenses. Signed by Honorable John Feikens (SMar) (Entered: 08/06/2007)
08/03/2007	<u>2081</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens (SMar) (Entered: 08/06/2007)
08/10/2007	<u>2082</u>	NOTICE of Submissions of the quarterly "Update to DWSD's Plan for Long Term Measures to Ensure Compliance with Permit Requirements". (CCoh) (Entered: 08/10/2007)
08/10/2007	<u>2083</u>	ORDER Approving Payment For Services of PSC. Signed by Honorable John Feikens (SMar) (Entered: 08/10/2007)
08/23/2007	<u>2084</u>	ORDER to Appear at Continued Settlement Conference. Signed by Honorable Gerald E Rosen (SMar) (Entered: 08/23/2007)
08/24/2007	<u>2085</u>	ORDER Appointing Community Foundation for Southeast Michigan as Advisor to this Court. Signed by Honorable John Feikens. (CCoh) (Entered: 08/24/2007)
08/30/2007	<u>2086</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 08/31/2007)
08/30/2007	<u>2087</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 08/31/2007)
09/05/2007	<u>2088</u>	TRANSCRIPT of Motion Hearing held on 6/19/07. (Court Reporter: Lawrence Przybysz) (Number of Pages: 16) (ATee) (Entered: 09/11/2007)
09/14/2007		Minute Entry -Continued Settlement Conference held on 9/14/2007 before Honorable Gerald E Rosen. (DOpa) (Entered: 09/17/2007)
09/18/2007	<u>2089</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens (SMar) (Entered: 09/19/2007)
09/18/2007	<u>2090</u>	ORDER for Payment Special Master's Fees and Expenses. Signed by Honorable John Feikens (SMar) (Entered: 09/19/2007)
10/30/2007	<u>2091</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 10/31/2007)
10/30/2007	<u>2092</u>	ORDER for Payment of Special Master's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 10/31/2007)
11/01/2007	<u>2093</u>	ORDER Approving Payment for Services of PSC. Signed by Honorable John Feikens. (BSoc) (Entered: 11/02/2007)
11/21/2007	<u>2094</u>	NOTICE of Submission to chambers of the November 1, 2007 "Update to DWSD's Plan for Long-Term Measures to Ensure Compliance with Permit Requirements". (CCoh) (Entered: 11/21/2007)
12/04/2007	<u>2095</u>	ORDER for Payment of Judicial Adjunct's Fees and Expenses. Signed by Honorable John Feikens. (CGre) (Entered: 12/05/2007)

In The Matter Of:

City of Detroit, Michigan

William Misterovich

July 14, 2014



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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6 _____
In re:) Case No. 13-53845
7 CITY OF DETROIT, MICHIGAN)
8) Chapter 9
9 Debtor)
10 _____) Hon. Steven W. Rhodes

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12
13 The Deposition of WILLIAM MISTEROVICH,
14 Taken at 21777 Dunham Road,
15 Clinton Township, Michigan,
16 Commencing at 10:28 a.m.,
17 Monday, July 14, 2014,
18 Before Melinda S. Moore, CSR-2258.

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22
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24
25

Page 3

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Page 2

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Page 5

1 Clinton Township, Michigan
 2 Monday, July 14, 2014
 3 10:28 a.m.
 4 WILLIAM MISTEROVICH,
 5 was thereupon called as a witness herein, and
 6 after having first been duly sworn to testify to
 7 the truth, the whole truth and nothing but the
 8 truth, was examined and testified as follows:
 9 **MR. WATSON:** Let the record reflect
 10 this will be a deposition taken pursuant to Notice
 11 and to be used for all pumps under the applicable
 12 court rules.
 13 **EXAMINATION**
 14 **BY MR. WATSON:**
 15 Q. Mr. Misterovich, I'll be asking you a series of
 16 questions. If you don't understand the question,
 17 wish me to rephrase it or anything of that
 18 nature, please ask that I do so and I'll try to
 19 accommodate you. Otherwise, I'll assume that
 20 you've heard the question, understand it, and are
 21 responding to it. Okay?
 22 A. Yes.
 23 Q. Have you been deposed before?
 24 A. Yes. I did want to mention that I've had carotid
 25 artery surgery about two weeks ago, and today is

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1 my first full day back in the office, and I still
 2 have some problem speaking fully. My -- the side
 3 of my face and throat are still suffering from the
 4 effects of the surgery, so from time to time I may
 5 mispronounce some words or it may be difficult to
 6 understand what I'm saying, so I'm just putting
 7 everybody on notice of that condition.
 8 Q. Okay. We'll try to promptly proceed through this
 9 thing.
 10 A. Okay.
 11 Q. Would you briefly tell us your educational
 12 background.
 13 A. Well, I earned a bachelor's degree in political
 14 science from the University of Michigan in 1965,
 15 and a law degree from Detroit College of Law in
 16 1981.
 17 Q. How long have you worked for Macomb County?
 18 A. Since 1971.
 19 Q. And can you take us through the progression of
 20 your positions at Macomb.
 21 A. I've had two -- two positions, as project
 22 coordinator and legal coordinator. That's one
 23 job. And since the year 2000 I've been Chief
 24 Deputy Public Works Commissioner.
 25 Q. And as Chief Deputy Public Works Commissioner, do

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1 you report directly to Mr. Marrocco?
 2 A. I do.
 3 Q. As part of your duties have you had business
 4 dealings involving the DWSD?
 5 A. Yes.
 6 Q. Can you describe for us the nature of the, I
 7 guess, business dealings you've had with DWSD.
 8 A. DWSD has an extensive system in place called the
 9 partnering project or outreach reach program in
 10 which DWSD has set up this program that involves
 11 DWSD and communities that are served by the City
 12 of Detroit Water and Sewerage Department. They
 13 have, perhaps, five or six different committees
 14 that meet on a regular basis. And early on I was
 15 an active participate in those types of committee
 16 meetings. And periodically there would be
 17 separate meetings between our office and the
 18 officials of DWSD. My involvement in the DWSD
 19 outreach program has been limited of late, and I
 20 deferred our office's representation to Craig Hupp
 21 of Bodman, Longley, Bodman now.
 22 Q. What are your job duties -- what's the title of
 23 your current position, deputy?
 24 A. Chief deputy. We have two deputies, regular and
 25 chief.

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1 Q. Who's the other deputy?
 2 A. Richard Sulaka.
 3 Q. What are your job duties as chief deputy?
 4 A. Let me just mention about Richard Sulaka. He is a
 5 new appointee. I think he came on board in about
 6 August of last year.
 7 Q. Okay.
 8 A. My duties?
 9 Q. Yes.
 10 A. In connection with DWSD?
 11 Q. Well, let's say generally first.
 12 A. Oh, generally.
 13 Q. And then second in connection with DWSD.
 14 A. Generally speaking, I stand in the shoes of the
 15 commissioner and manage the Public Works
 16 Department. We have a staff of approximately 60
 17 employees located at this office and the City of
 18 St. Clair Shores at a facility called the Chapaton
 19 Retention Basin. So at those two locations we
 20 have staff. And I manage the personnel and
 21 administration of the staff.
 22 And in connection with management of
 23 the office, I represent the commissioner on
 24 various boards and other bodies such as Chapter 20
 25 Drain Boards, Chapter 21 Drain Board, and other

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1 drain districts, also the other drain districts
 2 include projects that are wastewater in nature,
 3 not stormwater. I mention that because there
 4 could be some confusion. We process these
 5 projects under the drain code, but the drain code
 6 allows the projects to consist of wastewater
 7 facilities. So the Macomb Interceptor drain,
 8 which obviously is one of the parties of interest
 9 here, that's one of the projects that has been
 10 carried out under Chapter 20 through our office.
 11 Q. And what have your dealings been with Detroit,
 12 DWSD?
 13 A. What have the dealings been?
 14 Q. For instance, were you involved in litigation
 15 before Judge Feikens involving Macomb and DWSD?
 16 A. Yes. I would say I served as in-house counsel for
 17 those proceedings, and would advise our retained
 18 counsel, would work with them in consultation on
 19 various issues that would come up, and that did
 20 come up over the next 30 years, I guess, 35 years.
 21 Q. Do you recall at some point Detroit and Macomb
 22 entered into negotiations in regard to Macomb
 23 purchasing the Macomb Interceptor system?
 24 A. I do remember that, and I believe I was one of the
 25 originators of that concept.

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1 Q. Do you recall when those negotiations first
 2 started?
 3 A. I really can't give you a specific date, but I
 4 would say approximately two years before -- two
 5 and a half years before the acquisition agreement
 6 was signed, so I guess it would be maybe 2007 or
 7 so.
 8 Q. And the negotiations started prior to that
 9 settlement agreement?
 10 A. Perhaps somewhat.
 11 Q. Do you recall there being some type of handshake
 12 agreement in principle between Commissioner
 13 Marrocco and DWSD Director Mercado in regard to
 14 the purchase of the Macomb Interceptor proposal?
 15 A. I was not present for those discussions. I know
 16 they occurred. And the commissioner's
 17 understanding of the conversation with Mr. Mercado
 18 is that the City of Detroit would agree to -- to
 19 reducing our costs for the sewer repair.
 20 Q. Did Mr. Marrocco ever tell you that he had
 21 reached a tentative agreement with Mr. Mercado
 22 that Detroit would sell the system to Macomb with
 23 the purchase price being generally the cost of
 24 the debt -- the amount of the debt on the system?
 25 MS. BADALAMENTI: I'm just going to put

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1 an objection on the record to the extent that the
 2 information is conveyed to him for purposes of
 3 seeking or obtaining legal advice in his position
 4 as in-house counsel to the Macomb County Public
 5 Works Commissioner. You can go ahead.
 6 BY MR. WATSON:
 7 Q. Did he ever relate such a discussion to you?
 8 A. He did mention that he had met with Mr. Mercado
 9 and that there was this common understanding that
 10 Detroit would grant Macomb County a credit.
 11 Q. What do you mean by a credit?
 12 A. Credit toward the purchase price -- the overall
 13 purchase price of the -- what ended up being the
 14 Macomb Interceptor drain system, which consists of
 15 about 21 miles of sewer interceptor and pump
 16 station and various other ancillary facilities.
 17 Q. I want to hand you what's been marked as Hupp
 18 Exhibit 1, and ask if you can tell us what that
 19 is.
 20 A. This is a settlement agreement commonly known
 21 as -- referred to as the global settlement
 22 involving the DWSD, Macomb County, Oakland County
 23 and Wayne County.
 24 Q. Were you involved in negotiating this agreement
 25 at all?

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1 A. Yes.
 2 Q. What was your involvement?
 3 A. Well, there's various items. The settlement
 4 agreement covers a lot of ground. Some of the
 5 items referenced deal specifically with Macomb
 6 County, such as the interceptor transfer and the
 7 2004 collapse claims and 2006 interceptor repairs,
 8 and the interceptor interest rate, plus the model
 9 contract.
 10 Q. And by model contract, are you referencing the
 11 parties' intent that Detroit convey the system to
 12 Macomb?
 13 A. No, the model contract deals with the ongoing
 14 relationship between Detroit and the counties for
 15 provision of wastewater services. The agreement
 16 you refer to is a separate acquisition agreement.
 17 Q. And who negotiated this agreement for Macomb and
 18 who for Detroit?
 19 A. Craig Hupp of Bodman was our primary person
 20 involved in the negotiations. For Detroit I would
 21 say it would be Attorney Mark Jacobs of Dykema
 22 Gossett, and Bob Walters, in-house attorney with
 23 DWSD.
 24 Q. Now, did you serve as in effect the client
 25 representative for Macomb?

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1 **A. Yes.**
 2 Q. And Walter was sort of the client representative
 3 for Detroit?
 4 **A. Right.**
 5 Q. Both you guys are attorneys?
 6 **A. Right.**
 7 Q. So it's a bunch of attorneys reaching a deal?
 8 **A. Room full of them.**
 9 Q. And I won't even get into the Oakland and Wayne
 10 County attorneys. We'll leave those out.
 11 **A. Okay.**
 12 Q. Looking at page 7 of the agreement -- 7 at the
 13 bottom, it seems to be signed by Pamela Turner.
 14 Do you see that?
 15 **A. Yeah. On my page 7 -- I guess there's two --**
 16 Q. I think there are three page 7s. We went through
 17 this before. Don't ask me why. Well, they're
 18 repeats of the same but they're different
 19 signatures.
 20 **A. Pam Turner, yes, interim director.**
 21 Q. Was she involved in negotiating the deal at all?
 22 **A. I don't recall her ever being present at the**
 23 **negotiations.**
 24 Q. Then the next page, if you look at that, seems to
 25 be signed by Mr. Marrocco.

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1 **A. That's correct.**
 2 Q. Was he involved in negotiating the deal? What
 3 was his involvement, if you know?
 4 **A. Commissioner Marrocco would be kept informed of**
 5 **the proceedings as they moved forward. The**
 6 **negotiations themselves normally took place at the**
 7 **DWSD office or at Bodman, and Commissioner**
 8 **Marrocco was not usually present at those**
 9 **meetings, but I was.**
 10 Q. Now, this says "Settlement Agreement." What did
 11 it settle?
 12 **A. It settled about 10 or 15 different matters.**
 13 Q. After this was entered into, are you aware of any
 14 outstanding disputes between Detroit and Macomb
 15 that this -- did this sort of clear the slate at
 16 that time or were there still things Detroit and
 17 Macomb were arguing about?
 18 **A. It seems to me there were a certain number of**
 19 **loose ends that needed to be addressed, and the**
 20 **deliberations took place over a long period of**
 21 **time and eventually resulted in a settlement**
 22 **agreement.**
 23 Q. Now, let me ask you about this -- unnecessary
 24 language there, but at the Hupp deposition
 25 Mr. Hupp seemed to indicate that there was sort

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1 of this tentative broad framework of a deal
 2 reached in maybe 2006 or '07 between Marrocco and
 3 Mercado. But that was scuttled by Judge Feikens'
 4 decision pretty much. Do you recall that?
 5 **A. I do recall that.**
 6 Q. And then, according to Mr. Hupp, the deal was
 7 kind of resurrected or a new deal was initiated
 8 when -- I'll find the name. There was another
 9 gentleman that got involved.
 10 **MS. BADALAMENTI: O'Brien.**
 11 **BY MR. WATSON:**
 12 Q. Mr. O'Brien sort of -- yeah, in spring of 2008
 13 O'Brien became the facilitator and he helped the
 14 parties to sort of initiate a new deal. Do you
 15 recall that?
 16 **A. I do.**
 17 Q. And was that when -- was it those negotiations
 18 that eventually resulted in the settlement
 19 agreement and the acquisition agreement?
 20 **A. Yes.**
 21 Q. Thank you. Do you recall the negotiations that
 22 O'Brien initiated?
 23 **A. Not really. I mean, I know he initiated them and**
 24 **we discussed a lot of subjects, and I think it**
 25 **covered most, if not many, of the items that are**

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1 **in the settlement agreement.**
 2 Q. Is it fair to say that the agreements reached
 3 through those O'Brien-initiated discussions are
 4 reflected in the settlement agreement?
 5 **A. I believe so.**
 6 Q. How did you become aware of that sinkhole
 7 situation?
 8 **A. I think I heard or saw a report on television of**
 9 **the sinkhole. I had been on vacation that week**
 10 **prior, and I think it happened on a Saturday. I**
 11 **actually went to the site.**
 12 Q. That Saturday?
 13 **A. Yes, and saw the sinkhole.**
 14 Q. I take it it was immense?
 15 **A. Oh, it looked like an earthquake.**
 16 Q. Do you know who ran that project on a day-to-day
 17 basis?
 18 **A. Victor Mercado was in charge, and I believe the**
 19 **project engineer or construction manager was**
 20 **Mr. Shukla -- I don't recall his first name --**
 21 **DWSD.**
 22 Q. Did you have any interaction with Shukla?
 23 **A. You know, I knew Mr. Shukla from a prior project**
 24 **that DWSD did for us, but I can't say that I**
 25 **recall having any direct conversations with him on**

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1 the 15 Mile and Hayes sewer repair. I did attend
 2 several meetings at the project site in a trailer.
 3 I remember Mr. Mercado being present and a lot of
 4 engineers from NTH. And there were some people
 5 from the DWSD engineering staff such as a fellow
 6 named Awni Qaqish. I don't believe he's with DWSD
 7 any longer.
 8 Q. Did you have any formal role out there --
 9 A. No.
 10 Q. -- in managing the project?
 11 A. No.
 12 Q. Investigating, overseeing, anything like that?
 13 A. No, but I directed our construction department to
 14 assign an inspector to monitor the activities.
 15 Q. Who in the construction department was assigned?
 16 Do you know?
 17 A. The construction manager was Don Penrod, and he
 18 assigned primarily a fellow by the name of Tom
 19 Stockel, S-t-o-c-k-e-l. Tom might have been --
 20 let's see. Let me back up a little bit. Don
 21 Penrod's title was construction engineer, and I
 22 think Tom Stockel's title was construction manager
 23 or inspector. He was promoted some time during
 24 this time frame. But it was Tom Stockel who was
 25 on site on a regular basis.

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1 Q. Was Mr. Stockel there virtually every day at
 2 least when the project started?
 3 A. I believe so. Most every day if not every day.
 4 Q. Do you know if there were daily meetings on the
 5 project between the team working on it?
 6 A. I don't know that.
 7 Q. Okay. As far as you know, if Macomb wanted
 8 information on the project, to inspect what was
 9 going on or whatever, could it secure that from
 10 Detroit?
 11 A. That was my understanding.
 12 Q. How long did the repairs take? Do you recall?
 13 A. I think close to two years.
 14 Q. Do you recall the 1977 sewer collapse?
 15 A. I was here.
 16 Q. Okay. Didn't it take longer to repair that one
 17 than?
 18 A. It did, in part, though, because there was a long
 19 period of time that was required for Detroit to
 20 evaluate different options, present those options
 21 to Macomb County, and get Macomb County's decision
 22 on which way to proceed.
 23 Q. Was the 19 -- well, let me say, was the 2004
 24 sewer collapse more of an emergency than the 1977
 25 collapse?

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1 MS. BADALAMENTI: I'm going to object
 2 to foundation.
 3 BY MR. WATSON:
 4 Q. If you know.
 5 A. I would say characterizing them -- I'm not sure
 6 which one was more serious, but as I understand
 7 the 2004 incident, there was never a complete
 8 blockage overflow. A certain amount of flow
 9 continued through the pipe even though it was
 10 collapsed at that time. It was not a total
 11 blockage. The -- of course the decision was made
 12 to construct a bypass so that the permanent
 13 repairs could be made. Once the bypass was in
 14 place, then the danger of having a spill was
 15 pretty much eliminated.
 16 Q. At least initially were the repairs made on an
 17 emergency basis to the interceptor in 2004?
 18 A. Yes. That bypass was constructed.
 19 Q. Was there a dispute between Detroit and Macomb in
 20 regard to the repairs?
 21 A. We had a lot of questions regarding the project as
 22 it neared completion, the costs that were involved
 23 in the work that was taking place, and we felt
 24 that it was requiring too much time. It should
 25 have been done sooner.

Page 20

1 Q. And did that dispute eventually lead to
 2 litigation in the Feikens case?
 3 A. I don't believe so.
 4 Q. You do or --
 5 A. I don't.
 6 Q. Did you or anyone else at Macomb ever complain
 7 about the cost of the repairs?
 8 A. Sure.
 9 Q. And do you recall who you complained to?
 10 A. Each other.
 11 Q. Did you ever complain to anyone at Detroit or --
 12 A. I think comments were made back and forth, and as
 13 this event unfolded and construction took place
 14 and repair was made, we were having meetings with
 15 DWSD on other issues. We were meeting on a
 16 regular basis every week or every two weeks. And
 17 so the subject of repair would come up in the
 18 course of those conversations. I can't give you a
 19 date or time or exactly who was there, but we made
 20 known the fact that we considered the cost that
 21 was being incurred to be quite high.
 22 Q. Did you ever get a response from DWSD? Do you
 23 know who responded on DWSD?
 24 A. No, I can't give you a name.
 25 Q. Did anyone ever -- at DWSD, whether or not you

1 remember the name, say, no, these aren't too
 2 high?
 3 **A. That was the general response from DWSD, is that**
 4 **the costs that they were incurring were valid,**
 5 **bona fide and accurate.**
 6 Q. Do you know if anyone from the grand jury -- or
 7 anyone from Macomb was ever questioned by the
 8 grand jury?
 9 **A. Not to my knowledge.**
 10 Q. Or the FBI or U.S. Attorney's Office?
 11 **A. I don't believe anybody from Macomb County was**
 12 **contacted, but I can't say for sure.**
 13 Q. At some point did you find out that the U.S.
 14 Attorney's Office was investigating potential
 15 wrongdoing in the City of Detroit by the
 16 Kilpatrick administration?
 17 **A. Yes, I learned of that through newspaper reports**
 18 **of the proceedings.**
 19 Q. Didn't know prior to the newspapers?
 20 **A. No.**
 21 Q. Other than the folks indicted -- I think Mercado
 22 and Miller, Kilpatrick, Ferguson are the ones I
 23 recall -- are you aware of whether anyone else at
 24 DWSD or anyone at DWSD was aware of this
 25 wrongdoing? Did you ever speak to anyone at DWSD

1 **MS. BADALAMENTI:** Can we go off the
 2 record.
 3 (Off the record at 10:58 a.m.)
 4 (Back on the record at 10:58 a.m.)
 5 **BY MR. WATSON:**
 6 Q. Can you tell us what this agreement is.
 7 **A. This is the acquisition agreement between Macomb**
 8 **County, more accurately Macomb Interceptor Drain**
 9 **Drainage District and the County of Macomb with**
 10 **the City of Detroit for purposes of what is known**
 11 **as the MID system, consisting of approximately 21**
 12 **and a half miles of sanitary sewer and other**
 13 **facilities.**
 14 Q. It's been testified to by, I believe, at least a
 15 couple witnesses that this agreement was
 16 patterned after the -- I call it the OMI
 17 acquisition agreement. Is that true?
 18 **A. Yes.**
 19 Q. Were you involved in drafting this agreement at
 20 all?
 21 **A. Yes. I participated in discussions that were held**
 22 **concerning its terms and conditions.**
 23 Q. Is it fair to say that the Macomb team was pretty
 24 much the same, you and Hupp, and the Detroit team
 25 was pretty much the same, the primary players

1 about it?
 2 **A. No, never discussed it with DWSD. It was**
 3 **obviously a very sensitive subject. We felt it**
 4 **was best not to bring it up.**
 5 Q. Looking at page 7 of the document before you, the
 6 second page 7, which contains -- it appears to be
 7 Mr. Marrocco's signature.
 8 **A. Yes.**
 9 Q. Did you advise Marrocco to sign?
 10 **A. I did.**
 11 Q. Okay. Do you know if he went through and
 12 carefully read this agreement before he signed
 13 it?
 14 **A. I believe he was advised by Craig Hupp, our**
 15 **representative, and myself that the document was**
 16 **in order and that he should sign it.**
 17 Q. You don't recall him reading through it
 18 carefully?
 19 **A. I don't recall that.**
 20 Q. Were you satisfied with the document, that it
 21 accurately reflected the parties' decision?
 22 **A. Yes.**
 23 Q. Let me next hand to you what's been marked as
 24 Exhibit 3 to the Hupp deposition. I'll ask you
 25 if you can tell us what that is.

1 being pretty much Jacobs and Walter?
 2 **A. Right.**
 3 Q. I don't think we've marked in this particular
 4 litigation that OMI acquisition agreement, but it
 5 was entered into or executed in 2009; this one,
 6 in 2010. Why did it take so long for this one?
 7 **A. I think the primary reason was the concern or**
 8 **discussions over the purchase price. In the OMI**
 9 **agreement, it basically was a wash. There were no**
 10 **funds exchanged between OMI and the City of**
 11 **Detroit, as opposed to the MID agreement, which we**
 12 **had costs that in the end that added up to over**
 13 **\$90 million**
 14 Q. Let me show you what's been marked Hupp Exhibit 4
 15 and I'll ask if you can tell us what that is.
 16 **A. This is the computation of purchase price of the**
 17 **MID facilities.**
 18 Q. And two items -- I'm looking at "CS-1368 2005
 19 repairs, \$54,467,200." Do you see that?
 20 **A. Yes.**
 21 Q. Was there any discussion during the negotiations
 22 about the cost of those repairs?
 23 **A. There was some discussion about the cost.**
 24 Q. Do you recall what that discussion was?
 25 **A. Just in general terms, Macomb County felt the**

1 numbers were high and Detroit assured us they were
 2 accurate.
 3 Q. And by accurate, Detroit indicated this is what
 4 it paid for the repairs?
 5 A. Yes.
 6 Q. Was there any discussion that you can recall
 7 about the reasonableness of the costs?
 8 A. Again, just in general terms.
 9 Q. What general terms were those?
 10 A. Macomb County felt the figures were high and
 11 Detroit continued to assert that the numbers were
 12 valid.
 13 Q. Okay. What about the \$17,050,000, about 80% of
 14 the way down the document, that global
 15 settlement, what does that represent?
 16 A. The 17 million was one of the items covered in the
 17 global agreement dated 2009, and it represented a
 18 credit to Macomb County for all of the costs that
 19 were -- that are reflected in this Schedule 3.8.
 20 Q. At one point was the system debt at something
 21 like 116 million?
 22 A. I don't recall it being quite that high.
 23 Q. What do you recall? I see there's a 110.
 24 A. Yes, that's the number I remember.
 25 Q. And that was negotiated down, basically?

1 settlement agreement Detroit agreed to reduce the
 2 purchase price by \$3 million for credits that
 3 Oakland and Macomb wanted?
 4 A. 3 million as opposed to the 17 million?
 5 Q. Well, an additional 3 million on top of the 17
 6 million. And I'm looking here at -- where it
 7 says "Balance of OMI/Macomb Miscellaneous Rate
 8 Settlement 870,252." Do you see that language?
 9 A. No. Where?
 10 Q. Almost right at the end, like three lines before
 11 the bottom.
 12 A. Yeah.
 13 Q. Do you recall what that was for -- that credit?
 14 A. I don't remember that.
 15 Q. Were you satisfied with the acquisition
 16 agreement?
 17 A. In general, yes.
 18 (Off the record at 11:07 a.m.)
 19 (Back on the record at 11:07 a.m.)
 20 BY MR. WATSON:
 21 Q. Let me hand you, Mr. Misterovich, what's been
 22 marked as Hupp Exhibit 5, which says near the top
 23 "Macomb Interceptor Acquisition Settlement and
 24 Release of Certain Rate Disputes." Do you see
 25 that?

1 A. Yes.
 2 Q. And there were various, I take it, disputes
 3 between Detroit and Macomb with Macomb saying,
 4 look, bring the price down for this reason, and
 5 Detroit trying to draw the line and say, no, it
 6 shouldn't be lower? Is that the way the
 7 negotiations went?
 8 A. Yeah. Detroit resisted our request for credits,
 9 but in the end, agreed to the \$17 million figure,
 10 and then the \$17 million figure, I think, the
 11 origin of it was Macomb County, when it filed a
 12 complaint in front of Judge Feikens regarding the
 13 cost, our position was that the cost of this
 14 repair, instead of being assigned 100% to Macomb
 15 County, should be spread to the regional sewer
 16 system as a whole, and the 17 million, I think,
 17 was the number that Macomb County -- it would have
 18 benefitted Macomb County to the tune of about
 19 \$17 million if that had been put in place. So
 20 that's the origin of it. But in the end, it was
 21 applied not just to the 15 Mile sewer repair, but
 22 to all the other projects as well, which included
 23 the large amount for the Garfield interceptor,
 24 \$20 million, and then other repairs.
 25 Q. Do you remember when negotiating the 2009

1 A. Yes.
 2 Q. What was the purpose of this agreement? Or was
 3 it just a settlement of all the stuff listed in
 4 here? Anything other than that?
 5 A. I believe this settlement and release was signed
 6 at the same time as the acquisition agreement, and
 7 it was put together by Bodman to further define
 8 and expound on certain items in the settlement
 9 agreements such as the listing of the meters that
 10 were being transferred, and other matters that
 11 were referenced in the acquisition agreement but
 12 apparently needed further briefing.
 13 Q. To your understanding, once the acquisition
 14 agreement was executed and this settlement and
 15 release agreement was executed, were there any
 16 outstanding disputes between Macomb and Detroit?
 17 Was everything resolved that you were aware of --
 18 all disputes?
 19 MS. BADALAMENTI: I'm just going to
 20 object to foundation, but you can go ahead if you
 21 know the answer.
 22 THE WITNESS: We've had ongoing
 23 disputes with Detroit for so long that it's hard
 24 to recall what our position was at this point in
 25 time, but the global agreement did seem to settle

1 most, if not all, matters.
 2 **BY MR. WATSON:**
 3 Q. When did you first --
 4 **A. You know, I would like to add something to that**
 5 **answer, because since the acquisition agreement,**
 6 **various other subject matters have come up in the**
 7 **course of negotiations with Detroit over rates and**
 8 **charges and annual rate increases and that type of**
 9 **thing, and we have differed with Detroit on some**
 10 **of its proposals, and we've argued with them and**
 11 **eventually reached agreement, and I'm thinking in**
 12 **particular of the so-called look-back adjustments**
 13 **that have been put in place. So when you say did**
 14 **this settlement agreement settle all matters with**
 15 **Detroit, I guess I really need to modify my answer**
 16 **and say it settled most agreements that existed or**
 17 **were issues that existed at that time. However,**
 18 **since then other issues have surfaced and we've**
 19 **needed to deal with them as they have arisen.**
 20 Q. Do you recall any issues pending at that time?
 21 The date of the acquisition agreement and the
 22 settlement agreement were signed, September 2, I
 23 believe, 2010 -- do you recall any agreements --
 24 or disagreements or disputes with Detroit that
 25 were pending then that weren't settled?

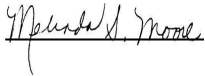
1 **80s, and I think even beyond the 80s. And so we**
 2 **did that type of paper review as well.**
 3 Q. Did Macomb ever do a valuation of the system, try
 4 to determine how much the system was worth?
 5 **A. I don't believe so. We understood that our cost**
 6 **to acquire it would be the debt that existed at**
 7 **that time.**
 8 Q. And I take it to rebuild the system like this
 9 nowadays would be several times the cost?
 10 **MS. BADALAMENTI:** I'm just going to
 11 object to the foundation. I think your question
 12 is ambiguous, too. Go ahead.
 13 **THE WITNESS:** I'm not an engineer, so I
 14 really can't evaluate what the current cost would
 15 be.
 16 **BY MR. WATSON:**
 17 Q. Are you aware of, prior to entering into the
 18 acquisition agreement, anyone at Macomb ever
 19 requesting information as far as documents or
 20 requesting an inspection that Detroit didn't
 21 supply or comply with?
 22 **A. No, I don't recall that happening.**
 23 Q. And as I understand, the system was purchased as
 24 is?
 25 **A. Yes.**

1 **A. I would say ongoing rate issues. We generally**
 2 **would have questions when Detroit would propose**
 3 **new scheduled rates for the upcoming fiscal year.**
 4 Q. Prior to the time Macomb entered into the
 5 acquisition agreement, was it entitled under the
 6 terms of the agreement to secure documents from
 7 Detroit or inspect the system or take actions to
 8 satisfy itself that it was getting what it was
 9 paying for?
 10 **A. The question is did we seek documentation of --**
 11 Q. Well, the first question is: Were you entitled
 12 to seek documents?
 13 **A. Yes.**
 14 Q. And did you do that?
 15 **A. We did. Engineering assessment or condition**
 16 **assessment of the Macomb facilities was conducted**
 17 **not by our office but by the engineering firm of**
 18 **NTH under contract with DWSD. Those documents**
 19 **were made available to us; so that report -- very**
 20 **voluminous report documented the condition of the**
 21 **sanitary sewers as they existed at that time.**
 22 **Then separately we produced a detailed listing of**
 23 **all the facilities and all of the contracts that**
 24 **Detroit carried out to install the system, and it**
 25 **was done over a period of years, in the 70s and**

1 **MR. WATSON:** Let's take a break. I
 2 want to speak to counsel here.
 3 (Off the record at 11:16 a.m.)
 4 (Back on the record at 11:18 a.m.)
 5 **MR. WATSON:** I have nothing further.
 6 **MS. BADALAMENTI:** I don't have any
 7 questions.
 8 (The deposition was concluded at 11:18 a.m.)
 9 Signature of the witness was not requested by
 10 counsel for the respective parties hereto.)
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1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF MACOMB)
 5

6 I, MELINDA S. MOORE, certify that this
 7 deposition was taken before me on the date
 8 hereinbefore set forth; that the foregoing
 9 questions and answers were recorded by me
 10 stenographically and reduced to computer
 11 transcription; that this is a true, full and
 12 correct transcript of my stenographic notes so
 13 taken; and that I am not related to, nor of
 14 counsel to, either party nor interested in the
 15 event of this cause.
 16
 17
 18

19 

20
 21
 22 MELINDA S. MOORE, CSR-2258
 23 Notary Public,
 24 Macomb County, Michigan
 25 My Commission expires: September 6, 2016

In The Matter Of:
City of Detroit

Robert C. Walter
July 11, 2014



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

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Min-U-Script® with Word Index

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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6 In re:) Case No. 13-53845
7 CITY OF DETROIT, MICHIGAN)
8) Chapter 9
9 Debtor)
10) Hon. Steven W. Rhodes
11
12
13 The Deposition of ROBERT C. WALTER,
14 Taken at 150 W. Jefferson, Suite 2500,
15 Detroit, Michigan,
16 Commencing at 10:27 a.m.,
17 Friday, July 11, 2014,
18 Before Melinda S. Moore, CSR-2258.
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25

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15 DEPOSITION EXHIBIT 6 79

16 DEPOSITION EXHIBIT 7 97

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1 Q. -- so the court reporter can get down what we're

2 saying.

3 Are you currently employed?

4 **A. No. I'm retired.**

5 Q. When did you retire?

6 **A. March of 2012.**

7 Q. Where did you retire from?

8 **A. City of Detroit Law Department.**

9 Q. What was your position?

10 **A. Senior assistant corporation counsel.**

11 Q. Who was above you in the Law Department?

12 **A. At that time, my supervisor was Judith Turner and**

13 **then the director and -- was Krystal Crittendon,**

14 **and the deputy director was Edward Keelean.**

15 Q. The highest ranking person in that department was

16 Ed Keelean?

17 **A. No, he was the deputy director. Krystal**

18 **Crittendon was the director.**

19 Q. What would your day-to-day duties have been as an

20 assistant -- senior assistant corporation

21 counsel?

22 **A. I was assigned to represent the Detroit Water and**

23 **Sewerage Department, and basically general counsel**

24 **work for whatever they wanted me to do. I didn't**

25 **do litigation. I wrote and reviewed contracts,**

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1 Detroit, Michigan

2 Friday, July 11, 2014

3 10:27 a.m.

4 (Mr. Sierzenga not present at

5 10:27 a.m.)

6 ROBERT C. WALTER,

7 was thereupon called as a witness herein, and

8 after having first been duly sworn to testify to

9 the truth, the whole truth and nothing but the

10 truth, was examined and testified as follows:

11 **EXAMINATION**

12 **BY MS. BADALAMENTI:**

13 Q. Sir, can you tell us your name for the record.

14 **A. Robert Charles Walter.**

15 Q. And, Mr. Walter, you're an attorney?

16 **A. Yes.**

17 Q. So you understand the deposition process?

18 **A. I do.**

19 Q. I have a tendency of getting a little ahead of

20 myself. If I cut you off before you're finished

21 answering a question, let me know that I'll back

22 up. And the same thing, even if you can

23 anticipate my question, make sure you wait and

24 let me finish it --

25 **A. Okay.**

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1 **negotiated contracts, advised the department on**

2 **any legal issues that they wanted advice on.**

3 Q. Advise the DWSD?

4 **A. Yes, that was -- I did some work for the Public**

5 **Lighting Department, but mostly DWSD.**

6 Q. When did you take the position of senior

7 assistant corporation counsel?

8 **A. I got promoted in the mid-90s -- '95 or '96.**

9 Q. And were you always in that position assigned to

10 the DWSD?

11 **A. I was assigned to DWSD from the time I started at**

12 **the Law Department in 1982 until I retired.**

13 Q. With respect to any criminal investigations or

14 outside agencies investigating the DWSD, would

15 that have been something that you would become

16 involved with?

17 **A. No. I was not involved in that.**

18 Q. What -- who would have been involved?

19 **A. Someone higher than me. There were two federal**

20 **investigations of the department while I worked**

21 **there, when I just started there, in 1982, when**

22 **the director of the department, Charles Beckham**

23 **was indicted and subsequently convicted. And that**

24 **was handled by my supervisor, Darryl Alexander,**

25 **and they add lawyer from Dykema -- a criminal**

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1 lawyer from Dykema Gossett named Howard O'Leary
 2 who worked on that.
 3 And then the one in the Kilpatrick
 4 administration was an headed by Edward Keelean,
 5 the deputy director of the department.
 6 Q. And when did that investigation begin, to the
 7 best of your knowledge?
 8 A. I don't remember a date. I became aware of it
 9 when I was -- when Mr. Keelean and another lawyer
 10 named Dennis Mazurek showed me a grand jury
 11 subpoena for Water and Sewerage Department
 12 documents and asked me who at the Water Board
 13 Building they would contact to find all the files
 14 that responded to that subpoena.
 15 Q. Do you know what time frame that was?
 16 A. I don't.
 17 Q. Did that grand jury subpoena request files or
 18 people to testify?
 19 A. The ones that I saw -- and there were several of
 20 them -- were all for documents. They did subpoena
 21 individuals to testify before the grand jury, but
 22 I was not involved in that at all.
 23 Q. Do you know what came first, the subpoenas for
 24 documents or subpoenas for individuals?
 25 A. I think it was the documents.

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1 Q. And so you were asked to compile the documents?
 2 A. No, I was not. Mr. Mazurek and Mr. Keelean
 3 compiled the documents. They just -- because I
 4 was familiar with all of the water board's
 5 contracting processes, they always asked me who
 6 was the project manager for this contract that
 7 they were having to find documents on and I would
 8 tell them which building to go to and which people
 9 to contact to find the files, but I did not look
 10 at the files or compile them myself.
 11 Q. Would you recognize those subpoenas if you saw
 12 them now?
 13 A. I don't know. I might.
 14 Q. Have you reviewed any grand jury subpoenas before
 15 or in preparation for your deposition today?
 16 A. No, I have not.
 17 Q. Did you keep a separate file that --
 18 A. I did not. Ed or Mr. Mazurek would show me the
 19 subpoena and I would tell them where to find --
 20 look for the files responsive to the subpoena, and
 21 that was it. I didn't keep copies of the
 22 subpoenas myself.
 23 Q. Was Mr. Mazurek an attorney?
 24 A. Yes.
 25 Q. What was his position?

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1 A. Chief assistant corporation counsel.
 2 Q. Did you work with him on other things or just
 3 this one?
 4 A. I worked with Dennis on a number of issues. He
 5 was the head of what's called the municipal
 6 section, which handled -- they responded to
 7 subpoenas in actions where the city was not a
 8 party. They advised the city council on ordinance
 9 drafting, and they handled all the Freedom of
 10 Information Act requests, so anytime the Water and
 11 Sewerage Department got FOIAs, and things like
 12 that, I would deal with him.
 13 Q. How about Ed Keelean? How often did you interact
 14 with him?
 15 A. Not all that often. Primarily I dealt with my
 16 supervisors. In the chain of command above me
 17 there was my supervisor, Judith Turner, and then
 18 she reported to Dennis Mazurek, who reported to Ed
 19 Keelean and Krystal Crittendon.
 20 Q. When you were shown the grand jury subpoenas, do
 21 you know what year that was?
 22 A. I don't.
 23 Q. When you were shown the grand jury subpoenas, was
 24 that the first time that Mr. Keelean had asked
 25 you to get something or direct him in the right

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1 way since you became -- or since he became the
 2 director?
 3 A. I think so, yes. I mean, basically I would deal
 4 with him if was writing a legal opinion for the
 5 Law Department that either he or the corporation
 6 counsel had to sign off on, but it was just
 7 projects like that. An average week, I had no
 8 contact with him.
 9 Q. Did you -- in order to answer his questions, did
 10 you have to ask him about the investigation and
 11 the nature -- the nature of the investigation?
 12 A. Yes. And although I don't know how much the
 13 federal investigators were telling him, he was the
 14 liaison between the federal investigators and the
 15 city. And I don't know what they told him.
 16 Q. What did he tell you?
 17 A. That he was receiving subpoenas, that he was
 18 compiling documents, and that he also sat in on
 19 some of the interviews where the federal
 20 investigators were interviewing city employees.
 21 This was before some of them got called before the
 22 grand jury.
 23 Q. Had you sat in on any interviews?
 24 A. No, but I was interviewed by the assistant U.S.
 25 attorney who was on the investigation.

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1 Q. When was that?
 2 **A. I don't remember the date. It was several months**
 3 **before the indictment came out.**
 4 Q. In 2010?
 5 **A. It might have been. Either late 2009 or early**
 6 **2010.**
 7 Q. So going back to the conversation with
 8 Mr. Keelean, did he tell you what was being
 9 investigated?
 10 **A. I don't know if this is privileged or not, but --**
 11 **MR. FAISON:** If you think it might be
 12 privileged, then establish the parameters, and
 13 then we can figure out whether it's privileged or
 14 not.
 15 **THE WITNESS:** He told me general --
 16 **MR. FAISON:** Not what -- in terms of
 17 the conversation, how did the conversation come
 18 up, and did you feel that you were offering law
 19 advice to him?
 20 **THE WITNESS:** Well, no, I wasn't
 21 offering any legal advice. There were
 22 investigations as far as it involved the
 23 department that I worked with, of kickbacks being
 24 paid by contractors or extorted from contractors,
 25 and there was also in a housing department

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1 contract that I got stuck working on an allegation
 2 of bid rigging.
 3 **BY MS. BADALAMENTI:**
 4 Q. You said kickbacks that were paid by or extorted
 5 from contractors. Do you know which one was
 6 being investigated?
 7 **A. No.**
 8 Q. Did Mr. Keelean tell you it was one or the other
 9 or did you gather that information on your own?
 10 **A. A lot of that came from just reading the**
 11 **newspapers and watching the television news. The**
 12 **news media were -- I probably got more information**
 13 **about the investigation from reading the**
 14 **newspapers than I did from talking to Ed Keelean.**
 15 Q. Would that have been at the time that you were
 16 answering these subpoenas you saw this
 17 information going on in the news?
 18 **A. The investigation was all over the newspapers and**
 19 **the TV stations.**
 20 Q. What was the housing project?
 21 **A. That was a fed -- the federal government, the**
 22 **Department of Housing and Urban Development, was**
 23 **putting up the money to rebuild an old public**
 24 **housing project on the west side of Detroit. The**
 25 **old one had demolished -- been demolished, and**

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1 **they were going to build a new one, and I got**
 2 **involved as special assignment away from my**
 3 **regular work, to get involved in negotiating that**
 4 **contract between the city and the federal**
 5 **government.**
 6 Q. Was it within your -- the course and scope of
 7 your employment to negotiate contracts that
 8 involved the DWSD?
 9 **A. Yes.**
 10 Q. Did you actually write those contracts?
 11 **A. The department had some standard contract forms**
 12 **for construction contracts, consultant contracts,**
 13 **water service contracts and sewer service**
 14 **contracts with suburbs, and I was involved in**
 15 **developing all of those basic format contracts.**
 16 **And then we'd start with that and -- for the**
 17 **construction contracts and consultant contract,**
 18 **they didn't change very much. In fact, we just --**
 19 **the water service contracts, there were a few**
 20 **provisions we would tweak or touch, but mostly it**
 21 **was boilerplate. But I was involved in writing**
 22 **them, yes.**
 23 Q. The presubpoena, during the interview process by
 24 the United States Attorney's Office, what did you
 25 understand the nature of the investigation to be?

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1 **A. It dealt with misconduct involving city contracts.**
 2 Q. DWSD contracts or other city contracts?
 3 **A. Both.**
 4 Q. Did you learn during the course of those
 5 interviews that you attended or your own
 6 interview what contracts were being investigated?
 7 **A. I didn't -- the only interviews that I attended**
 8 **was my own, and they were not asking me about**
 9 **specific contracts. They were asking me what the**
 10 **city's normal contracting procedures were, how did**
 11 **contracts get awarded, how did the bid process**
 12 **start, how did the bid evaluation process work.**
 13 **And it was more general background information.**
 14 **They did not ask me about any specific contracts**
 15 **or contractors.**
 16 Q. Did they ask you about the sinkhole project?
 17 **A. No.**
 18 Q. Did they ask you about Inland Waters?
 19 **A. No.**
 20 Q. Did they ask you about Tony Soave?
 21 **A. No.**
 22 Q. Any representatives, employees, agents of Inland
 23 Waters?
 24 **A. No.**
 25 Q. What was the typical DWSD contracting process,

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1 the bidding process?

2 **A. Well, there were two types of contracts,**

3 **construction contract -- well, more than two, but**

4 **I'll start with -- construction contracts would**

5 **start with a design. You would give the design, a**

6 **whole sheaf of engineering drawings and the**

7 **boilerplate contract documents to the bidders.**

8 **They would submit sealed competitive bids, and the**

9 **lower bidder was supposed to get the contract.**

10 **Then you would have what were called**

11 **professional services contracts, which were either**

12 **contracts for services by engineering firms in**

13 **which there was a bid evaluation process where**

14 **price was a factor but there were other factors**

15 **like professional competence, experience in doing**

16 **the type of work to be covered by that contract.**

17 **And then you had for some big projects**

18 **design-build contracts where you would be**

19 **evaluating -- where you would give them project**

20 **scope and they would process a basic design and a**

21 **construction and design budget, and that was**

22 **evaluated. It wasn't a pure competitive bid**

23 **situation. You would look at the price but also**

24 **look at the design and the competence of the**

25 **contractors who were on the bid team. Those were**

Page 18

1 **usually a joint venture between the general**

2 **contractor and the design firm.**

3 Q. What was the -- which of these examples would the

4 sinkhole project be characterized as?

5 **A. The sinkhole project was kind of unique. That was**

6 **an emergency. So what they did was they took an**

7 **existing sewer repair contract with Inland Waters,**

8 **who was already working on sewer repair and had**

9 **their equipment and team mobilized and were**

10 **available. They moved them all out to the**

11 **sinkhole and had them stabilize the situation and**

12 **build an emergency bypass around the sinkhole to**

13 **keep the sewage flowing and keep it from backing**

14 **up in all the sewers upstream.**

15 Q. That contract was -- that was already in place

16 was CS-1368?

17 **A. Yes.**

18 Q. How was CS-1368 awarded? Was it through --

19 **A. That was a professional -- CS stands for**

20 **consultant services.**

21 **MR. FAISON:** You're going to have to

22 let her finish her question.

23 **THE WITNESS:** I'm sorry.

24 **BY MS. BADALAMENTI:**

25 Q. Which of the three types of contracts that you

Page 19

1 just referred to would CS-1368 fall within?

2 **A. That was a professional service -- actually, wait.**

3 **It was a professional services contract but they**

4 **were managing sewer repairs.**

5 Q. Who was the -- so that would have been subject to

6 a bid evaluation process?

7 **A. Yeah. That contract would have been an**

8 **evaluation, not a pure competitive bid.**

9 Q. So a pure competitive bid the low bidder gets it,

10 period?

11 **A. Yes.**

12 Q. In a professional services contract, bidders are

13 evaluated on a rating system?

14 **A. There's a rating system. When the contracts go**

15 **out for bids, the contractors are told what the**

16 **basic criteria are. They are not told how those**

17 **are weighted. And they are not told -- I don't**

18 **think -- they were not told the identity of the**

19 **committee that was going to evaluate the bid.**

20 Q. And is it your understanding that Inland Waters

21 was evaluated before it was awarded CS-1368?

22 **A. Yes.**

23 Q. Who did that evaluation?

24 **A. I don't know who the members of the committee**

25 **were. For every bid evaluation the director of**

Page 20

1 **the department would appoint a committee to do the**

2 **evaluation. I don't know who was on the committee**

3 **for that contract. I did not serve on the bid**

4 **evaluation committees.**

5 Q. Do you remember a contract CS-1372?

6 **A. No.**

7 Q. Do you remember that the sinkhole or sewer

8 lining -- sorry -- the sewer lining work that was

9 to be performed under CS-1368 was originally the

10 subject of a different contract with Lakeshore

11 who had been awarded through the bid process?

12 **A. No, I was not aware of that.**

13 **(Mr. Sierzenga present at**

14 **10:45 a.m.)**

15 **BY MS. BADALAMENTI:**

16 Q. Okay. But your understanding is CS-1368 was

17 competitively bid?

18 **A. Yes.**

19 Q. As a professional services contract?

20 **A. Yes.**

21 Q. And you have no knowledge of the contract that

22 was initially awarded to Lakeshore and then

23 cancelled?

24 **A. No.**

25 Q. And moved over to 1368?

Page 21

1 **A. I may have heard about it at the time, but I don't**
 2 **remember anything about it.**
 3 Q. If you had heard about it, who would that have
 4 been from?
 5 **A. Probably Darryl Latimer. He was running the**
 6 **contracts and grants group in those days.**
 7 Q. Had there ever been something like that happen
 8 where a contract -- professional services
 9 contract had been awarded and it was cancelled
 10 and a different contractor was given the award?
 11 **A. Contracts were awarded and terminated on a regular**
 12 **basis usually, so it would not raise any red flags**
 13 **to me if work got shifted from one to the other.**
 14 Q. Do you know who would direct such a process to
 15 occur?
 16 **A. That would come from the director.**
 17 Q. The director of?
 18 **A. The Water and Sewerage Department.**
 19 Q. And at this time who would that have been?
 20 **A. Victor Mercado.**
 21 Q. Do you remember having any conversations with
 22 Victor Mercado about 1372 being cancelled?
 23 **A. No.**
 24 Q. Was it your understanding that when 1372 was
 25 cancelled and it was moved over to some different

Page 22

1 contractor, was the process completed again? Was
 2 the evaluation process completed again?
 3 **A. Well, when 1368 was awarded, there would have been**
 4 **an evaluation. If work was added to or taken out**
 5 **of the scope of the contract, that would have been**
 6 **done by a contract amendment after the contract**
 7 **was awarded.**
 8 Q. Okay.
 9 **A. I mean, there's a scope of work in the contract**
 10 **when it goes out for bids, but that can be changed**
 11 **by amendments that either add work or take work**
 12 **out.**
 13 Q. So if 1372 was cancelled and that was moved over
 14 to a different contractor, it would be your
 15 belief that would be due to a different scope of
 16 work than on 1368?
 17 **A. I don't understand the question.**
 18 Q. The contract CS-1368 was awarded to Inland
 19 Waters, correct?
 20 **A. Yes.**
 21 Q. And your belief is that it was awarded pursuant
 22 to a bidding process?
 23 **A. Yes.**
 24 Q. A professional services evaluation process,
 25 right?

Page 23

1 **A. Yes.**
 2 Q. My question is whether -- what information you
 3 have regarding that award process.
 4 **A. I really don't remember anything about the award**
 5 **of that specific contract, because generally I was**
 6 **not involved in evaluation of bids. Once the**
 7 **contract was signed, I would review it before it**
 8 **went to the Board of Water Commissioners for**
 9 **approval.**
 10 **MARKED FOR IDENTIFICATION:**
 11 **DEPOSITION EXHIBIT 1**
 12 10:50 a.m.
 13 **BY MS. BADALAMENTI:**
 14 Q. Do you recognize the document that I have just
 15 handed you?
 16 **A. This is Amendment No. 1 to Contract 1368.**
 17 Q. Do you recognize the exhibit that's been --
 18 document that's been marked Exhibit 1?
 19 **A. I do.**
 20 Q. Were you involved in the award of this Amendment
 21 1 to CS-1368?
 22 **A. No.**
 23 Q. Were you involved in the preparation of this
 24 Amendment 1?
 25 **A. The preparation was done by the contracts and**

Page 24

1 **grants group. I would review it after the**
 2 **negotiation was finalized, but typically the**
 3 **negotiation of an amendment was done by the**
 4 **contracts and grants group and engineers who were**
 5 **the project managers for the contract. I**
 6 **generally was not involved in that.**
 7 Q. What was the scope of the work that was covered
 8 by this Amendment 1?
 9 **A. The scope of the work is -- actually there is no**
 10 **scope of work in this amendment, which means that**
 11 **the scope of work that was in the initial contract**
 12 **would remain in place. And it looks like this one**
 13 **was simply adding additional funding to cover more**
 14 **of the same types of work.**
 15 Q. Who would be -- who would initiate an amendment
 16 like this where they're approving more money for
 17 the same work?
 18 **A. That would typically be the engineering department**
 19 **that was administering the contract. If they**
 20 **found that there was more work that needed to be**
 21 **done, then they would ask for a budget increase**
 22 **and a contract amendment putting more money. And**
 23 **sometimes they would add work to the scope of a**
 24 **contract. And this one -- this amendment doesn't**
 25 **do that. It's just sewer inspection and relining,**

Page 25

1 and there are unit prices for various sizes of
 2 pipe.
 3 Q. Is it your understanding that the work had
 4 changed in some aspect or that it had -- the
 5 scope of the original work was different when
 6 they got in to do it, or what was the reason that
 7 amendment was necessary?
 8 A. Well, the explanation is in the second and third
 9 pages of this exhibit. There's a memorandum to
 10 the Board of Water Commissioners from the director
 11 explaining the need for the contract amendment,
 12 which simply says that they're inspecting and
 13 relining old sewers, and that they want to have
 14 additional work done, but it's the same type of
 15 work. They're just adding more money.
 16 Q. Is it additional work or are they relining a
 17 different areas or --
 18 A. This covers sewers for the whole area of the
 19 city -- service area.
 20 Q. Did the original 1368 cover the same scope?
 21 A. I haven't seen the original -- the scope of work
 22 is in contract -- the original contract document,
 23 which I do not have before me.
 24 **MARKED FOR IDENTIFICATION:**
 25 DEPOSITION EXHIBIT 2

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1 10:55 a.m.
 2 **BY MS. BADALAMENTI:**
 3 Q. I marked as Exhibit 2 a document that is titled
 4 Contract CS-1368. Do you recognize that
 5 document?
 6 A. Yes, I do.
 7 Q. Is that the original contract?
 8 A. This is the original contract that Exhibit 1
 9 amended.
 10 Q. With that now in front of you, are you able to
 11 tell me whether or not the area or type or
 12 anything about the scope of work changed?
 13 A. The scope of work was not changed by the
 14 amendment. The scope of work involves inspecting
 15 sewers owned by the Detroit Water and Sewerage
 16 Department, evaluating their condition, and
 17 repairing and relining the ones that needed
 18 repair.
 19 Q. So did the job change to necessitate Amendment 1
 20 or did something else occur to necessitate
 21 Amendment 1?
 22 A. As I read these two documents, what happened was
 23 they spent the full budget on the original
 24 contract and decided they needed to have more of
 25 that work done and more sewers inspected, so they

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1 added additional money to the budget for more
 2 sewer inspection and relining.
 3 Q. Would there have been any review to determine why
 4 the full budget was spent but the project not
 5 complete in that sort of circumstance?
 6 A. Well, the City of Detroit has over a thousand
 7 miles of sewers, and so there is a constant need
 8 to inspect and repair, because many of them are
 9 over 50 years old and some of them are
 10 deteriorating. So you can't ever say the sewer
 11 system is fixed and it's set. It's always
 12 changing.
 13 Q. So it's your understanding that simply that more
 14 work needed to be done?
 15 A. For Amendment 1, yes.
 16 Q. What was the date of the original contract?
 17 A. The original contract was approved by the Detroit
 18 City Council on June 26, 2002.
 19 Q. And would you agree with me that it contemplated
 20 three years' worth of sewer lining work?
 21 A. Yes, actually 4.03 of the contract says the
 22 contract duration is three years.
 23 Q. So it wasn't that we were going outside of that
 24 original three-year term and the sewers still
 25 needed to be inspected and repaired and lined;

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1 we're within that time frame, right, when we
 2 enter into Amendment 1?
 3 A. Amendment 1 was approved by the city council on
 4 February 2nd, 2005, so --
 5 Q. Amendment 1 is -- there's a motion to the Board
 6 of Water Commissioners as of August 25th of 2004,
 7 correct?
 8 A. Right.
 9 Q. So the board might not approve it until 2005, but
 10 they've used up their budget from the original --
 11 A. At some point.
 12 Q. Hold on. Let me finish. They've used up their
 13 budget from 2002 to August 25th of 2004? That's
 14 when they request additional funding?
 15 A. They requested an additional \$10 million to do
 16 more work and they did not -- this Amendment No. 1
 17 did not extend the time of performance.
 18 Q. So within the same three-year time frame we're
 19 upping the budget \$10 million?
 20 A. Yeah.
 21 **MR. FAISON:** I object to the suggestion
 22 that all money had been used up on the contract at
 23 the time the motion was filed. There is no
 24 evidence to support that suggestion.
 25 **MS. BADALAMENTI:** I appreciate the

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1 testimony, counsel, but I think Mr. Walter
 2 testified that as of the motion, but I'll ask him.
 3 **BY MS. BADALAMENTI:**
 4 Q. As of the date of the motion, it looks to me like
 5 Victor Mercado is representing in page 2 and 3
 6 that additional funding is necessary, but what is
 7 your understanding?
 8 **A. He's saying -- it's on the second page of the**
 9 **motion -- and I'll quote: "In order to provide**
 10 **the department with the means necessary to**
 11 **continue the rehabilitation work described above,**
 12 **and respond to potential sewer repair emergencies**
 13 **until a new contract is in place, it is**
 14 **recommended that the budget for Contract CS-1368**
 15 **be increased by \$10,000,000 to close out the**
 16 **contract."**
 17 Q. In the first line of page 3 it says "The current
 18 balance of approximately \$12,200,000.00 is
 19 insufficient to cover the monthly cost of
 20 rehabilitation," which is about \$1,600,000 per
 21 month. Is it your understanding that that
 22 \$1.6 million per month was what was originally
 23 contemplated by CS-1368 or that that amount was
 24 more, such that the funding was going to run out
 25 during the three-year term?

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1 **A. I think the original anticipation was that the**
 2 **budget was going to be -- in the original**
 3 **contract, was going to be sufficient for the**
 4 **three-year term, but obviously they found**
 5 **additional work. You don't know what state the**
 6 **sewers are in until you actually get in there and**
 7 **take a look at them. And obviously they found**
 8 **more deterioration in the sewers and they wanted**
 9 **to have more work done.**
 10 Q. So in the professional services context you told
 11 me that there is a design process that goes into
 12 the proposal submitted by the professional. So
 13 is it your testimony now that they might not have
 14 known what the design or nature or how much sewer
 15 they were going to be covering --
 16 **A. Well --**
 17 **MR. FAISON:** Hold on. Let her --
 18 **MS. BADALAMENTI:** That's okay.
 19 **MR. FAISON:** Let her finish her
 20 question. That way I can figure out whether the
 21 question is objectionable or not before you
 22 answer.
 23 **THE WITNESS:** Okay. This was not
 24 really a design contract. This was more an
 25 as-needed inspection and rehabilitation work for

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1 relining old sewers that were deteriorated. You
 2 just look at the condition of the sewer, and if
 3 it's cracking or pitting, you reline it.
 4 **BY MS. BADALAMENTI:**
 5 Q. So this CS-1368 wasn't really any of those three
 6 types of contracts. That's what you're telling
 7 me now. It wasn't construction contracts; it
 8 wasn't a professional services contract; it
 9 wasn't a design-build contract. It was something
 10 different. Now we have a fourth category of
 11 contract?
 12 **A. Well, this -- this would be more of -- the scope**
 13 **of work here is inspecting sewers and relining the**
 14 **ones that need to be relined. So the inspection**
 15 **work and evaluation is professional services, and**
 16 **the relining work is basically construction work;**
 17 **so they were doing both in this contract.**
 18 Q. So is it your testimony that this is a fourth
 19 type of contract? It's not one of those three?
 20 **A. Yeah, there -- yeah.**
 21 Q. What other contracts were as-needed contracts?
 22 **A. Oh, the sludge hauling contracts for the**
 23 **wastewater treatment plant. Depending on how many**
 24 **tons of sludge the plant produces -- you'd have**
 25 **trucking companies on call. You would have what**

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1 **were called as-needed design services where you'd**
 2 **have engineering firms under contract and you**
 3 **would assign projects to them.**
 4 **You had what was called skilled**
 5 **maintenance contracts where you would have**
 6 **contractors that would provide skilled trades work**
 7 **at pump stations and water treatment plants and**
 8 **the sewer plant. And that was all on an as-needed**
 9 **basis. Some days they'd be doing nothing and some**
 10 **days they'd have a full crew.**
 11 Q. Those contracts would have a total contract
 12 amount and they would work for a certain period
 13 of time within that contract amount, right?
 14 **A. You would start -- yeah, you would have a contract**
 15 **amount that they could not go over without an**
 16 **amendment increasing the price, and there would be**
 17 **an initial time frame, and that would require a**
 18 **contract amendment to shorten or extend it.**
 19 Q. The sludge hauling contracts, the engineering
 20 contracts, were those -- were there typically
 21 amendments in connection with those types of
 22 contracts?
 23 **A. Yes.**
 24 Q. Would the amendments not extend the time but
 25 extend the budget?

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1 **A. You could get any combination of that. You could**
 2 **have a time-only extension. You could have a**
 3 **budget extension or you could have both.**
 4 Q. Tell me some of the amendments that you're aware
 5 of on these as-needed-type contracts where the
 6 time is not extended but the budget is. Any
 7 other example you can give me?
 8 **A. Oh, sometimes on the sludge hauling contracts, if**
 9 **you've got -- if the plant was producing more**
 10 **sludge than normal, things like that.**
 11 Q. Any others?
 12 **A. It could happen on any type of contract.**
 13 Q. Was this the only contract that you were involved
 14 with where the City of Detroit was contracting
 15 with a contractor or professional services
 16 provider to inspect the sewer system?
 17 **A. No. There were a number of those contracts over**
 18 **the years.**
 19 Q. Who were some of the other contractors?
 20 **A. There was a company called Insituform --**
 21 **Insituform of Michigan, which was owned by the**
 22 **same holding company that owns Inland Waters.**
 23 **There was a company called Lanzo Construction that**
 24 **had a contract for relining some of the larger**
 25 **sewers and outfalls on the Detroit River. Those**

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1 **are the ones I can think of off the top of my**
 2 **head.**
 3 Q. Would the contract with Lanzo have an amendment
 4 like this one where it was not extending the time
 5 but it did extend the budget?
 6 **A. I don't know.**
 7 Q. Do you know what that contract number was?
 8 **A. No.**
 9 Q. How about the contract with Insituform? Were
 10 there extensions of the budget without extensions
 11 of time for performance?
 12 **A. There were amendments to that contract. There**
 13 **were several contracts with Insituform over the**
 14 **years because for a long time Insituform owned the**
 15 **patent on the sewer relining process, and they**
 16 **were the only company that could do that kind of**
 17 **work, and then -- and there were amendments to**
 18 **that contract. Typically those were extending**
 19 **both the time and increasing the budget. And**
 20 **eventually there was some other processes that**
 21 **competed with Insituform that came onto the**
 22 **market, and then we could start competitively**
 23 **bidding those contracts.**
 24 Q. The next amendment that comes to CS-1368,
 25 Amendment 2, I am marking as Exhibit 3.

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1 **MARKED FOR IDENTIFICATION:**
 2 DEPOSITION EXHIBIT 3
 3 11:08 a.m.
 4 **BY MS. BADALAMENTI:**
 5 Q. Do you recognize that document?
 6 **A. Um-hmm. I do.**
 7 Q. When do you believe that Amendment 2 was entered
 8 into?
 9 **A. By city charter the official date of the contract**
 10 **is the date of city council approval, which in**
 11 **this case is -- well, it says December 20 --**
 12 **either 20 or 30. I can't read the purchasing**
 13 **director's handwriting, but it's December either**
 14 **the 20th or 30th of 2004.**
 15 Q. And what do you understand Amendment 2 to cover?
 16 **A. This is the contract for the emergency work after**
 17 **the sewer collapsed on 15 Mile Road.**
 18 Q. That sewer collapse occurred August 22, 2004.
 19 Does that sound about right now?
 20 **A. That sounds right.**
 21 Q. Would this -- there have been some discussions
 22 with Inland Waters about the terms of this
 23 amendment when it was put on the sinkhole repair
 24 project, in other words, immediately or within
 25 days of its occurrence?

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1 **A. Yeah. Somebody at the department would have**
 2 **talked to them about what it was going to take to**
 3 **get them out there, get them mobilized, and get**
 4 **the initial emergency stabilization work done.**
 5 Q. Who would -- when you say someone at the
 6 department, do you mean your department?
 7 **A. Not me. Someone at the Water and Sewerage**
 8 **Department.**
 9 Q. Any idea who would have that type of conversation
 10 or any idea who had that conversation?
 11 **A. Well, on something this big, the director, Victor**
 12 **Mercado, would have been involved, and some -- he**
 13 **would have had some people from the engineering**
 14 **department involved in that as well. I was not**
 15 **involved in the meetings with Inland Waters.**
 16 Q. When you -- when you do get involved, what do you
 17 -- I guess what time frame do you get involved?
 18 Is it within days or weeks?
 19 **A. I was actually out at the site of the collapse a**
 20 **couple days after it happened.**
 21 Q. And why is that?
 22 **A. Because it was a big emergency project and I**
 23 **worked with Darryl Latimer on putting this**
 24 **contract amendment together.**
 25 Q. What information did you take from the site visit

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1 to put this contract together?
 2 **A. Well, the site visit was just to go out there and**
 3 **see how bad the situation was. It was a huge hole**
 4 **about 60 feet deep and there were four houses with**
 5 **half their backyard in the bottom of the hole.**
 6 **There was going to be a lot of work for lawyers on**
 7 **a project like that.**
 8 Q. A lot of work for what?
 9 **A. Lawyers on a project like that. And so basically**
 10 **Darryl and I took the scope of work that the**
 11 **engineers worked out with Inland Waters in the**
 12 **original budget and put it in the city's amendment**
 13 **form and fast-tracked it through the Board of**
 14 **Water Commissioners for approval.**
 15 **MR. FAISON:** Can you keep your voice
 16 up.
 17 **THE WITNESS:** Okay.
 18 **BY MS. BADALAMENTI:**
 19 Q. So by the time you got out there a couple days
 20 later, the scope and the budget is already
 21 decided on?
 22 **A. They were being worked out.**
 23 Q. Being worked out by whom?
 24 **A. By the department's engineers and the Inland**
 25 **Waters project managers who were out there at the**

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1 **site.**
 2 Q. Was Victor Mercado out there at the site?
 3 **A. He was out there at the site, yes.**
 4 Q. When you say the project engineers, who do you
 5 remember being out there?
 6 **A. Ramesh -- for the City of Detroit it was Ramesh**
 7 **Shukla, and there were some other people out**
 8 **there, too, but he was the one that was the DWSD**
 9 **point person. And I think Mercado said that he**
 10 **was out there every day for the first month.**
 11 Q. That he himself or he, Shukla?
 12 **A. No -- well, both of them.**
 13 Q. Do you know if the mayor was ever out there?
 14 **A. He went out there once that I know of, because I**
 15 **saw photos of him with -- out there wearing a hard**
 16 **hat and a safety vest. I don't know if he went**
 17 **out there again, but I know Mercado gave him a**
 18 **tour of the site.**
 19 Q. Are there actually in the City of Detroit --
 20 prior to city council approval, can amounts be
 21 paid on contracts that are awarded but not
 22 formalized by council approval?
 23 **A. There is a procedure in the city's purchasing**
 24 **ordinance for an emergency contract where you**
 25 **have -- which the purchasing director has to**

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1 **declare that this is an emergency and can award a**
 2 **contract immediately, and I don't know if that was**
 3 **done in this case or not. Actually, since I don't**
 4 **see anything in here that says it was an**
 5 **emergency, it may not have been done. If there**
 6 **was an emergency declaration for this amendment --**
 7 **okay, yeah. I take that back. There is. There**
 8 **is an emergency order. There is the first page of**
 9 **an emergency order awarding this contract**
 10 **amendment, which is probably why the date of city**
 11 **council approval is blank. It wasn't approved by**
 12 **the city council. This was awarded under an**
 13 **emergency procedure. This was a special**
 14 **administrative order, but this is just the first**
 15 **page of it. There had to be a second page,**
 16 **because it's incomplete. This is incomplete. And**
 17 **this is different from the procedure under the**
 18 **purchasing ordinance that I just outlined.**
 19 Q. Let me show you Exhibit 4.
 20 **MARKED FOR IDENTIFICATION:**
 21 **DEPOSITION EXHIBIT 4**
 22 11:16 a.m.
 23 **BY MS. BADALAMENTI:**
 24 Q. It has what looks to be a similar page 1.
 25 **A. Okay. Is Amendment No. 3. Yeah, this is -- yeah,**

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1 **this is the full emergency order.**
 2 Q. Okay.
 3 **A. So the second page of this order, there is a**
 4 **similar -- there has to be a similar page to**
 5 **Amendment 2 that somehow isn't in the document,**
 6 **but it would look a lot like this.**
 7 Q. And the -- would that be something that was
 8 retained with the City of Detroit, page 2 of this
 9 order?
 10 **A. Yeah, there would have to be a second page because**
 11 **it would require the mayor's signature. So there**
 12 **is a second page to the order for Amendment No. 2.**
 13 **It's just not in this package of documents I have**
 14 **in front of me.**
 15 Q. Do you know when that would have been signed?
 16 **A. No. The date isn't in here, so -- well, I'll tell**
 17 **you all of the resolutions or the signatures are**
 18 **dated in November of 2004, so it might have been**
 19 **done then.**
 20 Q. And the reason why an emergency order or an order
 21 like this is done that's on page 2 of Exhibit 3
 22 and page 2 and 3 of Exhibit 4 -- tell me again
 23 why is this done.
 24 **A. This is -- this is a long story, but this was --**
 25 **the authority to issue orders like this was given**

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1 to the mayor of Detroit in an order signed by
 2 Judge Jon Feikens of the U.S. District Court.
 3 Here in Detroit -- and this goes back to a lawsuit
 4 that the Environmental Protection Agency filed
 5 against the Detroit Water and Sewerage Department
 6 in 1977, which was assigned to Judge Feikens in
 7 1977. And he was the judge on that case till
 8 about 2003, when his health -- when he was in his
 9 90s, and at that time his health got too bad that
 10 it was transferred to Judge Sean Cox. But Judge
 11 Feikens basically was overseeing the operations of
 12 the department, because it was having -- over the
 13 years it fell -- the sewage system fell out of
 14 compliance with the Clean Water Act a number of
 15 times, and twice during the over 30 years that
 16 that lawsuit lasted, Judge Feikens entered orders
 17 appointing the mayor of Detroit as what he called
 18 the special administrator of the wastewater
 19 system. He did it once during the Young
 20 administration and again during the Archer
 21 administration, and which basically gave the mayor
 22 of Detroit the authority to bypass the city
 23 council and award contracts for necessary services
 24 to keep the water system operating -- the sewage
 25 system operating and in compliance with the Clean

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1 Water Act. And when Kwame Kilpatrick became the
 2 mayor, he entered an order transferring the
 3 special administrative powers from Mayor Archer to
 4 Mayor Kilpatrick which basically gave the mayor
 5 the power to award contracts without going through
 6 the purchasing department.
 7 The City of Detroit's purchasing
 8 process is incredibly cumbersome, and from the
 9 start to finish of awarding a contract it could
 10 take over a year. That's how dysfunctional the
 11 city's purchasing department is, which made it
 12 very, very hard to buy spare parts for the
 13 equipment at the sewage plant which broke down and
 14 couldn't be prepared because we couldn't get
 15 parts.
 16 So basically the judge in a fit of
 17 exasperation or inspiration or whatever gave the
 18 mayor the power to bypass the whole purchasing
 19 system and just award contracts. And there were
 20 monthly reports to the judge on what was done
 21 under that power, and so this was not done under
 22 the purchasing director's emergency powers. This
 23 was done under the emergency powers that the judge
 24 gave to the mayor.
 25 Q. Prior to the order for Amendment 2 to CS-1368,

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1 were you aware of any other contract that had
 2 been awarded by the mayor on this type of basis?
 3 A. There were several of them, and I don't remember
 4 the numbers.
 5 Q. By Mayor Kilpatrick?
 6 A. By Mayor Kilpatrick, by Mayor Archer, and by Mayor
 7 Young.
 8 Q. Which were awarded by Mayor Kilpatrick under
 9 this --
 10 A. I don't remember the numbers.
 11 Q. Any others to Inland that you're aware of?
 12 A. I don't remember any, but that doesn't mean it
 13 didn't happen.
 14 Q. Okay. When the federal investigation -- you were
 15 interviewed in connection with the federal
 16 investigation, was that part of what you were
 17 asked about, this special administrative order?
 18 A. I think I explained the process to them, yes. It
 19 only applied to contracts for the sewage system.
 20 They could not award contracts like that for
 21 anything related to the water system, just sewage.
 22 Q. So the order's issued. And we don't know the
 23 date for Amendment 2.
 24 A. There was an order issued -- since the signature
 25 resolutions which would have been done around the

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1 same time are dated -- it was sometime in 2005,
 2 but I'm not going to guess at the date.
 3 Q. I see city acknowledgement's dated --
 4 A. Yeah, November 2005, so that might be when this
 5 was signed.
 6 Q. Let me stop you. I see them dated November 2004.
 7 A. I'm sorry.
 8 Q. Resolution of corporate authority dated
 9 November 10, 2004.
 10 A. Yeah. And which was a few months after the
 11 collapse in August of 2004.
 12 Q. And this contract is eventually put through city
 13 council; would you agree with that, or did that
 14 not even occur?
 15 A. Well, if it's awarded by an emergency order by the
 16 mayor, it did not have to go through city council,
 17 so it would not have been submitted to the city
 18 council. And the space on the boilerplate
 19 signature form for entry of the city council
 20 approval date is blank, which suggests that it was
 21 never submitted to city council. It didn't need
 22 to be.
 23 Q. Okay. So by November, you would agree with me --
 24 November 2004, that at least some of the work had
 25 begun on the sinkhole repair?

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1 **A. They began work in August. They were out on the**
 2 **emergency bypass, yeah.**
 3 Q. Would there have been payments made prior to the
 4 November date, if that's the date?
 5 **A. I don't know when the payment --**
 6 Q. If -- assuming the November resolution dates are
 7 the date of the order, the pages we don't have to
 8 this order, would that mean that there were
 9 payments issued prior to or not?
 10 **A. I don't know when the payments on this contract**
 11 **were made. I never reviewed the invoices.**
 12 Q. Is this order something -- a form that you would
 13 prepare?
 14 **A. No. That -- those were typically prepared by Mark**
 15 **Jacobs of Dykema Gossett. I never prepared one of**
 16 **those.**
 17 **MR. FAISON:** Are you talking about
 18 emergency orders?
 19 **THE WITNESS:** The emergency orders,
 20 award of contracts under the emergency powers as
 21 special administrator, Mark drafted those.
 22 **BY MS. BADALAMENTI:**
 23 Q. Are they emergency orders that -- the title
 24 doesn't refer to emergency orders. Is that what
 25 you're understanding is, that the special --

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1 **A. Well --**
 2 Q. Hold on. Let me finish. Is it your
 3 understanding that the special administrator, the
 4 mayor, could only issue an order like this that
 5 bypasses the traditional contract approval system
 6 in an emergency situation?
 7 **A. No. They were called special administrative**
 8 **orders. I'm using the "emergency" word because**
 9 **this project was a catastrophic emergency. But**
 10 **they were awarded for any type of contractual**
 11 **service that the city needed that could not be --**
 12 **the purchasing department could not supply in a**
 13 **timely way.**
 14 Q. And would you be provided with an order like this
 15 when it was done for a particular contract that
 16 you had worked on?
 17 **A. I would review the contract for the Law Department**
 18 **and then my supervisor would sign on the bottom**
 19 **line of the signature page because the city**
 20 **charter requires Law Department approval of all**
 21 **contracts. So I would review this before my**
 22 **supervisor signed it.**
 23 Q. So going to -- there's a page in the document --
 24 **A. Which document are we looking at? Which exhibit**
 25 **number?**

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1 Q. Amendment 2, which I believe is Exhibit 3.
 2 **A. Amendment 2, which is Exhibit 3, okay.**
 3 Q. There is a cover page for Exhibit B-2, Costing
 4 Summary for Exhibit A-1. Do you see that there?
 5 **A. Um-hmm.**
 6 Q. Behind that cover page is a document prepared by
 7 Mr. Shukla, who was from the engineering
 8 department, right?
 9 **A. Um-hmm.**
 10 Q. Is that a yes?
 11 **A. Yes. Yes.**
 12 Q. Do you recognize this document?
 13 **MR. FAISON:** Let me find it. Where are
 14 we?
 15 **THE WITNESS:** We're right here.
 16 **BY MS. BADALAMENTI:**
 17 Q. You're in the original contract. We're in
 18 Amendment 2.
 19 **MR. FAISON:** Exhibit what?
 20 **MS. BADALAMENTI:** 3.
 21 **THE WITNESS:** Exhibit 3.
 22 **MR. FAISON:** How far back?
 23 **MS. BADALAMENTI:** Near the back. The
 24 cover sheet looks like this.
 25 **MR. FAISON:** Exhibit B-2.

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1 **MS. BADALAMENTI:** Exhibit B-2.
 2 **MR. FAISON:** Thank you.
 3 **BY MS. BADALAMENTI:**
 4 Q. Do you recognize this document authored by
 5 Mr. Shukla?
 6 **A. Well, it's part of the contract amendment, yes.**
 7 Q. Is it something you would have reviewed?
 8 **A. I would have reviewed this when I reviewed the**
 9 **whole amendment, yes.**
 10 Q. The document is dated September 20, 2004. Do you
 11 have a recollection of a costing summary being
 12 prepared around that time?
 13 **A. I did not prepare -- I don't prepare costing**
 14 **supplements. I don't prepare costing documents**
 15 **for these contracts.**
 16 Q. Would you need to approve the language?
 17 **A. I would review it as part of the Law Department**
 18 **review, yes.**
 19 Q. Are costing supplements things that were used by
 20 the DWSD?
 21 **A. Yeah, there's -- well, there was a cost summary in**
 22 **every contract. There's a lump sum -- there's a**
 23 **total price, and then in a construction contract,**
 24 **it's a lump sum. But in a contract like this,**
 25 **there would be a breakdown what those costs were.**

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1 **There might be unit prices. There might be hourly**
 2 **rates. It would depend on the type of contract.**
 3 **There would be something breaking it down.**
 4 Q. So the costing summary for CS-1368, the original
 5 sewer lining project, is that something that we
 6 see in these documents here?
 7 **A. Well, the costing summary in Exhibit 1 is several**
 8 **pages -- more than several -- of unit prices for**
 9 **sewer lining based on the diameter of the sewer**
 10 **and then the linear feet of pipe rehabilitated.**
 11 Q. That would be Exhibit B-2?
 12 **A. This is Exhibit B, captioned Cost Information**
 13 **Sheet.**
 14 Q. Okay. Let me get the record situated here. It
 15 would be Exhibit B to the document titled
 16 Contract CS-1368, which we've marked as
 17 Exhibit 2?
 18 **A. Yes.**
 19 Q. Okay. Exhibit B to Exhibit 2 has these unit
 20 prices, right?
 21 **A. Yeah. Exhibit B to Exhibit 2 is a long list of**
 22 **unit prices based on the diameter of the sewer and**
 23 **the number of linear feet rehabilitated or**
 24 **realigned.**
 25 Q. What I don't see in this cost information sheet

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1 in Exhibit 2 is any sort of information about
 2 overtime, mobilization of equipment. Why is that
 3 now dealt with in Amendment 2?
 4 **A. Because Amendment 2 was for a different type of**
 5 **work. Amendment -- the original contract document**
 6 **is they go in and inspect the sewer. If it's a**
 7 **small sewer, they run a television camera through**
 8 **it. If it's a big sewer, you can walk through it.**
 9 **And then there is a linear -- and I'm looking**
 10 **for -- well --**
 11 Q. Let me see if I can help you with it. Is it the
 12 case that the cost information sheet in the
 13 original contract would include the manpower
 14 required to inspect --
 15 **A. Yes.**
 16 **MR. FAISON:** Let her finish. You have
 17 to let her finish the question, because the court
 18 reporter has to take it down, as you know,
 19 Robert --
 20 **THE WITNESS:** Yeah.
 21 **MR. FAISON:** -- her question and your
 22 answer, and I have to hear her question to find
 23 out whether or not I have an objection to it. So
 24 if you would -- we're dealing with two fast
 25 talkers here. Slow down the process a little bit.

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1 **THE WITNESS:** Okay.
 2 **BY MS. BADALAMENTI:**
 3 Q. So the unit price that's shown in this cost
 4 information sheet would include everything that
 5 went into that particular type of work, the
 6 inspection service, use of television equipment,
 7 the manpower required? Everything would be
 8 included within the unit price?
 9 **A. The unit price includes labor and material,**
 10 **inspection work, everything. The contractor has**
 11 **to set that price high enough to cover all of its**
 12 **costs.**
 13 Q. Does this original CS-1368 document provide for
 14 overtime?
 15 **A. No. It provides for unit prices, and if the**
 16 **contractor has to work overtime, it has to take**
 17 **the overtime -- pay for its employees out of this**
 18 **unit price.**
 19 Q. September 20th of 2004 we see Mr. Shukla now
 20 providing for labor, overhead, markups, overtime.
 21 These types of things are now going to be
 22 included within the amounts that Inland can
 23 charge; is that correct?
 24 **A. On the project covered by this amendment, which**
 25 **was the sewer collapse on 15 Mile Road only.**

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1 Q. Okay. Who would authorize Mr. Shukla to execute
 2 a costing supplement like this?
 3 **A. The director, Mr. Mercado.**
 4 Q. Who would authorize Mr. Mercado to do that?
 5 **A. As the director of the Water and Sewerage**
 6 **Department, he had the authority to do that. I**
 7 **don't know if he discussed it with the mayor or**
 8 **not.**
 9 Q. The next page is dated April 4, 2005.
 10 **A. Okay. We're still in Exhibit 3, okay.**
 11 Q. Right. This April 4, 2005 document is a letter
 12 by Victor Mercado. Do you see that there?
 13 **A. Yes.**
 14 Q. Is this something you've seen before?
 15 **A. It's part of the contract. Yes, I've seen it**
 16 **before.**
 17 Q. By April 4, 2005, has most of the work or some of
 18 the work been done on the project?
 19 **A. Some of the work has been done. I think that**
 20 **project ran into June or July of 2005, before all**
 21 **of it was done.**
 22 Q. This document by Victor Mercado dated April 4,
 23 2005, is proposing a different costing
 24 supplement. Do you understand that to be the
 25 case?

1 **A. No. This is just talking about the kind of**
 2 **documentation they have to submit with their**
 3 **invoices to get the invoices approved. That's how**
 4 **I read it.**
 5 Q. So the -- the paragraph reads "The other cost
 6 guidelines contained in the attached costing
 7 supplement will govern all work performed on the
 8 contract from its inception until final
 9 completion." Do you see that there?
 10 **A. Yes.**
 11 Q. So this document is intended to provide a
 12 different costing framework going all the way
 13 back to August, when the project began. Would
 14 you agree with that?
 15 **A. This references some negotiations over the**
 16 **pricing, and the costing supplement is on the next**
 17 **page.**
 18 Q. Okay. So my question was: Would you agree that
 19 this document is going to provide a new costing
 20 framework for Inland Waters going back -- the
 21 language is from its inception of the work until
 22 final completion.
 23 **A. From the inception of the work covered by this**
 24 **contract amendment, which is 15 Mile Road.**
 25 Q. So from August 22nd or as soon as they started

1 **A. I might not have because this was signed in**
 2 **November 2004. I might not have depending on the**
 3 **date of the administrative order. This may have**
 4 **been added afterwards. I'm not sure.**
 5 Q. Well, it's dated well after November 2004. You
 6 would agree with that, right?
 7 **A. Right.**
 8 Q. You have no reason to believe that that was
 9 something that was done before April of 2005, do
 10 you?
 11 **A. No.**
 12 Q. The signature on the bottom, do you recognize
 13 that to be Victor Mercado's signature?
 14 **A. That's his handwriting.**
 15 Q. Dennis Oszust from -- he signs as the vice
 16 president, general manager of the company, Pipe
 17 Rehabilitation Group?
 18 **A. No, that's the group within Inland Waters. The**
 19 **company is Inland Waters Pollution Control,**
 20 **Incorporated. The Pipe Rehab Group was a group**
 21 **within that company.**
 22 Q. Okay. Did you know Mr. Oszust?
 23 **A. Yes, I've met him a number of times.**
 24 Q. Did you meet him in connection with this project
 25 or with this Amendment 2, I should say?

1 work thereafter -- August 22, 2004 collapse, they
 2 start work. In April of 2005, we're now going to
 3 go backwards and impose these -- this costing
 4 framework; is that accurate?
 5 **A. It looks like this is maybe modifying the**
 6 **September 20th letter that Mr. Shukla wrote.**
 7 Q. Who would, again, give Mr. Mercado -- let me ask
 8 it this way: You said earlier Mr. Mercado would
 9 have had the authority to direct Mr. Shukla to do
 10 the first costing summary.
 11 **A. Yes.**
 12 Q. Would Mr. Mercado have authority, then, to do a
 13 new costing summary?
 14 **A. Yes, he would.**
 15 Q. Would he need to get the mayor's approval to do
 16 that, to the best of your knowledge?
 17 **A. I don't know how much the mayor delegated that to**
 18 **him. And I'm not sure --**
 19 Q. I don't want to cut you off. Were you --
 20 **A. No, go ahead.**
 21 Q. Was this document something that you would have
 22 reviewed, the letter dated April 4, 2005, or the
 23 costing supplement that follows? Was that
 24 something that you reviewed before it was made a
 25 part of the contract?

1 **A. Not with this amendment. I was dealing with DWSD**
 2 **staff on this amendment. I didn't talk to him**
 3 **about this.**
 4 Q. Were you present when this document was signed by
 5 Mr. Mercado --
 6 **A. No.**
 7 Q. -- or Mr. Oszust?
 8 The pages that follow, CS-1368
 9 Amendment No. 2 costing supplement, there are some
 10 initials there on the document and there's a date
 11 of 3/17 of '05. I deposed Mr. Shukla, and he
 12 indicated that one of those initials were his. Do
 13 you recognize the other one?
 14 **A. No. It looks like D.O., which would mean Dennis**
 15 **Oszust, but I'm guessing.**
 16 Q. In your dealings with contracts for the DWSD, had
 17 you had occasion to see a costing supplement that
 18 was redone like was done in this case, where
 19 there's actually a second costing supplement that
 20 issues for the same contract?
 21 **A. No.**
 22 Q. Do you know how this -- or who directed that this
 23 was done?
 24 **A. This would have to come from Mr. Mercado.**
 25 Q. Did you know what the standard markup or layers

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1 of markups were for DWSD contracts?
 2 **A. It varies from contract to contract, and it's**
 3 **negotiated with the contractor.**
 4 Q. Was this costing supplement something you were
 5 asked about when you were interviewed by the FBI?
 6 **A. No.**
 7 Q. I think you said you didn't --
 8 **A. Actually I was interviewed by a U.S. attorney, not**
 9 **an FBI --**
 10 Q. I thought it was probably a bad question when I
 11 said it, so thank you for correcting me. I know
 12 you weren't around when it was done, this
 13 April 4, 2005 costing supplement, but did you
 14 have occasion to see it when it became -- or at
 15 any point before retiring from the Law
 16 Department?
 17 **A. I don't remember seeing it. I may have -- I may**
 18 **have looked at this when I was reviewing Amendment**
 19 **No. 3, because typically you look at the previous**
 20 **amendments in the contract to see what changes are**
 21 **being made.**
 22 Q. So looking at Amendment No. 3, which I think is
 23 the document that we marked as 4 --
 24 **A. Yes.**
 25 Q. -- Exhibit 4, so Amendment No. 3, what is the

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1 date of that?
 2 **A. The date of the special administrator order is**
 3 **May 18, 2005.**
 4 **MS. BADALAMENTI:** I'm going to indicate
 5 that appears to be two pages on the back of
 6 exhibit where they don't belong. I just noticed
 7 that. If you want to pull them off, everybody --
 8 they should not be on that document. It will just
 9 cause confusion later on.
 10 **THE WITNESS:** You can have that back.
 11 **MS. BADALAMENTI:** We'll mark it
 12 separate.
 13 **BY MS. BADALAMENTI:**
 14 Q. Do you recognize the date that Amendment 3 was
 15 entered into?
 16 **A. It's the date of the special administrative order,**
 17 **which is May 18, 2005.**
 18 Q. Do you know how far in advance of May 18, 2005,
 19 this amendment would have been proposed or
 20 discussed by somebody at DWSD in order for it to
 21 be -- you know, in order for the order to be
 22 signed on 5/18 of '05?
 23 **A. I don't.**
 24 Q. Is it a process that takes days or weeks or
 25 months?

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1 **A. It depends on the complexity of the project. It**
 2 **can -- it can take weeks. You know, at some point**
 3 **engineering staff would have to propose something**
 4 **like this to the director who would have to review**
 5 **it and approve it.**
 6 Q. Well, in the case of Amendment 2, we know that
 7 the sinkhole collapse occurred in August and we
 8 don't see the -- we don't see the resolutions
 9 dated until November. Is that a typical time
 10 frame or would you expect to see it shorter or
 11 longer than that?
 12 **A. That's the time frame it took to get that**
 13 **amendment written, agreed, but the contractor**
 14 **actually started work before then. And by city**
 15 **purchasing standards, that's actually pretty fast.**
 16 Q. Okay. So Amendment 3 would have to also be
 17 written, prepared, approved by everybody so --
 18 **A. Yes.**
 19 Q. -- it would be a matter of months between the
 20 time that the discussions begin that, hey, we
 21 need an Amendment 3 here until --
 22 **A. It could be --**
 23 Q. -- until the time you see Mayor Kilpatrick
 24 signing this order?
 25 **A. It could be a couple of months or a couple of**

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1 **weeks. I'm not sure. It depends on the project.**
 2 Q. Okay. And Amendment 3 is issued for the purpose
 3 of increasing the budget for the sinkhole
 4 repairs; is that true?
 5 **A. Yes.**
 6 Q. The amount of the increase is --
 7 **A. \$23 million.**
 8 Q. -- \$23 million added to the amount of the
 9 Amendment 2?
 10 **A. Yeah. It's on page 3. Add 23 million, so the**
 11 **new -- so the new total is 118 million.**
 12 Q. Was that for work that had been done up to that
 13 point and going forward, or was all of that 23
 14 million still to be done?
 15 **A. I don't know. It is fairly common in the city**
 16 **contracting process for when a contract runs out**
 17 **of money, the contractor will keep working while**
 18 **the amendment putting more money into the project**
 19 **is processed, but they can't get paid until the**
 20 **amendment's approved. Contractor will sometimes**
 21 **take on the risk f the amendment not being**
 22 **approved, but in this case, it was.**
 23 Q. So -- well, in this case it was approved by
 24 special order, right?
 25 **A. Yes.**

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1 Q. So fair to say the contractor would know from his
 2 discussions with the mayor or Victor Mercado that
 3 the special order was going to issue to approve?
 4 **A. During the negotiation the contractor should have**
 5 **been told that there would be a special**
 6 **administrator order approving it, so if the**
 7 **contract had run out of money, they would have**
 8 **kept working knowing that they would be paid**
 9 **eventually.**
 10 Q. Would the contractor have known that a special
 11 order was the means by which Amendment 2 was
 12 approved? In other words, would they know that
 13 skipped the city council's purchasing approval
 14 process?
 15 **A. I was not involved in that discussion. I'm sure**
 16 **that that would have been discussed and they would**
 17 **have been told that, yes.**
 18 Q. Do you know what necessitated this additional
 19 \$23 million in Amendment 3?
 20 **A. I did not -- I don't know what the -- all of the**
 21 **work that was done out there. I do know that**
 22 **every time they got into the tunnel, they found**
 23 **things were deteriorating and getting worse.**
 24 Q. Did you ever ask why \$23 million more?
 25 **A. At some point I would have asked Shukla that**

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1 **question, and if he said there's more work to be**
 2 **done, I would have taken his word for it.**
 3 Q. The work to be done had already at least been
 4 started at that point, correct?
 5 **A. I don't -- well, the whole project, the work that**
 6 **Inland Waters started in August, and --**
 7 Q. Of '04?
 8 **A. Of '04, and they had been working -- they and**
 9 **their subcontractors had been working out there**
 10 **continuously.**
 11 Q. So was it your understanding at the time
 12 Amendment 3 is entered into that the whole budget
 13 had been used or that the whole budget had been
 14 used and there was more money due already?
 15 **A. My understanding would have been that the current**
 16 **budget was not enough, and that they were going to**
 17 **use -- need more money to complete the work.**
 18 **Whether that was -- whether they had spent**
 19 **everything or whether they had some left, they**
 20 **were going to run out, I don't know.**
 21 Q. Was that something you customarily checked on,
 22 how much had they spent -- "We're entering into
 23 this Amendment 3 and we're preparing this
 24 document. How much has been spent so far?"
 25 **A. I generally didn't ask that question. I did not**

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1 **review -- I never reviewed the contractor**
 2 **invoices. I just -- if they told me that they**
 3 **were running out, that the budget needed to be**
 4 **increased to complete the project, I would believe**
 5 **that and do it.**
 6 Q. And who other than Mr. Shukla would give you that
 7 information?
 8 **A. Either Darryl Latimer or Mr. Mercado.**
 9 Q. Did Darryl Latimer have any discussions with you
 10 in connection with Amendment 3 about amounts that
 11 had been disallowed with respect to the sinkhole
 12 repair work?
 13 **A. No.**
 14 Q. Did anyone discuss with you before Amendment 3
 15 was drafted or executed that there were concerns
 16 about overcharges on the project?
 17 **A. No.**
 18 Q. Did you actually prepare the text of the
 19 amendment?
 20 **A. No. Those amendments are boilerplate forms that**
 21 **the contracts administration group would prepare.**
 22 **And Darryl Latimer was the head of that group at**
 23 **that time.**
 24 Q. Does this amendment extend the time and budget or
 25 just the budget?

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1 **A. This is amendment No. 4.**
 2 Q. Amendment No. 3, Exhibit No. 4.
 3 **A. Okay. Well, this just increases the budget**
 4 **without increasing the time.**
 5 Q. Were you aware of any of the communications back
 6 and forth between Mr. Shukla or Mr. Mercado or
 7 Mr. Latimer that lead to Amendment 3?
 8 **A. No.**
 9 Q. Is that something that would typically go through
 10 the Law Department?
 11 **A. No. Typically they would negotiate the contract**
 12 **and then submit the whole contract to the Law**
 13 **Department.**
 14 Q. Did you in connection with Exhibit 2 -- I'm
 15 sorry, in connection with Exhibit 3, which is
 16 marked -- which is actually Amendment 2, and the
 17 costing supplement at the back of that
 18 document -- Mr. Mercado's costing supplement
 19 dated April 4, 2005, were you aware of any drafts
 20 that had gone back and forth about that costing
 21 supplement?
 22 **A. No.**
 23 Q. Were you aware of who proposed those terms,
 24 whether it was the contractor or Inland Waters
 25 who proposed the materials?

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1 **A. Inland Waters was the contractor, and I don't know**
 2 **who proposed.**
 3 Q. I'm sorry. Were you aware whether Inland Waters
 4 proposed terms for the costing supplement or
 5 whether it was something Mr. Mercado wanted?
 6 **A. I don't know.**
 7 Q. Okay.
 8 **MS. BADALAMENTI:** Do you want to take a
 9 break?
 10 **MR. FAISON:** Sure.
 11 (Off the record at 11:50 a.m.)
 12 (Back on the record at 12:09 p.m.)
 13 **BY MS. BADALAMENTI:**
 14 Q. What was your involvement -- let me ask it this
 15 way: At some point there begin to be, in the
 16 context of that 1977 case you were talking about,
 17 disputes between Macomb County, Oakland County
 18 and the City of Detroit. Are you aware of that?
 19 **A. There was a constant series of disputes.**
 20 Q. What sort of disputes were you aware of?
 21 **A. Mostly over sewer rates.**
 22 Q. Over -- I'm sorry?
 23 **A. Sewer rates that the city was charging. The**
 24 **counties were constantly arguing that they were**
 25 **too high.**

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1 Q. Was there other disputes that arose in the
 2 context of that 1977 case? Let me ask it this
 3 way: Do you recall a dispute over the radio
 4 system?
 5 **A. Yes.**
 6 Q. What do you recall about that?
 7 **A. The city built -- what happened, the Federal**
 8 **Communications -- the Federal Communications**
 9 **Commission reallocated radio frequencies and**
 10 **required all local governments and governments to**
 11 **switch their radio communications to the 800**
 12 **megahertz band. So the city built a new radio**
 13 **communications system for all -- that was to be**
 14 **used by all departments that used two-way radios**
 15 **if their vehicles to communicate -- police, fire,**
 16 **Department of Public Works and the Detroit Water**
 17 **and Sewerage Department. And the counties,**
 18 **Oakland, Macomb and Wayne County, complained that**
 19 **the city allocated too much of the cost to the**
 20 **Water and Sewerage Department and too little to**
 21 **what were collectively called the general fund**
 22 **departments.**
 23 Q. The general fund departments were City of Detroit
 24 departments?
 25 **A. Yeah. Basically the Water and Sewerage Department**

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1 **is what the city calls a revenue department. It's**
 2 **self-supporting off the water and sewer revenues.**
 3 **And general fund departments are the ones that are**
 4 **funded by tax revenues.**
 5 Q. Do you recall a dispute involving the allocation
 6 of the repair costs for the sinkhole?
 7 **A. Yes.**
 8 Q. What was the nature of that dispute?
 9 **A. At some point Macomb County suggested that the**
 10 **cost should be allocated to all of the customers**
 11 **of the sewer system, and the Water and Sewerage**
 12 **Department had allocated the full cost to Macomb**
 13 **County.**
 14 Q. It was determined that it was a Macomb-only
 15 project?
 16 **A. Yes.**
 17 Q. And the dispute in the 1977 case wasn't with the
 18 amount -- the total amount of the project. It
 19 was with the allocation of it to Macomb only?
 20 **A. Which project? Is that the sewer repair project**
 21 **or the 800 megahertz project?**
 22 Q. Let me ask more clearly. With respect to the
 23 2004 sewer collapse and the repairs, that
 24 project, was the dispute in the 1977 case limited
 25 to whether or not the repair costs should be

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1 allocated to Macomb only?
 2 **A. There came a time eventually when Macomb**
 3 **questioned the total cost, but the initial dispute**
 4 **was just over the allocation.**
 5 **MR. FAISON:** Just a minute. Are we
 6 talking about 1997 or 2004?
 7 **MS. BADALAMENTI:** I'm talking about the
 8 2004 repair costs.
 9 **THE WITNESS:** 2004 collapse, there was
 10 a dispute in which Macomb County suggested that
 11 the project -- that the cost of the repair should
 12 be spread over other communities served by the
 13 Detroit sewage system and not just Macomb County.
 14 **BY MS. BADALAMENTI:**
 15 Q. The Judge Feikens made a determination on that
 16 question of whether or not it's a Macomb-only
 17 project or not, didn't he?
 18 **A. He did. Mr. -- I read the opinion, I think,**
 19 **Tuesday of this week, earlier, yeah.**
 20 Q. Was that the first time that you had read it?
 21 **A. I probably -- I'm sure I read it when he issued**
 22 **it.**
 23 Q. Were you the liaison between DWSD and the
 24 attorneys representing DWSD --
 25 **A. Yes.**

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1 Q. -- in that lawsuit?
 2 Was there anybody else from your
 3 department who was involved?
 4 **A. By 2004, yeah, there was lawyer named Laurie**
 5 **Koester who was working with me.**
 6 Q. Can you say that name again.
 7 **A. K-o-e-s-t-e-r, pronounced "coaster," but she had**
 8 **just started working with me and she really wasn't**
 9 **up to speed.**
 10 Q. And the attorneys -- the outside counsel for the
 11 city in that case was Mark Jacobs; is that right?
 12 **A. Mark Jacobs and a partner of his named Marilyn**
 13 **Peters, and they may have used Bob Franzinger,**
 14 **F-r-a-n-z-i-n-g-e-r, on that case. I'm not sure.**
 15 Q. And Marilyn Peters was the litigation counsel and
 16 Mark Jacobs was sort of the counsel who handled
 17 the contracting or negotiations; is that fair?
 18 **A. Mark -- Mark is an environmental law specialist at**
 19 **Dykema. He's in their environmental department,**
 20 **but he did general counsel and contracting work**
 21 **along with me. Marilyn Peters is a litigator with**
 22 **Dykema.**
 23 Q. And I think you said earlier you don't litigate?
 24 **A. I stopped doing litigation in the early 90s. I**
 25 **just transitioned into more transactional work.**

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1 Q. Okay. You said at one point Macomb did question
 2 the total amount of the repairs in connection
 3 with the 1977 lawsuit. When was that?
 4 **A. It wasn't really in connection with the lawsuit,**
 5 **but at some point they got -- they had an engineer**
 6 **look at it and asked him for an opinion on if the**
 7 **cost could have been lower. He said that it could**
 8 **have been lower.**
 9 Q. Was that after the federal indictment came out?
 10 Do you remember -- let me just make it clear --
 11 after the first superseding indictment came out
 12 against Kwame Kilpatrick, Victor Mercado and
 13 others?
 14 **A. I don't remember the date of the first superseding**
 15 **indictment. I saw -- I think -- I saw his report**
 16 **when I was reviewing documents in getting ready**
 17 **for this dep, and I think it was 2011 or something**
 18 **like that, which would have been after the**
 19 **indictment.**
 20 Q. At any time prior to that do you recall Macomb
 21 questioning the total of project costs?
 22 **A. No.**
 23 Q. Do you remember providing information for that
 24 lawsuit to Mark Jacobs or Marilyn Peters
 25 regarding the total costs or the breakdown of the

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1 total costs on the repair project?
 2 **MR. FAISON:** Just a minute.
 3 **THE WITNESS:** I'm a little confused.
 4 **MR. FAISON:** Object to the question.
 5 There's been no testimony about a lawsuit per se,
 6 not yet.
 7 **BY MS. BADALAMENTI:**
 8 Q. Okay. In the context of that 1977 case and the
 9 claims that Macomb asserted regarding the
 10 allocation of those repair costs to it as opposed
 11 to spread out to all communities, did you provide
 12 any documents to Macomb or to your counsel on
 13 that case to be provided to Macomb?
 14 **A. I did not, no.**
 15 Q. Are you aware of whether or not any documents
 16 breaking down the repair costs were provided?
 17 **A. I did not do any active work on that case. Mark**
 18 **and Marilyn did that.**
 19 Q. So you would not have been involved with the
 20 creation of any spreadsheets or other documents
 21 that were provided to Macomb that itemized the
 22 total costs?
 23 **A. No.**
 24 Q. Okay. What other disputes were involved in the
 25 1977 case -- let me see if I can streamline it

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1 for you. There was questions about phantom
 2 improvements that were included within the rates;
 3 is that right?
 4 **A. That was not in part of the 1977 -- the way the**
 5 **1977 lawsuit was administered, there were a series**
 6 **of consent judgments that were entered by Judge**
 7 **Feikens, so every time there was a dispute between**
 8 **one of the counties and DWSD, rather than filing a**
 9 **lawsuit, they would file a motion in that lawsuit**
 10 **as a way of keeping it in front of Judge Feikens.**
 11 **So that was -- it was a unique procedure, unique**
 12 **to Judge Feikens. You don't file a complaint.**
 13 **You have to file a motion or something. But**
 14 **that's the way it was done. And the phantom**
 15 **projects issue was not raised. It was sort of**
 16 **raised when we were negotiating the transfer of**
 17 **the interceptor to Macomb and Oakland counties,**
 18 **which was part of the resolution -- ultimate**
 19 **resolution of that lawsuit. But Craig Hupp, I**
 20 **think, who was Macomb County's lawyer in those**
 21 **negotiations created the word "phantom projects."**
 22 Q. And phantom project, as it was referred to at
 23 that time, was a project that was included in
 24 part of the rates that the local communities were
 25 paying the DWSD, but the project had not actually

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1 been constructed?

2 **A. That was the way it was explained by Craig. And**

3 **there were a couple of projects that were put into**

4 **the capital improvement program and put into the**

5 **rates that were charged to Macomb County that**

6 **never got built, and part of the price negotiation**

7 **involved in the transfer -- the transfer agreement**

8 **was pulling those -- identifying those projects,**

9 **pulling them out -- back out of the rate base and**

10 **giving Macomb County a credit for them on the**

11 **purchase price.**

12 Q. Was that credit referred to as the global

13 settlement amount?

14 **A. The global -- no, the global settlement is a**

15 **settlement agreement that the parties entered into**

16 **with Judge -- before Judge Feikens to resolve a**

17 **number of issues that were out there. That was --**

18 **and part of that was that the community -- the**

19 **City of Detroit and Oakland and Macomb counties**

20 **would negotiate the sale of the interceptor to**

21 **drainage districts to be created by those two**

22 **counties, and the price resolution was done in the**

23 **context of the transfer agreement. I don't think**

24 **it -- I don't think it was in the settlement**

25 **agreement. I think it was worked out as we were**

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1 **setting the price to be paid for the sewer.**

2 Q. So the settlement agreement was essentially an

3 agreement to reach an agreement on the purchase?

4 **A. That was part of it. We also resolved the**

5 **disputes over the cost allocation for the 800**

6 **megahertz project and a couple of other disputed**

7 **issues as well.**

8 Q. Was the settlement agreement the means by which

9 the cost allocation of 15 Mile and Hayes was

10 resolved or was that resolved in its entirety by

11 Judge Feikens' ruling?

12 **A. Judge Feikens resolved the allocation issue, that**

13 **it was Macomb County only. And I don't recall**

14 **Macomb County ever filing a formal complaint about**

15 **the total cost of it. At some point Mr. Marrocco**

16 **showed us -- shared with us the report that said**

17 **it could have been done for a lower cost, but I**

18 **don't recall him ever filing a formal litigation**

19 **pleading over that.**

20 Q. In the '77 case?

21 **A. Or in any case, I don't think.**

22 Q. There was also a dispute in the 1977 lawsuit

23 about the interest rate that was being charged by

24 DWSD. Are you familiar with that?

25 **A. Yes.**

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1 Q. There was a dispute over whether or not the bond

2 interest rate could be added onto by DWSD and

3 there was a claim that DWSD was trying to make a

4 profit on that?

5 **A. There was a claim by Macomb County that the**

6 **interest rate was higher than it should have been,**

7 **and they asked that that interest rate be reduced,**

8 **and that was done in the context of the**

9 **negotiation of the purchase price of the sewer,**

10 **and they did get a credit on that. Detroit agreed**

11 **to recalculate the interest rate, get a lower**

12 **rate, and give them a credit for the difference.**

13 Q. And was that credit part of the global

14 settlement?

15 **A. No, that was part -- well, the agreement**

16 **transferring the sewer was one component of the**

17 **global settlement, but it's a separate contract.**

18 **There's a settlement agreement that says we will**

19 **negotiate the transfer of the interceptor, and**

20 **then there was the actual contract transferring**

21 **the interceptor. So it's two separate documents.**

22 Q. The discussions about the first component, which

23 was that we're going to agree to transfer the

24 Macomb Interceptor system to Macomb --

25 **A. Yes.**

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1 Q. -- that -- what led to that? Was it all of these

2 disputes or was it the interest rate?

3 **A. It was the whole collective thing, and another**

4 **thing that led -- that drove that was after the**

5 **sewer collapse had been repaired, the city hired**

6 **an engineering firm to do a survey and inspection**

7 **of the whole interceptor -- the entire length of**

8 **it. And they came back with a report that said**

9 **there was deterioration throughout the whole**

10 **length of all of the interceptors, and with an**

11 **estimated repair cost of over \$100 million, and**

12 **that was what really started the conversation**

13 **about the interceptor transfer going.**

14 Q. Was that consultant NTH Consultants?

15 **A. Yes.**

16 Q. Was that report complete by the time that the

17 settlement agreement is entered into?

18 **A. I don't know. It was certainly complete by the**

19 **time the sewer transfer contract was completed. I**

20 **don't know if it was completed by the time the**

21 **global settlement agreement was signed, but it was**

22 **certainly done by the time the sewer transfer**

23 **contract was signed.**

24 **MARKED FOR IDENTIFICATION:**

25 **DEPOSITION EXHIBIT 5**

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1 12:25 p.m.
 2 **BY MS. BADALAMENTI:**
 3 Q. Okay. I've marked as Exhibit 5 the document
 4 titled Settlement Agreement. Do you recognize
 5 that document?
 6 **A. Yeah, this is the document we referred to as the**
 7 **global settlement agreement.**
 8 **MR. FAISON:** Counsel, I have a
 9 question. Are you purporting that this document,
 10 Exhibit 5, is the complete settlement agreement.
 11 **MS. BADALAMENTI:** I'm asking the
 12 witness.
 13 **THE WITNESS:** I think there was some
 14 exhibits to it. There are exhibits referenced in
 15 this document that are not attached to the exhibit
 16 that you handed me.
 17 **BY MS. BADALAMENTI:**
 18 Q. Okay. This document was designed to resolve
 19 claims in the 1977 lawsuit by way of an agreement
 20 -- to reach an agreement on the purchase by
 21 Macomb of the sewer system; is that right?
 22 **A. Let me correct something that I just said. The**
 23 **interest rate adjustment that I say was included**
 24 **in the sewer transfer agreement is also in this**
 25 **settlement agreement. I had forgotten that. But**

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1 **it's in here. The amount was \$17,050,000, and it**
 2 **was given to Macomb County as a credit on the**
 3 **purchase price.**
 4 Q. Were you involved in the negotiation of those
 5 credits?
 6 **A. I was involved in the negotiation of the**
 7 **settlement agreement. The credits on the interest**
 8 **rates were done -- were not done by me. The**
 9 **negotiators for DWSD on that issue were Bart**
 10 **Foster and Mark Jacobs.**
 11 Q. At the time of the settlement agreement did you
 12 understand that the price for the purchase of the
 13 Macomb system was going to be calculated by
 14 making a determination of the system debt?
 15 **A. Yes. There was a general agreement among Detroit,**
 16 **Oakland County and Macomb County that the purchase**
 17 **price would be the outstanding bond debt on that**
 18 **interceptor, and then adjusted by the interest**
 19 **rate credit and the so-called phantom projects.**
 20 **Those would be resolved by giving credits on the**
 21 **amount of the outstanding debt. And that's how we**
 22 **worked out the purchase price.**
 23 Q. The settlement agreement refers to a Letter of
 24 Intent. Are you familiar with the Letter of
 25 Intent?

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1 **A. Yes.**
 2 Q. Do you know whether that Letter of Intent was
 3 ever executed?
 4 **A. I believe it was.**
 5 Q. Just to make the record clear, the document that
 6 I handed you that's titled Settlement Agreement
 7 has been marked as Exhibit 5; is that correct?
 8 **A. Yes.**
 9 **MARKED FOR IDENTIFICATION:**
 10 **DEPOSITION EXHIBIT 6**
 11 12:30 p.m.
 12 **BY MS. BADALAMENTI:**
 13 Q. The document that I've marked as Exhibit 6 is
 14 titled the Macomb Acquisition Agreement. It's
 15 dated September 2nd of 2010. Do you recognize
 16 that document?
 17 **A. Yeah. This is -- it's got an Exhibit A marked all**
 18 **over it, too. I assume that's from something**
 19 **else.**
 20 Q. Short of that Exhibit A, do you recognize the
 21 document?
 22 **A. Yeah, this is the contract under which the City of**
 23 **Detroit transferred the Macomb Interceptor to the**
 24 **the Macomb Interceptor Drain Drainage District and**
 25 **the County of Macomb.**

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1 **MR. FAISON:** Counsel, again, does this
 2 document purport to be the complete document?
 3 **MS. BADALAMENTI:** I'm asking the
 4 witness.
 5 **MR. FAISON:** Well, let me say for the
 6 record, I mean, you produced the document. You,
 7 produced the document. You identified it. If
 8 it's not a complete document and you don't want to
 9 say so, then you have to ask the witness whether
 10 this is a complete document or not.
 11 **MS. BADALAMENTI:** Well, generally the
 12 attorney asking the questions decides what
 13 questions are appropriate to ask, but I haven't
 14 asked the witness anything other than whether or
 15 not he recognizes the document, so why don't you
 16 give me opportunity to ask him about the document,
 17 and then if you're not satisfied, you can follow
 18 up.
 19 **MR. FAISON:** If you're going to
 20 represent a document to be something, I'm entitled
 21 to at least understand what your representation
 22 is.
 23 **MS. BADALAMENTI:** Okay. Your objection
 24 is on the record.
 25 **THE WITNESS:** What's the question now?

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1 **BY MS. BADALAMENTI:**
 2 Q. Do you recognize this document to be the Macomb
 3 Acquisition Agreement?
 4 A. **Yes.**
 5 Q. Okay. Do you believe there to be any schedules
 6 or exhibits that are missing or would you even be
 7 able to answer that?
 8 A. **I can't answer that. There are a lot of -- this**
 9 **one has a number of schedules and exhibits with**
 10 **it, and I don't know if it's all of them, but**
 11 **certainly most of them.**
 12 Q. Were you part of the negotiations that led to
 13 this acquisition agreement being executed?
 14 A. **Yes, I was.**
 15 Q. Were you part of the disclosures that were made
 16 in connection with the execution of this
 17 document?
 18 A. **I don't know what type of disclosures you are**
 19 **referring to?**
 20 **MR. FAISON:** Can I just ask for a
 21 moment. Did this document get marked as
 22 Exhibit 6?
 23 **MS. BADALAMENTI:** It did.
 24 **MR. FAISON:** Thank you.
 25 **BY MS. BADALAMENTI:**

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1 Q. Let me ask it a different way. There was due
 2 diligence that was contemplated by this
 3 agreement. Are you familiar with that?
 4 A. **Yes.**
 5 Q. Were you part of any of the due diligence under
 6 taken by Macomb or Detroit in connection with
 7 this agreement?
 8 A. **The due diligence was undertaken by Macomb. I**
 9 **don't recall Detroit doing any at all. And I was**
 10 **involved in all of the negotiation meetings that**
 11 **led to this document. If there were separate due**
 12 **diligence meetings, I don't think I was part of**
 13 **those.**
 14 Q. You had said that Bart Foster was involved in
 15 this process. Do you know what his involvement
 16 was?
 17 A. **Bart is a water and sewerage rate consultant.**
 18 **He's the one that creates the water and sewage**
 19 **rates for the city. He's very involved in the**
 20 **department's finances and rate setting. And he is**
 21 **also works on the city's bond issues. He was the**
 22 **one who really went into the bond documents and**
 23 **determined what the amount of the outstanding debt**
 24 **was. And then he had some meetings with Macomb**
 25 **County's lawyer, Craig Hupp, who have looked at**

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1 **the same documents and they -- they're the two who**
 2 **ultimately did most of the negotiating, looked at**
 3 **the final numbers.**
 4 Q. I took the deposition of Bart Foster, so let me
 5 try to streamline some of these questions.
 6 A. **Okay.**
 7 Q. It's my understanding that Bart Foster was
 8 provided with some project information and a
 9 project total for any project that was undertaken
 10 to repair, construct the facilities that were
 11 going to be a part of this purchase. Is that a
 12 fair characterization?
 13 A. **I would assume that he had that information, yes.**
 14 Q. Do you know whether he was provided with project
 15 files or invoices or ever reviewed the legitimacy
 16 of charges?
 17 A. **I don't know if he did that or not.**
 18 Q. Do you know whether it was his custom and
 19 practice to do that for Detroit?
 20 A. **Bart was not involved in administering or**
 21 **overseeing construction projects in any way, so he**
 22 **probably looked at -- I'm not going to speculate,**
 23 **but he was not involved in managing the repair**
 24 **work or overseeing any other construction projects**
 25 **for the department.**

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1 Q. In the course of calculating that system debt
 2 total, were you asked to provide any project
 3 files to Bart or to Macomb County?
 4 A. **No.**
 5 Q. Were you asked to provide any project information
 6 or project totals to Macomb County?
 7 A. **No.**
 8 Q. Do you know that Mr. Shukla provided some
 9 information regarding projects?
 10 A. **I'm not aware of that.**
 11 Q. Do you know who provided Bart Foster with the
 12 information that he needed?
 13 A. **It wasn't me. I don't know who he talked to.**
 14 Q. The document -- the negotiation surrounding this
 15 purchase went on for a number of years, as I
 16 understand. Is that your understanding?
 17 A. **I don't know about years, but certainly several**
 18 **months.**
 19 Q. The document is dated September 2nd, 2010. How
 20 long before that do you think the negotiations
 21 began?
 22 A. **We started the negotiation sometime in 2009. I**
 23 **don't remember exactly when, but --**
 24 Q. The settlement agreement that's in front of you
 25 is marked May 12, 2009. Would the negotiations

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1 regarding the purchase of the system have
 2 predated that?
 3 **A. I think this -- they would have started -- I think**
 4 **they would have started after this.**
 5 Q. The settlement agreement contemplated purchase of
 6 the system; is that right?
 7 **A. Yes.**
 8 Q. And how long did the negotiations go on prior --
 9 with respect to the execution of the settlement
 10 agreement and those terms?
 11 **A. Several months.**
 12 Q. Okay. Into 2008 or before that?
 13 **A. Oh, they would have started in 2008, sure.**
 14 Q. 2007 were there discussion about Macomb's
 15 purchase of the system?
 16 **A. I don't remember. The real catalyst that -- my**
 17 **recollection is that the catalyst that started the**
 18 **discussion about transferring the interceptor was**
 19 **the NTH report on the condition of it, so it would**
 20 **have been after that report was provided to the**
 21 **counties.**
 22 Q. There is a schedule 3.8 within these documents.
 23 I'll let you get to it. It's marked on the top
 24 page ID 3613. Have you seen this document?
 25 **A. Yes.**

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1 Q. Were you involved in the preparation of this
 2 document?
 3 **A. This was put together primarily by Craig Hupp and**
 4 **Bart Foster. I was not involved in those**
 5 **meetings.**
 6 Q. There's a line item for CS-1368, the 2004
 7 repairs, and there's a total of in excess of
 8 \$54 million. Do you see that there?
 9 **A. Yes.**
 10 Q. Do you know how that total was arrived at?
 11 **A. No, I don't.**
 12 Q. Do you know what disclosures were made with
 13 respect to that amount?
 14 **A. No, I don't.**
 15 Q. Were there any questions from Macomb County
 16 regarding that amount?
 17 **A. Not to me.**
 18 Q. Are you aware of whether or not there were any
 19 representations made to Macomb County by anyone
 20 regarding CS-1368?
 21 **A. No. I mean, I didn't make any. I don't know what**
 22 **anybody else might have said.**
 23 Q. Were any of these -- let me take you back. On
 24 page 2 of 25 of the acquisition agreement there's
 25 paragraph 1.10. Do you see that?

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1 **A. Okay.**
 2 Q. "'Detroit's knowledge' shall mean the actual
 3 knowledge of its Director, its Assistant
 4 Corporation Counsel assigned to DWSD matters, its
 5 Assistant Chief of Engineering or its Engineering
 6 Support Manager Craig Stanley." Do you see that?
 7 **A. Yes.**
 8 Q. Who was the director being referred to in that
 9 paragraph?
 10 **A. At that point the director of the department was**
 11 **Pamela Turner.**
 12 Q. And when did Pamela Turner become the director?
 13 **A. After Victor Mercado resigned. I don't remember**
 14 **the date. But she was the deputy director under**
 15 **Mercado. She -- she came in after Mercado.**
 16 Q. Was there an interim director that served
 17 somewhere in there, too?
 18 **A. Yeah.**
 19 Q. Who was that?
 20 **A. Anthony Adams.**
 21 Q. Anyone else?
 22 **A. No. My recollection is that after Mercado -- Pam**
 23 **Turner, I believe, was the deputy director under**
 24 **Mercado, and when he resigned, Anthony Adams**
 25 **became interim director for about six months. And**

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1 **then Pam became director.**
 2 Q. How long did Pam serve as the director?
 3 **A. Oh, three or four years.**
 4 Q. And who --
 5 **A. She retired after I did.**
 6 Q. Okay.
 7 **A. Wait. I'm sorry. She retired -- she retired**
 8 **about six months before I did.**
 9 Q. Did someone else take her position that you knew
 10 of?
 11 **A. Yeah.**
 12 Q. Who was that?
 13 **A. Susan McCormick, I think, is her name.**
 14 Q. The assistant corporation counsel assigned to
 15 DWSD matters referred to in this paragraph, would
 16 that be you?
 17 **A. Yes.**
 18 Q. The assistant chief of engineering at that time
 19 would have been who?
 20 **A. I don't remember.**
 21 Q. And --
 22 **A. One of Shukla's assistants, but I'm not sure what**
 23 **is.**
 24 Q. Shukla was chief of engineering at the time?
 25 **A. He was the assistant director at that time --**

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1 **assistant director in charge of engineering. The**
 2 **department had four or five assistant directors in**
 3 **those days.**
 4 Q. Victor Mercado resigned in 2008; is that right?
 5 **A. I believe so, yes.**
 6 Q. In connection with the 1977 lawsuit, did you
 7 become aware at any point of Victor having
 8 requested from Judge Feikens that he be appointed
 9 as special administrator in the place of
 10 Mr. Kilpatrick?
 11 **A. No.**
 12 Q. Do you know what the circumstances of Victor's
 13 resignation were?
 14 **A. No.**
 15 Q. Do you know the reason he gave for resigning?
 16 **A. No.**
 17 Q. Do you know if he was asked to resign?
 18 **A. I don't.**
 19 Q. Do you know if there was tension between
 20 Mr. Mercado and Mayor Kilpatrick at the time he
 21 resigned or prior to?
 22 **A. I don't know.**
 23 Q. In your capacity as assistant corporation counsel
 24 on the DWSD matters, have you had occasion to
 25 have meetings with Mr. Ferguson --

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1 **A. Never.**
 2 Q. -- Bobby Ferguson?
 3 **A. No.**
 4 Q. Other than the instances that you told me, did
 5 you have discussions with Inland?
 6 **A. No.**
 7 Q. The representations in this --
 8 **A. I'll take that back. Inland Waters has done many**
 9 **contracts over the years, and I had conversations**
 10 **with Dennis Oszust about other projects. I didn't**
 11 **deal with him directly on this one.**
 12 Q. Okay. I'll take you to paragraph 3.7 of the
 13 acquisition agreement. Paragraph 3.7 provides
 14 "Except as set forth in Schedule 3.7...there is
 15 no action, suit or proceeding pending or, to
 16 Detroit's Knowledge, threatened against or
 17 affecting Detroit before any governmental entity
 18 in which there is a reasonable possibility of an
 19 adverse decision which could have a material
 20 adverse effect upon the ability of Detroit to
 21 perform its obligations." Do you see that?
 22 **A. Yes.**
 23 Q. "...or which in any manner questions the validity
 24 of this agreement." The capitalized term "to
 25 Detroit's Knowledge" would include your

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1 knowledge, right?
 2 **A. Yes.**
 3 Q. And prior to this, September 2nd, 2010 date, you
 4 had been interviewed by a U.S. attorney in
 5 connection with 1368; is that true?
 6 **A. Not in connection with 1368. In connection with**
 7 **general city contracting procedures. They never**
 8 **asked me specific questions about 1368.**
 9 Q. Were you ever present when Mr. Shukla was
 10 interviewed?
 11 **A. No.**
 12 Q. The documents that you were asked to put together
 13 for the grand jury subpoenas, were those
 14 documents including documents related to 1368?
 15 **A. I was never asked to put together documents in**
 16 **response to a grand jury subpoena. I was shown**
 17 **the subpoena and asked by either Mr. Mazurek or**
 18 **Mr. Keelean where in the Water Board Building**
 19 **those files would be and who would be the**
 20 **custodian of them. They're the ones who actually**
 21 **went and found the documents and put together the**
 22 **document packages for the grand jury.**
 23 Q. Was that in inquiry with respect to 1368?
 24 **A. I don't remember the specific contracts that were**
 25 **mentioned in the subpoenas. I would have known it**

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1 **at the time, but I have honestly forgotten all**
 2 **that.**
 3 Q. Paragraph 3.8 Disclosure of System Debt, do you
 4 see that paragraph?
 5 **A. Yes.**
 6 Q. The last sentence of that paragraph, "None of the
 7 written data or information furnished or made
 8 available to Macomb County by Detroit as part of
 9 the due diligence," do you know what material was
 10 furnished to Macomb County as part of the due
 11 diligence?
 12 **A. No, I don't.**
 13 Q. Would Mr. Shukla or anybody else who's included
 14 within that category of Detroit's knowledge know
 15 what documents were provided?
 16 **A. Shukla was not on the negotiating team for this**
 17 **acquisition agreement, so it would not have been**
 18 **him. The due diligence mostly related to the**
 19 **finances, so that would have been Bart Foster.**
 20 Q. Paragraph 5.3 of this agreement provides that
 21 Detroit shall promptly inform the Macomb County
 22 and MID of any claims which it becomes aware that
 23 might reasonably be expected to become the
 24 subject of litigation affecting the Macomb
 25 system. Did you make any disclosures to Macomb

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1 County about claims or threatened claims which
 2 you were aware at that point?
 3 **A. We had a couple of lawsuits arising out of the**
 4 **sewer collapse which were disclosed to Macomb**
 5 **County during the negotiations, and there is a**
 6 **second later on about retained liabilities. There**
 7 **were property damage lawsuits by people who owned**
 8 **property adjacent to the sewer collapse, and one**
 9 **of them I -- we settled both of them. One of them**
 10 **I know we settled before this document was signed.**
 11 **The other one was -- I don't remember if we did it**
 12 **before or after, but Detroit -- that was the**
 13 **lawsuit with the homeowners whose backyards were**
 14 **at the bottom of the hole. There were about ten**
 15 **of them. DWSD settled those. And I don't**
 16 **remember if that was done before or after this**
 17 **lawsuit was signed, but DWSD kept that liability**
 18 **and paid the settlement.**
 19 **Q. Other than those disclosures, did you make any**
 20 **other disclosures to Macomb County in accordance**
 21 **with this paragraph?**
 22 **A. No, I don't recall any. No. Those were the**
 23 **claims we were aware of, and by the time this was**
 24 **signed, the statute of limitations for filing**
 25 **claim -- lawsuits for tort -- statute of**

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1 **limitations for tort lawsuits in Michigan is three**
 2 **years, so by this time this was done, the -- well,**
 3 **okay. The statute of limitations for those had**
 4 **run out, if there were any others that were**
 5 **pending out there.**
 6 **The other thing that was out there that**
 7 **we became aware of during this negotiation and**
 8 **during -- which actually was discovered, I think,**
 9 **by NTH when they did their survey of the whole**
 10 **sewer is that back in the early 1960s when the**
 11 **sewer was built, there were times when the tunnel**
 12 **boring machine that was 50 feet underground**
 13 **strayed out of the path of the easement, and there**
 14 **were several parts -- segments of that sewer**
 15 **system where the sewer was outside the scope of**
 16 **the easement, which means it was a trespass. And**
 17 **we certainly notified them of that. They got that**
 18 **information when they had the NTH report. And**
 19 **there was an agreement, which I think is spelled**
 20 **out in here, in the agreement. We weren't going**
 21 **to hold up the agreement to the contract to**
 22 **correct all the easements. There was an agreement**
 23 **that Macomb County would take responsibility for**
 24 **obtaining the easements for the -- Macomb County**
 25 **would obtain new easements for where the sewer**

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1 **actually was, and Detroit would reimburse them for**
 2 **that cost.**
 3 **Q. Did you become aware of before you retired a**
 4 **claim that was asserted by the City of Detroit**
 5 **against the contractors and subcontractors**
 6 **involved in 1368?**
 7 **A. Yes.**
 8 **Q. What do you know about that?**
 9 **A. What I know about that is that at some point**
 10 **somebody in the city -- and I think it was the**
 11 **director of the Law Department, determined**
 12 **after -- I think this was after the convictions in**
 13 **the criminal prosecution of Mayor Kilpatrick and**
 14 **Bobby Ferguson and Victor Mercado, that there was**
 15 **a possibility of suing those companies for the**
 16 **amounts that they were paying in bribes and**
 17 **kickbacks, and my involvement in that was**
 18 **Ms. Crittendon asked me to sit on the interviews**
 19 **with the law firms that she was considering hiring**
 20 **to do that work. And so I sat in on interviews**
 21 **with about four different law firms, and**
 22 **Ms. Crittendon made her selection. And then those**
 23 **cases were filed, and at that point I was getting**
 24 **ready to retire, and I wasn't much involved in the**
 25 **cases that were filed.**

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1 **Q. During that process did you come to learn the**
 2 **amount that Detroit would claim was overcharged**
 3 **on 1368 or used or paid out in the kickbacks?**
 4 **A. No. I was just involved in interviewing the law**
 5 **firms. I think I wrote the legal services**
 6 **contract for Miller Canfield after Ms. Crittendon**
 7 **selected them, but after that, I was out of it.**
 8 **Q. What other firms were interviewed other Miller**
 9 **Canfield?**
 10 **A. Dykema Gossett, and there were two others and I**
 11 **don't remember -- I think Butzel Long might have**
 12 **been one of them, and there -- there was another**
 13 **one, and I don't remember who it was. I seem to**
 14 **remember interviewing four law firms.**
 15 **Q. Did you interview Bodman?**
 16 **A. I don't think they applied for it. That would**
 17 **have been a real conflict of interest given their**
 18 **representation of Macomb County. No, I don't**
 19 **think they were on the list.**
 20 **Q. Did you learn before your retirement that Detroit**
 21 **had recovered in excess of -- I should say at**
 22 **least \$7 million in settlements with the**
 23 **contractors and subcontractors they had asserted**
 24 **those claims against?**
 25 **A. I think those settlements came after I retired. I**

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1 **was not involved in those cases in any way.**
 2 Q. The acquisition agreement, and in particular,
 3 schedule 3.8 provides or has Macomb County paying
 4 for the entire cost of the sinkhole repair
 5 project. Would you agree with that?
 6 **A. This just has a number on it which is higher than**
 7 **the total price of the contract amendment,**
 8 **although, as I said, the contract with Inland**
 9 **Waters covered more than just this work.**
 10 Q. Do you understand the sinkhole repair to have
 11 cost more -- total of the repairs to have been
 12 more than \$54 million?
 13 **A. No, it's my understanding that that was the total**
 14 **cost.**
 15 Q. Okay. And you're unfamiliar with the settlements
 16 between Detroit and the contractors and
 17 subcontractors?
 18 **A. I was not involved in those at all.**
 19 Q. Just so we have a good record, I'm going to mark
 20 this as Exhibit 7.
 21 **MARKED FOR IDENTIFICATION:**
 22 DEPOSITION EXHIBIT 7
 23 12:53 p.m.
 24 **BY MS. BADALAMENTI:**
 25 Q. Is this the Letter of Intent -- did I say I

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1 marked it as Exhibit 7? Is this the Letter of
 2 Intent we were referring to earlier?
 3 **A. This is the Letter of Intent, although this copy**
 4 **is not signed.**
 5 Q. But do you believe it was signed?
 6 **A. My recollection is that it was, but I don't see a**
 7 **signed copy here. Maybe it wasn't. My**
 8 **recollection is that it was, but --**
 9 Q. Section 9, Conduct of Operations, refers to in
 10 several paragraphs that you were to obtain the
 11 consent of the transferee to any -- in certain
 12 circumstances. In particular, paragraph 9(d)
 13 provides obtaining consent of the transferee to
 14 any extraordinary transaction or any transaction
 15 which is not at arm's length with any person or
 16 entity, in either case relating to the property."
 17 Did you ever obtained Macomb County's consent to
 18 any extraordinary transaction or transaction not
 19 at arm's length?
 20 **A. I did not.**
 21 Q. Who were you interviewed by at the United States
 22 Attorney's Office? Who were you interviewed by?
 23 **A. It was an assistant U.S. attorney and an**
 24 **investigator from the Environmental Protection**
 25 **Agency's Inspector General, a man and a woman. I**

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1 **don't remember their names.**
 2 Q. Did you have counsel with you?
 3 **A. Yeah, Ed -- well, the interview took place in Ed**
 4 **Keelean's office, and he was there.**
 5 Q. Did you and Ed Keelean discuss who else had been
 6 interviewed through that point?
 7 **MR. FAISON:** I'm sorry, I didn't hear
 8 the question.
 9 **BY MS. BADALAMENTI:**
 10 Q. Did you and Ed Keelean discuss who else had been
 11 interviewed by these same individuals?
 12 **A. No. He -- Mr. Keelean sat in on a number of**
 13 **interviews with city employees with the federal**
 14 **investigators, and he did not share their names**
 15 **with me.**
 16 **MS. BADALAMENTI:** I think I might be
 17 done, but if I could just have a couple minutes.
 18 **MR. FAISON:** Sure.
 19 (Off the record at 12:56 p.m.)
 20 (Back on the record at 12:59 p.m.)
 21 **BY MS. BADALAMENTI:**
 22 Q. Do you recall any of the agents that interviewed
 23 you to be Carol Paszkiewicz?
 24 **A. It was Paszkiewicz, yes. She was one.**
 25 Q. Do you recall Mark Chutkow interviewing you from

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1 the U.S. Department of Justice?
 2 **A. I don't remember that name. It might have been**
 3 **him. I don't remember. But I do remember**
 4 **Ms. Paszkiewicz.**
 5 Q. Looking for a final time at Exhibit 7, the Letter
 6 of Intent, the Letter of Intent requires that you
 7 promptly notify -- and I'm referring to paragraph
 8 9 (e) -- that you promptly notify the transferee,
 9 Macomb, of any emergency or other change in the
 10 normal course relating to the property. Did you
 11 notify Macomb about any change in the normal
 12 course of 1368?
 13 **A. This is long after 1368. This is after the work**
 14 **on 1368 was done, so this doesn't cover that.**
 15 Q. So did you notify Macomb that there had been a
 16 change in the normal course as to 1368?
 17 **MR. FAISON:** Just a minute. Is the
 18 question whether he did within the period of the
 19 due diligence?
 20 **MS. BADALAMENTI:** Sure.
 21 **BY MS. BADALAMENTI:**
 22 Q. In the period of due diligence, did you notify
 23 Macomb that there had been a change in the way
 24 that Amendment 2 to 1368 was awarded or anything
 25 else about the normal course of --

1 A. No, because that contract had been closed out by
 2 the time this was executed. This doesn't cover
 3 anything under that. This deals with events going
 4 from the date it was executed going forward. So
 5 that wouldn't cover anything under 1368 because
 6 that contract had already been completed and
 7 closed out.

8 Q. Did you have a discussion with Mark Jacobs or
 9 anybody else about crafting the language in a way
 10 that would only relate to things going forward as
 11 opposed to things going back?

12 A. This -- this language was worked out by myself,
 13 Mark Jacobs, Craig Hupp and Joe Colaianne. This
 14 is not just my language. This was a collaborative
 15 effort by Macomb County's lawyers and Oakland
 16 County's lawyers.

17 Q. Did you walk through the terms of the acquisition
 18 agreement with Mark Jacobs before it was executed
 19 by Mr. Latimer?

20 A. Yes. Mark and I were both in the negotiation
 21 team.

22 Q. And you knew that the document would contain the
 23 definition of Detroit's knowledge, and that would
 24 include you?

25 A. Yes.

1 Q. With respect to the Letter of Intent, my last
 2 question, is respect to paragraph 9(f). It
 3 indicates that you will in the due diligence
 4 period promptly notify the transferee, Macomb, of
 5 any governmental, regulatory or third party
 6 complaints, claims, investigations or hearings.
 7 Other than what you've told me about, did you
 8 notify Macomb about any complaints, claims,
 9 investigations or hearings?

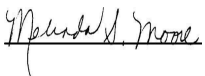
10 A. No.

11 MS. BADALAMENTI: That's it.

12 THE WITNESS: Thank you.

13 MR. FAISON: Thank you.

14 (The deposition was concluded at 1:02 p.m.)
 15 Signature of the witness was not requested by
 16 counsel for the respective parties hereto.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF MACOMB)
 5
 6 I, MELINDA S. MOORE, certify that this
 7 deposition was taken before me on the date
 8 hereinbefore set forth; that the foregoing
 9 questions and answers were recorded by me
 10 stenographically and reduced to computer
 11 transcription; that this is a true, full and
 12 correct transcript of my stenographic notes so
 13 taken; and that I am not related to, nor of
 14 counsel to, either party nor interested in the
 15 event of this cause.
 16
 17
 18
 19
 20 
 21
 22 MELINDA S. MOORE, CSR-2258
 23 Notary Public,
 24 Macomb County, Michigan
 25 My Commission expires: September 6, 2016

54

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff and Counter-Defendant,

vs.

STATE OF MICHIGAN,

Defendant and Counter-Plaintiff,

vs.

CITY OF DETROIT, a municipal corporation, and
DETROIT WATER AND SEWERAGE DEPARTMENT,

Defendant and Cross-Plaintiff,

vs.

ALL COMMUNITIES AND AGENCIES UNDER
CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES,

et al.

_____ /

Civil Action No. 77-71100
Hon. John Feikens

FILED
MAY 18 2009
CLERK'S OFFICE
DETROIT

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made May 12, 2009 by and among the City of Detroit ("City"), the Detroit Water and Sewerage Department ("DWSD"), the County of Macomb ("Macomb"), the County of Oakland ("Oakland"), and the County of Wayne ("Wayne"), collectively, the "Parties." For valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. **Background and Purpose.**

A. Under the terms of this Agreement, including but not limited to Section 9(A), the Parties collectively wish to resolve all currently outstanding disputes pending under *United States v. City of Detroit, et al.* (Case No. 77-71100) (the "Action") before the U.S. District Court for the Eastern District of Michigan (the "Court") (the "Disputes"), including, but not limited to:

- (i) All Disputes related to 800 MHz radio system, including the use of the Court's power to approve the contract or allocation of costs among the various ratepayers (the "Radio Contract Claims");
- (ii) All Disputes related to the allocation of repair costs related to the August 4, 2004 collapse on the Romeo Arm of the Macomb Interceptors at 15 Mile and Hayes (the "2004 Collapse Claims");
- (iii) All Disputes related to the interest rate charged to Macomb related to debt service associated with the cost of repairs of the 2004 Collapse, with subsequent repairs to the Macomb Interceptors and with the construction of the Garfield Interceptor (the "Interceptor Interest Rate Claims");
- (iv) All Disputes and claims between the Parties related to costs for repairs and renovation of the interceptor sewers listed in Exhibit 1 of Exhibit D of this Agreement, including any disputes and claims between the Parties relating to the associated pump stations, meters, appurtenant facilities, related easements, as built plans and records of construction and operation, and all property otherwise described in Exhibit D (collectively, "the Interceptors");
- (v) All Disputes related to the continuing oversight of contracts exceeding \$500,000 by the Infrastructure Management Group at the direction and supervision of the Court for the duration of the activity under the Action; and
- (vi) All Disputes related to the efforts to find a global settlement of issues regarding DWSD governance, including but not limited to the motions, petitions, and requests involving the work of F. Thomas Lewand, Timothy O'Brien, Public Sector Consultants, the Infrastructure Management Group, and the Community Leadership Group (formerly the Business Leadership Group).

B. The Interceptors have been a source of disagreements since their construction by DWSD, and as other customers own analogous interceptors, the Parties wish to avoid future questions regarding the Interceptors by transferring liability for, ownership of, and operations of the Interceptors to Macomb, Oakland, or any of them or such entity as Macomb or Oakland may designate (collectively, the "Interceptor Transferees").

C. The Parties recognize the need to create a mechanism other than litigation for the resolution of future disputes, and recognize the successes that have come through the Southeast Michigan Consortium for Water Quality (the "Consortium"), the Technical Advisory Committee (the "TAC"), the Sewer Steering Committee (the "SSC"), and their various subcommittees. Building on this foundation, the Parties seek to create a mechanism that is an alternative to litigation of any future disputes and to formalize processes for disclosure of information at earlier stages to prevent disputes from arising.

D. The Parties recognize the importance of acting cooperatively to secure collective benefits and wish to work together to secure outside sources of funding for the regional water and sewer infrastructure challenges facing all DWSD ratepayers.

2. Existing Motions

As of the Effective Date of this Agreement, all motions, petitions, or requests that are pending in the Action are resolved as follows:

A. Radio Contract

- (i) In complete satisfaction of the Radio Contract Claims and pending motions related thereto, all Parties agree to accept without objection the recommendation of the U.S. District Court Judge Gerald Rosen, attached hereto as Exhibit A. The Parties acknowledge that the settlement amount shall be Twenty Seven Million Dollars (\$27,000,000.00) ("the Radio Contract Claims Settlement"). The funds comprising the Radio Contract Claims Settlement shall be transferred to DWSD from the City no later than 30 days after the Execution Date and shall be deposited on a pro rata basis into the DWSD funds from which DWSD made payments for the 800 MHz radio system. It is the intent of the Parties that \$23,990,785 of the settlement be credited to radio capital costs, \$2,680,033.11 be treated as nonoperating income, and \$329,181.89 as attorney fees, recognizing that when the relevant audit is performed, another treatment may be required by the auditors. After settlement sums are credited to radio capital costs, the total capital cost for the 800 MHz radio system allocated to DWSD shall be \$19,544,000. The Sewer Rates Work Group shall determine the method for allocation of i) capital and operating costs for the 800 MHz radio system between DWSD's water and sewer operations, ii) and, with regard to sewer operations, between wholesale and retail customers. The portion treated as nonoperating income will be treated

consistent with the treatment of other nonoperating income in the sewer rate model.

- (ii) The Parties also acknowledge that in an effort to fairly distribute litigation costs among the customers benefited by this settlement, DWSD agrees to act as a conduit by which the attorney fees of certain customers are distributed via rates to all benefited customers. To that end, DWSD shall pay attorneys fees in the amount of \$621,829.47. Of that amount \$329,181.89 shall be paid from amounts received from Detroit's General Fund as follows: to Macomb \$90,500.00; to Wayne \$50,000.00; to Oakland \$188,681.89. The balance of attorneys fees in the amount of \$292,647.58 ("Additional Attorney Fees") shall be paid as follows: to Macomb \$76,371.55; to Wayne \$49,250.34; and to Oakland \$167,025.69. The Additional Attorney Fees shall be recovered by DWSD through treatment in the rates of all first-tier (non-Detroit) sewer customers as common to all expenditures.
- (iii) The Radio Contract Claims Settlement Payment shall operate to resolve any and all disputes, damages and causes of action related to the Radio Contract Claims.

B. 2004 Collapse Claims, 2006 Interceptor Repairs, Interceptor Interest Rate

The Parties, in complete satisfaction of the 2004 Collapse Claims, Macomb's claims with regard to the 2006 repairs to the Macomb Interceptors, and the Interceptor Interest Rate Claims, agree to principal and interest rate adjustments on charges by DWSD to Macomb in the aggregate amount of \$17,050,000. These adjustments shall be implemented as described in the Implementation Outline attached to this Agreement as Exhibit B.

C. Remaining Motions

The Parties expressly agree that all other pending motions, petitions, or requests shall be dismissed without prejudice, including but not limited to those motions, petitions, or requests related to those subjects listed in Section 1(a) of this Agreement, including all those listed in Exhibit C. The dismissals shall convert to dismissals with prejudice upon occurrence of the closing contemplated by the Asset Purchase Agreement or other agreement fulfilling the transaction described in the Letter of Intent attached hereto as Exhibit D and described below. In the event that any Party declares this Agreement to be null and void under Section 9(A) of this Agreement, the Parties shall have 30 days from the date of such voiding to refile any matter. If any matter is not refiled within 30 days, the dismissal of such matter shall convert to a dismissal with prejudice.

3. Interceptor Transfer

As described in the Letter of Intent attached hereto as Exhibit D, the City intends to transfer ownership of the Interceptors from DWSD to the Interceptor Transferees. The closing contemplated by Exhibit D shall fully resolve all claims in the Action regarding the Interceptors,

including but not limited to those regarding the condition and or need for repair of the Interceptors, as well as such other matters as may be stated in Exhibit D. Exhibit D shall be deemed dated as of the Execution Date.

4. **Model Contract**

The Parties have agreed on certain revisions to the "Model Contract" for sewerage services that have been proposed by DWSD after consultation with its customers. The Parties to this Agreement who have the power to enter into the contract as revised have done or will do so on or before the Effective Date. Those Parties who do not have the authority to enter into the Model Contract will, in good faith, attempt to secure approval of that contract. All Parties will recommend adoption of the Model Contract to customer communities that have not previously entered into the Model Contract. The Model Contract is attached hereto as Exhibit E.

The Parties have entered into a number of Rate Settlement Agreements in the Action (the "Rate Agreements"). The Parties agree to work in good faith to identify those portions of the Rate Settlement Agreements that still apply to the rates as currently determined and create a restatement of the Rate Agreements that contain only those portions of the Rate Agreements that are still relevant. The Parties agree that the purpose of the restatement is not to re-negotiate or alter any provisions of the Rate Agreements, but only to consolidate those portions of the Rate Agreements still in effect.

5. **Director's Council**

DWSD hereby establishes a Director's Council. The Director's Council's function shall be to work cooperatively to address concerns and issues raised by wholesale customers as to (i) DWSD decisions regarding the operation of sewer facilities owned or operated by DWSD that serve the wholesale customers, (ii) rates, or (iii) other issues. The Director's Council shall be comprised of the Mayor of the City of Detroit or on the Mayor's behalf, the Director of DWSD; the Public Works Commissioner of Macomb County; the Water Resources Commissioner of Oakland County; the Wayne County Executive or on the Executive's behalf, the Director of Department of Environment; and the Working Chair of the Consortium, who shall serve at the discretion of the Council. The Director's Council shall be chaired by the Director of DWSD. The Council shall meet not less than quarterly. The Director's Council may be expanded by mutual agreement of its participants and any Party may substitute and/or replace its designated representative on an annual basis, or as otherwise required from time to time. The Director's Council does not replace or limit the functions of any other current working groups or committees.

At the Chair's discretion, representatives of the TAC, the SSC, or other First Tier sewer customers may be invited to attend Director's Council meetings. Should the TAC or SSC ask to have representatives attend a specific meeting of the Director's Council, the Director's Council Chair may issue such an invitation. If a meeting will address topics directly impacting a First Tier sewer customer, the Chair shall issue an invitation to participate if such invitation is requested by such customer.

Matters or issues not resolved pursuant to committees/work groups under the applicable sewer contracts and not otherwise controlled by the dispute resolution clause in those contracts shall be subject to the dispute resolution procedures set forth in the Model Contract, which is subject to Section 4 of this Agreement.

6. Cooperation in Seeking Outside Funding

The Parties agree to make a cooperative effort to seek funding from outside sources to help address regional water and sewer infrastructure projects. Each Party will make good faith efforts to secure such funding. No Party shall be required to participate in any such funding effort unless that Party shall benefit from the funds sought.

7. Duration

This Agreement shall be effective on the day it is entered as part of an Order of the Court (the "Effective Date") in the Action. Unless otherwise specified, all provisions of the Agreement shall survive the conclusion of the Action or the cessation of any Consent Decree in the Action. Upon the last day of the execution of the last Party to execute this Agreement (the "Execution Date"), all Parties agree to seek approval and entry of the Agreement by the Court.

8. Consent Judgment

Upon the closing contemplated by the Letter of Intent attached as Exhibit D ("the Closing"), the Parties hereby agree to file a joint Motion for Relief (the "Motion") pursuant to Fed. R. Civ. P. 60(b)(5) and the provisions of the Second Amended Consent Judgment entered by this Court on August 3, 2000 (the "SACJ"). The Motion may seek a replacement of the SACJ with a Third Amended Consent Judgment consisting of this Agreement and the restatement described in Section 4 of this Agreement.

9. Miscellaneous

A. Mutual Interdependence

- (i) The Parties acknowledge that all of the terms and conditions of this Agreement are mutually interdependent and are essential consideration for the rights, obligations and claims entered into or released by each Party under this Agreement. Until the closing of the transfer of the interceptors contemplated in the Letter of Intent attached as Exhibit D, if any of the provisions of this Agreement or its application to any person or circumstance is determined by any court of competent jurisdiction to be invalid to any extent, unenforceable or is not implemented or performed for any reason, then any Party may, within 30 days, declare any provision of this Agreement void and without effect. After the closing of the transfer of the interceptors, if any provision of this Agreement or its application to any person or circumstance shall to any extent be invalid or

unenforceable, the remainder of this Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

- (ii) If the Parties fail to reach agreement on the terms of a definitive agreement regarding the transfer of the Interceptor within 180 days from the Execution Date, or if no Closing occurs within 360 days of the Execution Date (each a "Triggering Date"), any Party may, within 30 days of the first-occurring Triggering Date, declare any provision of this Agreement void and without effect. If any provision of this Agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

B. This Agreement, and the Exhibits, contains the entire agreement between the Parties with regard to the matters addressed in this Agreement. No Party has made any representations except those expressly set forth in this Agreement, and no rights or remedies are, or shall be, acquired by any Party by implication or otherwise unless expressly set forth in this Agreement.

C. This Agreement may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Agreement. Upon the Execution Date, the Parties hereby authorize F. Thomas Lewand to file this Agreement on their behalf with the Court with an accompanying motion for entry of this Agreement by the Court in which all Parties expressly join.

D. The rights and benefits under this Agreement shall inure to the benefit of and be binding upon the respective Parties hereto, their agents, successors, and assigns.

E. Any and all Exhibits referred to in this Contract are and shall be incorporated by reference herein.

F. This Agreement shall be deemed to be mutually drafted. The Exhibits have been mutually drafted by the Parties signatory thereto.

Signature Page to Follow

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN READ AND SIGNED IN
DUPLICATE ORIGINAL BY DULY AUTHORIZED LEGAL REPRESENTATIVES OF THE
PARTIES, AFTER ALL DULY REQUIRED APPROVALS HAVE BEEN MADE.

CITY OF DETROIT

By: Pamela Turner

Title: Interim Director

DETROIT WATER AND SEWERAGE
DEPARTMENT

By: Pamela Turner

Title: Interim Director

COUNTY OF MACOMB

By: _____

Title: _____

COUNTY OF OAKLAND

By: _____

Title: _____

COUNTY OF WAYNE

By: _____

Title: _____

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CITY OF DETROIT

By: _____

Title: _____

DETROIT WATER AND SEWERAGE
DEPARTMENT

By: _____

Title: _____

COUNTY OF MACOMB

By: Atty. V. Marano

Title: _____

COUNTY OF OAKLAND

By: _____

Title: _____

COUNTY OF WAYNE

By: _____

Title: _____

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PARTIES, AFTER ALL DULY REQUIRED APPROVALS HAVE BEEN MADE.

CITY OF DETROIT

By: _____

Title: _____

DETROIT WATER AND SEWERAGE
DEPARTMENT

By: _____

Title: _____

COUNTY OF MACOMB

By: _____

Title: _____

COUNTY OF OAKLAND

By: _____

John P. McCulloch

Title: Water Resources Commissioner

COUNTY OF WAYNE

By: _____

Title: _____

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN READ AND SIGNED IN
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CITY OF DETROIT

By: _____

Title: _____

DETROIT WATER AND SEWERAGE
DEPARTMENT

By: _____

Title: _____

COUNTY OF MACOMB

By: _____


Title: _____

COUNTY OF OAKLAND

By: _____

Title: _____

COUNTY OF WAYNE

By:  _____

Title: Assistant County Executive

Index of Exhibits

Exhibit A	Recommendation of U.S. District Court Judge Gerald Rosen
Exhibit B	Implementation Outline
Exhibit C	List of Matters Resolved
Exhibit D	Letter of Intent
Exhibit E	Model Sewer Contract

A

December 18, 2008

Judge John Feikens
231 W. Lafayette Blvd.
Room 851
Detroit, MI 48226

Re: Civil Action No. 77-71100

Dear Judge Feikens:

On March 23, 2007, you issued an Opinion and Order Regarding 800 MHz Radio Contract Cost Allocation in the above matter. You then asked me to assist in attempting a settlement.

I have conducted several lengthy negotiations at which all parties were present. Initially the parties were significantly apart.

I have reviewed the facts carefully, including your opinion, the arguments of the parties and recommendations of the Special Master and his colleagues on interest charges.

I recommend a settlement of \$27,000,000.00 to be paid by the City general fund to DWSD promptly upon execution of a settlement document.

Very Truly Yours,

Judge Gerald E. Rosen

B

EXHIBIT B

Implementation Outline - December 2008

Effect of Deductions to Principal Amounts Owed by Macomb

	Macomb County	Wayne County (c)	Oakland County	Detroit Retail	Total
1 Original Settlement Amount	\$ (17,600,000)				(17,600,000)
2 Responsibility for Original Settlement Amount - %	(a)	27.9%	26.2%	45.9%	
3 Responsibility for Original Settlement Amount	\$	4,910,000 \$	4,610,000 \$	8,080,000 \$	17,600,000
4 Portion of Original Settlement Related to Force Acct	\$ (3,950,000)				(3,950,000)
5 Responsibility for Original Settlement Amount - %	(a)	27.9%	26.2%	45.9%	
6 Responsibility for Original Settlement Amount	\$	1,100,000 \$	1,030,000 \$	1,820,000 \$	3,950,000
<u>Wayne County Adjustment</u>					
7 Reallocation of Wayne County's Force Account Portion - Line (6)	\$	(1,100,000)			(1,100,000)
8 Responsibility for "Non-Macomb" Amount - %	(a)		36.3%	63.7%	
9 Responsibility for Adjusted Amount	\$	550,000	200,000 \$	350,000 \$	1,100,000
10 Impact of Adjusted Settlement Amount	(b)	\$ (17,050,000) \$	3,810,000 \$	4,810,000 \$	8,430,000 \$

(a) Based on projected System allocation volumes for FY 2009-10

(b) Lines (1) + (3) + (7) + (9)

(c) Includes individual contract communities (Allen Park, Dearborn, etc.)

C

Exhibit C
List of Matters Resolved

1. 800 MHz Radio

- 06/06/2007 2064 ORDER Concerning Further Settlement Discussions in the 800 MHz Radio Contract Cost Allocation Case (a single dispute in the above-captioned case). Signed by Honorable John Feikens. (CCoh) (Entered: 06/06/2007)
- 03/23/2007 2029 OPINION and ORDER Regarding 800 mhz Radio Contract Cost Allocation - Signed by Honorable John Feikens. (CCoh) (Entered: 03/23/2007)

2. Briefing Order re Compliance and Succession Planning

- 06/13/2008 2137 MOTION Set Aside Order Regarding Compliance re 2122 Order by Oakland Cnty. (Quadrozzi, Jaye)[OAKLAND COUNTY'S OBJECTION TO ORDER REGARDING COMPLIANCE] Modified on 6/16/2008 (PPau). (Entered: 06/13/2008)

3. Facilitator (Timothy O'Brien)

- 06/13/2008 2141 Amended MOTION Explain the precise nature of the role of Timothy O'Brien re 2106 Order, 2128 Order and *Objection to Orders for Payments of Fees and Expenses* by Oakland Cnty. (Quadrozzi, Jaye)[SECOND AMENDED REQUEST FOR CLARIFICATION] Modified on 6/16/2008 (PPau). (Entered: 06/13/2008)
- 06/14/2007 2067 REQUEST *Amended Request for Clarification of the Role of Timothy O'Brien and for Reconsideration of the Court's Prohibition of Representation of the Parties by Counsel* by Oakland Cnty. (Gothelf, Beth) (Entered: 06/14/2007)

4. Infrastructure Management Group

- 06/13/2008 2140 MOTION Withdraw Order Extending IMG Contract and approving payment re 2119 Order, 2126 Order, 2105 Order by Oakland Cnty. (Quadrozzi, Jaye)[OBJECTION TO ORDER EXTENDING IMG CONTRACT] Modified on 6/16/2008 (PPau). (Entered: 06/13/2008)

5. **2004 Interceptor Collapse**

04/06/2007 2035 MOTION for Reconsideration re 2028 Order on
Petition/Request/Application by Macomb, County of. (Hupp, R.)
(Entered: 04/06/2007)

6. **Interceptor Interest Rate**

05/14/2007 2059 RESPONSE to 2053 MOTION ADOPT IN PART AND MODIFY IN
PART ADJUNCTS REPORT AND RECOMMENDATION
REGARDING INTERCEPTOR INTEREST RATE DISPUTE re 2031
Report of Special Master MOTION ADOPT IN PART AND MODIFY
IN PART ADJUNCTS REPORT AND RECOMMENDATION
REGARDING INTERCEPTOR INTEREST RATE DISPUTE re 2031
Report of Special Master filed by Detroit, City of, Detroit Water and
Sewerage Department. (Peters, Marilyn) (Entered: 05/14/2007)

04/30/2007 2053 MOTION ADOPT IN PART AND MODIFY IN PART ADJUNCTS
REPORT AND RECOMMENDATION REGARDING
INTERCEPTOR INTEREST RATE DISPUTE re 2031 Report of
Special Master by Macomb, County of (Hupp, R.) (Entered:
04/30/2007)

02/08/2007 2003 MOTION for Summary Judgment on *Interest Rate Issues* by Macomb,
County of. (Hupp, R.) (Entered: 02/08/2007)

7. **Leadership Group**

07/25/2007 2076 MOTION Joinder in Oakland county's Renewed Motion for Clarification
for Activities of the Business Group and Clarification of Court's June 21,
2007 letter by Wayne, County of. (McCauley, Patrick) (Entered:
07/25/2007)

7/19/2007 2074 MOTION for Reconsideration /*Renewed Motion for Clarification for
Activities of the Business Group and Clarification of Court's June 21,
2007 Letter* by Oakland Cnty. (Gotthelf, Beth) (Entered: 07/19/2007)

8. **Public Sector Consultants**

06/13/2008 2139 Renewed MOTION Objection to Court Order for Payments PSC re 2110
Order, 1978 Request, 2118 Order, 2099 Order *Supplemental Objection*
by Oakland Cnty. (Quadrozzi, Jaye)[SUPPLEMENTAL OBJECTION
TO COURT ORDER OF NOVEMBER 30, 2006] Modified on
6/16/2008 (PPau). (Entered: 06/13/2008)

12/08/2006 1978 REQUEST *Objection to Order of November 30, 2006 Approving Payment for Services of PSC by Oakland Cnty. (Miller, Donald)*
(Entered: 12/08/2006)

9. Special Master (F. Thomas Lewand)

06/13/2008 2138 Third MOTION Clarification of Role of Special Master re 2075 MOTION for Reconsideration /*Second Supplement to Motion for Further Clarification of Role of Special Master, and Continuation of Objection to Activities of Special Master, 1977* MOTION for Order *Further Clarifying Role of Special Master (Supplemental Motion)* by Oakland Cnty. (Quadrozzi, Jaye)[THIRD SUPPLEMENT TO OAKLAND COUNTY'S MOTION FOR FURTHER CLARIFICATION] Modified on 6/16/2008 (PPau). (Entered: 06/13/2008)

07/19/2007 2075 MOTION for Reconsideration /*Second Supplement to Motion for Further Clarification of Role of Special Master, and Continuation of Objection to Activities of Special Master* by Oakland Cnty. (Gotthelf, Beth) (Entered: 07/19/2007)

12/08/2006 1977 MOTION for Order *Further Clarifying Role of Special Master* by Oakland Cnty. (Miller, Donald) (Entered: 12/08/2006)

D

LETTER OF INTENT

This Letter of Intent is dated _____, 2009 and is by and among the City of Detroit ("City"), the County of Macomb ("Macomb"), and the County of Oakland ("Oakland"), each of the State of Michigan, and sets forth the principal terms and conditions of the proposed transaction (the "Transaction") pursuant to which the City would transfer to Macomb, Oakland, or any of them or such entity as Macomb or Oakland may designate ("Transferee Entity"), ownership of certain interceptor sewers and related property, in accordance with the terms hereof and of that certain Settlement Agreement of even date herewith between the parties and the Detroit Water and Sewerage Department ("Settlement Agreement"). Macomb, Oakland and such entity, or any of them, are referred to herein as the "Transferee."

1. Acquired Property. The Transferee would acquire all of City's right, title and interest in and to the interceptor sewers listed on Exhibit "1", associated pump stations, meters, appurtenant facilities, related easements, as built plans and records of construction and operation, and other related property as agreed by the parties, and as generally described in Exhibit "1" (collectively, the "Property"), and pursuant to the terms of definitive transfer agreements (collectively, the "Transfer Agreement") to be negotiated and entered into by the parties in accordance with the terms hereof; one between the City and Macomb for the portion of the Property that will be transferred solely to Macomb, and the other between the City and Oakland and Macomb (or the Transferee Entity, as determined by Oakland and Macomb) for the portion of the Property that will be transferred to Oakland and Macomb (or the Transferee Entity). The Property would be acquired by the Transferee free and clear of all liens, claims and encumbrances of whatever nature.

2. Assumed Obligations, Responsibilities and Liabilities. After the Closing (as defined in Paragraph 7 below) and transfer of the control of the Property, Transferee agrees to assume all responsibilities, liabilities and obligations for the operation, maintenance and repair of the Property, except for Claims (as defined herein) that accrued prior to the transfer of control. The City shall remain responsible for all Claims that accrue prior to Closing and transfer of control of the Property. To the extent permitted by applicable law, the City agrees to defend and hold harmless the Transferee for a period not to exceed the applicable statute of limitations for said Claims. Claims shall be defined as any alleged third-party: losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against the parties, or for which the parties may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened. In this paragraph, the term "Claims" pertains to third-party claims only and does not include claims between the parties.

3. Consideration. The consideration (the "Consideration") for the acquisition of the Property would be an amount equal to the outstanding debt (including accrued interest) owed by the City that is allocated to the Property in the Sewer Rate Model as of the Closing, and subject, in the case of the Macomb Interceptor, to an adjustment in the amount of \$17,050,000, and to such other adjustments to be agreed upon by the parties. At the Closing, Transferee would deliver to City cash equal to the Consideration (the "Closing Cash Consideration").

4. Additional Agreements. In addition to the Transfer Agreement, the following agreements would be entered into in connection with the consummation of the Transaction:

(a) a bill of sale for all of the Property that is tangible personal property executed by the City;

(b) an assignment of all of the Property that is intangible personal property executed by the City;

(c) for each interest in real property, a recordable warranty deed, an Assignment of Rights of Way and Easements, or such other appropriate document or instrument of transfer, as the case may require;

(d) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by the Transferee; and

(e) a Transition Services Agreement, if determined necessary by Transferee and subject to the agreement of the parties.

5. Access and Investigation. Between the date of this Letter of Intent and the Closing of the Transaction (the "Diligence Period"), the City shall afford (and shall cause City's officials, employees, attorneys, accountants and other agents to afford) to the Transferee and its agents and representatives reasonable access to the Property, and the files, agreements, permits, authorizations, documents, and books and records of the City (including, without limitation, financial information, engineering data and information, as built plans, computer programs, tapes and other records) related to the Property as well as access to City's personnel, employees and contractors whose job activities relate to the Property, and the opportunity to make notes, abstracts and copies therefrom, as may be requested by the Transferee in order that the Transferee may have full opportunity to make such investigations as it shall desire with respect to the Property in connection with the transactions contemplated hereby and the City shall furnish the Transferee with such additional financial and operating data and other data and information as to the Property as the Transferee shall, from time to time, reasonably request for such purpose. In addition, the Transferee shall have the right to have any real property and tangible personal property which is part of the Property inspected and investigated by the Transferee's agents and representatives, at the Transferee's cost and expense, for purposes of determining the physical condition and legal characteristics of the real property and tangible personal property. In the event subsurface or other destructive testing is recommended by any of the Transferee's agents or representatives, the Transferee shall, subject to obtaining the City's prior consent, be permitted to have the same performed. In the event any such investigations

disturb any portion of the Property, the Transferee shall, at its sole cost and expense, promptly restore such property to its prior condition.

The Transferee agrees to perform its inspection of the Property in a safe and lawful manner and agrees to be responsible for any damage to any person or to the Property arising out of the acts or omissions of the Transferee or its agents and representatives. To the extent permitted by applicable law, and without waiving any rights and privileges under Michigan law, the Transferee also shall be responsible for and shall defend, indemnify and hold the City harmless from and against any claim, loss, liability, action, suit, penalty, cost, damage or expense (including, without limitation, reasonable attorneys' fees, court costs, consultants' fees and expenses) which may be imposed upon, incurred by or asserted against the City arising out of the acts or omissions of the Transferee or its agents and representatives in connection with the inspection of the Property.

The Transferee shall notify the City at least 48 hours in advance of all entries onto the Property and shall schedule and inspections of the Property so that the City's representative may observe such inspection and shall coordinate such inspection with any activities of the City's representatives. The Transferee and its agents and representatives shall conduct the inspection of the Property at reasonable times and in a manner which does not interfere with the City's use or operation of the Property or its contractors' activities.

Throughout all phases of the Transferee's inspection of the Property, the Transferee's agents and representatives shall keep in force, at its sole cost and expense, with insurance companies licensed to do business in the State of Michigan, insurance coverages reasonably required by the City with respect to all of the Transferee's agents' and representatives' activities at the Property. The City shall be named as additional insured on all policies of insurance (except Workers' Compensation).

The City does not assume any risk, liability, or responsibility or duty of care as to the Transferee or its agents and representatives when on the Property, and the Transferee acknowledges and agrees that the Transferee and its agents and representatives enter the Property and conduct the inspections thereof at their own risk.

6. Conditions. The parties' obligations to consummate the Transaction would be subject to the satisfaction of each of the following conditions at or prior to Closing, any of which may be waived in whole or in part by the parties to the extent permitted by applicable law:

(a) The parties agree to make a cooperative effort to seek funding from outside sources to help address infrastructure needs. Each party will make good faith efforts to secure such funding. Obtaining funds on terms and conditions satisfactory to Oakland and Macomb, in amounts sufficient to address such infrastructure needs, will be a required condition to consummate the Transaction.

(b) In addition, the parties' obligations to consummate the Transaction would be subject to conditions and satisfaction of conditions to Closing customary in transactions of this type including, but not limited to:

- (i) execution of the Transfer Agreement and related agreements and documents reflecting the terms of the proposed Transaction as set forth herein or otherwise agreed to in writing by the parties, including, without limitation, the agreements identified in Paragraph 4 hereof (collectively with the Transfer Agreement, the "Definitive Agreements") and containing representations, warranties, covenants, and conditions of the parties customary in transactions of this type, satisfactory in form and substance to the parties;
- (ii) organization of the Transferee Entity;
- (iii) execution of an agreement between Oakland and Macomb Counties with regard to the creation and operation of the Transferee Entity;
- (iv) the satisfactory completion in the Transferee's sole discretion of the Transferee's due diligence investigations of the Property, including, without limitation, with respect to all operational, financial, environmental, engineering, legal and accounting matters;
- (v) receipt of all governmental and third-party permits, licenses, consents and approvals required under applicable court orders, laws, third party contracts and the charter documents of the parties, including, but not limited to, as applicable under the circumstances of the Transaction as set forth in the Definitive Agreements (collectively, the "Approvals");
- (vi) approval of the City's Board of Water Commissioners;
- (vii) approval of the City's City Council;
- (viii) approval of Macomb's Board of Commissioners (if required under the circumstances of the Transaction);
- (ix) approval of Oakland's Board of Commissioners (if required under the circumstances of the Transaction);
- (x) approval of Oakland's Water Resources Commissioner;
- (xi) approval of Macomb's Public Works Commissioner;
- (xii) approval of the governing body of any entity designated by Oakland and Macomb to be the Transferee;
- (xiii) any approvals or permits required by the Michigan Department of Environmental Quality;
- (xiv) receipt by the parties of legal opinions customary in a transaction of this type, and including an opinion of bond counsel to the City stating that the Transaction will not violate any applicable bond ordinances of the City;

- (xv) absence of any material adverse change in the Property;
- (xvi) full disclosure by the City of the manner in which sewer rates will be computed for the Transferee Entity subsequent to the Transaction, in detail satisfactory to Transferee in its sole reasonable discretion;
- (xvii) resolution of all outstanding disputes related to sewer services between Oakland and Macomb on the one hand and the City and the City of Detroit Water and Sewerage Department on the other;
- (xviii) the obtaining of financing by the Transferee Entity on terms and conditions satisfactory to Oakland, Macomb and Transferee Entity in their sole discretions, in an amount sufficient to pay the Consideration and expected repairs to Property;
- (xix) execution of a sewer services contract between the Transferee Entity and the City;
- (xx) execution of new sewer services contracts between the Transferee Entity and all of the governmental units discharging directly or indirectly into the Property with substantially the same material terms as the sewer services contract between the City and the Transferee Entity;
- (xxi) contractual arrangements with third parties reasonably necessary for Transferee to operate the Property after the Closing;
- (xxii) absence of defects within and necessary repairs to the Property that are materially greater or different than those disclosed in the NTH inspection reports previously provided to Transferee; and/or
- (xxiii) the absence of any injunction, restraining order or decree of any nature that restrains or prohibits the Transaction.

7. Definitive Agreements; Closing. As soon as practical after this Letter of Intent has been executed, the Transferee's counsel will prepare the initial drafts of the Definitive Agreements and the parties will negotiate the Definitive Agreements in good faith and will use their reasonable efforts to obtain all necessary Approvals and execute and deliver the Transfer Agreement within 180 days after the date of this Letter of Intent. The closing of the proposed Transaction (the "Closing") would occur as soon as practicable following the satisfaction of the conditions to Closing set forth in the Transfer Agreement. The parties will work toward a Closing within 360 days after the date of this Letter of Intent. The date on which the Closing occurs is referred to herein as the "Closing Date."

8. Consents. The parties will cooperate with each other to obtain all Approvals necessary in connection with the consummation of the proposed Transaction and the operation of the Property by the Transferee after the Closing as promptly as is reasonably practicable.

9. Conduct of Operations. Except as otherwise agreed in writing by the Transferee, during the Diligence Period, the City shall:

(a) Provide the Transferee reasonable notice prior to making any capital expenditures or implementing any maintenance, repair or operational decisions of a material nature relating to the Property and reasonably consider any objections of Transferee thereto;

(b) Maintain the Property in a state of repair and condition consistent with the City's normal conduct of the operation of the Property;

(c) Obtain the consent of the Transferee to any sale, assignment, or other transfer of all or any part of City's right, title or interest in and to any portion of the Property;

(d) Obtain the consent of the Transferee to any extraordinary transaction or any transaction which is not at arm's length with any person or entity, in either case relating to the Property;

(e) Promptly notify the Transferee of any emergency or other change in the normal course relating to the Property (or communications indicating that the same may be contemplated) if such emergency or change would be material, individually or in the aggregate, to the Property and its operation and/or the prospects of the City's ability to consummate the proposed Transaction;

(f) Promptly notify the Transferee of any governmental, regulatory or third party complaints, claims, investigations or hearings (or communications indicating that the same may be contemplated);

(g) Comply with all legal requirements and contractual obligations applicable to the Property; and

(h) Maintain all books and records relating to the Property in the ordinary course of business.

10. Expenses. The City and the Transferee shall each bear their own expenses incurred by them in connection with the proposed Transaction, including without limitation, consultants' fees, legal fees and accounting fees, whether or not the proposed Transaction is consummated. As between Oakland and Macomb, the expenses of the Transferee shall be allocated as they shall reasonably determine among themselves.

11. Counterparts; Facsimile; Electronic Transmission. This Letter of Intent may be signed in one or more counterparts, each of which will be deemed to be an original of this Letter of Intent and all of which, when taken together, will be deemed to constitute one and the same agreement. This Letter of Intent may be delivered by facsimile or other electronic transmission with the same effect as if a manually signed original were personally delivered.

12. Governing Law. This Letter of Intent shall be governed by and construed in accordance with the internal laws of the State of Michigan, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan.

13. Entire Agreement. This Letter of Intent and the Settlement Agreement, including Exhibits A, B, C and E attached thereto (collectively, the "Related Documents"), constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior or contemporaneous oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the parties regarding the subject matter hereof. This Letter of Intent is not intended to modify or abrogate the Related Documents, and may be amended or modified only by a writing executed by the parties after receipt of all required Approvals.

14. Binding Effect. Except for Paragraphs 5 and 10 through 13 hereof, the provisions of which the parties acknowledge and agree are legally binding upon them, this Letter of Intent is not contractual in nature and will not give rise to any legally binding obligation on the part of any of the parties hereto. Except as provided in Paragraphs 5 and 10 through 13 hereof, or as may be expressly provided in the Definitive Agreements or other binding written agreement that the parties may hereafter execute and deliver, no past or future course of conduct, or failure to act relating to the proposed Transaction, or relating to the negotiation of the terms of the possible definitive agreements therefor, will give rise to or serve as the basis for any obligation or liability, legally or otherwise, on the part of any of the parties hereto.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

In witness whereof, the persons named below have affixed their signatures on behalf of the parties.

WITNESS

COUNTY OF MACOMB

By: _____

Its: _____

COUNTY OF OAKLAND

By: _____

Its: _____

CITY OF DETROIT

By: _____

Its: _____

E

**WASTEWATER DISPOSAL SERVICES CONTRACT
BETWEEN
CITY OF DETROIT
AND**

This Wastewater Disposal Services Contract ("Contract") is made this ____ day of _____, 20____, by and between the City of Detroit, a municipal corporation ("City"), by its Board of Water Commissioners ("Board"), and _____, a municipal corporation ("Customer"). The Board and Customer may be referred to individually as "Party" or collectively as the "Parties."

Whereas, the City owns a System which is operated by the Board; and

Whereas, the City has contracted to supply Services to numerous governmental entities in southeastern Michigan; and

Whereas, Customer desires to obtain Services from the City; and

Whereas, the System owned by the City and operated by the Board is currently subject to the jurisdiction of the United States District Court for the Eastern District of Michigan and consent judgments and settlement agreements entered in *United States Environmental Protection Agency v City of Detroit*, Civil Action No. 77-77100; and

Whereas, the Board implemented a voluntary partnering effort with its First Tier Customers, of which the Steering Committee is a central part, which assists the Board in data gathering, alternative evaluations and recommendations; and

Whereas, the various work groups are key components of the Steering Committee;

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

Article 1. Definitions

1.01 The following words and expressions, or pronouns used in their stead, shall be construed as follows:

"Board" shall mean the Board of Water Commissioners of the City of Detroit.

"CFS" shall mean cubic feet per second.

"City" shall mean the City of Detroit, a municipal corporation, acting by and through its Board of Water Commissioners.

"Contract" shall mean each of the various provisions and parts of this document, including all attached Exhibits and any amendments thereto, as may be executed by the duly authorized representatives of the Parties, and approved by Customer, the Board of Water Commissioners and the Detroit City Council.

"Customer" shall mean the First Tier Customer that is designated herein as a Party to this Contract.

"Customer Overflow Volume" shall mean that volume of wastewater generated in Customer's service area during a wet weather event that exceeds the capacity of the Customer's system and is discharged before entering the Board's System

"Detroit City Council" shall mean the legislative body of the City of Detroit.

"DWSD" shall mean the Detroit Water and Sewerage Department.

"Exhibit A" shall be a description of the locations of the meters, data acquisition equipment and meter pits serving the Customer.

"Exhibit B" shall be a description of the Customer's Service Area from which wastewater may be delivered to the System. It shall depict the corporate limits of Customer, the agreed upon Service Area, the specific location of the points of metered and/or non-metered connection, and Customer's Maximum Allowable Flow Limit at the points of metered and/or non-metered connection.

"Exhibit C" shall be a description of the purpose, responsibilities, and membership of the DWSD Design Standards Committee.

"Exhibit D" shall be a description of the terms of the Industrial Waste Control Program that has been adopted by the DWSD and the Customer.

"Exhibit E" shall be a description of the alternative dispute resolution procedure established by Section 9.01.

Exhibit F shall be the list of rate settlement agreements cited in Section 20.05, which shall be developed in accordance with the 2009 Settlement Agreement in the case of U.S. Environmental Protection Agency v City of Detroit, et al, E.D. Mich. No. 77-77100.

"First Tier Customer(s)" shall mean all directly contracted Services customers of the System.

"Flow" shall mean wastewater delivered by Customer from Customer's Service Area to the System. It shall include sanitary flow, dry weather infiltration and inflow, and a wet weather flow component. It shall also include wastewater from industrial and/or commercial facilities in compliance with the City of Detroit's Industrial Pretreatment Ordinance, Detroit City Code Section 56-3-56.1 et seq., as amended.

"GDRSS" shall mean the Greater Detroit Regional Sewer System.

"GDRSS Technical Work Group" shall mean the committee consisting of representatives of the DWSD, and its First Tier Customers, and its respective sub-work groups, and shall include its successor or replacement if altered or discontinued. Customer shall have the right to attend all meetings of this committee.

"Instantaneous Flow" shall mean Flow that is calculated and registered by a metering device designed to measure wastewater flow at specified intervals over a specified period of time in accordance with GDRSS flow metering standards.

"Maximum Allowable Flow Limit" shall mean the maximum allowable Flow that Customer may deliver to the System. This limit shall be expressed in units of cubic feet per second and shall be determined by calculating an average of meter readings over a rolling sixty minute time frame.

"Meter" shall mean a wastewater billing meter.

"MGD" shall mean million gallons per day.

"Notices" shall mean all notices, consents, approvals, requests and other communications required to be given under the terms of this Contract.

"Service Area" shall mean the service area of Customer designated in Exhibit B to this Contract.

"Steering Committee" shall mean the advisory committee consisting of representatives of DWSD, its First Tier Customers, and the committee's work groups, and shall include its successor or replacement if altered or discontinued. The committee may, in its discretion, agree to add additional members. Customer shall have the right to attend all meetings of this committee.

"Services" shall mean the collection, transportation, and treatment of wastewater by the DWSD.

"System" shall mean the wastewater disposal system owned, operated and maintained by the City acting through its Board.

"WWTP" shall mean the DWSD's Wastewater Treatment Plant.

Article 2.

Delivery of Flow; Maximum Allowable Flow Limit; Enforcement

2.01 Maximum Allowable Flow Limit. Customer's Maximum Allowable Flow Limit shall be _____ CFS.

CHOOSE ONE SECTION 2.02

Option 1: All Flow

- 2.02 Delivery of All Flow. The City agrees to accept and Customer agrees to deliver all Flow from Customer originating within Customer's Service Area, excluding any Customer Overflow Volumes, up to Customer's Maximum Allowable Flow Limit.

Option 2: Percentage of Flow

- 2.02 Delivery of Percentage of Flow. The City agrees to accept and Customer agrees to deliver no less than _____% of all instantaneous Flow generated within Customer's Service Area and existing as of the date of the Detroit City Council's approval of this Contract.
- 2.03 Calculation of Charges. Customer shall pay the City for Services for Flow delivered into the System at such rates as the City may establish during its cost allocation and rate design processes, which rates shall be established in accordance with Article 20 of this Contract.
- 2.04 Enforcement of Maximum Allowable Flow Limit. The Parties acknowledge that Customer deviations over the Maximum Allowable Flow Limit may occur. If Customer has multiple incidents of Flow exceeding the Maximum Allowable Flow Limit which evidence a pattern of exceedances, as determined in the sole and reasonable discretion of the City, the City shall give written notice of such exceedances to Customer. Thereafter, the City and Customer shall meet and attempt to develop a plan for reducing or eliminating the exceedances. If, in the opinion of the City, the Parties are unable to agree on a plan, the City shall have the right to assert any available remedies for breach of contract.
- 2.05 Nothing in this Article 2 shall be construed to preclude Customer from constructing or operating wastewater facilities for the purpose of reducing or eliminating Customer Overflow Volumes or improving the operation of Customer's sewage system.

Article 3.

Meter Ownership, Maintenance, and Accuracy; Data Collection

- 3.01 Ownership and Maintenance Responsibility. The City shall own and maintain all Meters, data acquisition equipment, and meter pits used for the City's billing purposes. A list of the Meters, data acquisition equipment and meter pits located in Customer's Service Area is attached as Exhibit A.
- 3.02 Meter Maintenance. The City shall maintain its Meters and associated data acquisition equipment in accordance with the GDRSS Phase IV Technical Memoranda 8, or subsequent modifications thereto. The City shall collect data from its Meters in accordance with the Good Metering Practice specified in the GDRSS Phase IV Technical Memoranda 8, or subsequent modifications thereto. The City may contract for any such services.

- 3.03 Meter Accuracy. The City will ensure the accuracy of its Meters. Customer shall have the right to inspect the Meters and check for proper operation, including inspection of records. The City and the GDRSS Technical Work Group shall review the accuracy of the Meters on a regular basis and compare the findings to the then-best available technology. In the event that the accuracy of a Meter is found to be unsatisfactory, as determined by the GDRSS Technical Work Group and approved by the City, the City shall, as soon as practicable, repair, rehabilitate or replace the Meter.

Article 4.

Service Area; Acceptance of Flow

- 4.01 Service Area. The area for which the City agrees to provide Services shall be as shown in Exhibit B (the "Service Area"). Customer shall not deliver to the System any Flow originating in any area outside of the specified Service Area without the written consent of the City. A temporary delivery of Flow from outside the Service Area may be authorized by a memorandum of understanding between Customer and the City. A permanent change in the Service Area shall require amendment of this Contract.

CHOOSE ONE SECTION 4.02

Option 1: Directly Metered Customer

Note: Supplementary language may be necessary in the contracts with Oakland County and Macomb County to properly describe the situation with the interceptors, meters and meter pits.

- 4.02 Acceptance of Flow. The City will accept Flow from Customer, as limited by the terms of this Contract, at the points of metered connection evidenced on Exhibit B. The points of connection between the wastewater collection system owned, operated and maintained by Customer and the System shall also be shown on Exhibit B. The City shall have no responsibility for operating and maintaining any portions of the wastewater collection system upstream of the points of connection shown on Exhibit B. (Note: Supplementary language may be inserted here to address exceptions to this sentence.) The City owns and is responsible for operating and maintaining all parts of its System downstream from Customer's wastewater collection system.

Option 2: Customers Metered By System Meter

- 4.02 Acceptance of Flow. Due to the configuration of the wastewater collection system owned, operated and maintained by Customer and the System, the City will accept Flow from Customer, as limited by the terms of this Contract, at any of the system-metered points of connection evidenced on Exhibit B. The points of connection between the wastewater collection system owned, operated and maintained by Customer and the System shall also be shown on Exhibit B. The City shall have no responsibility for operating and maintaining any portions of the wastewater collection system upstream of the points of connection shown on Exhibit B. (Note: Supplementary language may be inserted here to address exceptions to this sentence.) The City owns and is responsible for operating and maintaining all parts of its System downstream from Customer's wastewater collection system.

- 4.03 Change in Service Area. The boundaries of the Service Area may be changed only by the express written agreement of the City and Customer and shall be embodied in an amendment to this Contract.

Article 5. Flow Measurement

- 5.01 The GDRSS Technical Work Group shall make all reasonable efforts to use the best available information to establish Customer's estimated (1) sanitary flows, (2) dry weather infiltration and inflow, (3) wet weather inflow that reaches the WWTP, and (4) wet weather inflow that does not reach the WWTP.

CHOOSE ONE SECTION 5.02

Option 1: Directly Metered Customer

- 5.02 Process. The GDRSS Technical Work Group shall decide on the type of analyses, and shall carry out analyses of Flow from Customer using Meter information and other relevant data. The results of such analyses shall be utilized by the City, in its sole and reasonable discretion, in its annual cost allocation and rate design processes and shall form the basis of billings for Customer.

Option 2: Customers Metered By System Meter

- 5.02 Process. The GDRSS Technical Work Group shall decide on the type of analyses, and shall carry out analyses to estimate Flow from Customer using the best available information. Customer shall submit to the City, on a monthly basis, water sales data for its individual wastewater customers. The water sales data, in combination with other best available information, shall be utilized by the City, in its sole and reasonable discretion, in its annual cost allocation and rate design processes and shall form the basis of billings for Customer.
- 5.03 The GDRSS Technical Work Group shall have the responsibility for reviewing the information it obtains pursuant to this Article 5 for the purpose of verifying that the information is acceptable from a technical basis. The City shall have the authority, in its sole and reasonable discretion, for determining how best to utilize the information analyzed by the GDRSS Technical Work Group.

Article 6. Flow Re-Allocation

- 6.01 Flow Re-Allocation. Should Customer terminate or reduce its Flow into the System, whether at the end of this Contract's term, by mutual agreement, or due to a breach of this Contract by Customer, that portion of its Maximum Allowable Flow Limit so terminated or reduced shall be re-allocated at the discretion of the City for the benefit of the System. Flow re-allocation between First Tier Customers may occur only with the prior written approval of the City.

- 6.02 Responsibility for Capital Cost Recovery. If Customer reduces or terminates its Flow into the System, Customer shall remain responsible for any remaining capital costs for facilities built to provide Customer its Maximum Allowable Flow Limit. In the event that Customer terminates its participation in the System, Customer shall either (1) pay in full all outstanding capital costs accumulated to the date of its termination of participation in the System, or (2) enter into a contract guaranteeing monthly payments to the City of the remaining capital costs, or (3) assign the responsibility for the remaining capital costs to the First Tier Customer to whom Customer has re-allocated its Flow (the "RAF Customer") provided that Customer shall remain ultimately responsible for the remaining capital costs in the event the RAF Customer fails to timely pay said capital costs.

Article 7.

Contract Term; Renewal and Termination

- 7.01 Term. The City shall provide Services to Customer in accordance with the terms and conditions of this Contract for a period of thirty years from the effective date of this Contract and any ten-year renewal terms (collectively the "Contract Term"). The effective date of this Contract shall be the date that this Contract is approved by the Detroit City Council or Customer's legislative body whichever is later. This Contract replaces and supersedes any prior wastewater disposal services contracts between the Parties.
- 7.02 Renewal. This Contract shall automatically renew at the conclusion of the thirty-year term for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the twenty-fifth year of the thirty-year term stating its intent not to renew this Contract. Thereafter, this Contract shall automatically renew every ten years for an additional ten-year term, unless a Party provides written notification to the other Party in accordance with Article 16 on or before the conclusion of the fifth year of the then current ten-year term stating its intent not to renew this Contract. The automatic renewals of this Contract shall not preclude a review of its terms and the Parties are encouraged to reaffirm or amend its terms as necessary. The Parties may, in writing, mutually agree upon a longer renewal term.
- 7.03 Customer's obligations under Article 6, if any, shall survive the expiration or termination of this Contract and continue until such obligations are satisfied.

Article 8. Construction Standards

- 8.01 Customer shall abide by the design specifications and construction standards as adopted by the City. DWSD shall form a Design Standards Committee. The Design Standards Committee shall create a set of design standards and shall make a recommendation to the City regarding adoption of the design standards. Customer shall submit plans and specifications for new wastewater collection or transport facilities for review and approval to DWSD prior to the installation of such facilities. DWSD will review the plans and specifications and provide Customer with a determination as to its approval or disapproval of the plans and specifications. If Customer does not agree with the outcome

of the DWSD review, Customer may request a review by the Design Standards Committee. The Design Standards Committee will be governed by the guidelines described in Exhibit C.

Article 9. Dispute Resolution

- 9.01 Any and all claims alleging a breach of this Contract shall be submitted to the alternative dispute resolution process set forth in Exhibit E of this Contract.

Article 10. Payment for Services

- 10.01 Bills for Services shall be rendered to Customer on a *INSERT CUSTOMER'S CURRENT BILL CYCLE* basis. All such bills shall be due and payable not more than forty-five calendar days from the date shown on the bill. Any portion of the charges related to accuracy that is not paid by the due date shall be subject to a finance charge at a rate of 1.5% per month for each month that they remain unpaid. Any portion of the total bill, plus any finance charges applied to the bill which are not paid by the next billing date, shall be shown on the next bill as arrears. If the accuracy of a bill is in dispute, Customer shall place the disputed amount of the bill in an interest bearing escrow account maintained by a bank located in Michigan or a County Treasurer pending resolution of the dispute and the finance charge shall thereupon cease. Accrued interest on the escrow account shall be allocated between the Parties directly proportional with the resolution of the dispute. The cost, if any, of maintaining the escrow account shall be allocated between the Parties inversely proportional with the resolution of the dispute. Disputes related to rates for Services charged by the City are specifically excluded from the application of this Article 10. Claims for interest in any other billing dispute shall be resolved by the Director's Council or a court of competent jurisdiction.

Article 11. Emergency Situations

- 11.01 No failure or delay in performance of this Contract, by either Party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event, including but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind enumerated in this Article 11 or otherwise, not within the control of a Party, except that no cause or contingency shall relieve Customer of its obligation to make payment for Services provided by the City.

Article 12. Default Provisions

- 12.01 In the event either Party commits a material breach of this Contract, the Party alleging the breach shall give written notice of the breach to the other Party within a reasonable time of discovering the breach. The Party in breach shall be given a reasonable time to cure the breach. If the Party in breach fails to cure the breach, the non-breaching Party may declare this Contract in default and pursue all available legal remedies, including termination of this Contract for cause.

Article 13. Assignment

- 13.01 This Contract shall not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. Consent to an assignment by either Party shall not be unreasonably withheld.

Article 14. Steering Committee

- 14.01 Establishment. The Steering Committee is formed to facilitate a cooperative working partnership between the City, DWSD and First Tier Customers by facilitating discussion and development of recommendations regarding System operation, maintenance, rates, and best practices to DWSD and the City, and is based on the free flow of information regarding financial and operational functions. The Steering Committee shall maintain bylaws that govern the way it conducts its business. In the event of a conflict between the terms of the bylaws adopted by the Steering Committee and the terms of this Contract, the terms of this Contract shall control.
- 14.02 General Responsibilities. The Steering Committee shall periodically review and evaluate the rates, rate methodology, operation, and maintenance of the System. The Steering Committee shall have the opportunity each year to review the Capital Improvement Program as prepared by DWSD, prior to its adoption by the City.
- 14.03 Annual Report by City. The City will present an annual report to the Steering Committee that shall consist of (1) a general report on System operation and maintenance and (2) a report that lists those contracts for Services, if any, that have been entered into by the City and another customer(s) where the terms of the contract(s) invoke the application of Article 21 of this Contract.
- 14.04 Annual Meeting and Report by Steering Committee. The Steering Committee will meet annually with and report to the Board. The Steering Committee may otherwise meet and communicate with the Board as the Steering Committee deems necessary.
- 14.05 Work Groups. The Steering Committee may create work groups to address specific issues facing the System. The work groups in existence as of January 1, 2009 are the Best Practices Work Group, the GDRSS Technical Work Group, the Public Information Work Group, the Rates Work Group, and the Wet Weather Work Group. Any reference to a particular work group in this Contract shall include its successor or replacement if altered or discontinued.

Article 15. Amendment

- 15.01 The Parties may from time to time consider it in their best interests to change, modify or extend a term, condition or covenant of this Contract. Any such change, addition, deletion, extension or modification, which is mutually agreed upon by the City and Customer shall be incorporated in written amendments to this Contract. Such amendments shall not invalidate this Contract nor relieve or release either Party of any of its respective obligations under this Contract unless so stated in the amendment.

15.02 No amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both Parties, is approved by Customer's legislative body, and is approved by the Board and Detroit City Council.

Article 16. Notices

16.01 Except as otherwise specified in this Contract, all notices, consents, approvals, requests and other communications (collectively, "Notices") required or permitted under this Contract shall be given in writing and mailed by first class mail, addressed as follows:

If to the Board:

Director
Detroit Water and Sewerage Department
735 Randolph
Detroit, Michigan 48226

If to the Customer:

Title _____
Address _____

16.02 All Notices shall be deemed given on the day of post-marked mailing. Any Notice given by a Party hereunder must be signed by an authorized representative of such Party.

16.03 Notwithstanding the requirement above as to the use of first-class mail, change of address notices, termination notices, and other Notices of a legal nature, shall be sent by certified first-class mail, postage prepaid, return receipt requested.

Article 17. Industrial Waste Control Program

17.01 Customer agrees to abide by the requirements of the Industrial Waste Control Program as set forth in Exhibit D. To the extent that Exhibit D obligates Customer in the future to adopt any new or modified ordinance, rule, or regulation based upon a future amendment to the City of Detroit's Industrial Pretreatment Ordinance or any successor or similar ordinance, such amendment shall be consistent with the then-current rules and regulations of the United States Environmental Protection agency (USEPA) and Michigan Department of Environmental Quality (MDEQ), but may be more stringent than USEPA and MDEQ rules and regulations.

Article 18. Rights-of-Way

CHOOSE ONE SECTION 18.01

Option 1: Customer is a County

- 18.01 The Customer shall assist the Board to obtain permission to use streets, highways, alleys, and/or easements in the local governmental units within the Customer's jurisdiction for the purpose of constructing, maintaining, and operating wastewater disposal facilities to adequately service the Customer's jurisdiction and other areas. This assistance shall include assisting with regard to obtaining the consent of the local governmental units, as provided in Article 7, Section 29, Michigan Constitution of 1963. In the event of such construction, the Board shall request the Customer and local governmental units within the Customer's jurisdiction to execute such separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by the Board. The Board shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place. Any such facilities constructed, maintained and operated under this section shall remain the property of the Board and shall not be operated or maintained by any entity other than the Board or its authorized representatives.

Option 2: Customer is a City

- 18.01 The Customer shall assist the Board to obtain permission to use streets, highways, alleys, and/or easements within the Customer's jurisdiction for the purpose of constructing, maintaining, and operating wastewater disposal facilities to adequately service the Customer's jurisdiction and other areas. In the event of such construction, the Board shall request the Customer to execute such separate instruments granting rights-of-way in its streets, highways, and alleys as may be reasonably required by the Board. The Board shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place. Any such facilities constructed, maintained and operated under this section shall remain the property of the Board and shall not be operated or maintained by any entity other than the Board or its authorized representatives.

- 18.02 Relocation of Facilities. Should future construction by any federal, state or county agency require relocation of a wastewater interceptor, Meter or other City facility, the cost incurred by the City for such relocation, if not reimbursed by the agency requiring the relocation, will be charged in future rates as a common-to-all cost to all System users for the relocation of a common-to-all facility, or as a customer-specific cost to a specific customer or customers for the relocation of a customer-specific facility.

- 18.03 Easements. Subject to the provisions of Section 18.01 and to the extent that Customer has jurisdiction, the City shall be granted temporary and permanent easements, and shall be permitted to use the streets, alleys and highways within Customer's legal jurisdiction for the purpose of constructing, operating and maintaining the System. This consent by Customer is given in compliance with Article 7, Sec. 29 of the Michigan Constitution of

1963, provided that the City shall provide Customer with a written explanation of the type of easement required and the duration thereof.

Article 19. Miscellaneous

- 19.01 Enforceability. If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 19.02 Integration. Subject to Section 20.05, this Contract contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Contract. Neither Party has made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by either Party by implication or otherwise unless expressly set forth in this Contract.
- 19.03 Headings. The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.
- 19.04 Jurisdiction. The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Contract and all actions arising under it shall be governed by, subject to, and construed according to the law of the State of Michigan. Each Party agrees, consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Michigan, for any action arising out of this Contract.
- 19.05 Execution of Contract. This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, the City shall provide a copy to the Customer.
- 19.06 Contract Beneficiaries. The rights and benefits under this Contract shall inure to the benefit of and be binding upon the Parties, their agents, successors, and assigns.
- 19.07 No Third Party Beneficiaries. There are no third party beneficiaries to this Contract and this Contract shall not be construed to benefit any persons other than the City and Customer.

Article 20. Rates

- 20.01 Rates. Customer agrees to pay for all Services supplied by the City at such rates as the City may establish. Rates shall be reasonable in relation to the costs incurred by the City for the provision of the Services. The City shall give written notice of any changes in the rates. Notice shall be made in accordance with Section 5e of Public Act 279 of 1909, Michigan Compiled Laws, Sec. 117.5e, as amended ("Act 279").

- 20.02 Notification of Rates. As soon as possible in the ratemaking process, the City shall provide information on proposed rates and the draft data and information used in the calculation of proposed rates in a format that will enable Customer to assist in the ratemaking process. Not less than thirty calendar days prior to the hearing required by Act 279, the City shall provide Customer with written notice of a proposed rate and the underlying data used to calculate the rate. The City shall meet with Customer to review the rate and the data. The City shall provide Customer, upon written request, a copy of the rate notebook containing the detailed tabulations supporting the establishment of the final rates for the next rate year and the look back adjustments.
- 20.03 Disclosure of Rate Information by Customer. Each year, Customer will disclose to its customers information related to its rates and other charges, and information regarding what portion of those costs is related to charges from DWSD and/or other major service providers.
- 20.04 Estimate of Usage. In the event meters fail to correctly measure the quantity of wastewater transmitted by Customer for any period of time, the City shall provide a reasonable estimate of the quantity of wastewater generated by Customer for such period provided that there is a reasonable basis for the estimate. Customer and the City shall, either through their respective technical representatives, the GDRSS Technical Work Group and/or the Steering Committee, seek agreement upon a method to estimate such quantities. In the event the Parties are unable to agree upon a method to estimate such quantities, the City's determination of a method shall be conclusive and the Customer agrees to accept the estimate established by the City.
- 20.05 The Parties acknowledge that certain provisions of certain prior rate settlement agreements and consent judgments, as described in Exhibit F, are in effect as of the effective date of this Contract. It is not the intent of this Contract to contradict or nullify the provisions of any court approved settlements, and court approved settlements shall continue in full force and effect to the extent they have not been otherwise fully performed, amended, or superceded. Nothing in this Contract shall prohibit a party from requesting that a court modify or terminate the provisions of a settlement agreement or consent judgment and any modification or termination granted by the court shall not require the amendment of this Contract.
- 20.06 The City recognizes that Customer's allocation of rates and charges to its customers may vary depending upon the nature, location and purpose of the particular project carried out by the City. Accordingly, when requested by Customer in writing, the City shall provide reasonable information to assist Customer in the accounting of expenses for a specified project.

Article 21. Ensuring Equality of Contract Terms

- 21:01 If the City enters into any contract, and any amendments thereto, with a wastewater disposal services customer other than Customer, and the material terms of such other contract are more favorable than the material terms of Customer's Contract, Customer may elect to adopt all of such other material terms. However, if Customer exercises the option provided for in this Article 21, Customer must accept all material terms of the

other contract in their entirety and may not select among various terms contained in multiple other contracts by, for example, selecting the Contract Term from one contract and the Rates provision of another contract. The terms and conditions of Exhibits A and B of this Contract are specifically excluded from the application of this Article 21.

(Signatures appear on next page)

In Witness Whereof, the City and Customer, by and through their duly authorized officers and representatives, have executed this Contract.

Customer:

By: _____
(Signature)

(Print name)

Its: _____
(Title)

City of Detroit:

By: _____
Kenneth V. Cockrel, Jr.

Its: Mayor

APPROVED BY
CUSTOMER'S LEGISLATIVE BODY ON:

Date

APPROVED BY
BOARD OF WATER COMMISSIONERS ON:

Date

APPROVED BY
DETROIT CITY COUNCIL ON:

Date

EXHIBIT A
Meters, Data Acquisition Equipment and Meter Pits Serving Customer's Service Area

EXHIBIT B
Customer's Service Area

This Exhibit contains the following information:

1. The corporate limits of Customer;
2. The Service Area of Customer;
3. The agreed upon sewer service area within the corporate limits of Customer;
4. The points of metered or non-metered connection;
5. The specific location of points of connection shown; and
6. The Customer's Maximum Allowable Flow Limit.

EXHIBIT C
DWSD Design Standards Committee

Name. The name of this committee is the Detroit Water and Sewerage Department Design Standards Committee (hereinafter, the "Committee").

Purpose/General Responsibilities. The Committee is formed to discuss and make recommendations to the Board, or its designee, on the appropriate specifications and standards which shall govern the design, use of material, and construction of wastewater collection and transport facilities which may, from time to time, be constructed by a First Tier Customer for the purpose of collecting and transporting wastewater to the Board's System. To effectuate this purpose, First Tier Customers may request a review of construction plans and specification by the Committee. In such a case, the Committee shall make the requested review and shall make its recommendations thereon to the Board or its designee.

Membership. The entities comprising the Committee shall consist of one (1) representative from the DWSD and one (1) representative from each First Tier Customer. The DWSD member shall also serve as Chairperson of the Committee.

Meetings. Committee meetings shall be held as follows:

(a) Meetings and Notice Thereof. The Committee shall meet at an agreed upon date and time. The time and place of such meeting shall be fixed by the Chairperson. Meetings shall be held as may be necessary and at such times and places as shall be determined by the Committee.

(b) Meeting Quorum. A majority of all the members present shall constitute a quorum.

(c) Recordkeeping. The Committee shall keep a journal of its proceedings which shall include a record of each vote and each recommendation made to the Board, or its designee, by the Committee.

(d) Voting. The Committee shall act by motion. Passage of any measure shall require a simple majority affirmative vote of the quorum present. Deliberation and consideration are required prior to any vote. Each member shall be entitled to one (1) vote adhering to the principle of "one person, one vote".

(e) Committee Recommendation. All Committee recommendations shall be transmitted to the Board, or its designee, for consideration and final determination.

Dissolution. The Committee shall continue in existence until dissolved by action of the Committee membership.

Effective Date. The Committee shall become effective upon the approval and adoption by DWSD and its First Tier Customers.

Appeals Procedure. Any First Tier Customer who is aggrieved by a decision of the Board, or its designee, relating to a determination based upon a Committee recommendation may appeal to the Director of the DWSD for possible relief of that grievance. Any such appeal shall be made in writing. The determination of the Director of the DWSD shall be final.

EXHIBIT D
Industrial Waste Control Program

- I. The Customer agrees that it shall adopt and enforce, and shall cause each of the local governmental units within its jurisdiction for sewage treatment and disposal service as provided by the Board to adopt and enforce, rules and regulations to implement and maintain a revenue system whereby, as a minimum, the operation, maintenance and replacement portion of the Board's rates are distributed proportionately to each user or user class that is tributary to the Board's treatment works. In particular, these rules and regulations shall provide that surcharges established by the Board for the recovery of incremental operation, maintenance and replacement costs of treating extraordinary concentrations of sewage, shall be billed to and collected from individual firms as identified by the Board in its billings. These rules and regulations shall conform to Section 204 (b) (1) (A) of Public Law 92-500, as amended, and regulations of the United States Environmental Protection Agency (hereinafter referred to as the U.S. EPA), being 40 CFR 35.929 through 35.929-3, and shall achieve a proportionate User Charge System which is effective throughout the Board's service area. The rules and regulations shall provide for monitoring of commercial, governmental and industrial users and shall be consistent with the monitoring rules and regulations of the City of Detroit. The Board shall have the right under said rules and regulations to audit all monitoring activities including the right to perform monitoring tests itself to verify the accuracy of monitoring results.
- II. The Customer agrees that it shall adopt and enforce, and shall cause each of the local governmental units within its jurisdiction for sewage treatment and disposal service as provided by the Board to adopt and enforce, rules and regulations pertaining to the use, design and construction of sewers, and the discharge of industrial or commercial wastes into sewers, where such sewers are tributary to the Board's treatment works. Such rules and regulations shall be consistent with and at least as stringent as all applicable provisions of the pertinent ordinances adopted by the City of Detroit, these being the 1979 amendments to Chapter 56, Article 1, and Chapter 56, Article 6, of the Municipal Code of the City of Detroit as they may be adopted and amended from time to time. In the event any municipality or other governmental unit shall fail to adopt an ordinance as required herein, or shall fail to diligently enforce the same, the Board shall take appropriate action which may include suit in an appropriate court of general jurisdiction alleging such municipality's failure to adopt or enforce an ordinance, and following a hearing on the merits, should the court find that the allegations in the Board's petition are true, it is agreed that such court may, in such instance, grant appropriate injunctive relief against said municipality or any individual discharger there; terminate the municipality's contractual right to discharge waste waters into the Board's system and/or to grant the Board such other relief as may be appropriate under the circumstances. These actions shall enable the Board to:
- A. Deny or condition new or increased contributions of pollutants or changes in the nature of pollutants, to the waste collection system by Industrial and Commercial Users. The terms "Industrial and Commercial" user shall mean those users defined in Section 56-6-3(H) and (P) of Detroit Ordinance No. 353-H of Chapter

56 of Article 6 passed on November 7, 1979 and as may be amended from time to time.

- B. Require compliance with applicable current and future national Pretreatment Standards and other more restrictive requirements as may be imposed by the Board promulgated by the U.S. EPA under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.
- C. Control, through permit, contract order, or similar means, the contribution to the waste collection system by Industrial and Commercial Users to ensure compliance with paragraph B above.
- D. Require the development of compliance schedules by Industrial and Commercial Users for the installation and facilities required to meet applicable National Pretreatment Standards and other more restrictive requirements as may be imposed by the Board.
- E. Require the submission of notices and self-monitoring reports from Industrial and Commercial Users to assess and assure compliance with National Pretreatment Standards and other more restrictive requirements as may be imposed by the Board.
- F. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial and Commercial Users, compliance or noncompliance with applicable National Pretreatment Standards and other more restrictive requirements as may be imposed by the Board. It being further understood that the Board may contract with qualified parties to carry out the inspection, surveillance and monitoring procedures of this paragraph.
- G. Seek injunctive relief for noncompliance with National Pretreatment Standards and other more restrictive requirements as may be imposed by the Board.
- H. Require Industrial and Commercial Users to install containment facilities to protect the treatment works from accidental spills of critical or hazardous materials.

* * * *

Macomb Acquisition Agreement

MACOMB INTERCEPTOR
ACQUISITION AGREEMENT

BY AND BETWEEN

CITY OF DETROIT

MACOMB INTERCEPTOR DRAIN DRAINAGE DISTRICT

AND THE

COUNTY OF MACOMB

DATED SEPTEMBER 2, 2010

Macomb Acquisition Agreement

ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT ("**Agreement**") is made this 2nd day of September, 2010, by and between the City of Detroit, Michigan ("**Detroit**"), the Macomb Interceptor Drain Drainage District ("**MID**") and the County of Macomb ("**Macomb County**") (each individually a "Party" and collectively, the "Parties").

RECITALS:

A. Detroit and Macomb County have determined that it is in their respective best interests for Macomb County to acquire, upon the terms and subject to the conditions set forth herein, the Macomb System (as defined herein).

B. In furtherance thereof, the Macomb Interceptor Drain Drainage District has been established under Chapter 20 of the Drain Code of 1956 to acquire the Macomb System property described in Schedule 1.20 hereto for the mutual consideration set forth in the Agreement below.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties and agreements herein contained, Detroit and Macomb County and MID hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Capitalized terms used in this Agreement shall have the meanings given to them in this Article I, unless defined elsewhere in this Agreement.

1.1 "**Agreement**" shall have the meaning such term is given in the introductory paragraph hereof.

1.2 "**Applicable Law**" shall mean shall mean any applicable federal, state or local law, statute, ordinance, rule, regulation and any other executive or legislative proclamation of any Governmental Entity.

1.3 "**Assumed Liabilities**" shall mean any and all Liabilities excluding: (I) the Retained Liabilities, and (ii) Claims by and among any or all of Detroit, Macomb County and the MID.

1.4 "**Business Day**" shall mean any day other than Saturday, Sunday or any day municipalities in the State of Michigan are authorized or obligated by law, executive order or regulation to close.

Macomb Acquisition Agreement

1.5 “**Macomb County’s Knowledge**” shall mean the actual knowledge of the Macomb County Public Works Commissioner and legal counsel assigned or retained to represent the offices of the Commissioner.

1.6 “**Claims**” shall mean any Order, any investigation announced or performed by a Governmental Entity, or any actual or alleged complaints, claims or charges, demands for relief or damages, suits, hearings, causes of action, proceedings or litigation which the parties hereto may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened, which are related in any way to the Macomb System.

1.7 “**Closing**” shall have the meaning such term is given in Section 2.7 hereof.

1.8 “**Closing Date**” shall have the meaning given such term in Section 2.7 hereof.

1.9 “**Default**” shall mean, as to any party to this Agreement, (a) a default by such party in the performance of any of its Material obligations hereunder and the continuation of such default for a period of thirty (30) Business Days after written notice is delivered by the non-defaulting party to the defaulting party that a default has occurred, or (b) the breach of any representation or warranty hereunder.

1.10 “**Detroit’s Knowledge**” shall mean the actual knowledge of its Director, its Assistant Corporation Counsel assigned to DWSD matters, its Assistant Chief of Engineering or its Engineering Support Manager Craig Stanley.

1.11 “**Encumbrance**” shall mean any security interest, mortgage, pledge, claim, lien, charge, option, defect, encumbrance, lease, tenancy, license, covenant, condition, restriction, right of way, easement, judgment, or other right or interest of any nature.

1.12 “**Environmental Requirements**” shall mean all federal, state and local statutes, regulations, and ordinances concerning pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, as such requirements are enacted and in effect on or prior to the Closing Date.

1.13 “**Global Settlement Agreement**” means the settlement agreement between Detroit and Macomb, Oakland and Wayne Counties executed by the parties to that agreement effective May 12, 2009, and approved by the U.S. District Court on that date.

2/25

9/2/2010
Doc 946709v12

Macomb Acquisition Agreement

1.14 “**Governmental Entity**” shall mean the United States of America, any state, county, city, municipality and any subdivision thereof, any court, administrative or regulatory agency, commission, department or body or other governmental authority or instrumentality or any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.15 “**Indemnified Party**” shall have the meaning such term is given in Section 11.1.

1.16 “**Indemnifying Party**” shall have the meaning such term is given in Section 11.1.

1.17 “**Liability**” means any responsibility, liability, obligation, expense, Claim, Loss, damage, indebtedness (other than System Debt), principal, interest, penalty, guaranty or endorsement of or by any Person, asserted, absolute or contingent, known or unknown, accrued or unaccrued, due or to become due, liquidated or unliquidated, which is related to or arising out of the ownership, condition, operation, maintenance and repair of the Macomb System.

1.18 “**Loss**” or “**Losses**” means any damages (excluding consequential), deficiencies, dues, principal, interest, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys’ fees and expenses, related to or arising out of the condition, operation, maintenance and repair of the Macomb System (other than the System Debt) or out of the breach of any representation, warranty or covenant of this Agreement or expense under Section 10.4.

1.19 “**Macomb County**” means the County of Macomb, Michigan.

1.20 “**Macomb System**” means the Macomb Interceptor System, to-wit, all of the interceptor sewers, meters, pump station and appurtenant facilities and associated tangible and intangible personal property commonly known as the Clintondale Pump Station and the Romeo Arm, Garfield, 15 Mile, Macomb, and Lakeshore and Lakeshore Extension Interceptors, and commencing in several branches northwards and eastwards from the intersection of the Edison Corridor Interceptor and 15 Mile Road, Macomb County, Michigan, as specifically described in Schedule 1.20, excluding such property as specifically identified in Schedule 1.20. Meters shall be deemed to include the lead-in sewer beginning at the downstream site of the manhole immediately upstream from the meter.

1.21 “**MID**” means the Macomb Interceptor Drain Drainage District, created pursuant to Chapter 20 of the Drain Code of 1956.

1.22 “**Material**” or “**materially**” means, depending on the context, any condition, change or effect that, individually or when taken together with all other such conditions, i) is or is reasonably likely to be significantly adverse to the condition of the Macomb System, ii) will or is reasonably likely to prevent the consummation of the transactions contemplated hereby or

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the validity of this Agreement or defeat the purpose of this Agreement, or iii) if such change or condition had occurred before the execution of this Agreement is of such a nature that it would have induced a Party not to enter into this Agreement

1.23 "MDNRE" means the Michigan Department of Natural Resources and the Environment.

1.24 "NPDES" means the National Pollutant Discharge Elimination System.

1.25 "Oakland County" means the County of Oakland, Michigan.

1.26 "Macomb System Real Property Agreements" shall mean the easement agreements, rights of way, licenses, deeds and/or other agreements, instruments or grants evidencing Detroit's rights and obligations with respect to the use and operation of the Macomb System at the properties described on 3.5(a)(1).

1.27 "Macomb System Real Property Rights" shall mean the easements, rights of way, licenses and other interests in real property necessary for the use and routine operation of Macomb System

1.28 "OMI System" means the Oakland-Macomb Interceptor System transferred from the City of Detroit to the Oakland-Macomb Interceptor Drain Drainage District effective October 22, 2009, to-wit, all of the interceptor sewers, meters and appurtenant facilities and associated tangible and intangible personal property commonly known as the Edison Corridor Interceptor, the Oakland Arm Interceptor and the Avon Arm Interceptor and commencing northwards from the north city line of the City of Detroit. The Northeast Sewerage Pump Station and that part of the Edison Corridor Interceptor located within the city limits of Detroit are not part of the OMI System and were not transferred to the District.

1.29 "Order" shall mean any decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling or writ of any Governmental Entity.

1.30 "Ordinary Course of Business" shall mean shall an action taken by a Person with respect to the Macomb System which is consistent in nature, scope and magnitude with the past practices of such Person with respect to the Macomb System and is taken in the ordinary course of the normal, day-to-day operations of such Person with respect to the Macomb System.

1.31 "Person" shall mean any individual, corporation, association, partnership, joint venture, trust, estate, unincorporated organization or Governmental Entity.

1.32 "Purchase Price" shall have the meaning set forth in Section 2.3 hereof.

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1.33 “**Representative**” with respect to a particular Person means any officer, employee, agent, consultant, engineer, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

1.34 “**Requisite Regulatory Approvals**” shall have the meaning such term is given in Section 5.1 hereof.

1.35 “**Retained Liabilities**” shall mean only those Liabilities which arise out of or are otherwise related to Claims asserted by a third party which accrue prior to the Closing Date or arise out of contracts for services provided to DWSD by third parties prior to the Closing, excluding any and all Claims by and among Detroit, Macomb County and MID. Notwithstanding the foregoing, for the purposes of this Agreement, any Claim, whether in trespass or other cause of action, whenever (whether before or after Closing), against whomever asserted, and arising out of any allegation that a) Detroit, Macomb County or MID did or does not have an easement, right of way or other interest in real property sufficient to entitle Detroit, Macomb County or MID to use, maintain and operate the Macomb System or b) Detroit, Macomb County or MID is otherwise in violation of or has any unsatisfied obligations arising under any Macomb Real Property Agreement, shall be deemed to have accrued on or before the Closing and be deemed a Retained Liability.

1.36 “**Schedules**” shall mean each schedule specifically referenced in this Agreement.

1.37 “**System Debt**” means the outstanding pro rated principal as of the Closing Date on any bonded debt for which a portion of the debt service is allocated to facilities comprising the Macomb System and charged to Macomb County in the DWSD Sewer Rate Model for FY 2009-10 on other than a “common to all” basis, as adjusted to reflect resolution of certain outstanding rate issues, with the exception of debt and debt service for the permanent repairs of the 1978 interceptor collapse which shall continue to be paid according to the terms of the court orders and settlement agreements related to those repairs. The calculation of System Debt as of 6/30/2009 is set forth in Schedule 3.8. The FY 2009-10 sewer rates and charges will remain in place for the entire fiscal year, even if Closing occurs prior to the end of the fiscal year. In order to determine the “System Debt” on the Closing Date, the District will be credited with i) the difference between debt service on the relevant facilities billed through the rates and the interest on the associated debt for such facilities paid through the Closing Date, assuming interest calculated at a simple interest rate of 5.17% (which the Parties agree fairly approximates the system weighted interest rate for FY 2009-10), and ii) debt service paid in the rates between the Closing and the end of the fiscal year. That calculation, assuming a Closing Date of 6/30/2010, is shown on Schedule 3.8. The Parties agree that this Schedule will be updated to the Closing Date as part of the closing documents.

1.38 “**Third Party Claim**” shall have the meaning such term is given in Section 11.2 hereof.

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1.39 “Wastewater Disposal Services Contract” shall mean that certain Wastewater Disposal Services Contract by and between Detroit and the Oakland Macomb Interceptor Drain Drainage District dated October 22, 2009.

**ARTICLE II
THE PURCHASE AND SALE**

2.1 Transfer to the MID. In accordance with the provisions of this Agreement, in consideration for the payment of the Purchase Price and other good and valuable consideration, and subject to the contingencies set forth in ARTICLE VII and ARTICLE VIII, Detroit shall transfer and convey the Macomb System to MID free and clear of all liens and encumbrances pursuant to an Assignment of Rights of Way and Easements, Exhibit A, and other instruments of transfer to be delivered at the Closing in accordance with the provisions relating to the Closing.

2.2 Acquisition by the MID. MID, in reliance upon the covenants, representations, and warranties of Detroit contained herein, hereby agrees to acquire the Macomb System from Detroit.

2.3 Payment of the Purchase Price. As part of the consideration for the transfer and conveyance of the Macomb System to the MID from Detroit, the MID shall make a payment to Detroit in a sum equal to the System Debt (the “Purchase Price”).

2.4 Assignment of Warranty and Guarantee Rights. Detroit shall assign to the MID all of its rights under all contracts, warranties and guarantees that apply to services or goods related to the Macomb System. Upon written request by the MID, Detroit shall use its best efforts to cause its engineering and other contractors to provide their work product created before the Closing related to the Macomb System to the MID and MID agrees to bear the costs, if any, incurred by the engineers and contractors in providing such work product.

2.5 MACOMB SYSTEM. THE MACOMB SYSTEM SHALL BE CONVEYED BY SELLER TO PURCHASER IN “AS IS” PHYSICAL CONDITION, WITH NO ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL CONDITION OF THE MACOMB SYSTEM THAT EXTEND BEYOND THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT. EXCEPT FOR ANY EXPRESS WARRANTIES STATED IN THIS AGREEMENT, THE MACOMB SYSTEM SHALL BE CONVEYED WITH NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE.

2.6 Retained and Assumed Liabilities.

(a) At and as of the Closing, Detroit shall retain, and Macomb County or MID shall in no way assume, the obligation to pay, discharge, perform or defend, as applicable and

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when due, any and all of the Retained Liabilities. Detroit shall pay, discharge, perform and satisfy all of the Retained Liabilities when due.

(b) At and as of the Closing, MID shall assume, and Detroit shall in no way retain, the obligation to pay, discharge, perform or defend, as applicable and when due, any and all of the Assumed Liabilities. MID shall pay, discharge, perform and satisfy all of the Assumed Liabilities when due.

2.7 Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") will take place at the offices of Bodman LLP at 1901 St. Antoine, Detroit, Michigan, on such date as shall be mutually acceptable to the parties on or before June 30, 2010, or such other date as mutually acceptable to the Parties (the "**Closing Date**").

2.8 Account Number. No later than three Business Days prior to the Closing Date, Detroit shall deliver to MID in writing the account number of the account into which the Purchase Price is to be transferred at Closing.

2.9 Deliveries. At the Closing, the transactions listed below shall occur.

(a) MID shall deliver to Detroit:

- (1) An original certified resolution of the MID authorizing the execution and delivery of this Agreement and the transactions contemplated hereby;
- (2) An opinion of counsel to MID covering such matters and in form and substance satisfactory to Detroit and its counsel;
- (3) A certificate executed by MID as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing; and
- (4) The Purchase Price by wire transfer.

(b) Detroit shall deliver to MID:

- (1) A certified resolution of the Board of Water Commissioners of Detroit authorizing the execution and delivery of this Agreement and the transactions contemplated hereby;

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- (2) A certified resolution of Detroit City Council authorizing the execution and delivery of this Agreement and the transactions contemplated hereby;
- (3) An executed bill of sale for all of the Macomb System that is tangible personal property in form and substance satisfactory to MID and its counsel and executed by Detroit;
- (4) An executed assignment of all of the Macomb System that is intangible personal property in form and substance satisfactory to MID and its counsel and executed by Detroit;
- (5) An assignment of the Macomb System Real Property Agreements by a quitclaim deed, an Assignment of Rights of Way and Easements, or such other appropriate document or instrument of transfer, as the case may require, each in form and substance satisfactory to MID and its counsel and executed by Detroit;
- (6) Such additional certificates, affidavits, undertakings and other evidence as may be required to induce MID's title company ("Title Company") to issue such title insurance policies, in form and substance satisfactory to MID, as MID may elect to purchase with respect to the real property identified in Schedule 3.5(a)(1);
- (7) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by MID, each in form and substance satisfactory to MID and its counsel and executed by Detroit;
- (8) An assignment of all rights under any contracts, warranties or guarantees that apply to services or goods related to the facilities comprising the Macomb System except NTH Contract CS-1372, the METCO Services Contract CS-1241, and the Martin Controls contract which shall not be assigned;
- (9) A certificate executed by Detroit as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing;

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- (10) An opinion of bond counsel to Detroit providing, in substance, that the transactions contemplated by this Agreement do not violate covenants made by Detroit to its bondholders; and
- (11) An opinion of the legal department of Detroit, reasonably satisfactory to MID, providing that the transactions contemplated by this Agreement do not violate the City Charter of Detroit and such additional matters and in such form satisfactory to MID and its counsel.

(c) Each of Detroit and MID shall deliver to the other Party hereto an executed original counterpart of the following documents:

- (1) Clintondale Pump Station Transition Services Agreement.

2.10 Transfer of Operation. Effective as of 11:59 p.m. on the Closing Date, MID shall take over from the City all of the operation, maintenance and administration of the Macomb System, except as provided by the Clintondale Pump Station Transition Services Agreement executed on even date herewith.

2.11 Termination of Wastewater Contracts. Effective as of 11:59 p.m. on the Closing Date, the existing Wastewater Disposal Services Contract between Detroit and the Macomb County Wastewater Disposal District shall be terminated, subject to the survival of the following rights and obligations:

(a) The rights and obligations to credits or for additional assessments, respectively, arising under the Look Back process for rate years and rates paid prior to the termination of the existing contracts; and

(b) The payment for wastewater services provided by Detroit to the Macomb County Wastewater Disposal District through the date of termination of the existing contract but not billed or paid until after its termination.

2.12 Expenses. Detroit, Macomb County and MID shall each bear their own expenses incurred by them in connection with the transactions contemplated by this Agreement, including without limitation, consultants' fees, legal fees and accounting fees, whether or not such transaction is consummated, except as may otherwise be provided in Section 5.5 and ARTICLES X and XI.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF DETROIT**

Detroit makes the following representations and warranties to Macomb County and MID, except as otherwise set forth in the written disclosure schedules (the "Schedules")

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delivered to Macomb County and MID on or prior to the date hereof, a copy of which is attached hereto:

3.1 Corporate Organization. Detroit is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Michigan.

3.2 Authorization. Detroit has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and thereby. Assuming due and valid authorization, this Agreement will constitute a legal, valid and binding obligation of Detroit, enforceable against Detroit in accordance with its terms, except as the enforcement thereof may be limited by applicable principles of bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors and subject to general principles of equity.

3.3 No Conflict. The execution, delivery and performance by Detroit of this Agreement, the compliance by Detroit with any of the provisions hereof, and the consummation by Detroit of the transactions contemplated hereby: (i) do not violate any provision of the City Charter of Detroit, ordinances of Detroit or any bond covenants associated with the System Debt; (ii) do not require the consent, approval, clearance, waiver, order or authorization of any Person other than the Board of Water Commissioners and the Detroit City Council; (iii) do not conflict with or violate any Applicable Law or any order, judgment, award or decree of any court or other Governmental Entity to which Detroit or the Macomb System is subject; and (iv) do not conflict with, or result in any breach of, or default or loss of any right under (or an event or circumstance that, with notice or the lapse of time, or both, would result in a default), or the creation of any encumbrance pursuant to, or cause or permit the acceleration prior to maturity of any amounts owing under any indenture, mortgage, deed of trust, lease or other agreement to which Detroit is a party or to which any of the Macomb System is subject, in each case, which failure, violation, conflict or breach would, in the aggregate, materially hinder or impair the consummation of the transactions contemplated by this Agreement.

3.4 No Material Transactions. Except for the execution of this Agreement, Detroit has not engaged in any Material transactions related to the Macomb System since January 1, 2009 except contracts or contract amendments for the design of the Clintondale pump station improvements under Contract CS-1241, or associated with NTH Contract CS-1372.

3.5 Easements and Rights of Way.

(a) Schedule 3.5(a) (1) identifies all of the real property occupied by the Macomb System. Schedule 3.5 (a) (2) sets forth all Macomb System Real Property Agreements in Detroit's possession and control.

(b) To Detroit's knowledge, except as disclosed on Schedule 3.5(b), Detroit possesses all necessary, permanent, perpetual and transferable Macomb System Real Property

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Rights (not including easements, licenses or rights of way by prescription, necessity, implication or acquiescence) necessary for the use and routine operation of Macomb System.

(c) Except as disclosed on Schedule 3.5(c), Detroit has good and marketable title to the Macomb System and to the rights arising under the Macomb System Real Property Rights, free and clear of all Encumbrances

(d) To Detroit's Knowledge, except as disclosed in Schedule 3.5(d), Detroit has not breached any provision of and is not in default (and no event or circumstance exists that with notice or the lapse of time, or both, would constitute such default) under the terms of any Macomb System Real Property Agreement and all of such Macomb System Real Property Agreements are in full force and effect.

(e) There are no pending or, to Detroit's Knowledge, threatened disputes or pending or threatened litigation with respect to any Macomb System Real Property Rights.

3.6 Environmental Requirements. Detroit has complied in all material respects with all Environmental Requirements in connection with the ownership, operation and administration of the Macomb System, including, without limitation, NPDES permits and MDNRE requirements, and has not received notice of any violation of any of the foregoing.

3.7 Litigation. Except as set forth in Schedule 3.7 hereto, there is no action, suit or proceeding pending or, to Detroit's Knowledge, threatened against or affecting Detroit before any Governmental Entity in which there is a reasonable possibility of an adverse decision which could have a material adverse effect upon the ability of Detroit to perform its obligations under this Agreement or which in any manner questions the validity of this Agreement.

3.8 Disclosure of System Debt. Schedule 3.8 sets forth all System Debt (with the exception of debt for the permanent repairs of the 1978 interceptor collapse which shall continue to be paid according to the terms of the court orders and settlement agreements related to those repairs), including for each facility or improvement in the Macomb System, and the allocated outstanding principal as of June 30, 2009, together with such charges and adjustments on which the Parties have agreed to resolve all outstanding issues related to debt and rates associated with the Macomb System. None of the written data or information furnished or made available to Macomb County by Detroit as part of the due diligence process with regard to System Debt or other debt or rate-related matters contains an untrue statement of a Material fact or omits to state a Material fact required to be stated therein or necessary to make the statements made, in the context in which made, not false or misleading.

3.9 Disclosure of Pending Contracts. To Detroit's Knowledge, Schedule 3.9 sets forth all pending contracts associated with the operation, maintenance and repair of any facility within the Macomb System.

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**ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF MACOMB COUNTY AND MID**

MID and Macomb County make the following representations and warranties to Detroit, except as otherwise set forth in the Schedule delivered to Detroit on or prior to the date hereof, a copy of which is attached hereto:

4.1 Corporate Organization. MID is a Chapter 20 drainage district duly organized and validly existing under the laws of the State of Michigan and has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

4.2 Authorization. MID has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement will constitute a legal, valid and binding obligation of MID, enforceable against it in accordance with its terms, except as the enforcement thereof may be limited by applicable principles of bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors and subject to general principles of equity.

4.3 No Conflict. Except as set forth in Schedule 4.3 hereto, the execution, delivery and performance by MID of this Agreement, the compliance by MID with any of the provisions hereof and thereof, and the consummation by MID of the transactions contemplated hereby and thereby: (i) do not violate any Applicable Law; (ii) do not require the consent, approval, clearance, waiver, order or authorization of any Person; and (iii) do not conflict with, or result in any breach of, or default or loss of any right under (or an event or circumstance that, with notice or the lapse of time, or both, would result in a default), or the creation of any encumbrance pursuant to, or cause or permit the acceleration prior to maturity of any amounts owing under any indenture, mortgage, deed of trust, lease or other agreement to which MID is a party, which failure, violation, conflict or breach would, in the aggregate, materially hinder or impair the consummation of the transactions contemplated by this Agreement.

4.4 Litigation. Except as set forth in Schedule 4.4 hereto, there is no action, suit or proceeding pending or, to the Macomb County's Knowledge, threatened against or affecting Macomb County or MID before any Governmental Entity in which there is a reasonable possibility of an adverse decision which could have a material adverse effect upon the ability of MID to perform its obligations under this Agreement or which in any manner questions the validity of this Agreement.

4.5 Due Diligence. MID acknowledges that it is being afforded the opportunity to conduct due diligence and investigation with respect to the transactions contemplated by this Agreement. MID further acknowledges that, to the extent that Macomb County, MID or their advisors, agents, consultants or representatives, by reason of such due diligence and investigation actually knew that any representation and warranty made herein by Detroit is

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inaccurate or untrue, this constitutes a release and waiver of any and all actions, claims, suits, damages or rights to indemnity, at law or in equity, against Detroit by MID or Macomb County arising out of breach of that representation and warranty. Nothing herein shall be deemed to limit or waive Macomb County's or MID's rights against Detroit arising out of any other representation and warranty made herein by Detroit.

**ARTICLE V
COVENANTS OF DETROIT**

Detroit covenants and agrees with Macomb County and MID as follows:

5.1 Governmental Approvals; Consents. Detroit shall use reasonable efforts and shall cooperate with Macomb County or MID (including, to the extent necessary, after the Closing), to obtain all permits, approvals and consents, and to make all filings, necessary or required to be obtained or made for MID to have full use and enjoyment of the Macomb System subsequent to the Closing and for the consummation of the transactions contemplated by this Agreement under Applicable Law (all such permits, approvals, filings and consents being referred to as the "**Requisite Regulatory Approvals**").

5.2 Operation and Maintenance of the Macomb System until Closing. Between the date of this Agreement and the Closing, Detroit shall:

- (a) Operate the Macomb System in the Ordinary Course of Business;
- (b) Obtain the consent of Macomb County or MID prior to implementing operational decisions of a Material nature;
- (c) Maintain the Macomb System in a state of repair and condition consistent with Detroit's conduct of the operation of the Macomb System prior to Closing;
- (d) Comply in all material respects with Applicable Law and contractual obligations applicable to the operation of the Macomb System;
- (e) Maintain all books and records relating to the operation of the Macomb System in the Ordinary Course of Business.
- (f) Provide to Macomb County and MID reasonable notice prior to making any capital expenditures or implementing any maintenance, repair or operational decisions of a material nature relating to the Macomb System and reasonably consider any objections of the Macomb County thereto;
- (g) Refrain from entering into any sale, assignment, or other transfer of all or any part of Detroit's right, title or interest in and to any portion of the Macomb System without first obtaining the consent of Macomb County and MID;

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(h) Refrain from entering into any extraordinary transaction or any transaction which is not at arm's length with any person or entity, in either case relating to the Macomb System without first obtaining the consent of Macomb County and MID; and

(i) Promptly notify the Macomb County of any emergency or other change in the normal course relating to the Macomb System (or communications indicating that the same may be contemplated) if such emergency or change would be Material.

5.3 Litigation and Claims. Detroit shall promptly inform the Macomb County and MID in writing of any Claims of which Detroit is or becomes aware that are or might reasonably be expected to become the subject of litigation affecting the Macomb System or the transactions contemplated by this Agreement.

5.4 Notice of Changes. Detroit shall inform Macomb County and MID in writing if it becomes aware that any representation or warranty made by Detroit in this Agreement has ceased to be accurate or if Detroit becomes aware of the occurrence of any breach of any covenant or other agreement required by this Agreement to be performed or complied with by Detroit.

5.5 Post-Closing Covenants. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, Detroit will take such further action (including the execution and delivery of such further instruments and documents) as Macomb County or MID may reasonably request, all at the sole cost and expense of MID, unless such action is a result of any Default or breach of any representation, warranty or covenant by Detroit under this Agreement or is covered by Section 10.4, in which cases it will be at the sole cost and expense of Detroit.

5.6 Adjustment of Sewer Disposal Rates After Acquisition Detroit will adjust its sewer rate model such that no debt service associated with System Debt is charged directly or indirectly to Macomb County, MID, or the Oakland-Macomb Interceptor Drain Drainage District after the Closing Date nor any costs formerly included in the sewer rate model associated with the operation and maintenance of the Macomb System, with the exception of debt service for the permanent repairs of the 1978 interceptor collapse which shall continue to be paid according to the terms of the court orders and settlement agreements related to those repairs. Schedule 5.6 shows in detail the manner in which the post Closing sewer rates for Oakland-Macomb Interceptor Drain Drainage District will be calculated if the transfers of the Macomb System and the OMI System were effectuated on June 30, 2010. The Parties agree that before November 30, 2010, they will mutually agree on how the FY2009-10 Look Back calculations should be conducted in light of the System Debt adjustments set forth in Section 1.37.

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**ARTICLE VI
COVENANTS OF MID AND MACOMB COUNTY**

The MID and Macomb County hereby covenant and agree with Detroit as follows:

6.1 Cooperation. Subject to the terms and conditions of this Agreement, Macomb County and MID shall cooperate with Detroit to use its best efforts to secure all necessary consents, approvals, authorizations, exemptions and waivers from all Persons and Governmental Entities as shall be requested by Detroit or required to be obtained in order to consummate the transactions contemplated hereby.

6.2 Litigation and Claims. MID shall promptly inform Detroit in writing of any Claims (or communications indicating that the same may be contemplated) of which MID is or becomes aware that are or might reasonably be expected to become the subject of litigation affecting the Macomb System or the transactions contemplated by this Agreement.

6.3 Notice of Changes. MID shall inform Detroit in writing if it becomes aware that any representation or warranty made by Macomb County or MID in this Agreement has ceased to be accurate or if MID becomes aware of the occurrence of any breach of any covenant or other agreement required by this Agreement to be performed or complied with by the Macomb County.

6.4 New Service Contracts. Prior to Closing, Macomb County shall enter into a wastewater disposal services contract with the Oakland-Macomb Interceptor Drain Drainage District.

**ARTICLE VII
CONDITIONS TO OBLIGATIONS OF DETROIT**

The obligations of Detroit to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction (or waiver by Detroit) on or prior to the Closing of all of the following conditions:

7.1 Accuracy of Representations and Warranties. Except as set forth in the Schedules, the representations and warranties of Macomb County and MID set forth in this Agreement shall be true and correct in all Material respects as of the date when made and at and as of the Closing.

7.2 Performance of Covenants and Agreements. Macomb County or MID, as their respective liabilities lie, shall have duly performed and complied in all Material respects with the covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing. None of the events or conditions entitling Detroit to terminate this Agreement under ARTICLE IX hereof shall have occurred and be continuing.

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7.3 Consents. Any consent required for the consummation of this purchase and sale under any agreement, contract, license or other instrument described in any exhibit hereto or referred to herein, or for the continued enjoyment by Detroit of any benefits of such agreement, contract, license or other instrument after the Closing, which consent Macomb County or MID is specifically obligated to obtain pursuant to this Agreement shall have been obtained and be effective.

7.4 Governmental Approvals. All Requisite Regulatory Approvals shall have been obtained or made and shall be in full force and effect. There shall be no injunction, restraining order or decree of any nature that restrains or prohibits the transactions contemplated by this Agreement.

7.5 No Proceedings. Since the date of this Agreement, there shall not have been commenced or threatened against Detroit, Macomb County or MID or their constituent counties or municipalities any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, the transactions contemplated by this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of the transactions contemplated by this Agreement.

7.6 Resolutions. Detroit shall have received certified copies of the resolutions identified in Sections 2.10(a)(1), 2.10(b)(1) and 2.10(b)(2).

ARTICLE VIII

CONDITIONS TO OBLIGATIONS OF MACOMB COUNTY AND MID

The obligations of Macomb County and MID to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction (or waiver by Macomb County or MID) on or prior to the Closing, of all of the following conditions:

8.1 Accuracy of Representations and Warranties. Except as set forth in the Schedules, the representations and warranties of Detroit set forth in this Agreement shall be true and correct in all Material respects as of the date when made and at and as of the Closing.

8.2 Performance of Covenants and Agreements. Detroit shall have duly performed and complied in all Material respects with the covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing. None of the events or conditions entitling MID or Macomb County to terminate this Agreement under ARTICLE IX hereof shall have occurred and be continuing.

8.3 Resolutions. MID and Macomb County shall have received certified copies of the resolutions identified in Sections 2.10(a)(1), 2.10(b)(1) and 2.10(b)(2).

8.4 Consent. Any consent required for the consummation of the transactions contemplated by this Agreement under any agreement, contract, license or other instrument

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described in any schedule or exhibit hereto or referred to herein, which consent Detroit is specifically obligated to obtain pursuant to this Agreement shall have been obtained and shall be effective.

8.5 Governmental Approvals. All Requisite Regulatory Approvals shall have been obtained or made and shall be in full force and effect. There shall be no injunction, restraining order or decree of any nature that restrains or prohibits the transactions contemplated by this Agreement.

8.6 No Proceedings. Since the date of this Agreement, there shall not have been commenced or threatened against Detroit, Macomb County of MID or their constituent counties or municipalities any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, the transactions contemplated by this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of the transactions contemplated by this Agreement.

8.7 Financing Contingency. MID shall have obtained financing on terms and conditions reasonably satisfactory to MID in an amount equal to System Debt plus associated financing costs.

8.8 New Service Contracts Macomb County shall have entered into a new wastewater disposal services contract with the Oakland-Macomb Interceptor Drain Drainage District.

8.9 Resolution of all Certain Disputes. Macomb County and Detroit shall have executed an agreement acknowledging that all pending disputes between such parties with respect to rates and all other matters have been resolved.

8.10 Title Insurance and Surveys. MID shall have obtained title commitments and searches and, if MID elects, also title insurance policies and surveys with respect to Macomb System Real Property Rights, from title companies, surveyors and engineering firms, as applicable, and in form and substance, satisfactory to MID.

**ARTICLE IX
TERMINATION PRIOR TO CLOSING**

9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing:

(1) By the mutual written consent of Detroit, MID and Macomb County;

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- (2) By Detroit in writing if Macomb County or MID shall be in Default;
- (3) By Macomb County or MID in writing if Detroit shall be in Default;
- (4) By written notice of either Party hereto to the other Party hereto if, after the date of this Agreement but prior to the Closing, defects within and necessary repairs to the Macomb System have become Materially greater or different than those disclosed in the following reports prepared by NTH Consultants, Ltd.:
 - (A) Report on Sewer Condition Investigation & Evaluation Romeo Arm, Oakland-Macomb Interceptor, PCI-12A, DWSD Contract CS-1368 ER_B Task 37-1 (June 5, 2006);and
 - (B) Report of Sewer Condition Assessment Inspection DWSD Construction Contracts PCI 13, 14, 15B, 15C, 24, 25, 42A, and 45, Project No. 15-060131-00 (June 7, 2006).
- (5) By Macomb County, MID or Detroit if the transaction is not approved by all their respective governing bodies; and
- (6) By any Party hereto if the other Party hereto shall fail to timely satisfy those conditions set forth in ARTICLE VII or ARTICLE VIII hereto, as appropriate.

(b) This Agreement may be terminated by Macomb County in writing on or before January 1, 2010 if it shall not have been satisfied in its sole discretion with the results of Macomb County's continuing due diligence investigations of the Macomb System, including, without limitation, with respect to all operational, financial, environmental, legal and accounting matters.

9.2 Effect on Obligations. Termination of this Agreement pursuant to this ARTICLE IX shall terminate all obligations of the Parties hereto; provided, however, that termination pursuant to Sections 9.1(a)(2) or 9.1(a)(3) hereof shall not relieve any defaulting party from any liability to the other party hereto resulting from such Default. Notwithstanding the foregoing, any and all existing agreements (other than this Agreement) between Detroit and Macomb County and/or any constituent entity thereof which are related to the Macomb System shall remain in full force and effect following any termination of this Agreement unless and until such existing agreements are otherwise terminated pursuant to the terms thereof.

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**ARTICLE X
REMEDIES FOR BREACHES OF THIS AGREEMENT**

10.1 Survival of Representations and Warranties. All of the representations, warranties and covenants of Macomb County and MID and Detroit contained in this Agreement and the schedules and exhibits hereto shall survive the Closing and continue in full force and effect forever thereafter (subject only to any applicable statutes of limitations applicable to their breach).

10.2 Remedies Generally Unless expressly limited by this Agreement, in addition to any remedies provided in Sections 10.3, 10.4 and 10.5, the Parties shall have all remedies available at law and equity for a breach of contract for any breaches of any terms of this Agreement.

10.3 Remedies for Breach of Representations, Warranties and Covenants. If a Party sustains any Losses because the representations or warranties provided by the other Party are incorrect or untrue or because the other Party has breached its covenants given herein, the other Party shall be liable for all Losses incurred by the Party to cure such representations, warranties or covenants. In addition or in the alternative, the Party may require the other Party to take such actions as required to cure such misrepresentations, warranties or breached covenants.

10.4 Remedies to Cure Title Issues. In the event that Detroit does not possess all necessary, permanent, perpetual and transferable Macomb System Real Property Rights, or if any of those Macomb Real Property Rights are in the form of easements, rights of way or licenses arising by prescription, necessity, acquiescence or implication, MID may obtain by purchase, condemnation or otherwise such easements, rights of way, licenses or other agreements on terms reasonably acceptable to MID and in any case sufficient to entitle MID to use and operate the Macomb System in the same manner as used and operated by Detroit prior to Closing. MID shall use good faith efforts to minimize the cost of obtaining such easements, rights of way, licenses or other agreements. MID shall consult with Detroit before extending offers to purchase, finalizing any appraisals, or extending any settlement offers, and shall reasonably consider any comments or objections made by Detroit with regard to same. In the event that condemnation proceedings are commenced or other litigation related to Macomb System Real Property Rights occurs, MID shall inform Detroit of the commencement of such proceedings and provide advance notice of hearings and settlement conferences scheduled in such proceedings. Detroit, at its sole cost and expense, shall cooperate in taking all actions requested by MID to assist MID in obtaining such easements and other interests in property. Within 60 days of demand, as may be made from time to time by MID, Detroit shall reimburse the Macomb County or MID in an amount equal to any and all costs incurred by Macomb County or MID to obtain such easements and other interests in property including, but not limited to, costs of acquisition or condemnation awards (including the condemnation defendant's attorneys fees and costs) and all legal, expert and professional fees and costs incurred by Macomb County or MID and any Losses actually incurred by the Macomb County

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or MID arising out of Claims asserted against Macomb County or MID by third parties based on the failure to have an easement, right of way, license or other agreement for real property necessary for the use and routine operation of Macomb System. These reimbursable costs include the cost incurred by the Macomb County before Closing to ascertain the location of any improvements constituting any part of the Macomb System or to compare the location of the Macomb easements to the "as-built" designs of the Macomb System. Further, within 60 days of demand, as may be made from time to time by Macomb County or MID, Detroit shall reimburse Macomb County or MID for all Losses actually incurred by Macomb County or MID arising out of Claims asserted against Macomb County or MID arising out of any obligation occurring under the OMI Real Property Agreements before Closing.

10.5 Limitations on Certain Remedies.

(a) Notwithstanding anything in Sections 10.2, 10.3 and 10.4 to the contrary, any right to damages arising under those Sections shall be net of the dollar amount of any insurance proceeds actually received by the Party from any third party insurer with respect to the Claim.

(b) The injured Party will take reasonable steps to mitigate all Losses relating to the Claim, including availing itself of any defenses, limitations, and will provide such evidence and documentation of the nature and extent of the Claim as may be reasonably requested by the other Party. The injured Party's reasonable steps include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any loss or expense for which a remedy would otherwise be due under this ARTICLE X, and the reimbursing Party will reimburse the injured Party for the injured Party's reasonable expenditures in undertaking the mitigation.

(c) Notwithstanding anything contained to the contrary in any other provision of this Agreement, except in cases of a Party's gross negligence, willful misconduct or fraud, the obligations of each Party under Sections 10.2, 10.3 and 10.4, and the recovery by any injured Party of any liabilities suffered or incurred by it as a result of any breach or non-fulfillment by a Party or any of its representations, warranties, covenants, agreements or other obligations under this Agreement, shall be limited to actual damages (but excluding consequential damages).

(d) Survival of Remedies The rights and obligations to remedies given in Article X shall survive the Closing indefinitely.

ARTICLE XI

PROCEDURES IN THE EVENT OF CLAIMS BY THIRD PARTIES

11.1 Remedies For Third Party Claims Asserted Against One Party Arising out of or Related to Liabilities Assumed or Retained by the Other Party. In the event that a Third Party

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Claim, as defined below, is asserted against one Party (“**Indemnified Party**”) arising out of or related to matters for which the other Party (“**Indemnifying Party**” (which includes the City of Detroit, Macomb County and MID)) has assumed liability under this Agreement, the Indemnifying Party shall defend the Indemnified Party from such Third Party Claims and shall reimburse the Indemnified Party for any Loss incurred by the Indemnified Party resulting from such Third Party Claims.

11.2 Defense and Settlement of Third Party Claims

(a) If any third party shall notify an Indemnified Party with respect to any matter (a “**Third Party Claim**”) which arises out of a matter for which liability was expressly assumed or retained by the Indemnifying Party under this Agreement or arises out of the breach of a representation, warranty or covenant given in this Agreement, the Indemnified Party shall promptly (and in any event within 30 days after receiving notice of the Third Party Claim) notify the Indemnifying Party thereof in writing. Third Party Claim does not include any Claim covered by Section 10.4. Failure to give the required notice shall not bar the rights of the Indemnified Party under this Agreement except to the extent that such failure prejudices the Indemnifying Party’s ability to defend and settle the Third Party Claim.

(b) To the extent permitted by Applicable Law, the Indemnifying Party will have the right at any time to assume and thereafter conduct the Indemnified Party’s defense of the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party provided that within 30 days after receipt of the notice of the claim the Indemnifying Party confirms in writing its responsibility therefore; provided, however, that the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably) unless the judgment or proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party and includes a full and complete release of the Indemnified Party as an unconditional term thereof.

(c) Unless and until the Indemnifying Party timely assumes the defense of the Third Party Claim as provided in Section 11.2(b) above, however, the Indemnified Party may defend against the Third Party Claim in any manner it reasonably may deem appropriate.

(d) In no event will the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without seeking the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

(e) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense) and the Indemnified Party shall be entitled to have sole entire control over the defense or settlement of the Claim or portion of a Claim to the extent the Claim or portion of a Claim seeks an order, injunction, non-monetary or other equitable relief

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against the Indemnified Party which if successful, could materially interfere with the business, operations assets, condition (financial or otherwise) or prospects of the Indemnified Party.

11.3 Release and Covenant Not To Sue. Each Party releases and covenants not to sue the other for Liabilities expressly assumed or retained by the Party under this Agreement except to enforce the terms of this Agreement.

11.4 Survival of Remedies. The rights and remedies given in Article XI shall survive the Closing indefinitely.

**ARTICLE XII
MISCELLANEOUS**

12.1 Continued Support. In the event and for so long as any party hereto actively is contesting or defending against any Claim in connection with (a) any transaction contemplated under this Agreement, (b) the resolution of any encroachments or trespasses by MID or Macomb County, encroaching easements, Encumbrances or rights-of-way, (c) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving the Macomb System, the other Party will cooperate with the contesting or defending Party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending party is entitled to reimbursement therefor under ARTICLE X and XI above). The rights and obligations in this Section 12.1 shall survive the Closing indefinitely.

12.2 Cooperation on Repairs After the Closing, Detroit shall cooperate with the MID in taking actions to facilitate the ongoing repairs to the Macomb System.

12.3 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

12.4 Incorporation of Schedules. The Schedules and exhibits identified in this Agreement are incorporated herein by reference and made a part hereof

12.5 Entire Agreement. This Agreement constitutes the sole understanding of the parties hereto with respect to the matters provided for herein and supersedes any previous

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agreements and understandings between the Parties with respect to the subject matter hereof. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by Detroit and MID and in compliance with Section 12.12.

12.6 Successors and Assigns. This Agreement will inure to the benefit of and be binding upon Detroit, Macomb County and MID and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party hereto without the prior written consent of the other Party hereto.

12.7 Taking of Necessary Action. Subject to the terms and conditions of this Agreement, each of the parties hereto agrees, subject to Applicable Law, to use all reasonable best efforts promptly to take or cause to be taken all action and to promptly do or cause to be done all things necessary, proper or advisable under Applicable Laws and regulations to consummate and make effective the transactions contemplated by this Agreement. Without limiting the foregoing and subject to the terms and conditions of this Agreement, the parties shall use their commercially reasonable efforts to obtain and make all Required Regulatory Approvals. Each party hereto shall cooperate with the other in good faith to help the other satisfy its obligations hereunder.

12.8 Invalidity. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the practical, economic and legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible. Invalid provisions shall be severed from this Agreement.

12.9 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. This Agreement may be executed by facsimile signatures which shall be considered originals.

12.10 Headings. The headings of the articles, sections and paragraphs of this Agreement and of the exhibits hereto are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof or thereof.

12.11 Construction and References. Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. Unless otherwise specified, all references in this Agreement to articles, sections,

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paragraphs or clauses are deemed references to the corresponding articles, sections, paragraphs or clauses in this Agreement, and all references in this Agreement to exhibits are references to the corresponding exhibits attached to this Agreement.

12.12 Modification and Waiver. Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions hereof (whether or not similar). Oral modifications of this Agreement are not permitted. Modification or amendment of this Agreement shall require the approval of MID's Board, the Board of Water Commissioners and the Detroit City Council.

12.13 Dispute Resolution. Any and all claims alleging a breach of this Agreement shall be submitted to the alternative dispute resolution process set forth in Exhibit B hereto

12.14 Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party shall be in writing and delivered personally, via telecopy (with receipt confirmed) or by registered or certified mail, postage prepaid:

- (a) if to the MID or Macomb County, to:

Anthony V. Marrocco
Macomb County Public Works Commissioner
21777 Dunham Road
Clinton Township, MI 48036

if to Detroit, to:

Director
Detroit Water and Sewerage Department
735 Randolph
Detroit, Michigan 48226

12.15 Governing Law; Interpretation. This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan. The parties hereto (a) consent to the personal jurisdiction of the state and federal courts located in Detroit, Michigan in connection with any controversy related to this Agreement including, but not limited to, counterclaims or third party demands raised as a result of third party counterclaims initiated in any other jurisdiction; (b) waive any argument that venue in any such forum is not convenient; (c) agree that any litigation initiated by Macomb County or Detroit in connection with this Agreement may be brought in either the state or federal courts located in Detroit, Michigan; and (d) agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

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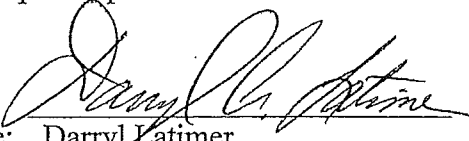
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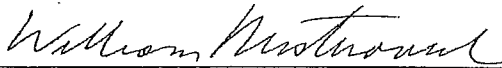
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF DETROIT, a Michigan
municipal corporation

MACOMB COUNTY

By: 
Name: Darryl Latimer
Title: Deputy Director
Detroit Water and Sewerage
Department

By: 
Name: William Misterovich
Title: Chief Deputy
Macomb County Public Works
Commissioner and County Agency
pursuant to 1939 P.A. 342.

MACOMB INTERCEPTOR DRAIN
DRAINAGE DISTRICT

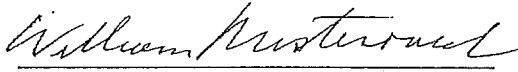
By: 
Name: William Misterovich
Title: Acting Chairperson, Macomb
Interceptor Drain Drainage District

EXHIBIT A
SEE TABS 11 AND 12

EXHIBIT B

DISPUTE RESOLUTION PROCEDURES

The Parties agree that it is in their collective best interest to establish a dispute resolution procedure to allow for faster resolution of problems, reduce expenses for attorneys, fees and costs, and improve working relationships. These procedures shall be utilized in the event that a dispute arises between the Parties arising under the Acquisition Agreement.

All capitalized terms shall have the meaning defined in the Contract.

1. General Dispute Resolution Policy

Any and all claims alleging a breach of or arising under the Acquisition Agreement, other than claims requiring immediate relief to prevent irreparable harm to a party, public health or the environment, shall first be submitted to the alternative dispute resolution ("ADR") process set forth in this Exhibit B. No litigation, other than a suit seeking immediate relief to prevent irreparable harm to a party, public health or the environment may be initiated until the Parties have complied with the Informal Negotiation (Section 2) and Formal ADR Procedures (Sections 3 & 4) set forth here.

Unless expressly agreed in writing by the Parties, all alternative dispute resolution procedures utilized shall be nonbinding.

No resolution achieved under these procedures shall be binding on any other First Tier Customer unless such customer has agreed in writing to the resolution.

All dispute resolution proceedings under this Contract shall be private and confidential, and any written or oral communications will similarly be deemed to be confidential, and may not be disclosed unless the parties agree otherwise. Documents created by the parties for use in any ADR process shall not be filed with any court or made available as evidence in any court proceeding by any other party. However, evidence or information which is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or its use in mediation. Any person involved in the ADR process who is not an agent or employee of a Party shall not testify regarding matters disclosed during the

mediation process, but may testify only as to the final outcome of the ADR process, and the parties to the Dispute agree they shall not seek testimony from any such person with regard to information or knowledge obtained by such person as the result of participating in an ADR process under this Contract.

2. Informal Negotiations

Each party agrees to undertake informal negotiations before invoking formal ADR procedures under this Contract or litigation. This process shall be commenced by written notice from the initiating party to the other describing the subject matter of the dispute. The notice shall contain such information as is necessary to advise of the exact nature of the dispute and the relief requested. Upon issuance of such written notice, the parties shall engage in good faith informal negotiations among themselves to attempt to develop a mutually acceptable resolution to the dispute. The time frame for conducting informal negotiations shall not exceed 45 days from the date of issuance of the written notice, unless all parties agree to a longer informal negotiation timeframe.

3. Invocation of Formal ADR Procedures

In the event a dispute arises between the Parties that is not resolved by informal discussions between them, either Party may initiate the formal alternative dispute resolution process under Sections 3 and 4 by giving notice in writing to the other Party, the Director's Council and the Chair(s) of the Steering Committee. The notice shall contain such information as is necessary to advise of the exact nature of the dispute and the relief requested.

Unless the parties reach a settlement within the 120-day period or agree in writing within the 120-day period to continue the ADR process and to continue toll the running of the statute of limitations, at the end of the 120-day period any party may commence litigation and the statute of limitations shall commence to run.

4. Formal ADR Procedures

- (a) Role of Steering Committee and Work Groups
- (b) Role of Director's Council

Either Board or the Customer may notify the Director's Council of the policy issue with a request that the Director's Council address the issue through good faith discussion and negotiations, and attempt to resolve the issue in a manner which provides a fair balancing of the interests of the Board and its First Tier Customers. Within 30 days of receiving such a notice, the Director's Council shall agree on an ADR process to address the policy issue in a manner which fairly accommodates the interests of the Parties. Thereafter, the Director's Council shall act expeditiously to assist in resolving the dispute within the balance of the 120-day period.

5. **Mediation**

If informal negotiation and the ADR process under the aegis of the Director's Council is not successful in resolving the dispute, the matter shall be referred to mediation. Mediation is defined to be a non-binding dispute resolution process in which an impartial neutral facilitates negotiations among the parties in an attempt to help reach a settlement.

(1) Selection of Mediator

The mediator of the dispute must be neutral and impartial, with no conflict of interest with any party, and no financial or personal interest in the outcome of the mediation. The mediator shall be selected within thirty (30) days following the conclusion of informal negotiations by the parties. The mediator shall be selected by agreement of the Board, the wholesale customer initiating the dispute resolution process, and at least one of the other wholesale customers affected by the subject matter in dispute. If no mutually acceptable mediator is identified and selected within thirty (30) days, then the dispute resolution process under this Step shall be terminated.

(2) Costs

The costs for the mediator shall be paid by the Board as an operating expense, unless it is mutually agreed that some alternative cost apportionment for the mediator's expenses is acceptable.

(3) *Conduct of Mediation*

Each wholesale customer and/or the Board involved in the dispute shall designate a decision-maker to serve as their representative to participate in the mediation, and that person shall be vested with authority to negotiate on behalf of the community and/or the Board, and to settle the dispute or, if required, recommend settlement to the governing board of the wholesale customer. Each wholesale customer and/or the Board who is party to the dispute may also be represented during the process by an attorney and/or technical consultants if it so chooses, provided that the costs of any such participation are borne solely by that wholesale customer and/or the Board.

The mediator shall be free to meet and communicate separately as he/she deems appropriate with each party, but will schedule joint meetings of all parties with the time, place and agenda to be established by the mediator in consultation with the parties. No stenographic, video or record will be made of meetings conducted by the mediator, and formal rules of evidence and procedure will not apply to materials presented and discussed.

The mediation process may be terminated by the mediator at any time if the mediator determines that one or more parties is not acting in good faith, or if the mediator concludes that further dispute resolution efforts would not be useful in achieving a settlement. The mediation process will automatically terminate after 90 days from the date the mediator is retained, unless the time period is extended by agreement of all parties and the mediator.

If a settlement is reached, a preliminary Memorandum of Understanding will be prepared and signed or initialed before the parties separate. Thereafter, either the mediator or the parties themselves will promptly and not later than thirty (30) days following the execution of the Memorandum of Understanding draft a written settlement document incorporating the terms of any such settlement. This draft document will be circulated, amended as necessary, and then formally executed. It is anticipated that in some cases, formal execution of any settlement agreement may be deferred pending review and consideration of the document by the governing bodies of the wholesale customer and/or the DWSD.

6. Proceedings After Unsuccessful Mediation

If mediation is terminated for any reason prior to resolution of the dispute, the parties or the mediator (if any) may discuss with the parties the possibility of proceeding with binding arbitration as a form of dispute resolution in lieu of litigation. If binding arbitration is acceptable to all parties, the parties may request that the mediator (if any) assist in structuring a procedure to generate a prompt and economical decision; for example, by use of the Commercial Rules of the American Arbitration Association. The mediator (if any) shall not serve as arbitrator unless all parties agree.

If no resolution is reached through the mediation process, and if the parties decide not to pursue voluntary binding arbitration as discussed above, any party may then exercise its right to pursue resolution of the matter in a court of appropriate jurisdiction.

Any and all right, title and interest that Detroit has in the interceptor sewers, meters, pump stations, flow control gates and appurtenant facilities and associated tangible and intangible personal property commonly know as the Romeo Arm Interceptor, Garfield Interceptor, Sterling Heights Arm, 15 Mile Interceptor, Lakeshore Interceptor and Lakeshore Interceptor Extension and the Clintondale Pump Station, consisting of the facilities constructed pursuant to the contracts listed below.

Interceptors	DWSD Contract #	Diameter	Length	Location	Municipality
Macomb Element	PCI-28	27	4,882	23 Mile from Garfield to Hayes	Macomb Twp
Macomb Element	PCI-28	48	10,755	Garfield from 23 Mile to 21 Mile	Macomb Twp
Romeo Arm	PCI-12A and PCI-37	126	9,060	Garfield from Clinton River Road to 15 Mile and 15 Mile from Garfield to Maple Lane	Clinton Twp
Romeo Arm	PCI-24	108	7,224	Garfield from 18 Mile to Clinton River Road	Clinton Twp
Sterling Heights Arm	PCI-25	42	5,185	18 Mile from Hayes to Garfield	Clinton Twp
Garfield	PCI-45	84	16,108	Garfield from 21 Mile to 18 Mile	Clinton & Macomb Twps
15 Mile Road (force main)	PCI-15C	60	15,150	15 Mile from Garfield to Maynard	Clinton Twp
15 Mile Road (force main)	PCI-15B	60	8,037	15 Mile from Maynard to I 94	Clinton Twp
Lakeshore Arm	PCI-13	132	11,600	I 94 from 15 Mile to Bonaire	Harrison Twp
Lakeshore Arm	PCI-14	132	11,400	I 94 from Bonaire to Joy	Harrison Twp
Lakeshore Interceptor Extension	PCI-42A	42	11,600	I 94 from Joy to 21 Mile	Harrison Twp
Lakeshore Interceptor Extension	PCI-42A	27	1,300	I-94 and 21 Mile Road/Brandenburg Rd.	Harrison Twp
Pump Stations					
Clintondale Pump Station	PC-218			36965 Union Lake Road (tax ID 11-36-103-007)	Clinton Twp
Meters					
		Upstream Manhole			
CH-S-5	PCI-42A	In-Line with sewer		PCI-42A	
CT-S-1	PC-261	CT-S-1 MH-3		PCI-12A	
CT-S-2	PC-262A	CT-S-2 MH-2		PCI-13	
CT-S-3	PC-289	CT-S-3 MH2		PCI-24	
CT-S-4	PC-291A	CT-S-4 MH-2		PCI-15C	
FR-S-1	PC-261	FR-S-1 MH-3		PCI-12A	
HR-S-1	PC-262B	HR-S-1 MH-2		PCI-14	
HR-S-2	PC-262B	HR-S-2 MH-2		PCI-3	
HR-S-3	PC-262A	HR-S-3 MH-2		PCI-13	
MA-S-2	PCI-45	MA-S-2 MH2		PCI-45	
ST-S-5	PC-262A	ST-S-5 MH-3		PCI-12A	
ST-S-6	PC-289	None		PCI-25	
SY-S-3	PCI-45	SY-S-3 MH-2		PCI-45	
MC-S-1	Unknown and CS-1368	In-Line with sewer		PCI-12A	
Various	CS-1292	NA		Odor Control	
Various	PC-707	NA		Meter Rehabilitation	
Note: Meters being transferred include the lead-in sewer to the meter beginning at the downstream side of the manhole that is immediately upstream of the meter for those meters with an upstream manhole. Manholes are as identified on Macomb Interceptor Sewer Alignment Drawings (August 2010)					
Repairs and Rehabilitation					
Romeo Arm	PCI-37			1978 15 & Hayes Repair	
Romeo Arm	CS-978			Repairs along Garfield	
Romeo Arm	CS-1368			2004 15 Mile Repair	
Romeo Arm	CS-1372			2006 - 2009 Repairs	
Clintondale Pump Station	CS-1421			Pump Station Rehabilitation	
Flow Control Gates					
Garfield Interceptor	PCI-45			Garfield at 18 Mile Road at PCI-24, Sta. 72+28	
Garfield Interceptor	PCI-12A			Garfield north of 15 Mile Road	
Romeo Arm	PCI-45			15 Mile Road at PCI 12A, Sta. 123+00	

Combined Schedule 3.5(a)(1) and (2)
Macomb Interceptor

MACOMB EASEMENT NO.	EASEMENT I.D.	ALIGNMENT DRAWING	DESCRIPTION	GRANTOR / GRANTEE	EX. DATE	REC. DATE	LIBER	PAGE	CURRENT FEE OWNERSHIP	TAX ID	TITLE COMMITMENT NO.	Approx. Start Station	Approx. End Station
M-1	PCI-12 P-1	12A-12	27' Easement for sewer by AWO. AKA Old PE-36	Adolf & Inge Reif; City of Detroit Water Board	03/23/70	07/30/70	2123	753	Garfield-15 Associates L.L.C.	11-31-229-009	WS10446	127 + 15	129 + 50
M-2	PCI-12 P-2	12A-12	27' Easement for sewer by AWO. AKA Old PE-37.	Tremarco Corp.; City of Detroit Water Board	10/27/70	02/02/71	2164	465	The Southland Corporation	11-31-229-010	WS10447 R-1	129 + 50	131 + 50
M-3	PCI-12 P-3	15-C-1	20' Easement for sewer by AWO. AKA Old PE-38.	Sun Oil Company; City of Detroit Water Board	04/29/70	08/18/70	2127	732	Independent Newspapers, Inc.	11/29/353-008	WS10448	0 - 75	1 + 30
M-4	PCI-13 P-1	13-7	25' Easement for sewer by AWO. Also Job #92-31 encroachment.	Ito & Winifred Smith; City of Detroit Water Board	01/14/74	02/28/74	2477	783	Ito & Winifred Smith, husband and wife	11-24-378-016	WS10462	64+90	65+55
M-5	PCI-13 P-2	13-7	30' Easement for sewer by AWO.	Charles J. Rogers Construction Co; City of Detroit Water Board	01/12/76	04/30/76	2679	408	John R. DuBay, a single man	11/24-378-007	WS10463	65+55	66+75
M-6	PCI-13 P-3	13-8 & 13-9	30' Easement for sewer by AWO. AKA Old PE-45	Hilda Georgeson & Hilda Anne Menzies; City of Detroit Water Board	12/27/71	03/13/72	2270	308	Carl D. Harlow and Christy Harlow, husband and wife	11-24-403-011	WS10438	83+15	89+35
M-7	PCI-13 P-4	13-9	Triangular easement for sewer by AWO. AKA Old PE-46	Lawrence & Jo Ellen Spearman; City of Detroit Water Board	10/4/71 07/08/74	12/17/71 09/09/74	2249 2532	257 523	Ronald R. and Donna L. Sogge, husband and wife	11-24-428-006	WS10464	90+50	91+10
M-8	PCI-14 P-1	14-3	30' Easement for sewer by AWO.	Michigan State Highway Commission; City of Detroit Water Board	02/27/74	05/20/74	2499	704	State Highway Commissioner of the State of Michigan	11-13-427-001	WS10465	32+00	34+10
M-9	PCI-14 P-2	14-3	30' Easement for sewer by AWO. AKA Old PE-55	Taylor Brothers, Inc.; City of Detroit Water Board	10/15/73	12/07/73	2459	551	UNKNOWN Currently - Captains Quarters Condominium	UNKNOWN	WS10466	29+00	30+85
M-10	PCI-14 P-3	14-4	50' Easement for sewer by AWO. AKA Old PE-53	Arnold & Judith Stroshein, his wife, and Bertha Stroshein; City of Detroit Water Board	7/12/72 11/13/72	7/3/73 7/3/73	2410 2410	741 745	Strael Up, L.L.C.	11-13-277-022 (part of) Note: Now within Lot 14 of Assessor's Plat No. 1, Liber 65, Pages 3 and 4 of Plats	WS10476 (same as M-11)	37+80	43+40
M-11	PCI-14 P-4	14-4	50' Easement for sewer by AWO. AKA Old PE-52	Arnold, Judith, & Bertha Stroshein; City of Detroit Water Board	7/12/72 11/13/72	7/3/73 7/3/73	2410 2410	741 745	Strael Up, L.L.C.	11-13-277-022 (part of) Note: Now within Lot 14 of Assessor's Plat No. 1, Liber 65, Pages 3 and 4 of Plats	WS10476 (same as M-10)	37+80	43+40
M-12 (see M-52 for Meter)	PCI-14 P-5	14-10 through 42A-3	60' Easement for sewer by AWO. AKA Old PE-50. Also see Job #74-9 encroachment	Ralph & Marie Beaufait; City of Detroit Water Board	07/11/72	01/15/73	2360	909	C. Marie Beaufait, as Trustee	12-06-300-008	WS10477	PCI-14 STA 112+10	PCI-42A STA 140+35
M-13 (See also PCI 42A-P-3 M-50)	PCI-14 P-6	14-10	Easement for sewer and construction road granted to DWSD at Selfridge Air Base.	Secretary of the Air Force; City of Detroit Water Board 1973 Unrecorded Easement and 1987 Supplemental Agreement between the Department of the Air Force and the City of Detroit	3-28-73 12-16-87	Unrecorded 1-2-88	4358	258	United States of America	12-07-101-002 12-07-151-001	WS10527	103 + 90	104 + 40

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Macomb Interceptor

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M-14	PCI-15 P-1	15C-12	20' Easement for sewer by AWO. AKA PE-47.	Donald Carrio; City of Detroit Water Board	09/20/71	10/15/71	2231	169	Baker College of Clinton Township	11-34-101-017	WS10478R-1	119 + 80	120 + 20
M-15	PCI-15 P-2	15C-12	20' Easement for sewer by AWO. AKA Old PE-48.	Norman & Isabel Sholz; City of Detroit Water Board	04/05/71	07/30/71	2207	361	Simon Ljuliduraj	11-34-126-001	WS10479	120 + 70	121 + 10
M-16	PCI-15 P-3	15 B-7	20' Easement for sewer by AWO. AKA Old PE-39	Dan & Lillian Mattingly; City of Detroit Water Board	06/21/71	08/04/71	2208	873	In-Line Hockey of America, L.L.C. B N Engineering & Associates Co, Clinton Land Investment Company Leonard Carl Camaghi, Trustee	various Note: A portion of the property platted now in the Clinton East Industrial Subdivision	WS10480	216 + 50	227 + 15
M-17	PCI-15 P-4	15 B-8	50' Easement for sewer by AWO. AKA Old PE-40. Also see encroachment Job #84-15.	Clinton Township; City of Detroit	03/22/72	05/26/72	2290	714	Peter W. Doe City of Detroit as to the part of the property	11-36-108-010	WS10481	227 + 15	229 + 65
M-18	PCI-24	24-1 thru 7	2004 Construction encroachment permit by DWSD to contractor for 12" storm sewer	No Easements Transfer any interest of DWSD/Macomb to District									
M-19	PCI-25	25-1 thru 5	2004 Construction encroachment permit by DWSD to contractor for 8" water main	No Easements Transfer any interest of DWSD/Macomb to District									
M-20	PCI-28 P-1	28-1,2,3	60' Easement for sewer	Transfer any Interest of DWSD/Macomb to District	07/20/72	07/21/72	2307	644	Part of the property conveyed to the Board of County Road Commissioners for Macomb County/The rest of the property dedicated to the public use- Pompea Gardens Subdivision	Unknown Garfield Road and 21 Mile Road	WS10632	0+00	20+71
M-21	PCI-28 P-2	28-3,4,5	60' Easement for sewer	Omer and Louise Reygaert, husband and wife/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	02/26/72	03/07/72	2268	732	Board of County Road Commissioners for Macomb County Oil and gas lease legal description now changed - now east 60 ft of Garfield Road dedication contained in the Rose Pointe Estates Subdivision	Unknown/ Garfield Road	WS10633	26+71	48+32
M-22	PCI-28 P-3	28-6	60' Easement for sewer	Arnold and Elsie Marcalh, husband and wife/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	02/02/72	03/07/72	2288	733	Ronald A. Henrion, a single man	08-29-100-003	WS10634	46+32	49+82
M-23	PCI-28 P-4	28-5	60' Easement for sewer	Dorothy C. Reygaert/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	02/26/72	03/08/72	2269	79	Amato Brother's Inc.	08-29-100-002	WS10635	49+82	51+32
M-24	PCI-28 P-5 MS-68	28-6,7	60' Easement for sewer	Arthur and Ruth Ploetz, his wife/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD/also Declaration of Taking	12/31/1973 undated	1/10/1974 2-14-74	2466 2474	675 852	Joseph R. Van Assche, III, Trustee	08-20-300-001	WS10574	53 + 40	80 + 10

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M-25	PCI-28 P-8	28-11	27' Easement for sewer	L.R. Rose Realty Co./County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	10/30/73	11/23/73	2455	843	May Development Company - as to the part of the property/ Future Development Company - as to the part of the property	08-17-300-001	WS10636	0+60	1+00
M-26	PCI-28 P-9	28-11	27' Easement for sewer	Adam and Lillian Nowicki, his wife./County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	11/16/73	11/23/73	2455	848	Township of Macomb as to the part of the property/The Board of County Road Commissioners as to the part	08-18-400-008	WS10637	0+00	3+30
M-27	PCI-28 P-10	28-11	27' Easement for sewer	Korol and Sophie Kucinski, his wife (and contract buyers) and Irma Blomne (Ableholder)/ County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	10/15/73	10/18/73	2446	474	The Board of County Road Commissioners	23 Mile Road	WS10638	3+30	6+65
M-28	PCI-28 P-11	28-11	Easement for sewer	Jovanka Krstic/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	10/31/73	11/02/73	2450	677	The Board of County Road Commissioners	23 Mile Road	WS10639	6+85	13+30
M-29	PCI-28 P-13	28-12	22' Easement for sewer	Waclaw Gmurowski/ County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	10/09/73	10/15/73	2445	280	The Board of County Road Commissioners	23 Mile Road	WS10640	16+50	18+10
M-30	PCI-28 P-14	28-12	27' Easement for sewer	Angela Romano, Peter and Bernice Terebasz, his wife (Ableholders), Mitchell and Rita Rzepka, his wife (and contract buyers)/ County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	11/15/73	12/14/73	2461	50	The Board of County Road Commissioners/S submit evidence that Larry Tersigni and Lorela Tersigni are names for the same person Assessed legal description appears to be in error and does not close. The south 60 ft road should have been excepted	08-18-400-019	WS10641	18+10	20+15
M-31	PCI-28 P-15	28-13	27' Easement for sewer	John Radlick, Mitchell and Rita Rzepka, his wife, Norbert and Dorothy Radlick, his wife (and contract holders)/ County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	11/27/73	01/10/74	2466	671	The Board of County Road Commissioners The South 60 feet now dedicated to the use of public by plat dedication in the Milano Industrial Subdivision	23 Mile Road	WS10642	20+15	23+40
M-32	PCI-28 P-17	28-13	27' Easement for sewer	Walter Kaiser/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	10/09/73	10/15/73	2445	282	The Board of County Road Commissioners	23 Mile Road	WS10643	26+60	27+85
M-33	PCI-28 P-18	28-13, 14	Easement for sewer	Robert and Diane Sans, his wife and Martha Buchholz/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	01/21/74	01/30/74	2471	311	Quadrata Development, L.L.C., as part of the property/The Board of County Road Commissioners	23 Mile Road	WS10644	27+85	32+45

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M-34	PCI-28 P-19	28-14	27' Easement for sewer	Herbert and Elsie Warczak, his wife/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	11/19/73	11/23/73	2455	845	The Board of County Road Commissioners	23 Mile Road	WS10645	32+45	36+10
M-35	PCI-28 P-20	28-14	27' Easement for sewer	Consumers Power Company/County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	02/04/74	03/13/74	2481	184	Consumers Power Company	08-18-300-017	WS10646	36+85	37+75
M-36	PCI-28 P-21	28-14, 15	Easement for sewer	Erni Meersheert County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	11/14/73	11/23/73	2455	833	The Board of County Road Commissioners and Hayes Land Development Group	23 Mile Road	WS10647	37+80	46+25
M-37	PCI-28 (M-S 67)	not mapped	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb recorded in Liber 2474, Page 852	undated	02/14/74	2474	852	Macomb County Board of Road Commissioners	21 Mile Road	WS10565	Not in area of mapped alignment	
M-38	PCI-28 (M-S 65)	not mapped	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb	undated	02/14/74	2474	852	Township of Macomb as to the part of the property/Wayne Oehmke and Mary Yvonne Ahrens, joint tenants	08-32-201-037	WS10566	Not in area of mapped alignment	
M-39	PCI-28 (M-S 66)	not mapped	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb	undated	02/14/74	2474	852	Township of Macomb as to the part of the property/Malcolm and Martha Beckman, husband and wife	08-32-201-004	WS10567	Not in area of mapped alignment	
M-40	PCI-28 (M-S 17)	28-13	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb recorded in Liber 2474, Page 852	undated	02/14/74	2474	852	Macomb County Road Commission	23 Mile Road	WS10568	23+40	28 + 60
M-41	PCI-28 (M-S 68)	not mapped	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb recorded in Liber 2474, Page 852	undated	02/14/74	2474	852	John and Kathleen Daley, husband and wife	08-32-226-002	WS10569	Not in area of mapped alignment	
M-42	PCI-28 (M-S 78)	not mapped	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb	undated	02/14/74	2474	852	Marvin and Rosemary Braekveel, husband and wife	08-31-202-004	WS10570	Not in area of mapped alignment	
M-43	PCI-28 (M-S 57)	28-8, 9, 10	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb	undated	02/14/74	2474	852	Township of Macomb	08-20-100-009	WS10571	80 + 10	106 + 70
M-44	PCI-28 (M-S 8)	28-8, 9, 10	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb recorded in Liber 2474, Page 852	undated	02/14/74	2474	852	Township of Macomb	08-20-100-007	WS10572	80 + 10	108 + 70
M-45	PCI-28 (M-S 7)	45-14	60' Easement	Declaration of Taking by Macomb County Drain Commissioner and the Township of Macomb recorded in Liber 2474, Page 852	undated	02/14/74	2474	852	George Wallace and Julianne McLarney, husband and wife	08-31-226-003	WS10573	149 + 90	150 + 80

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M-46	PCI-37	12A-7 12A-8	Easement for public way and meter station	Ronald and Hazel Stock/City of Fraser, Unrecorded assignment to Detroit Water Board	12/20/77	12/05/78	3039	508	Ronald G. Stock and Hazel I Stock, husband and wife		WS10764	69+73	83+27
M-47	PCI-42A P-1A	42A-3	60' Easement for sewer	Declaration of taking/City of Detroit Lakeshore Interceptor Extension 1988	02/26/88	3/4/1988 Amended	4378 4587	270 351	Annette Marian Ross and Janel Ann Slobodnik, w/full right of survivorship	12-06-300-002	WS10512	25+60	30+55
M-48	PCI-42A P-1B	42A-3 & 42A-4	60' Easement for sewer	Declaration of taking/City of Detroit Lakeshore Interceptor Extension 1988	02/26/88	3/4/1988 Amended	4378 4587	270 351	Annette Marian Ross and Janel Ann Slobodnik, w/full right of survivorship	12-06-100-010	WS10513	30+55	45+25
M-49	PCI-42A P-2	42A-4 & 42A-5	Easement for sewer	Michigan Department of Transportation/ City of Detroit DWSD	05/26/88	07/06/88	4453	555	Michigan State Highway Commissioner	12-09-100-011	WS10482	45+25	52+10
M-50	PCI-42A P-3	42A-5 & 42A-6	60' Easement for sewer	Easement for North Grosse Pointe Interceptor to Macomb County Public Works Liber 19509 P 589	01/24/08	10/02/08	19509	589	The United States of America	12-06-200-002	WS10528	52+10	61+30
M-51	PCI-42A P-4A		Temporary easement	OMIT									
M-52	PCI-42A P-4B		Temporary easement	OMIT									
M-53	PCI-42A P-4C	42A-6 & 42A-7	60' Easement for sewer	Declaration of taking/City of Detroit Lakeshore Interceptor Extension	02/26/88	3/4/1988 Amended	4378 4587	270 351	Michigan Department of Transportation	09-31-377-001	WS10514	67+00	77+00
M-54	PCI-42A P-4D	42A-7 & 42A-8	60' Easement for sewer	Declaration of taking/City of Detroit Lakeshore Interceptor Extension	02/26/88	3/14/1988 Amended	4378 4587	270 351	Chesterfield Town Center, LLC	09-31-402-004 Now part of Parcel 09-31-476-003	WS10515	77+00	91 + 30
M-55	PCI-42A P-5	42A-8	60' Easement for sewer	Declaration of taking/City of Detroit Lakeshore Interceptor Extension	02/26/88	3/4/1988 Amended	4378 4587	270 351	Raymond Segulin (4/9 Interest) Joseph E. Michelich (2/9 Interest) Joseph Diatio and Frances Buttazzoni, as Co-Trustees (3/9 Interest)	09-31-251-002	WS10516	91 + 30	90+95
M-56	PCI-42A P-6		Temporary easement	OMIT									
M-57	PCI-42A P-7A	42A-8, 9, 10, 11	60' Easement for sewer by AWO	Chesterfield Township, City of Detroit Water Board	02/19/87	04/09/87	4166 4166 4166	924 - 7A 934 - 7B 944 - 7C	Chesterfield Town Center, LLC/ Township of Chesterfield/ Michigan Department of Transportation	09-31-251-003 Now part of Parcel 09-31-476-003	WS10483	90+95	114+25
M-58	PCI-42A P-7B	42A-8, 9, 10, 11	Easement for sewer by AWO	Chesterfield Township, City of Detroit Water Board	02/19/87	04/09/87	4166 4166 4166	924 934 944	Chesterfield Town Center, LLC/ Township of Chesterfield	09-31-276-002	WS10508	113+90	114+00
M-59	PCI-42A P-7C	42A-8, 9, 10, 11	60' Easement for sewer by AWO	Chesterfield Township, City of Detroit Water Board	02/19/87	04/09/87	4166 4166 4166	924 934 944	Chesterfield Town Center, LLC/Michigan Department of Transportation	09-31-476-003 21 Mile Rd	WS10509	114+25	128+05
M-60	PCI-42A P-8	42A-12	20' Easement for sewer by AWO. Also see Job #92-7 (60 ft in width)	Maria DeMuyck and Sheldon W. Port/City of Detroit Declaration of Taking Lakeshore Interceptor Extension	02/06/88	03/04/88	4378	270	Briar Towns Condominium Association Recorded 1992	unknown	WS10517	4+00	9+00
M-61	PCI-42A P-9A		Temporary easement	OMIT									
M-62	PCI-42A P-9B Meter CH-S-5	42A-1		Declaration of taking/City of Detroit Lakeshore Interceptor Extension (Meter)	02/26/88	03/04/88	4378	250	City of Detroit owns meter site	12-06-300-008 (part of)	WS10529	0-35	0+35

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M-63	PCI-45 Meter SY-S-3 also	45-15	Temporary and permanent easements Garfield Interceptor. Easement obtained by Macomb County Public Works and assigned to DWSD, Garfield ROW	Rosa Manzella, survivor of herself and her deceased husband Salvatore Manzella; Garfield Interceptor, c/o Macomb County Public Works Office, assigned to the City of Detroit	1/20/99 7/13/99	6/25/99 7/15/99	8938 8938 8977 8977	719 722 630 632	Ventimiglia formerly 08-30-400-008	08-30-400-022	WS10761	161+08	161+08
M-64	PCI-45		Temporary Garfield Interceptor easement obtained by Macomb County Public Works and assigned to DWSD.	Macomb Community College to Macomb County; Assigned to City of Detroit OMIT	8/15/99	8/25/1999	8938 8977 1840	710 634 124	Macomb Community College	11-06-200-005 44575 Garfield Clinton Twp	WS10763 6-10-10	OMIT	
M-65			Garfield Interceptor Temporary and permanent easement - Temporary and permanent easement	Ventimiglia to Macomb Public Works assigned to DWSD			8938 8938 8977 8977	725 728 626 628	Ventimiglia formerly 08-30-400-006	08-30-400-022	WS10761		
M-68	PCI-45	45-1	Garfield Interceptor Temporary Easement obtained by Macomb County Public Works and assigned to DWSD.	Nleman to Macomb County, City of Detroit assigned to DWSD	05/03/99	07/13/99	8971 Assignment 8977	849-853 636	Nleman	11-07-476-003	WS10762 8-10-10	OMIT	
ADD		13-1 through 14-10	Construction Agreement Harrison Twp/DWSD	Construction Agreement - Harrison Twp/DWSD	12/27/72	03/13/72	2270	314		various	none	0 + 0 PCI-15	+ 70 PCI
Meter 1	CT-S-2	13 - 1	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter CT-S-2 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement					Clinton Township	11-25-357-008	WS10754	2 + 10	3+20
Meter 2	HR-S-3	13 - 1	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter HR-S-3 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement					Harrison Equity Group	11-25-378-003	WS10755	8+10	9+0
Meter 3	HR-S-2	13-11	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter HR-S-2 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement					Nelson DeSchepper	11-24-226-016 11-24-226-015	WS10756 WS10757	114+25	115+05
Meter 4 M-63	SY-S-3	45-15	Meter in Easement	Ownership from the downstream side of the first manhole upstream from Meter SY-S-3 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement					Ventimiglia	08-30-400-022	WS10761	161+08	161+08
Meter 5	HR-S-1	14-9	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter HR-S-1 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								97+50	
Meter 6 See M-62	CH-S-5	42A-1	Meter in Easement	Meter in line with sewer						12-06-300-008	WS10529	0+10	

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Meter 7	ST-S-5	12A-2	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter ST-S-5 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								16+60	
Meter 8	FR-S-1	15C-1	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter FR-S-1 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								0+0	
Meter 9	CT-S-4	15C-5	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter CT-S-4 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								42+40	
Meter 10	CT-S-1	12A-20	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter CT-S-1 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								84+60	
Meter 11	CT-S-3	24-7	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter CT-S-3 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								09+50	
Meter 12	MA-S-2	45-15	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter MA-S-2 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								156+00	
Meter 13	ST-S-6	0	Meter in R.O.W.	Ownership from the downstream side of the first manhole upstream from Meter ST-S-6 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement								52+15	
Meter 14	MC-S-1	12A-3	Meter in R.O.W.	Meter in line with sewer									

Combined Sections 3.5(b) and (c)
 Exceptions to MID System Real Property Rights and to Marketable Title

Macomb Easmt. No.	Drawing Number	Approx Start Station	Approx End Station	Owner of Affected Parcels	Impacted Parcels Tax Id #	Possible Easmt. Issue	Outside Easement	Easmt. Liber	Easmt. Page	Meter	Title Commitment	Prescr. Easmt. Dwg.	Comments/Other
2	15C-6, 15C-7	63+00	64+00	GTW Railroad at 15 Mile Road	11-28-501-002	Y (SDA)	Y	None			WS10814	SDA 7-14/2010	Contact GTW Easement to MCRC No permit or easement for railroad property
4	13-1	8+50	9+10	Unknown Union Lake Road at Shook Rd.	11-25-378-003	1		3742	662	HR-S-3	WS10755	AEW 8-23-2010	Get 10' additional easement adjacent to Union Lake Road ROW Harrison Township Sewer Easement Own from downstream side of first manhole upstream from Meter HR-S-3 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement
5	13-6	60+30	62+00	Clinton River Spillway Inter-County Drain Drainage District	11-24-378-013	Y	Y	None			WS10680	Post Closing	L887 P22 - Clinton River Spillway Inter-County Drain Drainage District No easement of record Get Easement post closing from Clinton River Spillway Inter-County Drain Drainage District
6	13-6, 13-7	61+50	64+90	Clinton River Spillway Inter-County Drain Drainage District	11-24-378-010, 11-24-378-011	Y	Y				WS10681, WS10682	Post Closing	L887 P22 - Clinton River Spillway Inter-County Drain Drainage District No easement of record Get Easement post closing from Clinton River Spillway Inter-County Drain Drainage District

Combined Sections 3.5(b) and (c)
 Exceptions to MID-System Real Property Rights and to Marketable Title

Macomb Easmt. No.	Drawing Number	Approx Start Station	Approx End Station	Owner of Affected Parcels	Impacted Parcels Tax Id #	Possible Easmt. Issue	Outside Easement	Easmt. Liber	Easmt. Page	Meter	Title Commitment	Prescr. Easmt. Dwg.	Comments/Other
7 M-4 M-5	13-7	64+90	66+75		11-24-378-016, 11-24-378-007	N	Y	2477 2679	783 408		WS10463 M-5, WS10462 M-4	AEW 8-17-2010 (2)	Title search on house on 11-24-378-007 - Parcel owned by John DuBay - Subject to gap in chain of title per AEW House is not in easement Minor encroachment outside of easement South of Ballard Street
8	13-7	67+50	67+75	MDOT	11-24-451-002		Y					AEW 8-17-2010	File Affidavit of interest - near Ballard St
9 M-7	13-9	90+50	91+10	Ronald and Donna Soggie, husband and wife	11-24-426-006	N	Y	2532 Amend-ment to Liber 2249 P 257	523		WS 10464	X AEW 8-23-2010	Minor encroachment outside of easement North of Crocker Blvd.
10	13-11	114+30	115+10	Unknown Meter West of Reimold Rd.	11-24-226-016, 11-24-226-015	Y				HR-S-2	WS10756 WS10757	AEW (2) 8-23-2010	Get an additional 10' of easement for meter. Own from downstream side of first manhole upstream from Meter HR-S-2 as identified in Schedule 1.2 to the Macomb Interceptor Acquisition Agreement
13	14-3 no search	27+00	29+00	Drain District? Clinton River	None		Y	None			None	AEW 8-17-2010	Obtain easement or permit from CoE and MDNRE Easement required for Clinton River?

Combined Schedule 3.5(b) and (c)
 Exceptions to MID System Real Property Rights and to Marketable Title

Macomb Easmt. No.	Drawing Number	Approx Start Station	Approx End Station	Owner of Affected Parcels	Impacted Parcels Tax Id #	Possible Easmt. Issue	Outside Easement	Easmt. Liber	Easmt. Page	Meter	Title Commitment	Prescr. Easmt. Dwg.	Comments/Other
14 M-9	14-3	29+00	30+85	Unknown North of Clinton River	11-13-428-011	Y	Y	2459	551		WS 10466		Condo docs do not disclose the easement. Captains Quarters Condo recorded after easement for sewer. Condominium unit and boat slip encroaches on sewer easement; curvilinear section of sewer may be outside easement. Very minor possible encroachment. Drain District to bring suit to clear easement of encroachments
15	14-4, 14-5, 14-6, 14-7, 14-8, 14-9	43+00	93+60	Unknown Executive Drive	11-13-277-017, 11-13-228-005, 11-13-228-004, 11-13-228-002, 11-12-477-003, 11-12-07-353-001, 12-07-301-004, 11-13-227-017, 11-13-228-004, 11-13-228-002, 11-13-228-005, 11-12-477-002	Y	Y	None			11-12-477-003 WS10686 12-07-353-001 WS10688 12-07-301-018 WS10689 12-07-301-004 WS10690 WS10683 11-13-228-004 WS 10684 WS 10685 11-13-228-005 WS10759 11-12-477-002	AEW (9) 8-17-2010	Some sections of ROW are covered by Notice of Taking. Harrison Twp sewer line Liber 2396 P138 Harrison Twp sewer easement Liber 2396 P138 for 11-13-228-002 and 11-12-477-002 No sewer easement of record to DWSD

Combined Sections 3.5(b) and (c)
 Exceptions to MID System Real Property Rights and to Marketable Title

Macomb Easmt. No.	Drawing Number	Approx Start Station	Approx End Station	Owner of Affected Parcels	Impacted Parcels Tax Id #	Possible Easmt. Issue	Outside Easement	Easmt. Liber	Easmt. Page	Meter	Title Commitment	Prescr. Easmt. Dwg.	Comments/Other
19 M-60	42A-12	4+00	9+00	Unknown	09-31-202-001, Briar Towne Condo. M.C.C.P. No. 401	No issues	Y	4378	270		WS 10693		Lakeshore Interceptor Extension Liber 4378 P 270. Easement predicated Condo. Easement lies within common elements of Condo. Add to list of assets transferred. District to file action to clear easement if encroachments exist
20	45-10, 45-11	109+60	111+50	Macomb County	08-32-300-018	Y					None	HRC (Area 3) 8-23-2010	Garfield Road North of Hall Rd. Sewer is within 5 feet of easement, but not outside. Get easement from Macomb County.
21	45-12	123+80	127+20	Unknown Garfield Rd.	Unknown (2B) 08-32-300-024 (2A)	Y					WS10823	X HRC (Area 2A) HRC (Area 2B) 8-23-2010	Get an additional 20' of ROW - Warwick Village Condominium Assoc. Curvilinear section, may encroachment outside of Garfield R.O.W.
22 M-63 M-65	45-15			Garfield Rd. at 21 Mile Rd	08-30-400-022					SY-S-3	WS10761 (see WS10762 and WS10763)	HRC(1) 8-23-2010	Garfield Interceptor Temporary and permanent easement for interceptor and appurtenances. Additional easement for access drive to meter needed

Combined Sections 3.5(b) and (c)
 Exceptions to MID System Real Property Rights and to Marketable Title

	Macomb Easmt. No.	Drawing Number	Approx Start Station	Approx End Station	Owner of Affected Parcels	Impacted Parcels Tax Id #	Possible Easmt. Issue	Outside Easement	Easmt. Liber	Easmt. Page	Meter	Title Commitment	Prescr. Easmt. Dwg.	Comments/Other
23A1	M-25	28-11	0+60	0+100	L.R. Rose Realty Co./County of Macomb Drain Commissioner Unrecorded Assignment to DWSD	08-17-300-001	Y	Y	2455	843		WS10636 (uninsurable)	AEW 8-24-2010	Grantor did not have right to grant easement. Macomb to correct post-closing.
23B	M-35	28-14	36+85	37+75	Consumers Power Jog at 23 Mile Rd.	08-18-300-017	Y	Y	2481	184		WS10646	AEW 8-17-2010	JOG Existing easement M-35 - does not solve problem per AEW
24		13-7, 13-8, 14-3, 14-4, 14-9, 14-10, 42A-5 & 42A-6			MDOT I-94				2270	314		None	POST CLOSING	Harrison Twp. Constr. Agreement. Confirm sewer location with MDOT. Contact MDOT to determine how best to create record of sewer location.
25		42A-7, 42A-11 & 42A-12			MDOT I-94							None	POST CLOSING	Confirm sewer location with MDOT. Contact MDOT to determine how best to create record of sewer location.
	M-13	14-10	103+90	104+40	U. S. Air Force	12-07-101-002 12-07-151-001			4358	258		WS 10527		Terminates in 2023 and other restrictions
	M-17	15B-8	27+15	29+65	Peter W. Doe	11-36-108-010			2290	714		WS 10481		Minor error in easement legal description.

Schedule 3.5(d)

Exceptions to Non-Breach of MID Agreements

None.

Schedule 3.7
DWSD Litigation

None.

Schedule 3.8
Computation of Purchase Price as of June 30, 2010

<u>Contract</u>	<u>Asset</u>	<u>6/30/09</u> <u>"System Debt"</u> <u>Before</u> <u>Adjustments</u>
<u>A. Projects Covered by Global Settlement</u>		
PCI-45	Garfield Interceptor	\$ 20,203,529
PCI-45	Flow Control Gates	\$ 3,203,500
CS-1368	2004 Repairs	\$ 54,467,200
CS-1372	Macomb Int. 2008 Repairs	\$ 19,283,707
	Subtotal	\$ 97,157,935
	Adjustment for FY 2009-10 Payments	\$ (3,192,570)
	Adjusted Purchase Price - 6/30/2010	\$ 93,965,366
<u>B. Other Projects in Rates</u>		
CS-1421	Clintondale Rehab (a)	\$ 1,290,858
CS-1288	8 ft Gravity Sewer Clintondale	\$ 1,343,821
	Subtotal	\$ 2,634,679
	Adjustment for FY 2009-10 Payments	\$ (50,610)
	Adjusted Purchase Price - 6/30/2010	\$ 2,584,069
<u>C. Other Projects Never or Only Partially in Rates</u>		
PCI-42A	Lakeshore Arm	\$ 5,033,238
CS-978	Garfield Repair (1986)	\$ 1,269,681
CS-1292	Odor Control	\$ 1,194,147
	Meters Being Transferred	\$ 3,701,752
Meter Credit	MC-S-1 (estimated)	\$ (400,000)
	Subtotal	\$ 10,798,818
	Adjustment for FY 2009-10 Payments	\$ (10,064)
	Adjusted Purchase Price - 6/30/2010	\$ 10,788,754
SUBTOTAL PURCHASE PRICE 6/30/2009		\$ 110,591,433
Total Adjustment for FY 2009-10 Payments		\$ (3,253,244)
RESTATED PURCHASE PRICE 6/30/2010		\$ 107,338,189
ADJUSTMENTS		
<u>Projects Charged but not Constructed</u>		
	Mt. Clemens Arm	\$ (30,210)
PC-687	Clinton Twp/Fraser Control Fac	\$ (1,532,954)
	Subtotal	\$ (1,563,164)
	Global Settlement	\$ (17,050,000)
	Interest on Omitted Macomb Projects	\$ 2,141,931
	Balance of OMI/Macomb Misc. Rate Settlement	\$ (870,252)
TOTAL ADJUSTMENTS		\$ (17,341,485)
ADJUSTED FINAL PRICE as of JUNE 30, 2010		\$ 89,996,704

(a) Based on interim contract cost of \$1,488,936, less principal payments credited in sewer rates through 6/30/2009

8/27/10

Schedule 3.9

All Pending DWSD Contracts

Contract with Martin Controls.

Macomb Interceptor Acquisition Agreement

Schedule 4.3

MID Exceptions to "No Conflict"

NONE

Macomb Interceptor Acquisition Agreement

Schedule 4.4

MID Litigation

NONE

Macomb Acquisition Agreement
Schedule 5.2

FY2010/11 Sewer Rates

OMI District Sewer Rate Calculation *as of 5/21/11*

FY 2010-11 Rate Year

Part 1 - Units of Service

Line	Unit	Amount	Reference	Comment
1	Mcf	3,750,000		
2	Mcf	3,144,110		90% of Water Sales
3	Mcf	428,219	GDRSS Data	Local Community only
4	Mcf	196,907	GDRSS Data	Represents share of common sewers "downstream" of connection
5	Mcf	177,671	GDRSS Data	
6		30.8%		Universal for all customers
7	Mcf	122,948	(5) x [(1) - (6)]	
8	Mcf	3,892,185	(2)+(3)+(4)+(7)	
9	Mcf	27,588,045		
10		14.11%	(8)/(9)	
11	lbs	28,178,966	116 mg/l	Represents Customer's share of "common" flow costs
12	lbs	37,422,077	154 mg/l	Lower than volume share due to higher strengths of monitored industries
13	lbs	814,221	3.4 mg/l	Lower than volume share due to higher strengths of monitored industries
14	lbs	4,661,165	19.2 mg/l	Lower than volume share due to higher strengths of monitored industries
15		2.65%	1999 RSA	Represents Customer's share of DWSD New CSO Facilities cost

Part 2 - Cost Allocation

Line	Units	Unit Cost (a)	Allocated Rev Req't (1)*(2)	Comment
1	0	2,190	0	
2	3,892,185	0.390	1,518,727	Collection System Costs
3	1,595,471	1.021	1,629,072	Collection System Costs
4	2,296,714	1.246	2,861,702	Collection System Costs
5	3,892,185	4.955	19,286,822	Common Collection & WWTP Costs
6	28,178,966	0.302	8,508,636	WWTP Costs
7	37,422,077	0.378	14,149,610	WWTP Costs
8	814,221	4.140	3,371,245	WWTP Costs
9	4,661,165	0.233	1,086,119	WWTP Costs
10	2.65%	35,641,176	944,916	
11	Total		53,556,849	Represents Unadjusted Annual Revenue Requirement Allocated to Customer

(a) Unit Costs are uniform for every customer

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PRELIMINARY PROPOSED

1/21/2010

1/4

OMI District Sewer Rate Calculation
 FY 2010-11 Rate Year

Part 3 - Adjustments and Rate Calculation

Line	Amount	Reference	Comment
1 Rev Req't Allocation	53,356,849		From Part 2.
2 Adjustment A	1,215,913	1978 RSA	Indirect Benefits - allocates rev req'ts from Detroit to Suburbs
3 Adjustment B4	103,061	1980 RSA	15 Mile & Hayes Repairs - reallocates common costs to Macomb Co. only
4 Wayne Co. Adj	10,597	1982 RSA	15 Mile & Corridor Collapse - reallocates costs from Wayne Co. to all others
5 Adjusted Rev Req't	54,686,420		Represents Annual Revenue Requirement from Customer

Part 4 - Rate Calculation

	Total	Fixed	Commodity	Existing Charge	Comment / Percent Change
6 Direct	4,600,774	4,600,774			
7 New WW Facilities	944,916	944,916			
8 Wholesale Only Costs	1,518,727	1,518,727			
9 Other	47,622,003				
10 Allocated to Sanitary	38,469,097		38,469,097		Other allocated based on Part 1: (Line 12) * [(Part 1, Line 2)/(Part 1, Line 8)]
11 Allocated to Infiltration	7,648,601		7,648,601		Other allocated based on Part 1: (Line 12) * [(Part 1, Lns 3&4)/(Part 1, Line 8)]
12 Allocated to Inflow	1,504,305	1,504,305			Other allocated based on Part 1: (Line 12) * [(Part 1, Line 7)/(Part 1, Line 8)]
13 Total	54,686,420	8,568,722	46,117,698		Total Lines 10 thru 16
14 Units		12	3,750,000		Months / Mcf
15 Fixed Charge		\$714,960		\$1,281,276	(Line 16)/(Line 17) -44.3%
16 Commodity Charge			\$12.30		(Line 16)/(Line 17) 0.0%
17 All Commodity Unit Charge			\$14.58		Total (Line 16)/(Line 17) 0.0%

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 1/21/2010

Macomb County Sewer Rate Calculation
 FY 2010-11 Rate Year

Part 1 - Units of Service

Line	Unit	Amount	Reference	Comment
1	Mcf	2,200,000		
2	Mcf	1,871,488	(1)-(3)-(5)	Metered less Local Community Infiltration/Inflow (Lns 3&5)
3	Mcf	208,972	GDRSS Data	Local Community only
4	Mcf	133,532	GDRSS Data	Represents share of common sewers "downstream" of connection
5	Mcf	119,539	GDRSS Data	Universal for all customers
6		30.8%		
7	Mcf	82,721	(5) x [1-(6)]	
8	Mcf	2,296,714	(2)+(3)+(4)+(7)	Higher than metered flow due to common sewer/interceptor VI
9	Mcf	27,588,045		
10		8.33%	(8)/(9)	Represents Customer's share of "common" flow costs
11	lbs	16,627,941	116 mg/l	Lower than volume share due to higher strengths of monitored industries
12	lbs	22,082,148	154 mg/l	Lower than volume share due to higher strengths of monitored industries
13	lbs	480,458	3.4 mg/l	Lower than volume share due to higher strengths of monitored industries
14	lbs	2,750,476	19.2 mg/l	Lower than volume share due to higher strengths of monitored industries
15		1.60%	1999 RSA	Represents Customer's share of DWSD New CSO Facilities cost

Part 2 - Cost Allocation

Line	Units	Unit Cost (a)	Allocated Rev Req'd (1)*(2)	(3)	Comment
1	0	2,190	0		
2	2,296,714	0.390	896,176		Collection System Costs
3	0	1,021	0		Collection System Costs
4	2,296,714	1,246	2,861,702		Collection System Costs
5	2,296,714	4,955	11,380,834		Collection System Costs
6	16,627,941	0.302	5,020,805		Common Collection & WWTP Costs
7	22,082,148	0.378	8,349,451		WWTP Costs
8	480,458	4,140	1,989,316		WWTP Costs
9	2,750,476	0.233	640,901		WWTP Costs
10	1.60%	35,641,176	571,891		
11	Total		31,711,075		Represents Unadjusted Annual Revenue Requirement Allocated to Customer

(a) Unit Costs are uniform for every customer

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3/4

1/21/2010

Macomb County Sewer Rate Calculation
FY 2010-11 Rate Year

Part 3 - Adjustments and Rate Calculation

Line	Amount	Reference	Comment
1 Rev Req't Allocation	31,711,075		From Part 2
2 Adjustment A	722,642	1978 RSA	Indirect Benefits - allocates rev req'ts from Detroit to Suburbs
3 Adjustment B4	110,000	1980 RSA	15 Mile & Hayes Repairs - reallocates common costs to Macomb Co. only
4 Wayne Co. Adj	6,253	1982 RSA	15 Mile & Corridor Collapse - reallocates costs from Wayne Co. to all others
5 Adjusted Rev Req't	32,549,971		Represents Annual Revenue Requirement from Customer

Part 4 - Rate Calculation

	Total	Fixed	Commodity	Existing Charge	Comment / Percent Change
6 Direct	2,971,702	2,971,702			Direct allocations and adjustments
7 New WW Facilities	571,891	571,891			From Part 2
8 Wholesale Only Costs	896,176	896,176			
9 Other	28,110,202				
10 Allocated to Sanitary	22,905,735		22,905,735		Other allocated based on Part 1: (Line 12) * [(Part 1, Line 2)/(Part 1, Line 8)]
11 Allocated to Infiltration	4,192,015		4,192,015		Other allocated based on Part 1: (Line 12) * [(Part 1, Lns 3&4)/(Part 1, Line 8)]
12 Allocated to Inflow	1,012,451	1,012,451			Other allocated based on Part 1: (Line 12) * [(Part 1, Line 7)/(Part 1, Line 8)]
13 Total	32,549,971	5,452,220	27,097,750		Total Lines 10 thru 16
14 Units		12	2,200,000		Months / Mef
15 Fixed Charge		\$454,352		\$1,156,555	(Line 16)/(Line 17) -60.7%
16 Commodity Charge			\$12.32	\$11.59	(Line 16)/(Line 17) 6.3%
17 "All Commodity" Unit Charge			\$4.80	\$17.90	Total (Line 16)/(Line 17) -17.4%

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PRELIMINARY PROPOSED

MACOMB INTERCEPTOR ACQUISITION

SETTLEMENT AND RELEASE OF CERTAIN RATE DISPUTES

In consideration for i) the purchase price of the Macomb Interceptor System as that term is defined in the Macomb Interceptor Acquisition Agreement dated September 2, 2010; ii) principal and interest adjustments for projects never built or projects not included or not fully included in the sewer rates to Macomb County; and iii) the other mutual undertakings by the parties herein, Detroit, Macomb County, and the Macomb Interceptor Drain Drainage District ("District") agree as follows:

Except as expressly provided below, this Agreement (the "MID Agreement") does not amend, nullify or repeal the provisions of a certain Settlement and Release of Certain Rate Disputes executed by Macomb County, Oakland County, the Oakland-Macomb Interceptor Drain Drainage District and Detroit on October 22, 2009 (the "OMI Settlement") which remains in full force and effect except as amended herein.

1. Waiver and Release of Claims

Detroit and Macomb County waive and release any claims with regard to the following matters:

- a. The cost of all projects and contracts shown on Schedule 3.8 to the MID Agreement and the calculation of all credits, charges and adjustments set forth in that Schedule.

b. Claims related to the amount of and liability for outstanding debt on the following meters:

- i. CH-S-5;
- ii. CT-S-1;
- iii. CT-S-2;
- iv. Ct-S-3;
- v. CT-S-4;
- vi. FR-S-1;
- vii. HR-S-1;
- viii. HR-S-2;
- ix. HR-S-3;
- x. MA-S-2;
- xi. ST-S-5;
- xii. ST-S-6;
- xiii. SY-S-3;
- xiv. MC-S-1; and
- xv. Meter Contract CS-1292.

c. Detroit's claims related to recovery of charges from Macomb County associated with the "Clinton Township Control Facility" (PC-687¹ and CS-1240) that was not built but for which capital costs were included in the rates of other customers during several rate years;

d. Any project or improvement for which capital costs and debt service could have been allocated solely to the Macomb County Wastewater Disposal District ("MCWDD") in the rates through June 30, 2010 but was not.

¹ Erroneously referred to as either PC-63 or PC6897 in Sections 1(d)(iii) and 2(a) respectively of the OMI Agreement.

- e. Claims against Macomb County for payments due after December 2009 for the 1978 Temporary Repairs for the 15 Mile-Hayes sewer break.
- f. Except as provided in Section 2 below and rights arising under this Agreement, Macomb County waives and releases its claims against Detroit and Detroit waives and releases its claims against Macomb County with regard to all other known or unknown claims or disputes with regard to rates charged to the MCWDD as a separate user class for all rate years up to and including the FY2009/10. To the extent that there was an objectionable or allegedly incorrect or erroneous rate practice in rate year FY2009/10 that continues after that rate year, the parties to this Agreement reserve their rights to challenge such practices for rate years after FY2009/10 and seek recovery of associated rates, and this Agreement shall not be interposed as a defense to such claims.

2. Continuing Liability, Reserved Claims and Post 2008/09 Rates

- a. Section 1(f) of the OMI Agreement is amended as follows. The final cost of the inspection of and repair to the Oakland-Macomb Interceptors and the Macomb Interceptors under DWSD Contract # CS-1372 had not been incurred at the time of the Closing on the Oakland-Macomb Interceptor System. The parties to this MID Agreement agree that the final cost of CS-1372 attributable to the OMI System is \$2,470,898 as set forth in Revised Schedule 3.8 to the OMI Agreement (dated March 31, 2010) and that the balance of the final cost of CS-1372 is \$19,283,707 as shown in Schedule 3.8 to the MID Agreement.

- b. Section 1(h) of the OMI Agreement is amended as follows. To the extent that any costs or debt service associated with the matters set forth in Sections 1(b) to 1(g) of the OMI Agreement continued in the FY2009/10 rates for the MCWDD they will either be credited against the purchase price at the closing on the Macomb Interceptor System, or be incorporated into a mutually agreed upon Look Back adjustment.
- c. Macomb County agrees it remains liable for continued payment of the 1978 Permanent Repairs for the 15 Mile-Hayes sewer break through a final payment in August 2011.
- d. In the FY2010/11 rate year and subsequent rate years, Detroit will not include the operating cost or debt service for the meters and contract set forth in Section 1(b) in the rates charged directly or indirectly (whether as a suburban common to all charge or some other charge) to the District or the MCWDD.
- e. Macomb County and Detroit do not waive or release rights to or claims arising out of adjustments to rates that result from either "Look Back" adjustments for matters not addressed in this Agreement for prior rate years for which a Look Back has been finalized as of the date of Closing, or any rate revisions or corrections that would apply to all First Tier customers.
- f. To the extent that Clinton Township has a right to assert a claim with regard to certain industrial wastewater charges imposed on customers in that portion of Clinton Township whose flow was directed to the Mt. Clemens POTW, which right Detroit disputes, Clinton Township does not waive or release its right to

assert such a claim nor does Detroit waive or release any defenses to such a claim or waive or release any claim against Clinton Township.

3. Adjustment of Macomb Interceptor Purchase Price

- a. Detroit and Macomb County agree that in calculating the purchase price of the Macomb Interceptors, Detroit has correctly credited Macomb County with principal paid on projects never built but included in the MCWDD rates (Mt. Clemens Arm; Clinton Township Control Facility, PC-6897 and CS-1240; Garfield Sewer Rehabilitation, PCI-45) plus interest at 5% for 6 years on the initial debt in the rates; and has correctly charged Macomb County interest at 5% for 6 years on projects that were built but not included or only partially included in MCWDD rates (Lakeshore Arm, PCI-42A; Garfield Repair, CS-978; Odor Control, CS-1292), which credits and charges are set forth in cumulative fashion in Schedule 3.8 to the MID Agreement.
- b. Detroit and Macomb County acknowledge that the matters set forth in Section 2(b) of the OMI Agreement have been resolved to Macomb County's satisfaction prior to the Closing of the Macomb Interceptor Acquisition or will be resolved by Detroit producing the engineering and project files for Contracts PCI-42A, CS-1288, CS-1241, CS-1288i and CS-1292 within 60 days after Closing.

4. Summary of Post Closing Debt

- a. The parties agree that after the Macomb Interceptors are transferred to Macomb County, the only debt service included directly or indirectly in the sewer rates for the District or the MCWDD, other than debt service allocated "common-to-all" or

“suburban common-to-all,” will be debt service associated with capital improvements at the Northeast pump station (excluding meters at the Northeast Pump Station).

- b. Macomb County acknowledges that the purchase price for the Macomb Interceptor System may be added to the DWSD Sewer Capital Improvement Fund and used to fund future capital projects. Macomb County agrees that inclusion of debt service or capital charges associated with such future capital projects, calculated in a manner consistent with past ratemaking practices or in a manner to which all First Tier Customers have agreed, will not violate Detroit’s obligations under Sections 2(d) or 4(a).

5. Adjustment to Resolve Disputes

Section 5 of the OMI Agreement is amended as follows. Macomb County and Detroit agree that the \$3,000,000 Adjustment To Resolve Disputes that was agreed to by the parties to the OMI Acquisition Agreement shall be applied as follows: \$2,179,748 to the OMI Purchase Price and \$870,252 to the Macomb Interceptor Purchase Price and that the latter amount is shown as Balance of OMI/Macomb Misc. Rate Settlement on Schedule 3.8 to the MID Agreement..

6. Effective Date

This Agreement is contingent on and only effective upon the closing on the Macomb Interceptor System transaction.

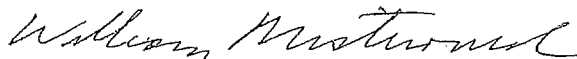
[Signatures on the following page]

Macomb County on behalf of the Macomb County Wastewater Disposal District



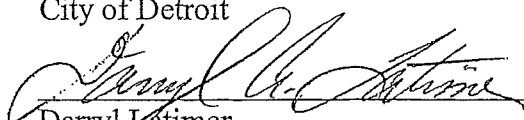
William Misterovich
Chief Deputy Macomb County Public Works Commissioner
County Agency for the Macomb County Wastewater Disposal District

Macomb Interceptor Drain Drainage District



William Misterovich
Acting Chairperson
Macomb Interceptor Drain Drainage District

City of Detroit



Darryl Latimer
Deputy Director
Detroit Water and Sewerage Department

BILL OF SALE
(Macomb Interceptor Acquisition Agreement)

THIS BILL OF SALE ("Bill of Sale") is dated as of September 2, 2010 by the City of Detroit, a Michigan municipal ("Detroit") to Macomb Interceptor Drain Drainage District, established pursuant to 1956 P.A. 40 (the "District"). Capitalized terms used in this Bill of Sale and not otherwise defined in this Bill of Sale will have the meaning given those terms in the Macomb Interceptor Acquisition Agreement between Detroit and the District dated September 2, 2010 (the "Acquisition Agreement").

Detroit and the District entered into the Acquisition Agreement whereby Detroit agreed to sell, convey, transfer, assign and deliver to the District, all of Detroit's right, title and interest in and to all of the assets owned by or leased or licensed to Detroit and that comprise the MID System or are otherwise used or held for use by Detroit in the operation of the MID System, whether real, personal or mixed, tangible or intangible, and wheresoever situated, whether or not reflected on Detroit's books and records or its financial statements (collectively, the "Transferred Assets"). Without limiting the generality of the foregoing, the Transferred Assets shall include all of Detroit's right, title and interest in, to and under:

- (a) the physical facilities including associated fixtures described in Schedule 1.20 to the Acquisition Agreement;
- (b) all of the MID System that is tangible personal property;
- (c) all of the MID System that is intangible personal property; and
- (d) all contracts, warranties and guarantees that apply to services or goods related to the facilities comprising the MID System, including without limitation, those contracts listed on Schedule 3.9 to the Acquisition Agreement; provided, however, that the NTH Contract #CS-1372, METCO Contract CS-1421, and the Martin Controls contract shall not be assigned or otherwise deemed to be a Transferred Asset.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy and legal sufficiency of which are hereby acknowledged, and as contemplated by the Acquisition Agreement, Detroit hereby sells, transfers, assigns, conveys, grants and delivers to the District, effective as of 11:59 p.m. on September 2, 2010 (the "Effective Time"), all of Detroit's right, title and interest in and to all of the Transferred Assets.

Detroit agrees with the District that Detroit will take all such further actions, execute and deliver all such further documents and do all other acts and things as the District may reasonably request for the purpose of carrying out the intent of this Bill of Sale.

Without limiting the prior paragraph, Detroit hereby constitutes and appoints the District the true and lawful agent and attorney-in-fact of Detroit, with full power of substitution and

resubstitution, in whole or in part, in the name and stead of Detroit but on behalf and for the benefit of the District and its successors and assigns, from time to time:

(a) to demand, receive and collect any and all of the Transferred Assets and to give receipts and releases for and with respect to the same, or any part thereof;

(b) to institute and prosecute, in the name of Detroit or otherwise, any and all proceedings at law, in equity or otherwise, that the District or its successors and assigns may deem proper in order to collect or reduce to possession any of the Transferred Assets and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and

(c) to do all things legally permissible, required or reasonably deemed by the District to be required to recover and collect the Transferred Assets and to use Detroit's name in such manner as the District may reasonably deem necessary for the collection and recovery of same,

Detroit hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by Detroit.

Notwithstanding any other provision of this Bill of Sale, nothing contained in this instrument shall in any way supersede, modify, replace, amend, change, rescind, waive or otherwise affect any of the provisions, including the representations, warranties, covenants and agreements of Detroit or the District, set forth in the Acquisition Agreement, this instrument being intended only to effect the transfer of the Transferred Assets sold or otherwise transferred by Detroit to the District pursuant to the Acquisition Agreement.

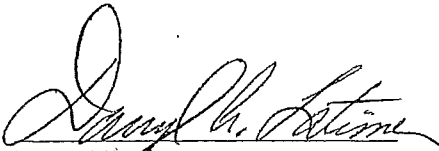
This Bill of Sale shall be binding upon, inure to the benefit of and be enforceable by Detroit and the District and their respective successors and assigns. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Michigan without regard to conflicts-of-law principles that would require the application of any other law.

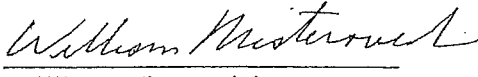
[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be duly executed as of the day and year first above written.

CITY OF DETROIT, a Michigan
municipal corporation

Macomb Interceptor Drain Drainage District
established pursuant to Chapter 20 of 1956 P.A.
40, as amended.

By: 
Name: Darryl Latimer
Title: Deputy Director of the Detroit
Water and Sewerage
Department, authorized
representative of the City of
Detroit and its Board of Water
Commissioners

By: 
Name: William Misterovich
Its: Acting Chairperson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. CR-10-20403-NGE

Plaintiff,

HON. NANCY G. EDMUNDS

v.

VIOLATIONS:

D-1 KWAME M. KILPATRICK,
D-2 BOBBY W. FERGUSON,
D-3 BERNARD N. KILPATRICK, and
D-4 VICTOR M. MERCADO,

18 U.S.C. § 1962(d) (RICO conspiracy)
18 U.S.C. § 666(a) (bribery)
18 U.S.C. § 1951 (extortion)
18 U.S.C. §§ 1341, 1343 (mail/wire fraud)
18 U.S.C. § 1512(c) (obstruction of justice)
26 U.S.C. § 7206(1) (false tax return)
26 U.S.C. § 7201 (tax evasion)
18 U.S.C. §§ 1956(a)(1)(B)(i) (money laundering)
18 U.S.C. § 2 (aiding & abetting)
18 U.S.C. §§ 981(a)(1)(c), 982(a)(1) & 1963, and
28 U.S.C. § 2461(c) (forfeiture)

Defendants.

_____ /

FOURTH SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At all times relevant to this Fourth Superseding Indictment:

1. Defendant KWAME M. KILPATRICK ("KWAME KILPATRICK") served as representative to the Michigan House of Representatives from 1996 through 2001. He was elected Mayor of the City of Detroit in November 2001 and re-elected in November 2005. He held the position of Mayor from January 1, 2002 to September 18, 2008. During that time, his annual salary ranged from about \$158,000 to \$176,000. The City of Detroit ("City") was a unit of local government, a municipal corporation and a political subdivision of the State of Michigan within the Eastern District of Michigan. The City provided services to its citizens through departments, agencies and offices of the executive branch of the City, which was headed by KWAME KILPATRICK. KWAME KILPATRICK's duties and responsibilities included

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DETROIT

supervising the officers and employees of the executive departments, agencies and offices of the City. He had authority or influence over the following agencies, departments or entities, among others, which were supervised, operated, funded or influenced in whole or in part by the City: the Detroit Water and Sewerage Department; the City of Detroit Buildings & Safety Engineering Department; the Detroit Police Department; the Detroit Building Authority; the Cobo Civic Center; the City of Detroit General Retirement System; the City of Detroit Police and Fire Pension Fund; the Detroit Economic Growth Corporation; the Economic Development Corporation of the City of Detroit; and the Downtown Development Authority. KWAME KILPATRICK also controlled the Kilpatrick Civic Fund, a purported nonprofit entity.

2. Defendant BOBBY W. FERGUSON ("FERGUSON") owned, operated, controlled, and/or directed the activities of Ferguson Enterprises, Inc., Xcel Construction Services, Inc., Johnson Construction Services (also known as Johnson Consulting Services), and a joint venture known as A&F Environmental / Johnson Construction Services (also known as A&F Environmental / Johnson Consulting Services), businesses located in the City which obtained contracts or subcontracts for work to be performed for the City, its departments and agencies. FERGUSON also controlled Detroit Three Dimensional Community Development Corporation, a purported nonprofit entity.

3. Defendant BERNARD N. KILPATRICK ("BERNARD KILPATRICK"), the father of KWAME KILPATRICK, was the president and owner of Maestro Associates, LLC, a purported consulting company located within the City which was paid by clients who sought contracts, subcontracts or investments with the City and its pension funds.

4. Defendant VICTOR M. MERCADO (“MERCADO”) was the Director of the Detroit Water and Sewerage Department (“DWSD”) from about June 2002 to July 2008. During that time, his annual salary ranged from about \$230,000 to \$240,000. During his tenure as DWSD’s Director, MERCADO had supervisory authority over the administration and awarding of more than \$2 billion of contracts between DWSD and private contractors.

5. Derrick A. Miller (“Miller”) was Deputy Chief of Staff to Michigan State Representative KWAME KILPATRICK from about 2000 to 2002. Between about 2002 and 2007, Miller served first as Chief Administrative Officer, then as Chief Information Officer for Detroit Mayor KWAME KILPATRICK. Among his duties at the Mayor’s Office, Miller acted as a liaison between the Mayor’s Office and both the Cobo Civic Center and the DWSD.

6. The City received federal assistance in excess of \$10,000 during each of calendar years 2002 through 2008. During this time period, the City contracted with and purchased goods and services from companies engaged in interstate commerce.

COUNT ONE

(18 U.S.C. § 1962(d) – Racketeering Conspiracy)

- D-1 KWAME M. KILPATRICK**
- D-2 BOBBY W. FERGUSON**
- D-3 BERNARD N. KILPATRICK**
- D-4 VICTOR M. MERCADO**

7. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above as if they were set forth in full herein.

THE ENTERPRISE

8. At all times relevant to this Fourth Superseding Indictment, defendants KWAME KILPATRICK, BOBBY FERGUSON, BERNARD KILPATRICK, VICTOR MERCADO, and others known and unknown, were a group of individuals associated in fact which constituted an enterprise as defined by 18 U.S.C. § 1961(4). This enterprise is referred to for purposes of this count as the Kilpatrick Enterprise. The Kilpatrick Enterprise, including its members and associates, constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the Enterprise. The Kilpatrick Enterprise was engaged in, and its activities affected, interstate commerce.

OBJECTIVES OF THE ENTERPRISE

- 9. The objectives of the Kilpatrick Enterprise included the following:
 - a. Financially enriching Enterprise members, associates and their families by using the power and authority of KWAME KILPATRICK’s position as a member of the Michigan House of Representatives and Mayor of the City of Detroit, and *ex officio* member of the board of trustees of the General Retirement System and City of Detroit Police and Fire Pension Fund to commit extortion, bribery and fraud;

b. Financially enriching Enterprise members, associates and their families by defrauding donors to nonprofit entities under the control of Enterprise members, including the Kilpatrick Civic Fund, Kilpatrick for Mayor and the Kilpatrick Inaugural Committee; and

c. Concealing and protecting the activities of the Enterprise from detection by law enforcement officials and the federal judiciary, as well as from exposure by the Detroit City Council and the news media, through means that included, among other things, witness tampering and intimidation, perjury and obstruction of justice.

THE RACKETEERING CONSPIRACY

10. Beginning in or about 2000, and continuing until about 2009, in the Eastern District of Michigan and elsewhere, defendants KWAME KILPATRICK, BOBBY FERGUSON, BERNARD KILPATRICK, and VICTOR MERCADO, together with other persons known and unknown, being persons employed by the City and/or associated with the Kilpatrick Enterprise, which engaged in and the activities of which affected interstate commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), by conducting and participating directly and indirectly in the conduct of the Enterprise's affairs through a pattern of racketeering activity involving multiple acts indictable or chargeable under the following provisions of federal law:

- a. 18 U.S.C. § 1951 (extortion);
- b. 18 U.S.C. § 1341 (mail fraud);
- c. 18 U.S.C. § 1343 (wire fraud);
- d. 18 U.S.C. § 1512 (obstruction of justice);

and multiple acts involving state offenses chargeable under the following provisions of state law:

- e. M.C.L. 750.213 (malicious threats to extort money);
- f. M.C.L. 750.118 (public officer accepting bribes).

11. It was a further part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the Enterprise.

THE MEANS AND METHODS OF THE RACKETEERING ACTIVITY

Among the means and methods by which the defendants and their associates conducted and participated in the conduct of the racketeering activity of the Kilpatrick Enterprise were the following:

I. EXTORTION AND ATTEMPTED EXTORTION OF MUNICIPAL CONTRACTORS AND RIGGING OF PUBLIC CONTRACTS

12. As set forth more fully in this section, below, in and between 2002 and 2008, KWAME KILPATRICK, BOBBY FERGUSON, BERNARD KILPATRICK, and VICTOR MERCADO, assisted by other members of the Enterprise, extorted municipal contractors by coercing them to include FERGUSON in public contracts and/or by rigging the award of public contracts to ensure FERGUSON obtained a portion of the revenue from those contracts. As a result of their extortion and contract rigging, FERGUSON obtained tens of millions of dollars of work and revenues from municipal contracts and municipal contractors, a portion of which FERGUSON shared with other members of the Enterprise, including KWAME KILPATRICK.

A. Kwame Kilpatrick, Assisted by Mercado, Miller and Bernard Kilpatrick, Held Up *Company P's* \$50 Million Sewer Lining Contract Until *Company I* Agreed to Give Ferguson Work Which Ultimately Totaled \$24.7 Million After Extensions

13. As set forth more fully in this subsection below, between in or about early 2002 and November 2006, KWAME KILPATRICK, assisted by VICTOR MERCADO, Derrick Miller and BERNARD KILPATRICK, held up a \$50 million sewer lining contract that had been

approved by the DWSD and its Board of Water Commissioners to be awarded to *Company I*. After KWAME KILPATRICK, MERCADO, Miller and FERGUSON extorted *Company I* through the fear of economic harm (i.e., losing the contract), *Company I* agreed to replace its minority subcontractor with FERGUSON, causing FERGUSON to receive sewer work and revenues totaling more than \$23.7 million, following change orders and amendments which increased the total contract amount.

14. In or about early 2002, BERNARD KILPATRICK alerted KWAME KILPATRICK that *Company I* was planning to use a certain minority subcontractor on the sewer lining contract, instead of FERGUSON.

15. In or about early 2002, KWAME KILPATRICK refused to approve the lining contract between DWSD and *Company I*, although the contract already had been approved by the DWSD and its Board of Water Commissioners, because FERGUSON was not part of the contract.

16. In or about early 2002, Miller, the Chief Administrative Officer of the City, contacted a representative of *Company I* to instruct him to meet FERGUSON and give FERGUSON 5% of the lining contract.

17. In or about April 2002, KWAME KILPATRICK told a representative of *Company I* that if the company wanted KWAME KILPATRICK to sign the lining contract, FERGUSON needed to be substituted for *Company I*'s selected minority subcontractor.

18. In or about May 2002, FERGUSON met with representatives of *Company I* and demanded that they pay him a base minimum profit of about \$1.5 million, unrelated to any work FERGUSON would perform.

19. On or about June 1, 2002, Miller asked a *Company I* representative who was attending the Mackinac Island Regional Policy Conference whether *Company I* had reached an agreement with FERGUSON on the lining contract.

20. In or about June 2002, FERGUSON entered an agreement with *Company I* where he would get at least \$10 million worth of work on the lining contract, with an assured minimum profit of about \$1.5 million. FERGUSON reached this deal with *Company I* by exploiting the company's fear that KWAME KILPATRICK would continue to hold up its contract or would otherwise harm its business interests if *Company I* failed to reach an agreement with FERGUSON.

B. Kwame Kilpatrick and Mercado Cancelled *Company L*'s \$10 Million Sewer Repair Contract Because *Company L* Refused Ferguson's Demand for a 25% Share, then Awarded the Work to *Company I* after *Company I* Agreed to Give Ferguson a Portion of the Contract

21. As set forth more fully in this subsection, below, in and between February and July 2003, after *Company L* refused FERGUSON's extortionate demand for a 25% share of a \$10 million as-needed emergency sewer repair contract, KWAME KILPATRICK and MERCADO cancelled the contract. Concurrently, after *Company I* agreed to give FERGUSON work on the as-needed emergency sewer contract if *Company I* were to receive it, MERCADO incorporated the \$10 million contract into *Company I*'s existing sewer lining contract.

22. On or about February 20, 2003, *Company L* paid BERNARD KILPATRICK \$2,500.

23. On or about February 26, 2003, MERCADO sent a memo to the Board of Water Commissioners asking it to authorize MERCADO to give the as-needed sewer repair contract to *Company L*. The Board approved MERCADO's request.

24. On or about March 25, 2003, FERGUSON asked KWAME KILPATRICK to place a lengthy hold on the as-needed sewer repair contract so FERGUSON could determine whether *Company L* or *Company I* would give him a better deal as a subcontractor on the contract. FERGUSON asked, "YOU HAVENT RELEASED THAT CONTRACT RIGHT[?]" KWAME KILPATRICK responded, "RIGHT. THEY KNOW I'm HOLDING IT." FERGUSON replied, "ITS STILL 'COOL' WITH YOU. I NEED TO HOLD IT FOR A LONG TIME ITS KNOW [no] NEED FOR IT AND SOMETHING ELSE ALSO."

25. In or about the Spring of 2003, FERGUSON went to the home of a *Company L* representative and told him that FERGUSON wanted 25% of *Company L*'s as-needed sewer repair contract. FERGUSON told the *Company L* representative that, even though the Board of Water Commissioners approved the contract, the contract could be stopped by KWAME KILPATRICK, who had yet to approve it. *Company L* refused to give FERGUSON a 25% share of the contract.

26. In or about the Spring of 2003, a representative of *Company L* met with BERNARD KILPATRICK to seek assistance in gaining approval of the contract. BERNARD KILPATRICK advised the *Company L* representative that BERNARD KILPATRICK would arrange a meeting with FERGUSON, which he did.

27. On or about May 8, 2003, MERCADO asked a representative of *Company I* to provide DWSD with *Company P's* unit pricing for the work contemplated by the as-needed sewer repair contract.

28. In or about May 2003, FERGUSON reached an agreement with *Company I* about the share of work FERGUSON would receive on the as-needed sewer repair contract.

29. On or about July 28, 2003, *Company L's* as-needed sewer repair contract was cancelled by MERCADO.

30. In or about September 2003, DWSD agreed to include the as-needed sewer repair work in *Company P's* existing sewer lining contract.

C. Kwame Kilpatrick Steered Work to Ferguson at a Sewer Collapse, then Held Up a \$12 Million Amendment to *Company P's* Sewer Lining Contract Until *Company I* Agreed to Give Ferguson \$350,000

31. As set forth more fully in this subsection below, in and between about September 2004 and December 2005, FERGUSON and KWAME KILPATRICK schemed together in an effort to steer work to FERGUSON at a large sewer collapse at 15 Mile Road in Sterling Heights ("the sewer collapse"). Then, from about May to December 2005, FERGUSON and KWAME KILPATRICK, assisted by Miller, threatened *Company I* and its partner that the City would hold up a \$12 million amendment to *Company P's* sewer lining contract until FERGUSON was satisfied with his financial compensation from *Company I* for work that FERGUSON wanted, but did not receive, at the sewer collapse. After *Company I* agreed to give FERGUSON an additional \$350,000 for work he did not do, KWAME KILPATRICK and MERCADO approved the \$12 million amendment.

32. On or about September 1, 2004, after visiting the site of the sewer collapse, KWAME KILPATRICK schemed with FERGUSON about how they could get FERGUSON work at the site. FERGUSON advised KWAME KILPATRICK that although *Company I* would be overseeing the overall project, *Subcontractor DA* had hired all the subcontractors at the site. KWAME KILPATRICK responded, "Perfect! That's what I needed." FERGUSON replied that FERGUSON and KWAME KILPATRICK needed to meet about how FERGUSON would "move in" given the arrangement of companies, saying, "We need to mee [*meet*] on how, I move in, I got a great idea sir".

33. On or about September 7, 2004, KWAME KILPATRICK asked FERGUSON whether FERGUSON had determined his share of work at the sewer collapse. FERGUSON responded that *Subcontractor DA* wanted to share the work with Ferguson on 50/50 basis, but that KWAME KILPATRICK had to instruct MERCADO about the arrangement, including that KWAME KILPATRICK would personally review *Subcontractor DA's* invoices to ensure that FERGUSON was getting his share: "just let victor [*MERCADO*] know [*if Subcontractor DA*] makes 2.00 fei [*Ferguson Enterprises, Inc.*] needs to make 2.00 also you will look at the invoices to make sure."

34. On or about May 3, 2005, FERGUSON told representatives of *Company I* that people "Downtown" would not understand it if FERGUSON did not get sufficient revenue from work on the sewer collapse, which might hurt *Company P's* chances of obtaining a contract amendment increasing the scope of its sewer lining contract. The representatives understood that FERGUSON's reference to people "Downtown" meant the Mayor's Office.

35. On or about July 27, 2005, MERCADO moved the Board of Water Commissioners for authorization to amend *Company P's* sewer lining contract to increase its scope by \$12 million (hereafter, "the amendment").

36. In or about the Summer of 2005, at various locations in Detroit, FERGUSON told representatives of *Company I* and *Company P's* partner that DWSD would not authorize the amendment if they did not pay FERGUSON \$500,000 to \$700,000, representing profits FERGUSON claimed he should have received had he been given more work at the sewer collapse.

37. In or about the Fall of 2005, MERCADO asked a representative of *Company I* if the company had resolved things yet with FERGUSON.

38. In or about December 2005, at FERGUSON's office, FERGUSON told a representative of *Company P's* partner that the amendment would sit on the Mayor's desk unapproved until FERGUSON got the compensation he wanted for the sewer collapse.

39. In or about late 2005, Miller told a representative of *Company I* that *Company I* had to resolve FERGUSON's complaint about the sewer collapse.

40. On or about December 16, 2005, at a restaurant in Detroit, FERGUSON, after conferring separately in the restaurant with Miller, approached a representative of *Company I* and demanded \$350,000 for the sewer collapse.

41. In or about late December 2005, *Company I* and *Company P's* partner agreed to pay FERGUSON a total of \$350,000 for the profits FERGUSON believed he should have received at the sewer collapse. FERGUSON obtained these agreed payments from *Company I*

and *Company P's* partner by exploiting their fear that KWAME KILPATRICK would continue to hold up approval of the amendment if they did not pay FERGUSON.

42. On or about December 23, 2005, KWAME KILPATRICK and MERCADO signed a Special Administrator Order authorizing the amendment, which called for a \$12 million increase in the scope of *Company P's* sewer lining contract.

D. Ferguson Extorted *Company L* out of \$1.7 Million from a \$27.9 Million Sewer Outfalls Contract

43. As set forth more fully in this subsection below, in and between about January 2004 and July 2007, FERGUSON, exploiting the fear of economic harm created by previous actions of KWAME KILPATRICK and MERCADO, extorted *Company L* and its partner out of \$1.7 million in proceeds from a \$27.9 million sewer outfalls contract.

FERGUSON and his companies did no work on the sewer outfalls contract in exchange for the \$1.7 million in extorted payments.

44. On or about January 26, 2004, while meeting with representatives of *Company L* and another company about partnering on future DWSD projects, FERGUSON sent a text message to Derrick Miller about the progress of the meeting, including the fact that *Company L* now understood that they could not win a DWSD contract without having FERGUSON on their team. Specifically, FERGUSON advised Miller that the representative of *Company L* "is here saying the same thing you are saying and telling them no deal without me, he gotten smart, I am just sitting here listening."

45. In or about April 2005, DWSD awarded *Company L* the outfalls contract. *Company L's* bid identified Ferguson Enterprises as one of its subcontractors.

46. In or about July 2005, FERGUSON demanded that *Company L* pay him \$1 million from the revenues of the outfalls contract, plus a profit share of more than \$300,000. FERGUSON obtained these payments, despite the fact that he and his companies would not do any work to earn the money, by exploiting *Company L's* fear that if they did not pay him, FERGUSON would use his influence with KWAME KILPATRICK to harm *Company L's* current and future City contracts, as he had done in the past.

47. In or about September 2005, after work had begun on the project, FERGUSON told a representative of *Company L* that he wanted a 5% share, or \$450,000, of *Company L's* revenues arising from change orders for the following DWSD contracts:

(a) \$375,000 of the revenues from a change order *Company L* was seeking to rehabilitate six more outfalls; and (b) \$75,000 from a change order *Company L* was seeking to abate asbestos at DWSD facilities, a contract in which FERGUSON had no previous involvement. FERGUSON was able to obtain these payments, despite the fact that he and his companies would do no work for the money, by exploiting *Company L's* fear that FERGUSON would use his influence with KWAME KILPATRICK to reject its change orders if they did not pay him.

48. In or about September 2005, FERGUSON demanded that *Company L* immediately give him \$25,000 of the \$450,000 he previously demanded. Fearing that FERGUSON would use his influence to adversely impact *Company L's* contracts, *Company L* employees collected \$25,000 in cash which a *Company L* official hand delivered to FERGUSON that same evening at FERGUSON's offices in Detroit, even though *Company L* and FERGUSON understood that FERGUSON would do no work for the money.

49. On or about September 23, 2005, in order to conceal the payments he demanded, FERGUSON gave *Company L* an invoice for \$450,000 from Johnson Consulting Services, a company registered to and purportedly operated by FERGUSON's wife but in truth and fact controlled by FERGUSON, describing environmental services Johnson Consulting purportedly provided to *Company L*, when FERGUSON knew Johnson Consulting had not performed, and would not perform, any of the work described in the invoice.

50. During the period from about October 7, 2005 to about July 18, 2007, *Company L* and its property management arm paid Johnson Consulting Services and a joint venture of Johnson Consulting Services/A & F Environmental Services a total of more than \$1.7 million from the revenues of the outfalls contract even though FERGUSON and his affiliated companies did not perform any work for the money.

E. Kwame Kilpatrick, Ferguson, Miller and Mercado Schemed to Increase Ferguson's Revenues on a \$19.8 Million Downtown Water Main Contract Administered by *Company D*

51. As set forth more fully in this subsection below, in or about 2003 and 2004, KWAME KILPATRICK, FERGUSON, Miller and MERCADO schemed together to steer subcontracts and emergency task orders to FERGUSON in connection with a \$19.8 million downtown water main replacement contract administered by *Company D*. Following the intervention into the contracting process by KWAME KILPATRICK, Miller and MERCADO, including giving FERGUSON downtown work originally assigned to the lowest bidder, FERGUSON received over \$4.8 million in work on the downtown water main project through about 2007.

52. In or about June 2003, MERCADO and KWAME KILPATRICK authorized *Company D* to perform design and construction oversight of the downtown water main project under an arrangement whereby *Company D* would evaluate bids and provide DWSD with a ranking of the contractors who bid to perform the work.

53. On or about October 14, 2003, FERGUSON asked KWAME KILPATRICK to have Miller review and approve the water main replacement work before *Company D* did so, specifically asking: "is it ok , if zeke [Miller] reveiew and approve the watermain replacement work priorto victor [MERCADO] assigning a new task to his new consultant team."

54. On or about February 18, 2004, FERGUSON advised KWAME KILPATRICK and Miller that they needed to be part of the decision-making for the downtown water main contracts because *Company D* had stopped negotiations with FERGUSON and was trying to give the contract to one of FERGUSON's competitors.

55. On or about March 16, 2004, KWAME KILPATRICK and FERGUSON had an urgent meeting with MERCADO regarding the downtown water main project.

56. On or about March 18, 2004, at FERGUSON's request, MERCADO interceded with *Company D* to change the deadline of FERGUSON's emergency water main project in order to benefit FERGUSON.

57. On March 19, 2004, a DWSD employee accepted *Company D*'s recommendation that the first round of downtown water main replacement contracts be assigned to three City contractors who submitted the lowest bids. FERGUSON, whose bid was 45% higher than the lowest bidder, was not among these three lowest bidders.

58. On or about March 22, 2004, at FERGUSON's urging, KWAME KILPATRICK told Miller to advise MERCADO that Miller would review recommendations of contractors for the downtown water main project before MERCADO made a final decision. Specifically, FERGUSON told KWAME KILPATRICK, "I need zeke [Miller] to call victor [MERCADO] and tell him he wants to review recommendations for the downtown contractors prior to the final decision being made." KWAME KILPATRICK replied, "COOL." FERGUSON added, "You will tell him sir, real soon they are trying to move fast, thank you not rushing the boss just don't won't this to get by us."

59. On or about March 30, 2004, FERGUSON told KWAME KILPATRICK and Miller that MERCADO had told FERGUSON that MERCADO could not remove the lowest bidder from the downtown water main project because the City's purchasing ordinance prohibited it.

60. On or about April 1, 2004, MERCADO assured KWAME KILPATRICK that he was trying to look for grounds to disqualify the lowest bidder and that he might look into delaying the project.

61. In or about the Spring of 2004, MERCADO instructed *Company D* to give FERGUSON the downtown water main work originally assigned to the lowest bidder. To compensate the lowest bidder for the loss of its downtown work, a DWSD employee instructed *Company D* to give the lowest bidder work at the northeast water plant, outside of the downtown area.

62. In or between about 2004 and late December 2005, FERGUSON received more than \$4.8 million in water main work downtown, including the emergency task orders and the downtown work originally assigned to the lowest bidder.

F. Kwame Kilpatrick and Mercado Rigged a Water Main Contract for the East Side of the City so Ferguson's Team Would Win, after which Ferguson Extorted more than \$12.9 Million in Work from Other Members of the Winning Team

63. As set forth more fully in this subsection, below, between in or about the Winter of 2006 and 2008, KWAME KILPATRICK and MERCADO rigged the evaluation and award of a \$15 million contract to improve the City's eastside water mains so *Company D*, which had not teamed with FERGUSON, would lose and *Company L*, which was paired with FERGUSON, would win the contract. After change orders increased the scope of the contract, FERGUSON, assisted by KWAME KILPATRICK, extorted *Company L* and its affiliated company, *Company A*, into giving Ferguson Enterprises and FERGUSON's affiliated company, Xcel Construction Services, a total of more than \$12.9 million in work from the contract.

64. On or about January 25, 2006, DWSD sent out requests for proposals for the eastside water main contract as well as a contract for improvements of water mains on the west side of the City.

65. In or about late Winter of 2006, FERGUSON told representatives of *Company L* that he would join their team's proposal for both the eastside and westside water main contracts, but they had to identify *Company E* in place of FERGUSON on their bid because FERGUSON's affiliated company, Xcel Construction Services, was already bidding on the same contracts in partnership with another company. FERGUSON recruited *Company E* to serve as his proxy on

Company L's bid despite the fact that *Company E* had a single crew which was unable to perform the volume of work set forth in the proposal.

66. On or about March 23, 2006, *Company L* submitted a proposal to DWSD for both water main contracts. At FERGUSON's direction, *Company L* submitted a bid which intentionally concealed FERGUSON's participation by listing *Company E*, rather than FERGUSON, and falsely credited *Company E* with FERGUSON's work experience. At the time, FERGUSON and *Company L* both knew that FERGUSON would be substantially participating in the contract if it were awarded to *Company L*.

67. In or about the Spring of 2006, FERGUSON reassured a representative of *Company L* that he had spoken with MERCADO about the water main contracts and *Company L* was in good shape.

68. On or about May 14, 2006, after bid evaluations revealed that *Company L* was ranked behind *Company D*, a rival bidder not aligned with FERGUSON, KWAME KILPATRICK directed an official from the City's Human Rights Division to revoke the Detroit Headquartered Certification of *Company D*, which would adversely impact *Company D*'s bid ranking.

69. On or about May 18, 2006, pursuant to KWAME KILPATRICK's directive and with MERCADO's knowledge, the City's Human Rights Division, contrary to its policy and practice, revoked the Detroit Headquartered Certification of *Company D* without notifying *Company D* or allowing them to respond or appeal, thereby eliminating *Company D* from contention for the contract and improving *Company L*'s bid position.

70. On or about May 22, 2006, at the direction of KWAME KILPATRICK, the City's Human Rights Division awarded a Detroit Headquartered Certification to *Company A*, a partner in the *Company L* bid, thereby improving *Company L*'s bid position.

71. On or about May 23, 2006, at the direction of MERCADO, a DWSD employee credited *Company A* with Detroit Headquartered status, improving *Company L*'s bid ranking.

72. On or about May 25, 2006, DWSD recommended that *Company L* receive the eastside water main contract and Xcel Construction Services's joint venture receive the westside water main contract, thereby giving FERGUSON part of both contracts.

73. In or about the Spring of 2006, after *Company L* won the eastside contract, FERGUSON told a representative of *Company A*, which was on *Company L*'s team, to pay FERGUSON's affiliated company Xcel Construction Services a consulting fee of \$200,000, even though *Company A* did not need consulting services. FERGUSON was able to make *Company A* pay the fee by exploiting *Company A*'s fear that FERGUSON would use his relationship with KWAME KILPATRICK to harm the economic interests of *Company A* and *Company L* if they refused to pay.

74. On or about August 10, 2006, MERCADO signed an acknowledgment of contract form awarding *Company L* the eastside water main contract and Xcel Construction Services's joint venture the westside water main contract.

75. On or about June 11, 2007 and January 25, 2008, in response to FERGUSON's previous demands, *Company A* paid FERGUSON's affiliated company, Xcel Construction Services, a total of more than \$540,000 for purported consulting and construction management services, although Xcel did not earn this amount of money. FERGUSON was able to make

Company A pay this money by exploiting the company's fear that FERGUSON would harm *Company A's* business with the City if it refused to pay.

76. On or about August 29, 2008, in response to a demand from FERGUSON, *Company L* paid FERGUSON's affiliated company, Xcel Construction Services, a total of \$200,000 for purported consulting services, although Xcel did not earn this amount of money. FERGUSON was able to make *Company L* pay this money by exploiting the company's fear that FERGUSON would use his relationship with KWAME KILPATRICK to harm the economic interests of *Company L's* business with the City if it refused to pay.

77. After post-award change orders increased the size of the eastside contract, *Company L* and *Company A* gave Ferguson Enterprises and Xcel Construction Services a total of more than \$12.9 million in work.

G. Ferguson Extorted *Company L* out of \$5 million in Work on a Sewer Repair Contract for East Side of City

78. As set forth more fully in this subsection, below, between in or about June 2006 and September 2008, FERGUSON made *Company L* give FERGUSON more than \$5 million in earthwork and point repair work arising out of a sewer repair contract for the east side of the City by exploiting *Company L's* fear that FERGUSON would use his relationship with KWAME KILPATRICK to harm *Company L's* business interests if *Company L* did not give him the work.

79. On or about June 12, 2006, DWSD sent out requests for proposals for the eastside sewer repair contract.

80. In or about the Summer of 2006, FERGUSON told representatives of *Company L* that he was going to be part of their proposal to repair sewers, demanding 50% of the

work, including all the earthwork and point repair work on the project. FERGUSON instructed *Company L* not to list his company, Ferguson Enterprises, on the bid proposal because another of his companies, Xcel Construction Services, was on *Company P's* competing proposal.

FERGUSON convinced *Company L* to do this by exploiting *Company L's* fear that FERGUSON would use his relationship to KWAME KILPATRICK to harm *Company L's* chances of winning the contract if they did not do so.

81. On or about August 2, 2006, *Company L* submitted a bid to DWSD identifying *Subcontractor DC*, instead of Ferguson Enterprises, for the earthwork and point repair work. *Company L* did this, at FERGUSON's instruction, to conceal FERGUSON's role in the proposal because he also was teamed up with one of the competing bidders, *Company I*.

82. On or about November 2, 2006, MERCADO notified *Company L* that DWSD had selected it for negotiations for the eastside sewer repair contract.

83. On or about the Winter of 2006, *Company L* entered into a contract with *Subcontractor DC* to perform the earthwork and point repair work on the eastside sewer repair contract because Ferguson Enterprises's crews were busy on other City projects. *Subcontractor DC* provided a performance bond and performed the work from about December 2006 to about July 2007.

84. In or about July 2007, FERGUSON had his crew bring their equipment to the job site and kick *Subcontractor DC's* crew off. Despite the fact that FERGUSON refused to sign a contract with *Company L* or provide or pay for a performance bond for his work, *Company L* permitted FERGUSON to take over *Subcontractor DC's* work after FERGUSON threatened to shut the job down if *Subcontractor DC* did not leave the job site.

H. Ferguson Extorted *Company I* out of \$5 million in Sewer Repair Work on the West Side of City

85. As set forth more fully in this subsection, below, between in or about June 2006 and 2008, FERGUSON caused *Company I* to give Ferguson Enterprises more than \$5 million in sewer repair work on the west side of the City by exploiting his relationship with KWAME KILPATRICK and MERCADO to cause *Company I* to believe they would not win the contract if they did not agree to FERGUSON's terms.

86. On or about June 9, 2006, at *Company I*'s offices, FERGUSON told *Company I* representatives that *Company I* must enter into a joint venture with FERGUSON's company, Xcel Construction Services, in order to win one of DWSD's two upcoming contracts to rehabilitate sewers on the east and west side of the City.

87. On or about June 12, 2006, DWSD sent out requests for proposals for the sewer repair contracts.

88. On or about August 2, 2006, a joint venture of *Company I* and FERGUSON's affiliated company Xcel Construction Services submitted a proposal for the work, with Ferguson Enterprises identified as a subcontractor.

89. On or about December 21, 2006, MERCADO sent *Company I* a letter of DWSD's intent to enter into the westside sewer repair contract with the *Company I* / Xcel joint venture and further authorized *Company I* / Xcel to begin work on the contract immediately.

90. In or about December 2006, FERGUSON threatened *Company I* representatives that if FERGUSON did not get paid more money, FERGUSON would hold up the westside sewer repair contract just like he had done with the \$12 million amendment to their previous

sewer lining contract. FERGUSON further threatened that he could make more money working with *Company L*, which the *Company I* representative interpreted to mean that FERGUSON would join *Company L* on future DWSD projects, meaning that *Company I* would not get the work, given FERGUSON's influence with KWAME KILPATRICK, MERCADO and DWSD.

91. In or about December 2006, fearing that FERGUSON would carry out his threat to hold up the contract, *Company I* agreed to give FERGUSON nearly all of *Company I*'s profits from the point repair work, as well as an assured minimum profit for the overall project.

I. Ferguson, Assisted by Miller and Mercado, Extorted *Company W* out of \$5 Million in Work for Ferguson on the Baby Creek / Patton Park Contract

92. As set forth more fully in this subsection, below, in and between about February 2003 and 2008, FERGUSON, assisted by KWAME KILPATRICK, Miller and MERCADO, caused *Company W* to give Ferguson Enterprises more than \$2.7 million in work at the Baby Creek combined sewer overflow facility ("Baby Creek contract"), as well as to give FERGUSON and his affiliated company, Xcel Construction Services, more than \$2.4 million of construction work at the neighboring Patton Park recreational facility, which was part of the Baby Creek contract. FERGUSON obtained this work by exploiting *Company W*'s fear that FERGUSON would use his relationship with KWAME KILPATRICK and other members of the Mayor's Office to adversely impact *Company W*'s chances of winning the contract if they did not do so.

93. On or about September 30, 2002, DWSD requested proposals for the Baby Creek contract.

94. On or about February 6, 2003, *Company W* submitted a bid for the construction of the Baby Creek facility. *Company W* was the second lowest bidder before application of preferences given to Detroit-based and Detroit-headquartered businesses.

95. On or about February 8, 2003, Miller told a representative from *Company W* that it should put FERGUSON on its team, even though *Company W* already had agreed to hire a different subcontractor whose quotation for excavation work was 23% lower than FERGUSON's quotation.

96. On or about February 10, 2003, Miller gave FERGUSON non-public information about the bidding evaluation process, including the City's adjusted ranking of the bidders, so that FERGUSON could use that information to his advantage in negotiations with *Company W*. Specifically, FERGUSON told Miller, "I need for you to talk [*to the City Purchasing Director*], baby creek before she [*announces*] her decision, to give it to you first." Miller replied, "I did."

97. On or about February 10, 2003, DWSD declared *Company W* the lowest responsive equalized bidder after giving the company preference for being a Detroit-headquartered business.

98. On or about February 14, 2003, *Company W* agreed with FERGUSON that if it were awarded the Baby Creek contract, it would give FERGUSON \$2.73 million in mass site work at Baby Creek, as well as a \$10 million provisionary allowance to improve the Patton Park recreational facility.

99. On or about February 18, 2003, DWSD declared *Company W* the lowest responsible bidder.

100. On or about April 8, 2003, KWAME KILPATRICK, as Special Administrator of DWSD, signed an order awarding the contract to *Company W*.

101. On or about July 1, 2003, *Company W* subcontracted about \$2.7 million worth of site preparation work at the Baby Creek facility to FERGUSON.

102. On or about August 11, 2003, FERGUSON told an upper level member of the administration that KWAME KILPATRICK had authorized DWSD and the Recreation Department to reduce *Company W*'s administrative fee for the construction of the Patton Park recreation facility, enabling FERGUSON to obtain the balance for himself.

103. On or about July 2004, MERCADO directed *Company W* to reduce its administrative fee for the recreation facility by about \$150,000. FERGUSON or his affiliated company, Xcel Construction Services, received more than \$1.3 million in administrative fees.

104. During execution of the contract, FERGUSON threatened a representative of *Company W* that FERGUSON would take matters to the "inner circle" of the City administration if a dispute arose with *Company W*. *Company W* thereafter gave FERGUSON a total of more than \$5 million in work on the combined sewer overflow facility and the Patton Park recreational facility.

J. Kwame Kilpatrick and Mercado, Assisted by Miller, Rigged the Award of a \$21 Million Security Contract to Ensure Ferguson's Team Won, Causing Ferguson to Receive \$1.2 Million in Work

105. As set forth more fully in this subsection, below, in or between about August 14, 2003 and October 2004, KWAME KILPATRICK and MERCADO, assisted by Miller, rigged the evaluation and award of a contract to upgrade security systems at various DWSD facilities ("security contract") so FERGUSON's team would win the contract.

MERCADO helped conceal the scheme by funneling additional work for the contract into an unrelated contract, then misleading an inquiry authorized by a federal judge into the propriety of the security contract. FERGUSON obtained more than \$1.2 million of work on the security contract.

106. In or about late September 2003, FERGUSON, in an effort to influence DWSD's evaluation of bids for the security contract, advised MERCADO that FERGUSON would be part of a joint venture that was forming to bid on the contract.

107. On or about October 15, 2003, FERGUSON became a 15% partner in a joint venture formed to bid on the security contract (hereafter, "FERGUSON's team").

108. On or about November 3, 2003, FERGUSON's team and *Company MC* submitted competing bids for the security contract.

109. In or about January 2004, DWSD's evaluation committee advised MERCADO that the committee had determined that *Company MC* was the most qualified bidder.

110. On or about January 13 and 14, 2004, shortly after the evaluation committee met for the last time, KWAME KILPATRICK, MERCADO and Miller, at FERGUSON's urging, strategized about how to prevent DWSD's evaluation committee from awarding the security contract to *Company MC* rather than FERGUSON's team. Specifically, on or about January 14, 2004, a few minutes after asking KWAME KILPATRICK whether he had spoken with MERCADO, FERGUSON asked Miller, "Zeke [Miller] did you talk to victor [MERCADO] yesterday it real important." Miller said "Yes." FERGUSON replied, "Thank you sir, we striaght." Miller clarified, "Not yet but will be." Shortly thereafter, FERGUSON warned Miller, "Zeke [Miller] its happen right now it had to be done yesterday, if you don't call asap its over,

and [*Company MC*] will have won again, eng [*Engineering*] is send ing the decesion right now.”

Miller asked, “Call whom?” FERGUSON answered, “Victor [*MERCADO*].”

111. On or about January 27, 2004, *MERCADO*, contrary to DWSD practice and against the advice of DWSD’s attorneys and staff, directed DWSD’s evaluation committee to negotiate simultaneously with both FERGUSON’s team and *Company MC* for the security contract.

112. On or about February 11, 2004, after FERGUSON met with *MERCADO*, a DWSD employee relayed *MERCADO*’s directive to the evaluation committee that high-level DWSD management would be taking an active role in the negotiations.

113. On or about February 25, 2004, *MERCADO* asked the Board of Water Commissioners to allow him to conduct contract negotiations simultaneously with both *Company MC* and FERGUSON’s team.

114. On or about April 19, 2004, *MERCADO* rejected a recommendation by the members of DWSD’s evaluation committee to discontinue contract negotiations with FERGUSON’s team and to proceed only with *Company MC* whose proposal was a better value to DWSD. *MERCADO* directed his staff to reject the committee’s recommendation on the pretextual ground that it was contrary to the Board of Water Commissioner’s intentions, and further directed his staff to continue to negotiate simultaneously with both FERGUSON’s team and *Company MC*.

115. On or about August 5, 2004, *MERCADO* recommended that DWSD award the security contract to FERGUSON’s team despite the fact that its amended proposal was over \$2.4 million more than *Company MC*’s proposal.

116. On or about September 22, 2004, MERCADO moved the Board of Water Commissioners to authorize DWSD to negotiate the terms of the security contract with FERGUSON's team.

117. On or about October 4, 2004, KWAME KILPATRICK signed an order as Special Administrator authorizing MERCADO to enter into the security contract with FERGUSON's team.

118. In or about January 2006, after a federal judge authorized an investigation into the appropriateness of the award of the security contract to FERGUSON's team, MERCADO directed his staff to find other contracts, besides the security contract, to fund an extension of the security system to five additional water treatment plants.

119. In or about January 2006, MERCADO asked a City contractor to fund the extension of the security system to the water treatment plants using extra money left over from a separate project the contractor had completed. When the representative declined to provide the funds in the manner MERCADO wanted, MERCADO ordered him out of his office, then directed a DWSD employee to place an indefinite hold on change orders requested by that contractor.

120. In or about January 2006, MERCADO persuaded a different City contractor to submit a \$3.9 million change order to DWSD for an existing pump station project, \$3.1 million of which would be used as a pass-through to fund the extension of the security system to the water treatment plants.

121. On or about February 27, 2006, KWAME KILPATRICK asked a federal judge to approve a \$3.9 million change order for the pump station, the bulk of which was to be used for

the security system. Three of the other four change orders identified in KILPATRICK's letter to the judge were to pay FERGUSON on unrelated contracts.

122. From the start of work on the security contract, until he received his last payment on or about late June 2008, FERGUSON obtained more than \$1.2 million in work on the project.

K. Ferguson, Assisted by Kwame Kilpatrick and Mercado, Attempted to Extort Company W to Give Ferguson a Substantial Portion of a \$140 Million Oakwood Pump Station Contract

123. As set forth more fully in this subsection, below, in and between about late January and early February 2007, FERGUSON, with the assistance of KWAME KILPATRICK and MERCADO, attempted to extort *Company W* through fear of economic harm to give FERGUSON a substantial portion of a \$140 million DWSD contract for work on the Oakwood pump station ("Oakwood contract"). When *Company W* refused to agree to terms with FERGUSON, the Oakwood contract was awarded instead to another team.

124. On or about January 31, 2007, about a month after DWSD requested proposals for the Oakwood contract, FERGUSON told a *Company W* representative that the Mayor's Office wanted *Company W* to enter into a joint venture on the Oakwood contract with FERGUSON and another firm. FERGUSON added that MERCADO would be contacting *Company W* to discuss *Company W* teaming with FERGUSON.

125. On or about the morning of February 1, 2007, MERCADO called a *Company W* representative and told that representative that their conversation was "just between you and I." MERCADO said he understood *Company W* would be taking on FERGUSON as a "mentor-partner" on the Oakwood contract, and that "if you [*Company W*] want go in that

direction [*i.e. partnering with FERGUSON*] we [*DWSD*] would approve it.” The representative asked MERCADO if MERCADO’s “big guy” (KWAME KILPATRICK) had authorized the approval. MERCADO answered “yes.”

126. On or about February 8, 2007, during a meeting with a *Company W* representative, FERGUSON demanded a 35% joint venture share of *Company W*’s proposal for the Oakwood contract, warning the *Company W* representative, “there’s a new boy in town . . . this isn’t like when you called somebody up with [*a former Detroit Mayor*] and gave him 20% and he went away.”

127. On or about February 8, 2007, KWAME KILPATRICK requested that a *Company W* representative meet with him at the Manoogian Mansion.

128. On or about February 8, 2007, MERCADO advised a *Company W* representative that KWAME KILPATRICK asked MERCADO to contact him “to make sure there were no issues between” *Company W* and FERGUSON.

129. On or about Saturday, February 10, 2007, a *Company W* representative met with KWAME KILPATRICK at the Manoogian Mansion. KWAME KILPATRICK told the representative he wanted *Company W* to “play fair,” with respect to the Oakwood contract, which the representative understood to mean that *Company W* needed to partner with FERGUSON.

130. In or about March 2007, FERGUSON rejected *Company W*’s offer of a 15% share of the Oakwood contract because FERGUSON refused to share a corresponding percentage of risk of loss on the project.

131. On or about March 21, 2007, KWAME KILPATRICK instructed a *DWSD* employee to postpone the bid deadline by one week so that a high-level aide to KWAME

KILPATRICK could meet in person with a *Company W* representative in an effort to work out a joint venture between *Company W* and FERGUSON.

132. In or about March 2007, *Company W* declined to partner with FERGUSON after FERGUSON again refused to share a risk of loss equaling his share of the project.

133. In or about April 2007, DWSD awarded the Oakwood Contract to a rival bidder rather than to *Company W*.

L. Attempt to Find a Replacement for Mercado

134. As set forth more fully in this subsection below, in or about the Winter of 2008, after MERCADO had announced that he was going to leave his post as DWSD Director, KWAME KILPATRICK confidentially asked an official at the Buildings & Safety Engineering Department (“B&SE”) to take the job of DWSD Director, even though that official did not have the training or experience for the job. KWAME KILPATRICK made the offer in the hope that the B&SE official would take over MERCADO’s role of steering DWSD contracts and funds to FERGUSON through extortion and contract rigging.

135. In or about the Winter of 2008, shortly after KWAME KILPATRICK’s confidential job offer to the B&SE official, FERGUSON invited that official to FERGUSON’s offices where FERGUSON urged the official to take the job of DWSD Director, saying that if he did, FERGUSON and the official could make over a million dollars for KWAME KILPATRICK in two weeks.

M. Kwame Kilpatrick Attempted to Get Ferguson the Tiger Stadium Demolition

136. As set forth more fully in this subsection, below, in or between about February to April 2008, KWAME KILPATRICK used his position as Mayor of Detroit in an

attempt to coerce an official of the Detroit Economic Growth Corporation ("DEGC") to recommend that FERGUSON get the contract to demolish Tiger Stadium in Detroit, even though FERGUSON was not the lowest bidder. When the DEGC official refused, KWAME KILPATRICK tried to retaliate against the official by causing him to resign from his position.

137. On or about November 30, 2007, a joint venture which included Ferguson Enterprises (hereafter, "FERGUSON's joint venture") submitted a bid to the City of Detroit Economic Development Corporation ("EDC") to demolish Tiger Stadium in Detroit.

138. In or about late February or early March 2008, KWAME KILPATRICK contacted a DEGC official who was helping the EDC evaluate the bids, telling him that KWAME KILPATRICK wanted FERGUSON's joint venture to win the demolition contract.

139. On or about April 21, 2008, KWAME KILPATRICK expressed his concern and unhappiness to the DEGC official after learning that the EDC's staff had recommended that the EDC negotiate a contract with a different demolition team whose bid was \$300,000 lower than FERGUSON's joint venture. KWAME KILPATRICK instructed the DEGC official to delay submitting the recommendation to the EDC board so KWAME KILPATRICK could have an official at the Building & Safety Engineering Department (who served at KWAME KILPATRICK's pleasure) review the recommendation. The DEGC official declined to delay the board's vote.

140. On or about April 30, 2008, after the EDC board unanimously voted to award the contract to the lowest bidder, rather than the FERGUSON joint venture, a high-level official from the Mayor's Office, at KWAME KILPATRICK's direction, called the DEGC official to

warn him that he had made a bad decision, that he was not a team player, and that from now on the Mayor's Office would review all staff recommendations before they were given to the board.

141. On or about April 30, 2008, KWAME KILPATRICK, who was upset with the DEGC official in part for not recommending that the FERGUSON joint venture receive the Tiger Stadium demolition contract, sent his Chief of Staff, Kandia Milton, to the office of the DEGC official to ask for his resignation. The DEGC official declined to resign.

N. Kwame Kilpatrick Attempted to Get Ferguson Demolition Work at the Book Cadillac Hotel

142. As set forth more fully in this subsection below, from in or about the Spring of 2003 to the Spring of 2004, KWAME KILPATRICK and FERGUSON schemed together in an attempt to ensure that FERGUSON would receive a multi-million dollar subcontract to conduct the interior demolition and hazardous material abatement as part of the renovation of the Book Cadillac Hotel in Detroit, which was overseen and partly funded by departments and agencies affiliated with the City, including the Detroit Economic Growth Corporation ("DEGC") and the Downtown Development Authority ("DDA").

143. On or about March 31, 2003, FERGUSON told KWAME KILPATRICK that the *Construction Management Firm* overseeing the renovation of the Book Cadillac wanted to subcontract with a demolition company other than FERGUSON for the interior demolition of the hotel. FERGUSON reassured KWAME KILPATRICK, however, that a City official had arranged for FERGUSON to accompany that official to an event attended by the *Construction Management Firm* to let the *Construction Management Firm* know how close FERGUSON was to the City Administration. KWAME KILPATRICK replied, "COOL!"

144. On or about April 11, 2003, FERGUSON warned KWAME KILPATRICK that the *Construction Management Firm* still wanted to hire another subcontractor for the Book Cadillac demolition work. KWAME KILPATRICK replied, "Let's go to work" and they arranged to meet that afternoon to discuss the matter further.

145. On or about April 17, 2003, FERGUSON advised KWAME KILPATRICK, "I NEED YOUR HELP" before a meeting on the Book Cadillac project.

146. In or about the Spring of 2003, while attending a Detroit Red Wings game in a suite at the Joe Louis Arena in Detroit with representatives of the *Construction Management Firm*, KWAME KILPATRICK brought FERGUSON into the suite, introduced him to a *Construction Management Firm* representative, then explained that FERGUSON was his "friend" and would be "good" for the Book Cadillac project. The *Construction Management Firm* representative believed that KWAME KILPATRICK was pressuring his firm to hire FERGUSON or risk adverse consequences to the *Construction Management Firm's* future business prospects in the City.

147. On or about April 25, 2003, FERGUSON was awarded the Book Cadillac demolition subcontract.

148. On or about May 7, 2003, the DDA board approved the selection of the developer for the Book Cadillac renovation.

149. On or about January 13, 2004, FERGUSON told KWAME KILPATRICK that the developer had discontinued work on the Book Cadillac development, leaving FERGUSON with money in the project that he needed to recoup. FERGUSON stated, "Is over, . . . I have over \$300,000.00 out of my pockets cash money tied up in this job." KWAME KILPATRICK

reassured FERGUSON that they would find another developer to take over the project, "Its not over! We WILL have a deal. If [*the developer*] doesn't do it, we have another Company that will." FERGUSON said, "Cool,i need to recope what I spent so far". KWAME KILPATRICK replied, "NO QUESTION!"

150. On or about May 17, 2004, while discussing the Book Cadillac project, FERGUSON told KWAME KILPATRICK that because of KWAME KILPATRICK, "I am famous now. just need to get some money." KWAME KILPATRICK agreed, "Lol! Right. Let's get you some [*i.e., money*]." FERGUSON corrected KWAME KILPATRICK, saying, "Us."

O. Bernard Kilpatrick Attempted to Pressure *Company J* to Hire Bernard Kilpatrick's Client to Remove Waste from the Book Cadillac Hotel

151. In about early January 2008, after BERNARD KILPATRICK learned that construction *Company J* had not hired BERNARD KILPATRICK'S client, *Company C*, to remove construction debris from the Book Cadillac Hotel renovation, BERNARD KILPATRICK made a series of telephone calls to a representative of *Company J* to pressure him to fire the waste removal company he was using and replace that company with *Company C*.

152. On about January 25, 2008, after failing to persuade *Company J* to hire *Company C*, BERNARD KILPATRICK told FERGUSON that he was going to "drop a rock on [a representative of *Company J*'s] head when I find him."

153. On about February 14, 2008, a representative of *Company C* asked BERNARD KILPATRICK, "Who's like the regulatory board that could give [*Company J*] trouble? . . .

We need somebody to go in there and say, 'You know, we're gonna (expletive deleted) start writing you up for every little (expletive deleted) violation.'

154. On about February 14, 2008, BERNARD KILPATRICK asked FERGUSON whether an official with the Detroit Economic Growth Corporation could "make trouble" for *Company J* at the Book Cadillac renovation project, including removing *Company J* entirely from the project. FERGUSON said he would check and get back to BERNARD KILPATRICK

155. On about February 14, 2008, BERNARD KILPATRICK told an employee of FERGUSON, "I don't like the way [*Company J*] doin' me man," adding, "I'm gonna try to get somebody to do something to [*Company J*]."

156. On about February 21, 2008, a representative of *Company J* explained to BERNARD KILPATRICK that *Company J* could not replace the waste removal company working at the Book Cadillac Hotel with BERNARD KILPATRICK's client, *Company C*, but tried to appease BERNARD KILPATRICK by attempting to get *Company C* waste removal work at a Detroit casino and at a bank in Livonia.

P. A City Development Official, at the Direction of Kwame Kilpatrick, Pressured *Company F* to Hire Bernard Kilpatrick for a Ford Field Development Project

157. In about the summer of 2002, KWAME KILPATRICK told a representative of *Company F* that the City would contribute about \$10 million towards *Company F*'s proposal to add a "House of Blues" restaurant at Ford Field.

158. On about September 3, 2002, a City development official met with representatives of *Company F* and told them they needed to hire BERNARD KILPATRICK as their minority partner. The representatives declined.

159. In about September of 2002, after *Company F* declined to hire BERNARD KILPATRICK, KWAME KILPATRICK reversed his promise of City funding for the Ford Field project.

Q. Miller Directed a Theater Developer to Hire Bernard Kilpatrick For a Proposal to Purchase and Renovate Ford Auditorium

160. In about 2003, Miller met with a *Theater Developer* who proposed purchasing and renovating the City-owned Ford Auditorium in Detroit.

161. During the month following the meeting with Miller in 2003, the *Theater Developer* obtained artist renderings, a renovation proposal, insurance quotes and an asbestos abatement assessment for the Ford Auditorium.

162. In about 2003, Miller met again with the *Theater Developer*, at which time Miller gave the *Theater Developer* BERNARD KILPATRICK's business card with instructions to hire BERNARD KILPATRICK to assist in the proposal. The *Theater Developer* declined, and his proposal for Ford Auditorium did not proceed further.

R. Kwame Kilpatrick and Ferguson Attempted to Steer to Ferguson a Share of a Contract to Renovate the Detroit Police Department Headquarters

163. In about the fall of 2005, during a meeting to discuss a contract to renovate the Detroit Police Department's headquarters, KWAME KILPATRICK gave a representative of *Company P* the business card of an associate of FERGUSON and directed the representative to get FERGUSON's associate involved in the renovation contract.

164. In about February 2006, during negotiations between *Company P* and FERGUSON regarding the renovation contract, FERGUSON used his relationship with

KWAME KILPATRICK in an attempt to pressure *Company P* into giving him a 40 percent share of the contract.

165. In about April 2006, after FERGUSON refused *Company P's* offer of 30 percent of the renovation contract, *Company P* notified the City of Detroit that it no longer wanted to participate in the contract.

II. DEFRAUDING THE STATE OF MICHIGAN AND DONORS TO NONPROFITS OF MONIES MEANT TO HELP THE COMMUNITY OR TO FUND CAMPAIGN EXPENSES

166. As set forth more fully in this section, below, beginning in or about 1999, and continuing until 2009, KWAME KILPATRICK, FERGUSON and BERNARD KILPATRICK, assisted by other members of the Enterprise, obtained monies from the State of Michigan, as well as from donors to nonprofit entities they controlled, including the Kilpatrick Civic Fund, Kilpatrick for Mayor and the Kilpatrick Inaugural Committee, under the false pretense that such monies would be used for purposes consistent with bettering the community or for campaign expenses when, in truth and in fact, these monies were used for personal or otherwise impermissible expenses of members of the Kilpatrick Enterprise. KWAME KILPATRICK, FERGUSON and BERNARD KILPATRICK executed their pattern of fraud, in part, by causing items to be delivered by U.S. mail or interstate carrier or by transmitting information by means of wire communication in interstate commerce. The total amount of money obtained by fraud from the State of Michigan and donors to nonprofits was over \$650,000.

A. Kwame Kilpatrick and Ferguson Defrauded the State of Michigan of Over \$280,000 In Grant Monies Meant to Help the Community

167. As set forth more fully in this subsection, below, in and between 2000 and 2002, KWAME KILPATRICK, while a member of the State House of Representatives and with the assistance of FERGUSON, committed fraud on the State of Michigan by directing over \$280,000 in grant money from the State of Michigan to nonprofit entities controlled by KWAME KILPATRICK's wife and FERGUSON. The State grant money, which was supposed to help children and seniors in the Detroit area, was spent in large part by KWAME KILPATRICK or his wife on personal expenses and by FERGUSON to refurbish the offices of Ferguson Enterprises on Wyoming Avenue in Detroit.

168. In or about 2000, KWAME KILPATRICK, using his position as Democratic Floor Leader in the Michigan House of Representatives, agreed to support a proposed budget for the State of Michigan on condition that the State Budget Office award Arts, Cultural and Quality of Life grants ("State grants"), as follows: a \$500,000 grant to Detroit Three Dimensional Community Development Corporation ("Detroit 3D"), a purported non-profit entity controlled by FERGUSON; and a \$300,000 grant to another Detroit-based nonprofit ("*Nonprofit V*").

169. On or about June 22, 2000, KWAME KILPATRICK, acting as a member of the Michigan House of Representatives, sent a letter to the State Budget Office supporting the award of State grants to Detroit 3D and *Nonprofit V*.

170. On or about June 30, 2000, KWAME KILPATRICK caused an application from Detroit 3D to be sent to the State Budget Office seeking a \$500,000 State grant to help children and senior citizens. In or about August 2000, KWAME KILPATRICK asked a

representative of *Nonprofit V* to hire KWAME KILPATRICK's wife using some of the State grant funds awarded to *Nonprofit V*.

171. On or about October 2, 2000, the State of Michigan mailed a \$250,000 check to Detroit 3D and a \$150,000 check to *Nonprofit V*, equaling half of their respective State grants.

172. On or about October 12, 2000, unbeknownst to the State Budget Office or the Michigan legislature, *Nonprofit V* gave \$37,500 of its State grant to a for-profit company controlled by KILPATRICK's wife called "Using Nonviolence to Influence Total Education, Inc." ("U.N.I.T.E."), for peer mediation classes for children, which services were never provided.

173. On or about December 15, 2000, unbeknownst to the State Budget Office or the Michigan legislature, Detroit 3D gave \$100,000 of its State grant to U.N.I.T.E.

174. Between October 2000 and April 2002, most of the \$137,500 in State grant money given to U.N.I.T.E. was used for personal expenses for KWAME KILPATRICK and his wife, including \$91,000 in salary to his wife, which, as KWAME KILPATRICK well knew at that time, was contrary to the purpose of the grant.

175. In or about the Spring of 2001, KWAME KILPATRICK complained to a representative of the State Budget Office that the State wanted too much detail from Detroit 3D and *Nonprofit V* about how they spent the State grant money.

176. In or about the Spring of 2001, Miller met with a representative of the State Budget Office to help Detroit 3D and *Nonprofit V* get the second half of their State grants.

177. In or about the Summer of 2001, FERGUSON used about \$100,000 of Detroit 3D's State grant money to renovate his company offices and to repair his company's rooftop air

conditioning units, which, as FERGUSON knew at the time, was contrary to the purpose of the grant.

178. On or about June 11, 2001, a letter signed by FERGUSON's wife was sent to the State Budget Office asking for the second half of the State grant to Detroit 3D.

179. On or about January 15, 2002, a letter signed by FERGUSON's wife was sent to the State Budget Office claiming that Detroit 3D spent the first half of its State grant to renovate a dwelling in Detroit for displaced seniors and runaway youth, when in truth and fact, as FERGUSON knew at the time, the renovations were made at Ferguson Enterprises's facility.

B. Kwame Kilpatrick Defrauded Donors to Kilpatrick for Mayor, the Kilpatrick Inaugural Committee and Other Kilpatrick-Related Nonprofits by Taking Cash Kickbacks of Over \$286,000 from His Fundraising Director

180. As set forth more fully in this subsection, below, in and between August 2003 and May 2008, KWAME KILPATRICK, assisted by a person employed to fund raise for his nonprofits (the "*Fundraiser*"), caused solicitations for donations to be sent by U.S. mail to potential donors to Kilpatrick for Mayor (KWAME KILPATRICK's campaign fund), the Kilpatrick Inaugural Committee (a fund to pay for KWAME KILPATRICK's inaugural ceremonies) and the Kilpatrick Civic Fund (KWAME KILPATRICK's social welfare nonprofit). During this same time period, KWAME KILPATRICK and the *Fundraiser* received donations to these entities by U.S. mail. KWAME KILPATRICK and the *Fundraiser* represented to donors that their donations would be used for the purposes of these nonprofits, i.e., that the donations to Kilpatrick For Mayor would be used for KWAME KILPATRICK's mayoral campaigns, donations to the Kilpatrick Inaugural Committee would be used to pay for KWAME KILPATRICK's inaugural ceremonies and donations to the Kilpatrick Civic Fund would be used

for social welfare causes. KWAME KILPATRICK and the *Fundraiser* never told any of the donors that KWAME KILPATRICK would be taking cash kickbacks from the commissions paid to the *Fundraiser* by the nonprofit entities. The cash kickbacks taken by KWAME KILPATRICK totaled over \$286,000.

181. On or about August 6, 2003, KWAME KILPATRICK told the *Fundraiser* that he wanted her to give him a portion of the commissions she received for her fund raising efforts. Thereafter, from about August 6, 2003 to about May 8, 2008, at KWAME KILPATRICK's direction, the *Fundraiser* met with KWAME KILPATRICK to give him the following amounts of cash, representing his personal "share" of her commission checks:

Par. No.	Date	Non-Profit	Cash to Kilpatrick
182.	8/6/03	Kilpatrick for Mayor	\$50,000.00
183.	12/11/03	Kilpatrick for Mayor	\$5,000.00
184.	1/23/04	Kilpatrick for Mayor	\$7,500.00
185.	8/26/04	Kilpatrick for Mayor	\$40,000.00
186.	5/18/05	Kilpatrick for Mayor	\$5,000.00
187.	8/29/05	Kilpatrick for Mayor	\$2,000.00
188.	1/17/06	Kilpatrick Inaugural Committee	\$25,000.00
189.	2/7/06	Kilpatrick Inaugural Committee	\$20,000.00
190.	3/17/06	Kilpatrick Inaugural Committee	\$5,000.00
191.	6/8/06	Kilpatrick for Mayor	\$30,000.00
192.	5/4/07	Kilpatrick Inaugural Committee	\$20,000.00
193.	7/6/07	Kilpatrick Inaugural Committee	\$10,000.00
194.	9/20/07	Kilpatrick Civic Fund	\$7,000.00
195.	12/18/07	Kilpatrick for Mayor	\$25,000.00

Par. No.	Date	Non-Profit	Cash to Kilpatrick
196.	12/26/07	Kilpatrick Civic Fund	\$15,000.00
197.	4/17/08	Kilpatrick for Mayor	\$10,000.00
198.	5/8/08	Kilpatrick for Mayor	\$10,000.00
	Total		\$286,500.00

C. Kwame Kilpatrick, With the Assistance of Members of the Kilpatrick Enterprise, Defrauded Donors to the Kilpatrick Civic Fund by Using Civic Fund Monies for Personal and Campaign Expenses

199. Beginning in or about 1999, and continuing until at least February of 2009, as explained in further detail in Counts 18 through 30 below, which is incorporated by reference herein, KWAME KILPATRICK, assisted by other members of the Kilpatrick Enterprise, committed mail and wire fraud on donors to the Kilpatrick Civic Fund, a social welfare organization, by using donated monies for personal and political expenses. At least \$159,000 in Civic Fund monies were used by KWAME KILPATRICK on personal expenses.

III. BRIBERY AND ACQUISITION OF MONEY AND PROPERTY UNDER COLOR OF OFFICIAL RIGHT AND BY FEAR OF ECONOMIC HARM

200. As set forth more fully in this section below, during the course of the conspiracy, Enterprise members KWAME KILPATRICK, BERNARD KILPATRICK, BOBBY FERGUSON and other associates and City officials solicited and accepted payments and property from individuals seeking business with the City or its General Retirement System or Police and Fire pension funds. These items of value, which totaled more than \$1.2 million, were obtained by making wrongful use of KWAME KILPATRICK's mayoral office as they were items not due to KWAME KILPATRICK or BERNARD KILPATRICK, and they knew when they received the items that they were given in return for official acts and favorable treatment by

KWAME KILPATRICK as Mayor of the City. In addition, KWAME KILPATRICK, BERNARD KILPATRICK and FERGUSON obtained and attempted to obtain money and property from these same individuals through the fear of economic harm.

**A. Kwame Kilpatrick, Bernard Kilpatrick and Miller Accepted Bribes
Totaling at Least \$360,000 From Cobo Contractor Karl Kado;
Bernard Kilpatrick Attempted to Extort Kado**

201. As set forth more fully in this subsection, below, from in or about 2001 to 2005, KWAME KILPATRICK, BERNARD KILPATRICK and Miller accepted bribes of at least \$360,000 in cash from Cobo Civic Center contractor Karl Kado for favorable treatment on millions of dollars in Cobo service contracts sought or held by Kado. Moreover, in about 2008, BERNARD KILPATRICK attempted to extort Kado out of a percentage of money the City owed Kado for work performed at the City's Department of Administrative Hearings Building.

202. In and between about 2001 and 2002, KWAME KILPATRICK obtained a number of cash payments totaling at least \$80,000 from Kado, knowing that, in return, Kado expected to receive favorable treatment on service contracts Kado sought or held at Cobo Hall.

203. In or about 2001, at the direction of KWAME KILPATRICK, Miller obtained \$10,000 cash from Kado and delivered it to KWAME KILPATRICK.

204. In or about KWAME KILPATRICK's first term as Mayor of Detroit, at the direction of KWAME KILPATRICK, Miller on two occasions met with Kado in Kado's office in Cobo Hall and obtained between \$5,000 and \$10,000 in cash from Kado which Miller delivered to KWAME KILPATRICK.

205. In or about 2001, Miller obtained \$10,000 cash from Kado knowing that, in return, Kado expected to receive favorable treatment by Miller on contracts Kado sought or held at Cobo Hall.

206. Early in the administration of Mayor Kilpatrick, Miller obtained another \$10,000 cash from Kado, knowing that, in return, Kado expected to receive favorable treatment from Miller on contracts Kado sought or held at Cobo Hall.

207. In and between about 2002 and 2005, BERNARD KILPATRICK obtained a number of cash payments totaling at least \$250,000 from Kado knowing that, in return, Kado expected to receive favorable treatment from the City on contracts Kado sought or held at Cobo Hall. The payments included a single cash payment of \$100,000 in 2005.

208. In or about April 2002, KWAME KILPATRICK and Miller agreed to assign the exclusive Cobo Hall cleaning contract to Kado's company, Metro Services Organization, Inc. ("MSO").

209. On or about April 17, 2002, BERNARD KILPATRICK told Miller to instruct Lou Pavledes, director of the Cobo Civic Center, to award the Cobo Hall electrical contract to Kado, saying, "LAST THING (FOR TODAY) YOU HAVE TO CALL LOU [Pavledes] AND GIVE O.K.FOR KARL [Kado] TO DEAL WITH THE ELECTRICAL CONTRACT IN JUNE."

210. On or about April 24, 2002, BERNARD KILPATRICK reminded Miller to call Pavledes to award the Cobo electrical contract to Kado, adding that Miller should do it exactly like they did it for Kado's cleaning/maintenance contract at Cobo: "ITS TIME TO CALL LOU [Pavledes] ON THE CARL [Kado] DEAL..EXACTLY LIKE THE MAINTENANCE."

211. On or about January 25 and 28, 2003, and February 2, 2003, BERNARD KILPATRICK prodded Miller to complete the Cobo Hall electrical services contract with Kado.

212. On or about February 5, 2003, KWAME KILPATRICK and Miller agreed to assign the exclusive electrical contract for Cobo Hall to MSO. KWAME KILPATRICK and Miller later agreed to extend MSO's electrical contract until December 20, 2006.

213. In or about mid and late January 2004, KWAME KILPATRICK called Kado on the telephone.

214. On or about February 4, 2004, KWAME KILPATRICK and Miller agreed to a \$600,000 annual increase of MSO's cleaning contract at Cobo Hall.

215. On or about July 18, 2005, KWAME KILPATRICK and Miller agreed to a \$1.75 million increase of MSO's cleaning contract at Cobo Hall.

216. In or about September 2005, shortly after Kado showed BERNARD KILPATRICK a letter indicating that Kado was the target of a federal investigation, BERNARD KILPATRICK told Kado that the Kilpatrick Administration was ready to give Kado ten more years of Cobo service contracts if Kado agreed to "work with" the Administration.

217. On or about January 11, 2006, KWAME KILPATRICK and Miller agreed to extend MSO's cleaning contract at Cobo Hall until December 20, 2006.

218. On about February 27, 2008, an official of the Building Safety & Engineering Department ("BS&E") told Kado to contact BERNARD KILPATRICK to ask KWAME KILPATRICK to order BS&E to pay Kado for refurbishing the City's Department of Administrative Hearings building.

219. On about March 1, 2008, BERNARD KILPATRICK told Kado that if Kado paid him 10 percent of the money the City owed Kado, then BERNARD KILPATRICK would get the Mayor's Chief of Staff or Deputy Mayor to instruct BS&E to pay Kado. When Kado declined to pay BERNARD KILPATRICK, BERNARD KILPATRICK warned him that it would take Kado two years to be reimbursed by the City otherwise, saying, "You don't even wanna pay me, huh? . . . It would take you two years to go through lawyers to get your money, man."

B. Kwame Kilpatrick and Bernard Kilpatrick Solicited and Took Bribes of Over \$500,000 From Jon Rutherford, Who Sought a Casino Development

220. As set forth more fully in this subsection below, KWAME KILPATRICK and BERNARD KILPATRICK solicited and took more than \$500,000 in cash, non-profit donations and campaign-related payments from Jon Rutherford in return for the support of KWAME KILPATRICK, Miller and other officials in the Mayor's Office for Rutherford's riverfront casino development plan.

221. On or about September 19 and 27, 2000, Rutherford gave checks totaling about \$100,000 to an entity associated with the Michigan Democratic Party to assist KWAME KILPATRICK in becoming the Democratic leader in the State House of Representatives.

222. In or about October 2000, Rutherford gave \$23,000 to a television and radio political analyst to support KWAME KILPATRICK's mayoral campaign.

223. On or about October 19, 2000, Rutherford gave \$40,000 to the Kilpatrick Civic Fund as a way to fund KWAME KILPATRICK's mayoral campaign.

224. On or about May 2, 2001, Rutherford gave \$20,000 to the Kilpatrick Civic Fund as a way to fund KWAME KILPATRICK's mayoral campaign.

225. On or about June 6, 2001, Rutherford gave \$34,000 to Next Generation Detroit, a political action committee controlled by KWAME KILPATRICK.

226. On or about July 2, 2001, Rutherford gave \$30,000 to the Kilpatrick Civic Fund as a way to fund KWAME KILPATRICK's mayoral campaign.

227. On or about October 25, 2001, Rutherford gave \$3,000 to Kilpatrick for Mayor.

228. Between October 26, 2001 and November 6, 2001 (election day), Rutherford provided four checks totaling \$97,275 to Community Coalition to pay for costs associated with KWAME KILPATRICK's mayoral campaign.

229. On or about November 6, 2001, at the request of BERNARD KILPATRICK, Rutherford gave \$20,000 to BERNARD KILPATRICK for KWAME KILPATRICK's campaign expenses, including paying poll workers.

230. In or about 2001, during KWAME KILPATRICK's campaign for mayor and after KWAME KILPATRICK was elected mayor, Rutherford told KWAME KILPATRICK about his plan to develop a casino on the Detroit river front. KWAME KILPATRICK agreed to support this plan.

231. On or about November 17, 2001, in Las Vegas, Rutherford gave KWAME and BERNARD KILPATRICK tickets worth \$2,400 to a heavyweight boxing match.

232. Between about June 4, 2002 and March 7, 2003, as KWAME KILPATRICK well knew, Rutherford paid BERNARD KILPATRICK between \$5,000 and \$15,000 per month for purported consulting services, almost none of which BERNARD KILPATRICK actually

performed. The total amount Rutherford paid BERNARD KILPATRICK during this time period was more than \$130,000.

233. In or about the Spring of 2002, in Las Vegas, KWAME KILPATRICK asked Rutherford for \$5,000 cash, which Rutherford gave to him.

234. In or about May 2002, KWAME KILPATRICK asked Rutherford for \$10,000 cash so that KWAME KILPATRICK would have spending money when he visited the United Arab Emirates. Rutherford provided the cash to KWAME KILPATRICK.

235. On or about October 22, 2002, at BERNARD KILPATRICK's request, Rutherford gave \$5,000 to the Next Vision Foundation, a nonprofit run by KWAME KILPATRICK's sister. BERNARD KILPATRICK advised KWAME KILPATRICK of this contribution.

236. In or about 2004, Rutherford gave KWAME KILPATRICK at least \$10,000 in cash, which KWAME KILPATRICK said he needed to support a plan to elect City Council members by geographic districts.

237. Between about 2002 and 2005, KWAME KILPATRICK took a number of official actions to further Rutherford's river front casino development deal, either personally or through other representatives of the KILPATRICK administration, including attending meetings with architects, casino executives and members of the Detroit City Council and the Detroit/Wayne County Port Authority, at which KILPATRICK or other mayoral representatives discussed the logistics of Rutherford's river front casino plan and expressed that the Mayor's Office supported the plan.

C. Kwame Kilpatrick and Bernard Kilpatrick Solicited and Took Money, Private Jet Flights and Entertainment Expenses Worth at least \$100,000 from James Rosendall; Bernard Kilpatrick Attempted to Extort \$5,000 from Rosendall

238. As set forth more fully in this subsection below, from about 2001 to about 2008, KWAME KILPATRICK and BERNARD KILPATRICK solicited and took money, private jet flights, entertainment expenses and donations to KWAME KILPATRICK's non-profits and political entities worth more than \$100,000 from James Rosendall, an executive of *Company S*, in exchange for the support of KWAME KILPATRICK and other members of the Mayor's Office for a \$47 million per year sewage sludge disposal contract (the "sludge contract"). In about 2008, BERNARD KILPATRICK attempted to extort \$5,000 from Rosendall by threatening to "kill" the sludge contract if he was not paid.

239. In or about mid-2001, in a house near the State Capital in Lansing, Rosendall told KWAME KILPATRICK that *Company S* wanted to take over the contract the City had entered with another company to handle its wastewater sludge, then gave KWAME KILPATRICK and an aide three bundled campaign checks totaling more than \$10,000 for KWAME KILPATRICK's campaign for Mayor.

240. In about late 2002, KWAME KILPATRICK met Rosendall in a hotel suite in Grand Rapids, Michigan and instructed Rosendall to work with KILPATRICK's aide, Miller, on the sludge contract.

241. In or about March 2003, *Company S* submitted a proposal to DWSD to revise an existing waste disposal and hauling contract between DWSD and another company with the intent that *Company S* would take over the sludge contract.

242. In or about early 2003, at a fund raiser at the Manoogian Mansion, KWAME KILPATRICK introduced Rosendall to BERNARD KILPATRICK, telling Rosendall he wanted Rosendall to work with BERNARD KILPATRICK on the sludge contract. Rosendall understood this to mean that KWAME KILPATRICK wanted Rosendall to hire BERNARD KILPATRICK.

243. In or about early 2003, shortly after the fund raiser at the Manoogian Mansion, BERNARD KILPATRICK introduced Rosendall to Rayford Jackson, explaining that Jackson would be Rosendall's point of contact in the sludge deal. Thereafter, BERNARD KILPATRICK spent little time helping to obtain the approval of the DWSD or the Detroit City Council for the sludge contract, although he periodically would ask Rosendall for money, including requests for "loans," totaling at least \$25,000, which were never repaid.

244. From about 2003 to 2007, acting on the instructions of KWAME KILPATRICK, City officials including Kandia Milton lobbied the DWSD and the Detroit City Council to support the sludge contract. This included resolving financial, liability, environmental and regulatory issues.

245. In or about 2003 or 2004, MERCADO declined to open the sludge contract to competitive bidding despite a request to do so by DWSD staff involved in the negotiation of the contract.

246. In or about the Fall of 2003, Rosendall chartered a private jet costing more than \$19,000 to take KWAME KILPATRICK, Miller and several of their associates to Las Vegas over the weekend of September 12, 2003. Rosendall spent more than \$2,000 entertaining the group while in Las Vegas. Neither KILPATRICK, Miller, nor their associates reimbursed Rosendall for the flight or the other expenses.

247. In or about the Spring of 2004, Rosendall chartered a private jet costing more than \$15,000 to take Miller and several of his associates to Las Vegas over the weekend of April 2, 2004. Rosendall spent more than \$4,000 for food, lodging and entertainment for the group while in Las Vegas. Neither Miller nor his associates reimbursed Rosendall for the flight or the other expenses.

248. On or about October 31, 2005, Rosendall wrote a check for \$7,500 to the Kilpatrick Civic Fund.

249. On or about November 11, 2005, Rosendall wrote a check for \$10,000 to Generations PAC, KWAME KILPATRICK's political action committee.

250. On or about January 3, 2006, Rosendall wrote a check for \$5,000 to the Kilpatrick Inaugural Committee.

251. On or about February 13, 2006, at BERNARD KILPATRICK's request, Rosendall gave BERNARD KILPATRICK \$5,000 as a purported loan, which was never repaid.

252. On or about August 18, 2006, at BERNARD KILPATRICK's request, Rosendall gave BERNARD KILPATRICK a \$5,000 check, labeled as a loan, which was never repaid.

253. In or about 2006, BERNARD KILPATRICK advised Rosendall that BERNARD KILPATRICK had an agreement with Rayford Jackson giving BERNARD KILPATRICK 50% of all proceeds Jackson received from the sludge contract, totaling about \$1 million over three years.

254. In or about 2006, BERNARD KILPATRICK introduced Rosendall to BERNARD KILPATRICK's girlfriend, saying she would be in charge of recruiting and hiring

minority contractors to help build and operate the sludge processing facility. BERNARD KILPATRICK instructed Rosendall that his girlfriend, rather than BERNARD KILPATRICK, should be named in any *Company S* contracts involving BERNARD KILPATRICK to conceal BERNARD KILPATRICK's role.

255. On or about May 19, 2007, Rosendall wrote a check for \$3,400 to Kilpatrick for Mayor.

256. In or about June 2007, Rosendall chartered a private plane to return KWAME KILPATRICK and BERNARD KILPATRICK to Detroit from Mackinac Island. Rosendall was not reimbursed for the flight.

257. In or about June 2007, DWSD approved the contract with *Company S*.

258. On or about September 26, 2007, BERNARD KILPATRICK told Kandia Milton that he would see if he could make it MERCADO's "urgency" to complete the sludge deal.

259. On or about November 27, 2007, KWAME KILPATRICK signed a resolution approving the sludge contract, valued at about \$47 million per year, with a 25-year term.

260. On or about December 4, 2007, BERNARD KILPATRICK and his girlfriend met Rosendall at a restaurant in Birmingham, at which time BERNARD KILPATRICK explained that he had an unwritten agreement with Rayford Jackson that any profits Jackson derived from the sludge contract would be split as follows: 45% to BERNARD KILPATRICK, 45% to Jackson and 10% to BERNARD KILPATRICK's girlfriend, with the payment to BERNARD KILPATRICK structured through his girlfriend to conceal BERNARD KILPATRICK's interest.

261. On or about December 20, 2007, in a parking lot in Detroit, BERNARD KILPATRICK attempted to extort Rosendall, threatening him that “we” would “kill” the sludge contract if BERNARD KILPATRICK was not compensated to his satisfaction. Rosendall gave BERNARD KILPATRICK about \$300 in cash, hidden in a pack of chewing gum, in an effort to temporarily pacify him.

262. On or about March 5, 2008, outside BERNARD KILPATRICK’s residence in Detroit, BERNARD KILPATRICK held up five fingers, indicating he wanted Rosendall to give him \$5,000. Later that day, BERNARD KILPATRICK took \$2,500 in cash from Rosendall, saying he was “the one guy that made [*the sludge contract*] happen” and confirming that if he had not been paid, he would have told KWAME KILPATRICK, “Do what you can to stop it [*the sludge contract*] for a year. Stop it for two years.”

263. On or about April 16, 2008, in a restaurant parking lot in Southfield, BERNARD KILPATRICK took \$2,500 in cash from Rosendall in connection with the sludge contract.

D. Kwame Kilpatrick Solicited and Took Private Jet Flights Worth Over \$300,000 From a Representative of *Company I*

264. As set forth more fully in this subsection, below, from about August 2003 to January 2008, KWAME KILPATRICK requested the use of the private jets of a representative of *Company I* on at least eighteen occasions for the personal use of KWAME KILPATRICK and his friends and family, including BOBBY FERGUSON and BERNARD KILPATRICK, without reimbursing the representative. The representative provided this free private jet service, worth

over \$260,000, in part so KWAME KILPATRICK and the Mayor's Office would not harm the representative's business interests in the City, including *Company I*.

265. In or about 2006, after KWAME KILPATRICK had used the private jets a number of times, the representative of *Company I* asked KILPATRICK if he thought he should start paying for some of the flights because "it did not look good" for the representative to provide the flights for free. KILPATRICK said he would see about it but never otherwise responded to the representative of *Company I*.

266. In or about 2006, one of the representative's employees suggested to a high-level member of the Mayor's administration that they consider setting up a nonprofit entity which could receive donations to pay for KWAME KILPATRICK's flights. The City official said they were not interested in doing this.

267. The representative of *Company I* continued to pay for KWAME KILPATRICK's flights in part because he knew KWAME KILPATRICK could adversely impact his businesses in the City if he refused. The flights, having a fair market value to KWAME KILPATRICK of more than \$260,000 and an added variable cost to the representative of more than \$120,000, were as follows:

Par. No.	Date(s)	Destination(s)	Flights	Passengers	Added Cost to Owner	Fair Market Value
268.	2/25/04 to 2/28/04	Washington, D.C.	2	4	\$4,473.59	\$7,750.00
269.	4/12/04 to 4/16/04	Orlando	2	8	\$8,947.19	\$11,760.00

Par. No.	Date(s)	Destination(s)	Flights	Passengers	Added Cost to Owner	Fair Market Value
270.	7/24/04 to 7/25/04	East Hamptons Boston	2	3	\$3,890.08	\$10,466.00
271.	10/15/04 to 10/16/04	Houston	2	6	\$10,114.20	\$14,659.00
272.	5/19/05	Cleveland	2	9	\$1,167.02	\$2,025.00
273.	5/27/05 to 5/28/05	Greensboro, NC	2	1	\$4,279.08	\$6,160.00
274.	7/7/06 to 7/8/06	Houston	2	2	\$9,919.70	\$16,919.00
275.	8/2/06 to 8/6/06	Bermuda	3	9	\$11,281.23	\$20,382.00
276.	10/27/06 to 10/28/06	Tallahassee	2	3	\$7,974.66	\$10,480.00
277.	4/12/07	Naples, FL to Detroit	1	5	\$4,668.10	\$13,765.00
278.	5/1/07	Tallahassee	2	7	\$7,196.65	\$10,360.00
279.	5/27/07 to 5/29/07	Tallahassee	2	7	\$7,391.15	\$20,625.00
280.	6/13/07 to 6/14/07	Tallahassee	2	3	\$7,196.65	\$10,360.00
281.	6/30/07 to 8/14/07	Tallahassee	2	7	\$7,196.65	\$22,240.00
282.	9/16/07 to 9/17/07	Tallahassee	2	3	\$7,391.15	\$20,720.00

Par. No.	Date(s)	Destination(s)	Flights	Passengers	Added Cost to Owner	Fair Market Value
283.	11/2/07 to 11/5/07	Tallahassee Miami	3	6	\$10,308.71	\$26,880.00
284.	12/27/07	Tallahassee	1	5	\$3,890.08	\$10,360.00
285.	1/23/08 to 1/27/08	Tallahassee	2	5	\$7,585.66	\$28,582.00
	Totals				\$124,871.55	\$264,493.00

E. Kwame Kilpatrick Obtained More than \$75,000 in Free Private Jet Flights and Entertainment From A Representative of *Company M* And Attempted to Extort a \$100,000 Donation to the Kilpatrick Civic Fund

286. As set forth more fully in this subsection, below, in or between 2006 and 2007, KWAME KILPATRICK and others acting on his behalf obtained free private jet service and entertainment expenses worth more than \$74,000 from *Company M*. In addition, KWAME KILPATRICK and others acting on his behalf attempted to extort from *Company M* a \$100,000 payment to the Kilpatrick Civic Fund by exploiting *Company M*'s fear that if it did not do so, KWAME KILPATRICK and his *ex officio* representatives and allies on the City of Detroit Police and Fire ("P&F") pension fund and the City of Detroit General Retirement System ("GRS") would financially harm *Company M*'s business managing over \$150 million in properties owned by the P&F and a \$10 million GRS investment.

287. In or about 2006, at the direction of KWAME KILPATRICK, two upper-level officials in the Mayor's Office, including one of KWAME KILPATRICK's *ex officio* representatives to the City pension funds, told a representative of *Company M* that KWAME

KILPATRICK was upset with the representative for supporting KWAME KILPATRICK's opponent in the November 2005 election for mayor.

288. In or about April 2007, in an attempt to reconcile with KWAME KILPATRICK, *Company M*, at the request of one of KWAME KILPATRICK's *ex officio* representatives to the City pension funds, permitted KWAME KILPATRICK and five of his associates to fly on a private jet *Company M* chartered to Las Vegas over the weekend of April 13, 2007, for a golfing trip. *Company M* paid for greens fees, lodging, meals, limousine service, concert tickets and massages for KWAME KILPATRICK and his group at a cost of more than \$16,000, which was never reimbursed.

289. In or about mid-July 2007, *Company M*, at the request of one of KWAME KILPATRICK's *ex officio* representatives to the City pension funds, chartered a private plane for KWAME KILPATRICK at a cost of more than \$24,000 so KWAME KILPATRICK could go on a trip to Tallahassee, Florida over the weekend of July 20, 2007. No one from *Company M* went on this trip nor was *Company M* reimbursed by KWAME KILPATRICK.

290. In or about mid-September 2007, *Company M*, at the request of one of KWAME KILPATRICK's *ex officio* representatives to the City pension funds, chartered a private plane for KWAME KILPATRICK at a cost of more than \$34,000 so KWAME KILPATRICK could fly to Bermuda over the weekend of October 4, 2007 with KWAME KILPATRICK's wife, BERNARD KILPATRICK and BERNARD KILPATRICK's companion. No one from *Company M* went on this trip nor was *Company M* reimbursed by KWAME KILPATRICK.

291. In about 2008, one of KWAME KILPATRICK's *ex officio* representatives to the City pension funds told a representative of *Company M* that *Company M* had to "step up" by making a \$100,000 donation to the Kilpatrick Civic Fund. The representative of *Company M* declined, telling KWAME KILPATRICK's representative, "do what you have to do."

F. Kwame Kilpatrick Accepted Cash Kickbacks in Connection with the Lease and Sale of City Properties

292. In about the Fall of 2003, after learning that his Chief Administrative Officer, Derrick Miller, would financially benefit from a City contract to manage the City's real estate, KWAME KILPATRICK approved a contract with a *Real Estate Company*.

293. Between about October 2003 to 2007, Miller and KWAME KILPATRICK split cash kickbacks from a consultant to the *Real Estate Company*, totaling about \$115,000, which were funded from commissions the consultant received for property transactions for the City.

G. Kwame Kilpatrick Directed Miller to Obtain Money from a Restaurant Developer Who was Seeking a Loan From City Pension Funds

294. In about the fall of 2007, KWAME KILPATRICK asked Miller to try to obtain money from a *Restaurant Developer* who was seeking a loan from the City's pension funds for the Asian Village restaurant development.

295. In about the fall of 2007, Miller obtained \$10,000 cash from the *Restaurant Developer*, which Miller gave to KWAME KILPATRICK in a restroom in the developer's Detroit restaurant.

H. Kwame Kilpatrick Directed Marc Andre Cunningham to Pay Bernard Kilpatrick Part of Cunningham's Commission for Pension Fund Investments

296. As set forth more fully in this subsection, below, in or between about 2006 and 2007, at the direction of KWAME KILPATRICK, the Mayor's executive assistant, Marc Andre Cunningham, paid BERNARD KILPATRICK at least \$15,000 of Cunningham's commission on a pension fund consulting deal, in return for KWAME KILPATRICK's support of investments by the City of Detroit's General Retirement System ("GRS") and Police and Fire ("P&F") pension funds to a firm Cunningham represented.

297. In or about the Summer of 2006, at a restaurant in Detroit, KWAME KILPATRICK, through one of his high-level aides, directed Cunningham to pay BERNARD KILPATRICK a portion of the commissions Cunningham received from a venture capital firm ("the Firm") for Cunningham's assistance obtaining a \$30 million investment from the GRS and the P&F pension funds. KWAME KILPATRICK was present when Cunningham was told to make these payments.

298. On or about October 4, 2006, at the direction of KWAME KILPATRICK, Cunningham met with BERNARD KILPATRICK at the Coleman A. Young Municipal Center and provided BERNARD KILPATRICK at least \$4,000 in cash. It was understood between Cunningham and KWAME KILPATRICK that this and future payments were to be made to BERNARD KILPATRICK to reward KWAME KILPATRICK for his support of the GRS and P&F investments and to obtain favorable treatment by KWAME KILPATRICK in any future business that might arise between Cunningham and the City of Detroit.

299. On or about January 29, 2007, at the direction of KWAME KILPATRICK, Cunningham met with BERNARD KILPATRICK at the Coleman A. Young Municipal Center and provided BERNARD KILPATRICK at least \$4,000 in cash.

300. On or about June 27, 2007, at the direction of KWAME KILPATRICK, Cunningham met with BERNARD KILPATRICK at the Coleman A. Young Municipal Center and provided BERNARD KILPATRICK at least \$4,000 in cash.

301. Between about October 2006 and June 2007, KWAME KILPATRICK asked Cunningham when he was going to be paid his commission, as a way to remind Cunningham to pay BERNARD KILPATRICK when he received the commission payment.

302. In or about the Fall of 2007, following a media report of an FBI undercover corruption investigation that implicated Cunningham, KWAME KILPATRICK told Cunningham to stop paying BERNARD KILPATRICK.

I. Ferguson Directed Owner of *Company E* to Pay Bernard Kilpatrick \$40,000

303. In or about January 2005, FERGUSON directed the owner of *Company E* to pay BERNARD KILPATRICK \$40,000 so *Company E* could obtain business with the City.

304. On or about January 21, 2005, the owner of *Company E* paid BERNARD KILPATRICK \$40,000.

305. Following the payment, BERNARD KILPATRICK did not help *Company E* obtain any City business.

J. Ferguson and Kwame Kilpatrick Obtained More than \$90,000 from a Towing Contractor

306. As Mayor of Detroit, KWAME KILPATRICK had responsibility over the Detroit Police Department and its towing contracts, including towing contracts belonging to the *Towing Contractor*.

307. In or about February 2003, at the direction of members of the Kilpatrick Enterprise, an associate of KWAME KILPATRICK obtained about \$9,000 cash from the *Towing Contractor*.

308. In or about July 2004, the *Towing Contractor* gave \$25,000 to a Political Action Committee ("PAC"), with instructions that the PAC give the money to KWAME KILPATRICK's campaign; the PAC gave the *Towing Contractor's* \$25,000 to KILPATRICK's campaign that same month.

309. In or about 2005, FERGUSON directed the *Towing Contractor* to give \$9,500 cash to FERGUSON; the *Towing Contractor* complied in order to prevent FERGUSON from using his influence with KWAME KILPATRICK to adversely affect the *Towing Contractor's* business with the Detroit Police Department.

310. On or about May 25, 2005, KWAME KILPATRICK directed a high level member of the Detroit Police Department to meet with the *Towing Contractor* to review the *Towing Contractor's* proposal to manage all the towing for the Police Department.

311. In or about October 2005, KWAME KILPATRICK, through his subordinates, directed high level members of the Detroit Police Department to add several of the *Towing*

Contractor's companies to Police Department tow lists, resulting in increased business for the *Towing Contractor*.

312. In about May 2008, FERGUSON directed the *Towing Contractor* to give him \$100,000; the *Towing Contractor*, fearing that FERGUSON might use his influence with KWAME KILPATRICK to adversely affect the *Towing Contractor's* business with the Detroit Police Department, gave FERGUSON \$50,000 in about June 2008, which FERGUSON shared with KWAME KILPATRICK.

IV. WITNESS TAMPERING, WITNESS INTIMIDATION, PERJURY, AND OBSTRUCTION OF JUSTICE

313. As set forth more fully in this subsection, between about 2001 and 2006, BOBBY FERGUSON, VICTOR MERCADO and other members of the Kilpatrick Enterprise promoted and preserved the Kilpatrick Enterprise and its objectives by tampering with and intimidating witnesses, committing perjury and obstructing justice in both state and federal proceedings.

A. Ferguson, Assisted by Members of Kwame Kilpatrick's Executive Projection Unit, Intimidated a Detroit Police Officer into Dropping Illegal Dumping Charges Against Ferguson Enterprises

314. In about September and October of 2001, *Officer A*, a 10th Precinct Detroit Police Officer assigned to enforce environmental compliance by commercial businesses, issued citations to BOBBY FERGUSON for environmental ordinance violations, including illegally dumping waste on property owned by the City of Detroit.

315. On or about November 26, 2001, *Officer A* attended BOBBY FERGUSON's arraignment on the ordinance violations at 36th District Court. FERGUSON asked *Officer A* if he

knew who FERGUSON was, then questioned whether *Officer A* still wanted to proceed with the prosecution of the ordinance violations. *Officer A* indicated that he intended to proceed and the case was set for trial.

316. On about February 5, 2002, following KWAME KILPATRICK's inauguration as Mayor, FERGUSON appeared in 36th District Court for trial on the ordinance violations accompanied by two Detroit Police Officers assigned to KWAME KILPATRICK's Executive Protection Unit ("EPU"). FERGUSON and one of the EPU officers approached *Officer A* in the hallway outside the courtroom and the EPU Officer told *Officer A* that it would be in the best interest of *Officer A* and everyone concerned if *Officer A* dropped the prosecution of the ordinance violations. Shortly thereafter, *Officer A*, fearing for the safety of his family, caused the ordinance violations against Ferguson Enterprises to be dismissed.

B. Ferguson Attempted to Cause "Straw Donors" to Lie to Federal Investigators and a Federal Grand Jury

317. From about June to July 2005, FERGUSON and his associates instructed some of the "straw donors" identified in paragraph 314, below, whom FERGUSON had used to give \$40,000 to the Kilpatrick for Mayor campaign ("Kilpatrick for Mayor") in violation of state law, to lie to federal investigators and a federal grand jury about the fact that FERGUSON had funded their donations to Kilpatrick for Mayor, including the following:

a. In about June 2005, FERGUSON told *Straw Donor A* to tell FBI agents that she had paid for the money orders she signed for Kilpatrick for Mayor, when in truth and fact, as they both well knew, FERGUSON had funded the donations. After *Straw Donor A* reported back to FERGUSON that she had told the FBI agents that she paid for

the money orders, FERGUSON told her to stick to that story because otherwise they both could go to jail. FERGUSON further instructed *Straw Donor A* to tell one of her family members, who also made a straw donation to Kilpatrick for Mayor, to claim that the family member had paid for her donation, when in truth and fact, as they both well knew, FERGUSON had funded it.

b. In about July 2005, shortly before *Straw Donor B* was to testify before a federal grand jury, FERGUSON showed up unannounced at her house and instructed her to deny to the grand jury that the money orders she signed for Kilpatrick for Mayor came from FERGUSON, when in truth and fact, as they both well knew, FERGUSON paid for the money orders. FERGUSON warned *Straw Donor B* that if she told the grand jury that FERGUSON had paid for the money orders, she would get one of her family members in trouble.

c. In about June 2005, an associate of FERGUSON told *Straw Donor C* to tell investigators that he paid for his money order to Kilpatrick for Mayor, when in truth and fact as they both well knew, FERGUSON paid for the donation.

C. Victor Mercado Committed Perjury in an Investigation of the Awarding of a DWSD Security Contract Authorized by a Federal Judge

318. On about February 10, 2006, MERCADO testified at a deposition authorized by a federal judge investigating the appropriateness of the award of a DWSD security contract to FERGUSON's team, given FERGUSON's purported relationship to Mayor KWAME KILPATRICK and the fact that FERGUSON's team's bid was higher. MERCADO falsely testified that the security contract was completed on time and on budget without extras or

change orders. When asked whether he had any conversations with FERGUSON, MERCADO testified, "Absolutely not. I don't talk to bidders when they're bidding." MERCADO further denied having any contact with members of the Mayor's Office during the negotiations over the security contract. As MERCADO well knew at that time, however, the security contract would require more time and money before it was completed. In order to obscure any additional security system costs, MERCADO, in the weeks leading up to his deposition, authorized that additional security system work at DWSD facilities be funded out of an unrelated pump station contract, rather than the security contract. Moreover, contrary to his deposition testimony, MERCADO had a number of meetings and conversations with FERGUSON and Miller at critical stages during DWSD's evaluation of the security contract, including with Miller on January 13, 2004 and with FERGUSON on February 11, 2004.

V. PROCEEDS FROM THE RACKETEERING ACTIVITY

A. Ferguson Shared Proceeds of the Racketeering Activity With Kwame Kilpatrick

319. In or about early July 2003, FERGUSON gave KWAME KILPATRICK about \$7,000 in cash. In or about late July 2003, FERGUSON collected more than \$200,000 in campaign donations for KWAME KILPATRICK's campaign fund, with KWAME KILPATRICK's knowledge, although FERGUSON was not among the identified donors.

320. In or about late May 2004, FERGUSON gave KWAME KILPATRICK at least \$12,500 in cash on consecutive dates, consisting of at least \$8,500 cash on one day and at least \$4,000 cash the next day.

321. In or about mid July 2004, in violation of State campaign finance laws, FERGUSON caused the purchase of more than \$40,000 in money orders using funds from Ferguson Enterprises, which were then given to employees, friends, relatives and associates of FERGUSON to sign and endorse to Kilpatrick for Mayor in order to conceal that FERGUSON and his company were the true source of the donations.

322. In or about late March 2008, FERGUSON gave \$75,000 to the Kilpatrick Civic Fund.

323. In or about the Summer of 2008, FERGUSON went to *Courier A*'s room at the Athenium Hotel in Detroit and gave him a bag containing \$90,000 in cash with instructions to hold the money for KWAME KILPATRICK. At KWAME KILPATRICK's direction, *Courier A* delivered the cash to KWAME KILPATRICK in two installments, giving him \$50,000 cash at the Hilton Hotel in Southlake, Texas in or about mid-September 2008, and \$40,000 cash at the Park Shelton Apartments in Detroit in or about late October 2008.

B. Kwame Kilpatrick Used Cash Proceeds from the Racketeering Activity

324. In or about the following years, KWAME KILPATRICK used the following amounts of cash, derived from the racketeering activity, to make deposits into his bank accounts, pay his credit card and other bills, purchase cashier's checks and clothing and repay loans:

Par. No.	Year	Type of Cash Transactions	Total Cash Amount
325.	2002	cash bank deposits and cash payments for credit card and clothing	\$29,314.00
326.	2003	cash bank deposits and cash payments for credit card and clothing	\$80,070.00

Par. No.	Year	Type of Cash Transactions	Total Cash Amount
327.	2004	cash bank deposits and cash payments for credit card and clothing	\$68,548.00
328.	2005	cash bank deposits, cash payments for credit card and clothing, cash purchases of cashier's checks	\$80,200.00
329.	2006	cash bank deposits and cash payments for credit card and clothing	\$92,474.00
330.	2007	cash bank deposits, cash payments for credit card and clothing, cash purchase of cashier's check	\$105,961.00
331.	2008	cash bank deposits, cash payments for credit card, clothing and crisis manager, cash purchases of cashier's checks, cash loan repayments	\$124,379.00
332.	2009	cash payments on credit card and cash loan repayments	\$13,913.00
	Total		\$594,859.00

C. Bernard Kilpatrick Used Cash Proceeds From the Racketeering Activity

333. In or about the following years, BERNARD KILPATRICK deposited the following amounts of cash from the racketeering activity into his personal bank accounts:

Par. No.	Year	Type of Cash Transactions	Yearly Total Amount of Cash Deposits
334.	2002	cash bank deposits	\$122,810.00
335.	2003	cash bank deposits	\$134,240.00
336.	2004	cash bank deposits	\$123,700.00

Par. No.	Year	Type of Cash Transactions	Yearly Total Amount of Cash Deposits
337.	2005	cash bank deposits	\$88,300.00
338.	2006	cash bank deposits	\$59,905.00
339.	2007	cash bank deposits	\$50,200.00
340.	2008	cash bank deposits	\$23,900.00
	Total		\$603,055.00

All in violation of Title 18, United States Code, Section 1962(d).

COUNT TWO

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Sewer Lining Contract)

- D-1 KWAME M. KILPATRICK
- D-2 BOBBY W. FERGUSON
- D-3 BERNARD N. KILPATRICK

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.
2. From in or about April 2002 to November 2006, in the Eastern District of Michigan, defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON, and BERNARD N. KILPATRICK, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that they obtained payments from *Company I* consisting of contract revenues of more than \$23.7 million, with the consent of *Company I* induced by wrongful fear of economic harm and under color of official right. That is, KWAME KILPATRICK, aided and abetted by FERGUSON and BERNARD KILPATRICK, held up a \$50 million sewer lining contract that previously had been awarded to *Company I* until the company

agreed to replace its minority subcontractor with FERGUSON on terms acceptable to FERGUSON.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT THREE

(18 U.S.C. § 1951 – Interference with Commerce by Extortion
Amendment to Sewer Lining Contract)

D-1 KWAME M. KILPATRICK
D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.
2. From in and between September 2004 and December 23, 2005, in the Eastern District of Michigan, defendants KWAME M. KILPATRICK and BOBBY W. FERGUSON, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that they obtained payments from *Company I* of about \$175,000 in connection with an amendment to a sewer lining contract, with the consent of *Company I* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT FOUR

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Baby Creek/Patton Park)

D-1 KWAME M. KILPATRICK
D-2 BOBBY W. FERGUSON
D-4 VICTOR M. MERCADO

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From in and between February 2003 and 2008, in the Eastern District of Michigan, defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON, and VICTOR M. MERCADO, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that they obtained from *Company W* more than \$5 million in work for FERGUSON and his affiliated companies at Baby Creek and Patton Park, with the consent of *Company W* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT FIVE

(18 U.S.C. § 1951 -- Attempted Interference with Commerce by Extortion
Oakwood Pump Station)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

D-4 VICTOR M. MERCADO

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the "General Allegations" above, as well as Count One above, as if they were set forth in full herein.

2. From in or about January 2007 to about April 2007, in the Eastern District of Michigan, defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON and VICTOR M. MERCADO, aiding and abetting each other, did knowingly and unlawfully attempt to obstruct, delay and affect interstate commerce through extortion, in that defendants KWAME KILPATRICK, FERGUSON and MERCADO pressured *Company W* to consent to partner with FERGUSON in a \$140 million construction project at the Oakwood pump station, and attempted to induce that consent by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT SIX

(18 U.S.C. § 666(a) – Bribery Concerning Programs Receiving Federal Funds
Downtown Water Main Repairs)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. In or between about 2003 and 2007, in the Eastern District of Michigan, defendant KWAME M. KILPATRICK, while an agent of the City of Detroit, an entity that received more than \$10,000 in federal funding during each of the calendar years of 2003 through 2007, did corruptly solicit and demand for the benefit of any person, and accepted and agreed to accept a stream of gratuities totaling more than \$5,000 from defendant BOBBY W. FERGUSON, intending to be influenced and rewarded in connection with business and transactions of a value of \$5,000 or more with the City of Detroit. That is, in exchange for items of value from FERGUSON, KWAME KILPATRICK, with the assistance of other City officials, steered subcontracts and emergency task orders to FERGUSON in connection with a \$19.8 million downtown water main replacement contract administered by *Company D*. Following their intervention into the contracting process, including giving FERGUSON downtown work originally assigned to the lowest bidder, FERGUSON, from the start of the contract through the Spring of 2007, obtained more than \$4 million in work on the downtown water main project.

All in violation of Title 18, United States Code, Sections 666(a) and 2.

COUNT SEVEN

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Outfalls Contract)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From in or about the Summer of 2005 to about the Summer of 2007, in the Eastern District of Michigan, defendants BOBBY W. FERGUSON and KWAME M. KILPATRICK, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that they obtained payments from *Company L* and *Company A* of more than \$1.7 million from a sewer outfalls contract for no services rendered, with the consent of *Company L* and *Company A* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT EIGHT

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Asbestos Abatement)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From in or about October 2005 to about February 2007 in the Eastern District of Michigan, defendants BOBBY W. FERGUSON and KWAME M. KILPATRICK, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce

through extortion, in that they obtained payments from *Company L* of about \$75,000 in relation to an asbestos contract for no services rendered, with the consent of *Company L* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT NINE

(18 U.S.C. § 1951 – Interference with Commerce by Extortion
Repair of Eastside Water Mains)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From in or about the Spring of 2006 to about August 2008, in the Eastern District of Michigan, defendants BOBBY W. FERGUSON and KWAME M. KILPATRICK, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that FERGUSON and his affiliated company, Xcel Construction Services, obtained payments and subcontracts from *Company L* and *Company A* worth more than \$12.9 million from a contract to repair water mains on the east side of the City, with the consent of *Company L* and *Company A* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT TEN

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Eastside Sewer Repairs)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From in or about the Summer of 2006 to about 2008, in the Eastern District of Michigan, defendants BOBBY W. FERGUSON and KWAME M. KILPATRICK, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that they obtained more than \$5 million in earthwork and point repair work from *Company L* and *Company A* arising out of a sewer repair contract for the east side of the City, with the consent of *Company L* and *Company A* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT ELEVEN

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Westside Sewer Repairs)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From in or about June 2006 to about 2008, in the Eastern District of Michigan, defendants BOBBY W. FERGUSON and KWAME M. KILPATRICK, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through

extortion, in that FERGUSON obtained more than \$5 million in sewer repair work on the westside of the City from *Company I*, with the consent of *Company I* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT TWELVE

(18 U.S.C. § 1951 – Interference with Commerce by Extortion – Towing Contractor)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. From about February 2003 until about June 2008, in the Eastern District of Michigan, defendants BOBBY W. FERGUSON and KWAME M. KILPATRICK, aiding and abetting each other, did knowingly and unlawfully obstruct, delay and affect interstate commerce through extortion, in that FERGUSON and KILPATRICK obtained more than \$90,000 from a *Towing Contractor*, with the consent of the *Towing Contractor* induced by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951 and 2.

COUNT THIRTEEN

(18 U.S.C. § 666(a) – Bribery Concerning Programs Receiving Federal Funds Security Systems Contract)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. In or between about 2003 and 2008, in the Eastern District of Michigan, defendant KWAME M. KILPATRICK, while an agent of the City of Detroit, an entity that received more than \$10,000 in federal funding during each of the calendar years of 2003 to 2008, did corruptly solicit and demand for the benefit of any person, and accepted and agreed to accept a stream of gratuities totaling more than \$5,000 from defendant BOBBY W. FERGUSON, intending to be influenced and rewarded in connection with business and transactions of a value of \$5,000 or more with the City of Detroit. That is, in exchange for items of value from FERGUSON, KWAME KILPATRICK, with the assistance of other City officials, rigged the evaluation and award of a contract to upgrade security systems at various DWSD facilities (“security contract”) so FERGUSON’s team would win the contract. From the start of the work to about June 2008, FERGUSON obtained more than \$1.2 million of work on the security contract.

All in violation of Title 18, United States Code, Sections 666(a) and 2.

COUNT FOURTEEN

(18 U.S.C. § 1512(c) – Obstruction of Justice – Mercado Deposition)

D-4 VICTOR M. MERCADO

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. In or about January and February 2006, in the Eastern District of Michigan, defendant VICTOR M. MERCADO did corruptly obstruct, influence and impede an official proceeding, that is an investigation authorized by a federal judge into the appropriateness of the award of a security contract by the Detroit Water and Sewerage Department. In particular, on or

about February 10, 2006, during a deposition authorized by a federal judge investigating the appropriateness of a security contract awarded to a team including defendant BOBBY W. FERGUSON, MERCADO testified that the contract was completed on time and on budget without extras or change orders. When asked whether he had any conversations with FERGUSON, MERCADO testified, "Absolutely not. I don't talk to bidders when they're bidding." MERCADO further denied having any contact with members of the Mayor's Office regarding the negotiations over the security contract. In truth and in fact, as MERCADO well knew at that time, the contract would require more time and money before it was completed. In order to obscure any additional security system costs, MERCADO, in the weeks leading up to his deposition, authorized that additional security system work at DWSD facilities be funded out of an unrelated pump station contract, rather than the security contract. Moreover, MERCADO, as he well knew and contrary to his deposition testimony, had a number of meetings and conversations with FERGUSON and Miller at critical stages during DWSD's evaluation of the security contract, including with Miller on January 13, 2004 and with FERGUSON on February 11, 2004.

All in violation of Title 18, United States Code, Sections 1512(c).

COUNT FIFTEEN

(18 U.S.C. § 1951 – Attempted Interference with Commerce by Extortion – Sludge Contract)

D-3 BERNARD N. KILPATRICK

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the "General Allegations" above, as well as Count One above, as if they were set forth in full herein.

2. From in or about December 20, 2007 to about April 18, 2008, in the Eastern District of Michigan, defendant BERNARD N. KILPATRICK did knowingly and unlawfully attempt to obstruct, delay and affect interstate commerce through extortion, namely, demanding payments from James Rosendall, including a payment of about \$5,000 for no services rendered, and attempted to induce the consent of Rosendall by wrongful fear of economic harm and under color of official right.

All in violation of Title 18, United States Code, Sections 1951.

COUNT SIXTEEN

(18 U.S.C. § 666(a) – Bribery Concerning Programs Receiving Federal Funds – \$90,000 Bribe)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. On or between about mid September 2008 and late October 2008, in the Eastern District of Michigan, defendant KWAME M. KILPATRICK, while an agent of the City of Detroit, an entity that received more than \$10,000 in federal funding during the calendar year 2008, did corruptly solicit and demand for the benefit of any person, and accepted and agreed to accept about \$90,000 in cash from defendant BOBBY W. FERGUSON, which was delivered in installments on or about mid September 2008, in Southlake, Texas, and on or about late October 2008, in Detroit, Michigan, intending to be influenced and rewarded in connection with business and transactions of a value of \$5,000 or more with the City of Detroit, that is, KWAME

KILPATRICK's assistance in steering City contracts to FERGUSON and pressuring persons with City contracts to hire or pay FERGUSON.

All in violation of Title 18, United States Code, Sections 666(a) and 2.

COUNT SEVENTEEN

(18 U.S.C. § 666(a) – Bribery Concerning Programs Receiving Federal Funds – \$75,000 Bribe)

D-1 KWAME M. KILPATRICK

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Count One above, as if they were set forth in full herein.

2. On or about mid March 2008, in the Eastern District of Michigan, defendant KWAME M. KILPATRICK, while an agent of the City of Detroit, an entity that received more than \$10,000 in federal funding during the calendar year 2008, did corruptly solicit and demand for the benefit of any person, and accepted and agreed to accept \$75,000 from defendant BOBBY W. FERGUSON's company, Ferguson Enterprises, Inc., which was deposited into the Kilpatrick Civic Fund, intending to be influenced and rewarded in connection with business and transactions of a value of \$5,000 or more with the City of Detroit, that is, KWAME KILPATRICK's assistance in steering City contracts to FERGUSON and pressuring persons with City contracts to hire or pay FERGUSON.

All in violation of Title 18, United States Code, Sections 666(a) and 2.

COUNTS EIGHTEEN THROUGH THIRTY
(18 U.S.C. §§ 1341, 1343: Mail and Wire Fraud)

D-1 KWAME M. KILPATRICK

General Allegations As to Counts Eighteen Through Thirty

1. On or about July 8, 1999, the Kilpatrick Civic Fund, Inc. (“the Civic Fund”), controlled by KWAME KILPATRICK, received federal tax exempt status as a social welfare organization pursuant to Section 501(c)(4) of the Internal Revenue Code after KWAME KILPATRICK caused an application to be submitted to the United States Department of the Treasury (“the Treasury Department”) (“the application”), which contained the following representations:

- a. The application claimed that the Civic Fund’s purposes were the following:
 - i. Promoting community activities that enhance the neighborhoods in which the citizens of Detroit reside as well as those activities that contribute to the betterment of the lives of the youth of Detroit and its surrounding communities;
 - ii. Providing information to the citizens of the City of Detroit and the State of Michigan about legislative issues affecting their lives and promoting the importance of voting and related activities; and
 - iii. Participating in those activities that contribute to the redevelopment of a positive image of the City of Detroit and benefit the community at large.
- b. The application further claimed that the Civic Fund had not spent and did

not plan to spend any money attempting to influence the selection, nomination, election or appointment of any person to any federal, state, or local public office.

c. The application further claimed that, “[*the Civic Fund*] shall not participate or intervene in ... any political campaign on behalf of or against any candidate for public office.”

d. The application further claimed that the Civic Fund would operate exclusively for charitable and educational purposes and that it would receive and administer its assets exclusively for charitable, educational, religious or scientific purposes.

e. The application further claimed that, “in the event of the dissolution [*of the Civic Fund*], all of [*the Civic Fund's*] assets ... shall be distributed to a 501(c)(4) organization with a similar purpose by majority vote of the Board of Director[s].”

The Scheme and Artifice to Defraud

2. Beginning In or about 1999, KWAME KILPATRICK devised a scheme and artifice to defraud donors to the Civic Fund of monies they donated to it.

3. It was part of the scheme and artifice to defraud that KWAME KILPATRICK would claim to the Internal Revenue Service, the public and potential donors that the Civic Fund was a social welfare organization that spent its funds in ways consistent with the purposes stated in its application for tax exempt status. In truth and in fact, as he well knew, KWAME KILPATRICK used monies donated to the Civic Fund for personal expenses and for his political campaigns, neither of which was identified as one of the purposes of the Civic Fund.

4. It was part of the scheme and artifice to defraud that KWAME KILPATRICK would hold events to raise money for the Civic Fund, at which he and others would claim to potential donors that the Civic Fund spent its funds in ways consistent with the purposes stated in its application for tax exempt status.

5. It was part of the scheme and artifice to defraud that KWAME KILPATRICK would falsely claim to the news media that the Civic Fund was not used for his political campaigns.

6. It was part of the scheme and artifice to defraud that KWAME KILPATRICK would send and cause to be sent letters to donors and potential donors which claimed that the Civic Fund used its funds consistent with the purposes outlined in its application for tax exempt status and specifically stated that "No funds of the Civic Fund are donated to a political campaign."

7. It was part of the scheme and artifice to defraud that KWAME KILPATRICK caused Civic Fund Returns of Organization Exempt from Income Tax, Forms 990, to be submitted to the Department of the Treasury, Internal Revenue Service, for tax years 2003 through 2008, which misrepresented how the Civic Fund spent its funds.

8. Contrary to the representations KWAME KILPATRICK made and caused to be made to the IRS, the public and donors to the Civic Fund, KWAME KILPATRICK used monies donated to the Civic Fund for the following personal expenses, among others:

a. Cash kickbacks to KWAME KILPATRICK from an individual who worked for the Civic Fund, consisting of nearly half of the money the Civic Fund paid to that individual;

- b. Money to friends and relatives, including BERNARD KILPATRICK, disguised as payments for purported services rendered to the Civic Fund;
- c. Counter-surveillance and anti-bugging equipment;
- d. Yoga lessons for KWAME KILPATRICK;
- e. Golf-related expenses for KWAME KILPATRICK and others, including lessons, a set of Nike golf clubs and a personalized golf bag;
- f. Summer camp for KWAME KILPATRICK's children;
- g. College tuition for relatives of KWAME KILPATRICK;
- h. A birthday party for a relative of KWAME KILPATRICK;
- i. A video documenting KWAME KILPATRICK's family history;
- j. A crisis manager to manage KWAME KILPATRICK's public image following the public disclosure of text messages sent to and received by KWAME KILPATRICK on a city-owned paging device;
- k. Personal moving costs for KWAME KILPATRICK and his family after he left office;
- l. Lease of a personal residence for KWAME KILPATRICK and his family after they departed from the mayoral residence;
- m. Personal travel, including hotel costs and airfare for KWAME KILPATRICK and his relatives and friends;
- n. Lease of a Cadillac DeVille for KWAME KILPATRICK; and
- o. Rental cars.

9. KWAME KILPATRICK used monies donated to the Civic Fund for his campaigns for election and reelection to the office of Mayor of the City of Detroit, including, among other things, polling, focus groups, public relations and political consulting.

10. It was also part of the scheme and artifice to defraud that KWAME KILPATRICK, when he resigned as Mayor of Detroit in September 2008, attempted to purchase furniture from the Manoogian Mansion Restoration Society with money from the Civic Fund.

Execution of the Scheme and Artifice to Defraud

11. On or about each of the dates set forth below, in the Eastern District of Michigan, Southern Division, defendant KWAME KILPATRICK did, for the purposes of executing the scheme and artifice to defraud described above, and attempting to do so, knowingly caused the items described below to be delivered by U.S. mail or commercial interstate carrier (Federal Express), such items being delivered according to the directions thereon, each such mailing constituting a separate count of this Fourth Superseding Indictment:

Count	Date and Item Sent via U.S. Mail or Federal Express
18	June 22, 2006, donor check for \$10,000 payable to the Civic Fund sent via Federal Express.
19	February 13, 2007, letter explaining the Civic Fund to donor sent via U.S. mail.
20	September 26, 2007, donor check for \$5,000 payable to the Civic Fund sent via U.S. mail.
21	April 3, 2008, Civic Fund check in the amount of \$4,500 for summer camp sent via Federal Express.
22	May 23, 2008, letter soliciting a donation and explaining the Civic Fund to donor sent via U.S. mail
23	June 4, 2008, Civic Fund check in the amount of \$2,640 for summer camp sent via Federal Express.

Count	Date and Item Sent via U.S. Mail or Federal Express
24	June 4, 2008, donor check for \$10,000 payable to the Civic Fund sent via Federal Express.
25	June 25, 2008, donor check for \$1,000 payable to the Civic Fund sent via U.S. mail.
26	June 30, 2008, donor check for \$4,000 payable to the Civic Fund sent via Federal Express.
27	July 23, 2008, letter explaining the Civic Fund to donor sent via U.S. mail.

All in violation of Title 18, United States Code, Section 1341.

12. On or about each of the dates set forth below, in the Eastern District of Michigan, Southern Division, KWAME KILPATRICK did, for the purposes of executing the scheme and artifice to defraud described above, and attempting to do so, knowingly caused to be transmitted by means of wire communication (fax) in interstate and foreign commerce certain documents, as listed below, each wire communication constituting a separate count of this indictment:

Count	Date and Description of Wire Communication
28	August 24, 2007, letter soliciting a donation and explaining the Civic Fund sent to donor via fax.
29	April 3, 2008, letter explaining the Civic Fund sent to donor via fax.
30	June 20, 2008, letter soliciting a donation and explaining the Civic Fund sent to donor via fax.

All in violation of Title 18, United States Code, Section 1343.

COUNT THIRTY-ONE

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-1 KWAME M. KILPATRICK

1. On or about April 11, 2004, in the Eastern District of Michigan, KWAME KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for calendar year 2003, which was verified by a written declaration that it was made under the penalties of perjury, and which KWAME KILPATRICK did not believe to be true and correct as to every material matter. Specifically, KWAME KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income in the form of cash, private jet flights and personal expenses paid for by the Civic Fund, amounting to at least \$67,181, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$188,227, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-TWO

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-1 KWAME M. KILPATRICK

1. On or about April 15, 2005, in the Eastern District of Michigan, defendant KWAME KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for calendar year 2004, which was verified by a written declaration that it was made under the penalties of perjury, and which KWAME KILPATRICK did not believe to be true and correct as to every material matter. Specifically,

KWAME KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income in the form of cash and private jet flights, amounting to at least \$74,925, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$167,940, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-THREE

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-1 KWAME M. KILPATRICK

1. On or about April 17, 2006, in the Eastern District of Michigan, defendant KWAME KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for calendar year 2005, which was verified by a written declaration that it was made under the penalties of perjury, and which KILPATRICK did not believe to be true and correct as to every material matter. Specifically, KWAME KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income in the form of cash and private jet flights, amounting to at least \$11,279, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$156,329, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-FOUR

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-1 KWAME M. KILPATRICK

1. On or about April 16, 2007, in the Eastern District of Michigan, defendant KWAME KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for calendar year 2006, which was verified by a written declaration that it was made under the penalties of perjury and which KWAME KILPATRICK did not believe to be true and correct as to every material matter. Specifically, KWAME KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income in the form of cash, private jet flights and personal expenses paid for by the Civic Fund, amounting to at least \$122,997, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$153,024, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-FIVE

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-1 KWAME M. KILPATRICK

1. On or about April 15, 2008, in the Eastern District of Michigan, defendant KWAME KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for calendar year 2007, which was verified by a written declaration that it was made under the penalties of perjury and which KWAME KILPATRICK did not believe to be true and correct as to every material matter. Specifically,

KWAME KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income in the form of cash, private jet flights and personal expenses paid for by the Civic Fund, amounting to at least \$194,569, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$167,005, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-SIX

(26 U.S.C. § 7201 – Income Tax Evasion)

D-1 KWAME M. KILPATRICK

1. During the calendar year 2008, defendant KWAME KILPATRICK had and received unreported taxable income in the form of cash, private jet flights and personal expenses paid for by the Civic Fund, amounting to at least \$261,751.
2. KWAME KILPATRICK owed the United States of America an income tax of \$85,397 for this unreported taxable income.
3. Well-knowing and believing the foregoing facts, KWAME KILPATRICK, in and between January 1, 2008 and April 13, 2009, in the Eastern District of Michigan, Southern Division, and elsewhere, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for the calendar year 2008 and did take affirmative action to evade these taxes. Specifically, he concealed income from the Internal Revenue Service in the following ways: (a) he caused to be filed a false joint U.S. Individual Income Tax Return, Form 1040, for calendar year 2008; (b) he caused an individual employed by his mayoral campaign and associated non-profits to kick cash back to him from

wages paid to the individual by the campaign and non-profits; and (c) he caused the Civic Fund to pay for certain of his personal expenses and concealed such payments; and (d) he accepted a \$90,000 cash payment from FERGUSON.

All in violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-SEVEN

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-3 BERNARD N. KILPATRICK

1. On or about October 5, 2005, in the Eastern District of Michigan, defendant BERNARD N. KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for calendar year 2004, which was verified by a written declaration that it was made under the penalties of perjury, and which BERNARD N. KILPATRICK did not believe to be true and correct as to every material matter. Specifically, BERNARD N. KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income amounting to at least \$35,632, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$336,625, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-EIGHT

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-3 BERNARD N. KILPATRICK

1. On or about October 10, 2006, in the Eastern District of Michigan, defendant BERNARD N. KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe

a U.S. Individual Income Tax Return, Form 1040, for calendar year 2005, which was verified by a written declaration that it was made under the penalties of perjury, and which BERNARD N. KILPATRICK did not believe to be true and correct as to every material matter. Specifically, BERNARD N. KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income amounting to at least \$150,329, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$220,259, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THIRTY-NINE

(26 U.S.C. § 7206(1) – Subscribing False Tax Return)

D-3 BERNARD N. KILPATRICK

1. On or about October 15, 2008, in the Eastern District of Michigan, defendant BERNARD N. KILPATRICK, a resident of Detroit, Michigan, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for calendar year 2007, which was verified by a written declaration that it was made under the penalties of perjury, and which BERNARD N. KILPATRICK did not believe to be true and correct as to every material matter. Specifically, BERNARD N. KILPATRICK did not believe the tax return to be true and correct as to every material matter in that: (a) it failed to disclose that he had additional income amounting to at least \$172,655, which he well knew at that time he was required by law and regulation to disclose; and (b) it stated on line 22 that his total income was \$70,529, whereas, as he well knew at that time, his total income was in excess of that amount.

All in violation of Title 26, United States Code, Section 7206(1).

COUNTS FORTY TO FORTY-FIVE
(18 U.S.C. §§ 1956(a)(i)(B)(i), 2 -- Money Laundering)

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the “General Allegations” above, as well as Counts One and Seven above, as if they were set forth in full herein.

2. On or about the following dates, within the Eastern District of Michigan, Southern Division, and elsewhere, defendant BOBBY W. FERGUSON did knowingly and willfully conduct and attempt to conduct, and cause others to conduct, a financial transaction affecting interstate and foreign commerce, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and which property was, in fact, the proceeds of specified unlawful activity – that is, the extortion of *Company L* and *Company A* as alleged in Count Seven – knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the specified unlawful activity. Specifically, FERGUSON caused the following checks, which he obtained by the extortion of *Company L* and *Company A*, as alleged in Count Seven, to be endorsed, then deposited into the following third-party accounts for FERGUSON’s benefit:

Count	Date	Transaction	Amount
40	02/12/07	Citizens Bank check no. 1429, payable to “A&F Environmental / Johnson Consulting,” was endorsed and given to <i>Law Firm P</i> , then deposited into <i>Law Firm P</i> ’s client trust account	\$200,000
41	05/23/07	Citizens Bank check no. 1363, payable to “A&F Environmental / Johnson Consulting,” was endorsed and given to <i>Law Firm P</i> , then deposited into <i>Law Firm P</i> ’s client trust account	\$120,000

Count	Date	Transaction	Amount
42	06/15/07	Citizens Bank check no. 1436, payable to "A&F Environmental / Johnson Consulting," was endorsed to Ferguson Enterprises, Inc., then deposited into Ferguson Enterprise's bank account	\$147,500
43	06/15/07	Citizens Bank check no. 1486, payable to "A&F Environmental / Johnson Consulting," was endorsed to Ferguson Enterprises, Inc., then deposited into Ferguson Enterprise's bank account	\$203,800
44	08/21/07	Citizens Bank check no. 1832, payable to "Johnson Consultants Services, Inc.," was endorsed and given to <i>Company U</i> , then deposited into <i>Company U's</i> bank account	\$100,000
45	12/12/07	Citizens Bank check no. 1744, payable to A&F Environmental / Johnson Consulting," was endorsed and given to <i>Company U</i> , then deposited into <i>Company U's</i> bank account	\$150,000

All in violation of Title 18, United States Codes, Sections 1956(a)(1)(B)(i) and 2.

COUNT FORTY-SIX

(18 U.S.C. §§ 1956(a)(1)(B)(i), 2 – Money Laundering)

D-2 BOBBY W. FERGUSON

1. The Grand Jury incorporates by reference paragraphs 1 through 6 of the "General Allegations" above, as well as Counts One and Seven above, as if they were set forth in full herein.

2. As set forth below, in the Eastern District of Michigan, Southern Division, defendant BOBBY W. FERGUSON did knowingly and willfully conduct and attempt to conduct, and cause others to conduct, a financial transaction affecting interstate and foreign commerce, knowing that the property involved in the financial transaction represented the proceeds of some

form of unlawful activity, and which property was, in fact, the proceeds of specified unlawful activity – that is, the extortion of *Company L* and *Company A* as alleged in Count Seven – knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the specified unlawful activity.

3. Specifically, on or about February 17, 2010, defendant BOBBY W. FERGUSON negotiated, and caused to be negotiated, eleven First Independence Bank Cashier's Checks, listed below, and used \$451,304.00 derived from these cashier's checks to (a) open Paramount Bank Account Number xxxxx1749, with an opening balance of \$301,304.00, and (b) purchase Paramount Bank Certificate of Deposit No. 2010004568, in the amount of \$150,000.00.

Cashier's Check No.	Amount
17746	\$25,000.00
17747	\$25,000.00
17748	\$15,000.00
17749	\$20,000.00
17750	\$10,000.00
17751	\$ 5,000.00
17752	\$ 9,384.87
27812	\$85,500.00
27813	\$85,500.00
27814	\$85,500.00
27815	\$85,500.00
Total	\$451,384.87

All in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

CRIMINAL FORFEITURE ALLEGATIONS

(18 U.S.C. §§ 981(a)(1)(c), 982(a)(1) & 1963, and 28 U.S.C. § 2461(c))

1. The allegations contained in Paragraphs 1 through 6 of the "General Allegations," above, as well as Counts One through Four and Six through Thirty above, are hereby incorporated by reference as if they were set forth in full herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(c), 982(a)(1), 1963 and Title 28, United States Code, Section 2461(c).

2. Upon conviction of racketeering conspiracy, in violation of Title 18, United States Code, Section 1962(d), as alleged in Count One of this Fourth Superseding Indictment, defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON, BERNARD N. KILPATRICK and VICTOR M. MERCADO shall forfeit to the United States, pursuant to 18 U.S.C. § 1963(a)(1)-(3):

- a. any and all interest defendants have acquired or maintained in violation of 18 U.S.C. § 1962;
- b. any and all interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any Enterprise named and described herein which defendants established, operated, controlled, conducted or participated in the conduct of, in violation of 18 U.S.C. § 1962; and
- c. any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, from racketeering activity in violation of 18 U.S.C. § 1962.

3. Property subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1), (a)(2) and (a)(3), includes all money and property which represents the value of the interests acquired and the gross proceeds obtained through the

violation of Title 18, United States Code, Section 1962 as alleged in Count One of this Fourth Superseding Indictment.

4. Upon conviction of one or more counts of bribery as alleged in this Fourth Superseding Indictment, defendants KWAME M. KILPATRICK and BOBBY W. FERGUSON shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 666.

5. Upon conviction of one or more counts of interference with commerce by extortion as alleged in this Fourth Superseding Indictment, defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON, BERNARD N. KILPATRICK and VICTOR M. MERCADO shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1951.

6. Upon conviction of obstruction of official proceeding as alleged in this Fourth Superseding Indictment, defendant VICTOR M. MERCADO shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1512.

7. Upon conviction of one or more counts of wire fraud or mail fraud as alleged in this Fourth Superseding Indictment, defendant KWAME M. KILPATRICK shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. §§ 1341 or 1343.

8. Upon conviction of one or more counts of money laundering in violation of 18 U.S.C. §§ 1956 or 1957, as alleged in this Fourth Superseding Indictment, defendant BOBBY W. FERGUSON shall forfeit to the United States (a) any property, real or personal, involved in such offense(s), or any property traceable to such property, and (b) any property, real or personal, which constitutes or is derived from proceeds traceable to such offenses, pursuant to 18 U.S.C. § 982(a)(1).

9. Substitute Assets: Pursuant to Title 18, United States Code, Section 1963(m), Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), and Title 28, United States Code, Section 2461(c), defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON, BERNARD N. KILPATRICK and VICTOR M. MERCADO shall forfeit any of their other property, real or personal, up to the value of property described in Paragraphs 2 through 8 above, if, by any act or omission of the defendant, the property subject to forfeiture:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, sold to or deposited with a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty.

All in accordance with Title 18, United States Code, Section 1963; Title 21, United States Code, Section 853(p); Title 18, United States Code, Section 982(b); Title 28, United States Code, Section 2461(c); and Rule 32.2, Federal Rules of Criminal Procedure.

10. Money Judgment. Upon conviction of one or more violations alleged in this Fourth Superseding Indictment, the Government will seek a forfeiture money judgment against defendants KWAME M. KILPATRICK, BOBBY W. FERGUSON, BERNARD N. KILPATRICK and VICTOR M. MERCADO in an amount as is proved at trial in this matter representing the total amount of proceeds obtained as a result of defendants' offenses, for which defendants shall be jointly and severally liable.

THIS IS A TRUE BILL

s/Grand Jury Foreperson
FOREPERSON

BARBARA L. McQUADE
United States Attorney

s/Mark Chutkow
MARK CHUTKOW
Assistant United States Attorney

s/R. Michael Bullotta
R. MICHAEL BULLOTTA
Assistant United States Attorney

s/Linda Aouate
LINDA AOUATE
Assistant United States Attorney

Date: February 15, 2012

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accurately in all respects.

Reassignment/Recusal Information This matter was opened in the USAO prior to August 15, 2008 [Yes]

Companion Case Information	Companion Case Numbers: U.S. v. Karl Kado 08-CR-20418; Hon. Marianne O. Battani
	U.S. v. James Rosendall, Jr., 09-CR-20025; Hon. Avern Cohn
This may be a companion case based upon LCrR 57.10 (b)(4) ¹ :	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	AUSA's Initials: <i>[Signature]</i>

Case Title: USA v. D-1 KWAME M. KILPATRICK
 D-2 BOBBY W. FERGUSON
 D-3 BERNARD N. KILPATRICK
 D-4 VICTOR M. MERCADO

County where offense occurred : Wayne

Check One: Felony Misdemeanor

Indictment/ Information --- no prior complaint.
 Indictment/ Information --- based upon prior complaint [Case number:]
 Indictment based upon LCrR 57.10 (d) [Complete Superseding section below].

FILED
 2012 FEB 15 P 3:50
 U.S. DIST. COURT CLERK
 EAST. DIST. MICHIGAN
 DETROIT

Superseding Case Information

Superseding to Case No: 10-CR-20403 Judge: NANCY G. EDMUNDS

- Original case was terminated; no additional charges or defendants.
- Corrects errors; no additional charges or defendants.
- Involves, for plea purposes, different charges or adds counts.
- Embraces same subject matter but adds the additional charges below:

<u>Defendant name</u>	<u>Charges</u>	<u>Prior Complaint (if applicable)</u>
See attached		

Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.

February 15, 2012
Date

[Signature]
 R. MICHAEL BULLOTTA
 Assistant United States Attorney
 211 W. Fort Street, Suite 2001
 Detroit, MI 48226
 Phone: (313) 226-9507
 Michael.Bullotta@usdoj.gov

Superseding Case Information

Superseding to Case No: 10-CR-20403 Judge: NANCY G. EDMUNDS

- Original case was terminated; no additional charges or defendants.
- Corrects errors; no additional charges or defendants.
- Involves, for plea purposes, different charges or adds counts.
- Embraces same subject matter but adds the additional charges below:**

<u>Defendant name</u>	<u>Charges</u>	<u>Prior Complaint</u>
D-1 KWAME M. KILPATRICK	Count 12: 18 USC §§ 1951 and 2	N/A
D-2 BOBBY W. FERGUSON	Count 12: 18 USC §§ 1951 and 2	N/A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. July 17, 2014
Debtor. . 11:00 a.m.
.

HEARING RE. (#5155) MOTION TO ALLOW CLAIM(S)/NOTICE
OF AND MOTION FOR TEMPORARY ALLOWANCE OF CLAIM OF THE
MACOMB INTERCEPTOR DRAIN DRAINAGE DISTRICT PURSUANT TO
RULE 3018(a) OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE FOR PURPOSES OF ACCEPTING OR REJECTING THE
DEBTOR'S FOURTH AMENDED PLAN OF ADJUSTMENT FILED BY
CREDITOR COUNTY OF MACOMB, MICHIGAN
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Miller, Canfield, Paddock & Stone, PLC
By: JEROME R. WATSON
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For Macomb
Interceptor Drain
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For Official
Committee of
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Transcribed By: Lois Garrett
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Leslie, MI 49251
(517) 676-5092

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 THE CLERK: Case Number 13-53846, City of Detroit,
2 Michigan.

3 MR. BRILLIANT: Good morning, your Honor. Allan
4 Brilliant from Dechert, LLP, and I'm joined at counsel table
5 by my co-counsel, Raechel Badalamenti and Robert Morris from
6 Kirk, Huth, Lange & Badalamenti on behalf of Midland
7 Interceptor Drain Drainage District.

8 MR. WATSON: Good morning, your Honor. Jerome
9 Watson appearing on behalf of City of Detroit along with my
10 partner, Irene Hathaway.

11 MR. MONTGOMERY: Good morning, your Honor. Claude
12 Montgomery, Dentons, US, for the Retiree Committee, and I'm
13 joined today with Mr. Joe Selby. Thank you.

14 MR. BRILLIANT: Good morning, your Honor.

15 THE COURT: You may proceed, sir.

16 MR. BRILLIANT: Thank you, your Honor. Your Honor,
17 as a preliminary matter, please --

18 THE COURT: Well, as a preliminary matter, let me
19 apologize to all of you for not being here at our appointed
20 time. The earlier argument took much longer than I had
21 thought it would, and so I apologize to you for that.

22 MR. BRILLIANT: Thank you, your Honor, but it's not
23 necessary. As it turned out, there was a big traffic jam on
24 I-94 this morning, and we would have probably had to ask you
25 for a little bit of an extension in any event --

1 THE COURT: Okay.

2 MR. BRILLIANT: -- but thank you for -- you know,
3 for your courtesy. As a preliminary matter, your Honor, I
4 spoke with Mr. Watson, and we've agreed solely for purposes
5 of this hearing that all of the -- you know, the briefs, the
6 documents that are attached, the declarations both that have
7 been filed in connection with the 3018 hearing as well as in
8 connection with the objection to claim will be admitted into
9 evidence subject to all the parties being able to argue with
10 respect to, you know, weight and what view your Honor should
11 give it, but given the -- you know, the nature of the
12 hearing, we didn't think that it made sense, you know, to
13 argue about what's hearsay and various other things.

14 THE COURT: Okay.

15 MR. BRILLIANT: Now, your Honor, we dumped a whole
16 lot of paper on your Honor, and --

17 THE COURT: Well, let's talk about that. I can
18 represent to you that I have read your briefs, both those
19 that were filed earlier this week and the ones that were
20 filed today and yesterday. I skimmed through the hundreds of
21 pages of attachments. I can't say that I studied any of them
22 in any particular detail, so that may help you in your
23 presentation here --

24 MR. BRILLIANT: Yes.

25 THE COURT: -- your presentations here this morning.

1 MR. BRILLIANT: Yes. Well, what I had thought we
2 would do, your Honor, there's a whole lot here that is
3 agreed. I mean there are some -- there are some pretty
4 significant factual disputes, and we have some disputes
5 about, you know, some issues as a matter of law. What I
6 thought might make some sense, your Honor, is to go through
7 some of the documents, go through the facts, highlight for
8 your Honor, you know, really what facts are pretty much
9 agreed, what's really, you know, in dispute here, talk about
10 some of the legal arguments and obviously, to the extent that
11 we can, you know, answer any questions or concerns that your
12 Honor may have having -- hearing the presentation or read the
13 briefs.

14 So, your Honor, as your Honor knows, all of this,
15 you know, relates to, you know, a giant sinkhole that
16 occurred in 2004 in connection with, you know, an
17 interceptor, part of the sewage system, you know, that was
18 then owned by the DW, you know, SD. At that point in time,
19 your Honor, you know, the city made certain modifications to
20 existing contracts that it had to pay for the -- you know, to
21 the repair of the sinkhole, and there was an extraordinary,
22 you know, procedure that went into effect in connection with
23 the issuance of those contracts. And, your Honor, do you
24 have the exhibits?

25 THE COURT: I can access them here on my computer if

1 you'll just give me one moment. Okay. Is there an
2 exhibit -- what would it be attached to first?

3 MR. BRILLIANT: The Marrocco affidavit, declaration,
4 I guess, to be more, you know, precise.

5 THE COURT: Is that attached to your --

6 MR. BRILLIANT: Our brief, attached to our --

7 THE COURT: -- brief, 6016?

8 MR. BRILLIANT: I believe that's correct, your
9 Honor.

10 THE COURT: Okay.

11 MR. BRILLIANT: I'm not as conversant in the
12 documents --

13 THE COURT: So what page in the PDF is it,
14 approximately?

15 MR. BRILLIANT: Well, we're going to get to, you
16 know, in a few moments 233.

17 THE COURT: Okay.

18 MR. BRILLIANT: So, your Honor, in two thousand, you
19 know, and four, there was a, you know -- you know, the
20 sinkhole. Various procedures were put into place. And
21 unbeknownst to MIDD, you know -- you know, my client, at that
22 time, there were some improprieties which ultimately led to
23 criminal convictions and investigations, prosecutions, and
24 criminal convictions of the mayor, the head of the DWSD and
25 various other co-conspirators, and the issue, your Honor, is

1 whether or not there were overcharges that -- you know, that
2 occurred in that process and whether they were
3 fraudulently -- the lack of, you know, the fact that there
4 were overcharges was misrepresented, you know, to our
5 clients, and the fact that -- the fact that there was a
6 governmental investigation, a U.S. Attorney's investigation,
7 and whether or not that was disclosed to our client. And
8 those are the -- when they should have been disclosed to the
9 client, our clients, and whether or not -- I don't think
10 anyone disputes that they were not. You know, the city takes
11 the position that they didn't have, you know, knowledge.
12 Well, they don't take the position they didn't have knowledge
13 of an investigation. They take the position that they
14 weren't required to disclose it, and they didn't know -- have
15 any knowledge that there were overcharges.

16 On page 233, your Honor, this is the complaint that
17 was filed by the city in connection with the suit in front of
18 Judge Cleland where they intervened in connection with an
19 action that MIDD had brought against the -- you know, the
20 contractors and the former officials of the city who
21 perpetuated the fraud. And in connection with that, your
22 Honor, in paragraph 23 the city says the -- which is the
23 intervening plaintiff, the intervening plaintiff's claims are
24 based upon the conduct first unveiled in the Kilpatrick
25 prosecution. On December 15, 2010, a grand jury returned a

1 first superseding indictment in the Kilpatrick prosecution
2 naming Kilpatrick, Ferguson, Bernard Kilpatrick, Mercado and
3 Miller as defendants. The indictment alleged criminal --
4 RICO conspiracy, bribery, extortion, obstruction of justice
5 and mail fraud, wire fraud, and money laundering in relation
6 to a number of projects entered into by DWSD, including the
7 DWSD project at issue in this case, the repair of the Macomb
8 Interceptor sewer at 15 Mile Road in Sterling Heights,
9 Michigan, under Amendments 2 and 3 to the DWSD contract, CS-
10 1368. And that's really what this is about, your Honor, this
11 whole issue, is whether or not, you know, there were
12 overcharges in connection, you know, with CS-1368, you know,
13 2 and 3. And on page 233 of the PDF -- actually, I'm going
14 to go to paragraph 79 of their complaint, which is
15 paragraph --

16 THE COURT: Okay. Hold on one second because I'm
17 not sure we're coordinated here. I wish I could show it to
18 you.

19 MR. BRILLIANT: Maybe page 99 may be the PDF. Does
20 that help, your Honor?

21 THE COURT: Let me go to that page and see what
22 comes up.

23 MR. WATSON: I can't find it either. Can you tell
24 me the exhibit number?

25 MR. BRILLIANT: It's Exhibit Number 12 --

1 MR. WATSON: To the Marrocco --

2 MR. BRILLIANT: -- to the Marrocco affidavit.

3 MR. WATSON: Okay.

4 MR. BRILLIANT: Your complaint.

5 THE COURT: Okay. It's --

6 MR. BRILLIANT: I think it might be 99, your Honor.

7 I'm sorry, your Honor. It's 13.

8 MR. WATSON: And what paragraph?

9 MR. BRILLIANT: 79.

10 MR. WATSON: Thank you.

11 MR. BRILLIANT: Do you have a hard copy? I think we
12 gave you a hard copy.

13 THE COURT: Did we bring that over, Carolyn? I'm
14 sorry. No. I want to find it in the PDF.

15 MR. BRILLIANT: Okay.

16 MR. WATSON: It's actually Exhibit 15, I think, your
17 Honor.

18 THE COURT: All right. One more second, please.

19 MR. BRILLIANT: Yes, your Honor. That's right.

20 It's Exhibit 15.

21 THE COURT: Okay. In the entire 742-page PDF, it is
22 page 406.

23 MR. BRILLIANT: Unfortunately, the book I have, your
24 Honor, doesn't have those same numbers, so it's going to be
25 hard for us --

1 THE COURT: Yeah. The complaint begins on 389.

2 MR. BRILLIANT: Okay. And I wanted to move to
3 paragraph 79, your Honor --

4 THE COURT: All right. Let me find that.

5 MR. BRILLIANT: -- which is on page 18 of the
6 complaint.

7 THE COURT: Got it. Okay.

8 MR. BRILLIANT: Okay. So --

9 THE COURT: Now we're good.

10 MR. BRILLIANT: So the city alleged in connection
11 with its intervening complaint that until the 15 Mile Road
12 collapse project DWSD maintained a standard practice on its
13 other sewer and water repair projects of acquiring DWSD
14 inspectors at sewer repair sites to prepare daily engineering
15 and inspection reports which detailed, among other things,
16 the time each employee of each contract or subcontractor
17 spent on the job each day and the equipment used or stored on
18 the job site each day. Rather than use the standard daily
19 engineering inspection reports for the 15 Mile Road collapse
20 project, Mercado instructed DWSD inspectors to use a daily
21 press report which did not contain the actual hours worked by
22 each employee each day or the equipment used on the site each
23 day. And they go through, your Honor, and talk about, you
24 know, how -- in their complaint about how, you know, these
25 changes, you know, led to the potential for improprieties.

1 If you go to paragraph 84, it says by reducing the
2 involvement of DWSD staff in supervising the contractors'
3 work by transferring management and supervisory
4 responsibilities to outside contractors and by reducing or
5 eliminating portions of DWSD's written record of the
6 contractors' purported activity, Mercado aided, abetted,
7 participated in and furthered the pattern of racketeering,
8 you know, through which defendants conducted the Kilpatrick
9 enterprise. And then it goes on, your Honor, to, you know --
10 you know -- you know, and talks in the complaint about how by
11 taking out these controls it made it possible for work to be,
12 you know, billed that wasn't actually performed. And then we
13 go, your Honor, to paragraph 101, which is on page 23 of the
14 complaint, where the city says without waiver of its claims
15 and without limitation as to its damages, intervening
16 plaintiff adopts and incorporates herein plaintiff MIDD's
17 claim that as a result of inflated invoices submitted on the
18 15 Mile Road sewer collapse, the cost of the repairs of the
19 15 Mile sewer collapse was increased by at least \$23 million,
20 so the city, you know, without waiving its right to say it's
21 more, says that, you know, they adopt, you know, our view
22 that was filed against the contractors that there's at least
23 damages of \$23 million of overcharges in connection with
24 the -- in connection with the -- you know, the -- you know,
25 the -- you know, the repair of the sinkhole.

1 Now, your Honor, you know, they -- you know, it's
2 really hard, you know, for the city to say, you know, that
3 there -- you know, there wasn't fraud here. There were, you
4 know, guilty pleas. In the city's complaint they go through
5 and summarize them. We summarize, you know, the documents,
6 you know, as well, you know, in our briefs, and I don't think
7 there's any real dispute here that the perpetrators, you
8 know, pled guilty to overcharges in connection, you know,
9 with this particular, you know, project.

10 Now, the city in their briefs over the last three
11 days, you know, say that they don't concede, you know, that
12 there were any overcharges and that they, in fact, you know,
13 deny that there were overcharges, but that's just, you know,
14 unbelievable. There's no credibility, you know, for that
15 given the statements they've made, given the criminal
16 indictments, the guilty pleas, the jury, you know, decisions
17 with respect to, you know, the convictions that there wasn't
18 a significant overcharge here, and the fact that the city on
19 their own goes forward and talks about how the policies of
20 DWSD were changed that enabled this, you know, to happen
21 really just reaffirms the fact that there were overcharges
22 here, so I don't think there's really a big argument here or
23 issue as to the fact that there were overcharges, you know.
24 We had, you know, put in the declaration of Mr. Winn, who's
25 an engineer, who testified, you know, that he estimated how

1 much it would have cost to do this project if it was done
2 appropriately, and he estimates that the total amount of
3 overcharges exceeded, you know, \$26 million. And in the
4 complaint that the city filed, they talk about NTH's
5 estimate, you know, their expert, who they also, you know --
6 you know -- you know, say estimated that the project should
7 have cost, you know, significantly, you know, less than it
8 was ultimately charged, so I don't think there's much of an
9 issue here as to damages. The question becomes whether or
10 not there was, you know, fraud, you know, here.

11 Now, with respect to that issue, your Honor, you
12 have the declaration of Mr. Marrocco, the public works, you
13 know, commissioner of Macomb County, who was involved to some
14 extent in the negotiations here and, in particular, in
15 connection with, you know -- you know, mediations in front of
16 Judge Feikens over some of these issues, and he, in his
17 affidavit -- declaration, makes it very clear that he was
18 told by Mr. Mercado, you know -- you know, directly in a
19 meeting after Judge Feikens had told the two of them to go
20 into a room, you know, by themselves and work things out, and
21 he expressly remembers and says that Mercado represented to
22 him that there were -- you know, that these were, you know,
23 fair and legitimate charges and that there were, you know, no
24 overcharges or any other issues in connection with the money.
25 And based upon, you know, that representation and the

1 continued representations of the city and the city's failure
2 to inform, you know -- you know, MIDD, you know, that there
3 was a governmental investigation, you know, Macomb went
4 forward and signed, you know, the settlement agreement, the
5 letter of intent, and then ultimately, you know, signed
6 the -- you know, the contract, you know, for the sale. You
7 know, the -- your Honor, it's -- I don't know how, you know,
8 we're going to find this document, but I think -- I want to
9 turn you to the settlement agreement, you know, that was --
10 actually, let's go first, your Honor, to the letter of
11 intent, which is Exhibit 2 to the Marrocco affidavit.

12 THE COURT: Again, can you give me a page number?

13 MR. BRILLIANT: Page 6 of the -- page 6 of the
14 letter of intent. I don't have -- unfortunately, I don't
15 have the same numbering system that your Honor has.

16 THE COURT: One second, please. Okay. I'm on page
17 6 of his declaration. Is that where you want me to be?

18 MR. BRILLIANT: Okay. And then, you know, it's
19 probably about 15 or 20 pages past that, you know. Exhibit 2
20 to the declaration is the 2009 --

21 THE COURT: Exhibit 2. Okay.

22 MR. BRILLIANT: -- letter of intent.

23 THE COURT: Okay. I'm there. Thank you, sir.

24 MR. BRILLIANT: Okay. And then it's page 6.

25 THE COURT: Okay.

1 MR. BRILLIANT: Okay. Now, this, your Honor, is the
2 letter of intent. Now, we'll talk about the settlement
3 agreement in a minute. This was an attachment to the
4 settlement agreement, and the settlement agreement was
5 conditioned upon the closing actually occurring. If the
6 closing of the sale never occurred, then the releases and
7 various other things wouldn't have occurred, and we'll go
8 through that, but attached to that was a letter of intent
9 that set forth a due diligence period that would occur after
10 the settlement agreement occurred and set up a due diligence
11 period prior to the closing of the sale. And on page -- and
12 on paragraph 9 on page 6, you know, the -- you know, the city
13 agreed during the diligence period, which is defined in the
14 document as the period from that date through the closing of
15 the sale of the interceptor, that it would promptly notify
16 the transferee of any governmental, regulatory, or third-
17 party complaints, claims, investigations, you know, or
18 hearings or communications indicating that the same may be
19 contemplated. Promptly notify the transferee of any
20 governmental, regulatory, or third-party complaints, claims,
21 investigations, or hearings, so they agree that if there any
22 governmental investigations, they would -- during this period
23 prior to the closing, they would tell us. And, you know,
24 your Honor, I'm sure you read from the briefs, and I'm not
25 going to go through all the testimony, but it's absolutely

1 clear that starting in 2008 the FBI showed up, you know,
2 at -- you know, at the home of various employees of the DWSD
3 and started asking questions about issues relating to the
4 sinkhole, the sinkhole repair, you know, project, the
5 contracting, you know, and Mr. Ferguson, how he got the job
6 and whether or not, you know, there were, you know -- you
7 know, issues, you know, with respect to the cost. And that
8 started in 2008, and notwithstanding the contractual
9 obligation to inform MIDD just of the investigation, they
10 never did so. They did not tell us at all prior to the
11 closing that there was a -- there was an ongoing, you know,
12 investigation, you know. Mr. Marrocco, you know, in his
13 declaration and in Mr. Hupp, who is the lawyer for -- you
14 know, for MIDD in connection with the transaction, both, you
15 know, say that they would not have closed if they would have
16 known about the fact that there was an investigation or the
17 possibility, you know, of overcharges, you know, here in
18 connection with the transaction, so, you know -- you know,
19 based upon the representations that Mr. Mercado made to Mr.
20 Marrocco and the failure of the city to comply with its
21 obligation under the diligence agreement to inform the
22 parties of the fact that there was an investigation, your
23 Honor, we have a very strong, you know -- you know -- you
24 know -- you know, claim here, I mean extremely strong claim
25 here that there was actual fraud in the inducement of the

1 contract for the sale of the property which would lead -- you
2 know, outside of bankruptcy would have potentially led to,
3 you know, reformation or rescission of the contract or
4 potentially, you know -- you know, damages once the
5 bankruptcy -- you know, all claims are, you know, turned
6 into, you know, cash dollar amounts. And given all of the
7 representations, you know, the amount of the claim is, you
8 know -- I think it's very hard to argue that it could be
9 anything less than \$23 million, although based on all the
10 documentary evidence, I think a \$26 million, you know, number
11 at a minimum is the more appropriate, you know, claim here.

12 Now, your Honor, in their papers the -- you know,
13 the -- you know, the city says, well, there was a settlement
14 agreement, and the settlement agreement, you know, released
15 all the claims, and I have two responses to that. One is,
16 your Honor, if -- you know, in Exhibit 3, the next exhibit,
17 so if we go up probably about, you know, six pages or so --

18 THE COURT: To look for what, sir?

19 MR. BRILLIANT: In the settlement agreement, you
20 know, the last page before the signature block in the
21 settlement agreement, paragraph 9, miscellaneous.

22 THE COURT: Got it.

23 MR. BRILLIANT: If you look at 9(a)(2), your Honor,
24 it says if the parties fail to reach agreement on the terms
25 of a definitive agreement regarding the transfer of the

1 interceptor within 180 days from the execution date or, if no
2 closing occurs, within 360 days of the execution date, each a
3 triggering date, any party within 30 days at the first
4 occurring triggering date may declare any provision in the
5 agreement void and without effect. If any provision of this
6 agreement is applicable, blah, blah, blah, but the bottom
7 line is, your Honor, you know, they say, "Oh, well, you
8 waived all these claims, you know, at the time you signed the
9 letter, you know, of intent." Now, the reality is it was
10 fraudulent inducement to enter into the settlement agreement.
11 They said they would tell us about any investigation. There
12 was already an investigation that was ongoing that they knew
13 about and they didn't tell us, but more importantly than
14 that, it's -- the release wasn't effective because it could
15 have been terminated by MIDD if there wasn't a closing. And
16 so the same issue here that we were fraudulently induced into
17 closing both is fraudulent inducement with respect to the
18 settlement agreement as well as the other agreement, but the
19 reality is it was not a final release until the sale occurred
20 because any party could have -- essentially any party, but to
21 the extent that MIDD, you know, learned about the
22 investigation or learned that they were, you know,
23 potentially going to be, you know -- you know, paying too
24 much and was in a position to -- you know, to terminate --
25 you know, terminate the agreement. So, your Honor, I think,

1 you know, those simple, you know -- you know, facts, I
2 think, establish, you know, the fact that we have a claim.

3 Now, the city takes the position, which is just
4 clearly wrong as a matter of Michigan law, you know, that --
5 you know, they take the position that the merger clause
6 that's contained in the agreement, you know -- you know,
7 precludes, you know, parties, you know, after a closing of a
8 transaction, you know, from bringing a claim for fraud in the
9 inducement of the agreement, and they cite the UAW-GM case.
10 You know, we cite in both our brief and in the reply briefs,
11 you know, several, you know, more recent cases. There's
12 actually three cases that came out in 2013 and so far this
13 year in 2014 from the appellate court, you know, here in
14 Michigan, you know, that make it very clear that when there's
15 a -- when there's fraudulent representations made to induce a
16 party to contract, whether it be a direct claim or a claim
17 under Michigan law, you know, for silent, you know,
18 misrepresentation when you fail to disclose what you're
19 supposed to disclose, that the merger clause doesn't bar the
20 claim. And, you know, we cite, you know -- you know, all
21 three of those cases. The, you know, Retiree Committee says,
22 well, there's, you know, binding Sixth Circuit authority on
23 it, and they ask your Honor, you know, to read that case.
24 When your Honor reads that case, we cite in a footnote to our
25 reply brief that case supports our position as well. The

1 UAW-GM case, which is cited, you know -- you know, by -- you
2 know, by the city, you know, is really limited, you know, to
3 its facts. When your Honor reads the most recent cases out
4 of Michigan, it makes it very clear, you know, how that case
5 should be interpreted and how that case is interpreted here
6 in Michigan, and it just doesn't preclude our claim. If
7 anything, it -- you know, it supports the fact that we
8 actually, you know -- you know, have this claim.

9 Your Honor, one other document, you know, I wanted
10 to show you is attached to our reply brief, which is Exhibit
11 C to the reply brief that we've --

12 THE COURT: One second, please.

13 MR. BRILLIANT: So it's page 35 of -- it's page 35
14 of 45 on the docket, your Honor.

15 THE COURT: Okay. That's helpful. I have it, sir.

16 MR. BRILLIANT: All right. And, your Honor, this is
17 a -- you know, an e-mail, you know, cover sheet from Craig
18 Hupp, who is, you know, counsel to the -- to MIDD in
19 connection with the transaction, and he's sending an e-mail
20 to Bob Walter, you know, who's, you know, at the city, and
21 then also to Mr. Jacobs at Dykema, and, you know, the city
22 has put in his affidavit or his declaration. You know, he
23 was the principal, you know, lawyer with respect to the city.
24 And in the e-mail Mr. Hupp, you know, asks, you know, the
25 parties to -- you know, he took minutes or notes, you know,

1 at a due diligence meeting where, you know, the city came in
2 and talked about, you know, various issues, and as you can
3 see on the date here is March 19th, 2009, well into the
4 investigation that the U.S. Attorney's Office had started and
5 well into the time period when the members of DWSD were being
6 interviewed in connection with the investigation. And, you
7 know, he -- you know, he asked them if there were anything
8 that's in error or incomplete, and, you know, to the best of
9 our knowledge, there's never been any response. And, your
10 Honor, the issues here -- you know, if you just go to the --
11 you know, starting on 29 -- whoops. We were up late working
12 on the reply brief and apologize for being a little
13 unorganized this morning.

14 THE COURT: That's okay.

15 MR. BRILLIANT: But starting on 29 --

16 THE COURT: Page 29?

17 MR. BRILLIANT: No. Question 29, page 8, or on the
18 docket it'll be 43 of 45, I believe.

19 THE COURT: Okay. Let me catch up to you. Hold on.
20 Okay.

21 MR. BRILLIANT: Okay. And so we're just going to
22 start here. We're going to talk about -- going to get to the
23 key one in a little bit, but, you know, basically the way
24 this works is this was a due diligence checklist they gave to
25 the city. The city came in, had conversations, so describe

1 any regulatory complaint or notices of violations issued on
2 Detroit or DWSD in the past five years out of or related to
3 the operation of the facilities. Jacobs and Walter, the
4 outside counsel and the person from the city, were the people
5 who were going to respond, and they responded none just to
6 give you an example as to how, you know, this -- you know,
7 this works.

8 Now, if we go down, your Honor, to 32, it says
9 describe any facts of which DWSD or Detroit is aware which
10 would give rise to or support a claim against any contractor
11 or other person arising out of or related to the facilities,
12 and state whether such claim has -- you know, such claim been
13 asserted. You know, the word "has" probably belongs there,
14 but -- so basically asking the city, "Are you aware of any
15 claim that might exist against a contractor or subcontractor
16 and whether it's been, you know, asserted yet?" And it's
17 even broader than that. "Are you aware of any facts that
18 would give rise to or support a claim?" Right? Jacobs and
19 Walter will address, and their response was, "DWSD is not
20 aware of any known, threatened, or pending claims other than
21 those identified in Item 30, and if you go up to 30, you
22 know, 30 is, "Describe any civil claims asserted or
23 threatened in the past five years arising out of the
24 operation of the facilities," and they say three claims,
25 claims and suits arising out of the collapse. Presumably

1 that's, you know -- you know, tort claims, you know, arising
2 out of that, you know, people's homes being sucked into the
3 sinkhole or whatever may have happened. Collins' business
4 interruption claims because of construction delays in the
5 Garfield suit, and that's all they disclose. So, you know,
6 they -- you know, to -- you know, your Honor, they had an
7 affirmative obligation to disclose the investigation. They
8 didn't disclose it. They were asked specifically about
9 whether there were any claims against any contractors, and
10 although they were aware that the FBI and the U.S. Attorney's
11 Office was investigating the contractors in connection with
12 potential fraud in connection with, you know, this
13 particular, you know, contract, they didn't disclose that.
14 And to the extent, your Honor, that they say that this vague,
15 you know, assertion here, you know, that, you know, claims
16 arising out of, you know -- you know, the collapse somehow is
17 a disclosure, you know -- you know, the Michigan courts have
18 made it absolutely clear that when you disclose information,
19 you have to disclose it in a way that it's -- you know, that
20 it's meaningful and people can understand it. You can't, you
21 know, be -- you know, be sneaky and tricky and, you know,
22 answer the question, you know, with a half truth, you know,
23 to lead to, you know, an inappropriate, you know -- you know,
24 impression.

25 So, your Honor, you know, based upon, you know, the

1 facts and Michigan -- you know, Michigan law, you know, it's
2 pretty clear, I think, that we have, you know, a good claim.
3 The other, you know, issues that they raise that they think
4 may, you know, bar, you know, the claim is, one, they raise
5 the issue of res judicata in connection with, you know, Judge
6 Cleland's decision. It's just completely, you know,
7 inapplicable, you know, to this particular case. That was a
8 suit that was brought, you know, by MIDD against the -- you
9 know, against the contractors. It was not a suit related to
10 the city, and the city intervened initially, you know, to
11 support the claims of MIDD, you know, the theory being that
12 either MIDD would get the benefit of it or it would go to the
13 city. They did not say in their initial intervention that
14 they thought we did not have the claim. Ultimately, Judge
15 Cleland concluded that claims against third parties were not
16 assigned to us, and we couldn't bring those claims, but the
17 case did not involve or did he rule upon any issues that are
18 the subject of the complaint that we have, which is against
19 the -- you know, against the city, so res judicata just
20 clearly, you know, doesn't apply in this situation, and issue
21 preclusion and claim preclusion, you know, don't apply
22 either.

23 And then, your Honor, the only other, you know,
24 defense that they have, you know, come up with is a, you
25 know, defense of governmental immunity, which doesn't apply

1 in the situation, and if you would like to hear about that
2 now, Ms. Badalamenti can talk about that.

3 THE COURT: That's fine.

4 MS. BADALAMENTI: Yes. Thank you, your Honor. The
5 governmental immunity defense that's been asserted by the
6 city is premised on one case. It's the Blackmar case. And
7 they assert that the Blackmar case involves a claim of fraud
8 and recognizes that governmental immunity bars all fraud
9 claims. That case does no such thing. In fact, the problem
10 with the Blackmar case and the northern Michigan case that
11 they cite -- and I will say as a caveat that the rest of the
12 cases that are cited in that section have nothing to do with
13 fraud claims or governmental immunity. But with respect to
14 those two claims, they do involve a claim of fraud, and they
15 do involve a claim of fraud against a governmental entity.
16 And the issue and the reason why those claims are subject to
17 governmental immunity is because the fraud that is supposedly
18 perpetrated is something that is specifically contemplated by
19 statute. In other words, it's not an ultra vires. It's not
20 a proprietary. It's not a -- there's no exception to
21 governmental immunity that applies to cover any wrongdoing by
22 the city, so the findings in those cases are that the
23 governmental agency is immune because there is no basis for a
24 fraud claim. There is no holding in Michigan law -- and I've
25 spent the last two days making sure of this before I came in

1 to your Honor to tell you -- there is absolutely nothing to
2 suggest that a fraud claim, as a matter of laws, is precluded
3 by governmental immunity. In fact, the suggestion is that a
4 fraud claim, especially a fraud in the inducement claim, is
5 to be analyzed by its damages and what the damages are sought
6 and analyzed that way, and as the Court knows, with respect
7 to contract claims, there is no governmental immunity ever
8 for contract claims asserted against governmental agencies,
9 so with respect to that defense --

10 THE COURT: Isn't there an immunity statute?

11 MS. BADALAMENTI: There is. There's a section --
12 MCL 691.1407 is an immunity statute. It provides that the
13 governmental agencies in Michigan are immune from tort claims
14 and that that tort is what the question is. The tort
15 analysis is not the title of a tort claim. It's not whether
16 a tort claim is traditionally viewed as a tort claim. The
17 question for purposes of governmental immunity is what type
18 of damages are being sought when -- in the case of fraud,
19 innocent misrepresentation, fraudulent inducement, those
20 types of claims are -- the remedy that's being sought is
21 rescission or reformation of the contract, so for that reason
22 fraud is -- and we cite a number of cases. Fraud is
23 considered with respect to governmental entities, and there's
24 no immunity that applies. In particular, we cite a Michigan
25 Supreme Court case where the -- a public contract was let,

1 and it was based specifically on a misrepresentation. This
2 is the Valentini versus City of Adrian case. The public
3 contract was let, and there was a misrepresentation by the
4 city to induce the contractor to get to that price. When the
5 fraud was uncovered, the claim was allowed to proceed, first,
6 because the governmental agency has no statute. It's not
7 engaged in a governmental function. When it goes outside of
8 its statutory authority in order to conceal information,
9 certainly that is not a governmental function, your Honor,
10 which would be covered by immunity. And, second, because
11 the -- what the contractor sought was the payment for actual
12 services, so the issue with fraud and a claim like fraud is
13 that there's no immunity because there's no statute. A
14 governmental agency has to be, one, engaged in a governmental
15 function. That's the first question. A fraud claim -- there
16 is no statute or law that allows a governmental agency to
17 make the decision to conceal information with regard to its
18 contract processes, so the case -- the Blackmar case that was
19 cited to you by the city here involves a fraud in the
20 negotiation of an employment contract. However, what is
21 found in Blackmar is that there was no misrepresentation,
22 and, in fact, the contract processes that were followed were
23 specifically provided for by the emergency act that was the
24 subject of that case, so there's an emergency manager statute
25 that's followed to the letter that forms that contract, and

1 they say you can't have a fraud claim in that case. All they
2 did was follow what the statute told them to do.

3 In this case, you have a city who was entering into
4 a transaction with Macomb knowing and making a conscious
5 decision to disclose information and conceal other
6 information in order to induce to get the purchase price that
7 it wanted, so there is no governmental immunity in such a
8 circumstance.

9 Furthermore, the claim here is pled for rescission,
10 reformation, in addition to damages, and for that reason it
11 would be a contract claim as opposed to the traditional tort
12 claim that is barred by governmental immunity.

13 MR. BRILLIANT: Your Honor, there's a few more just
14 miscellaneous points. Your Honor, in the reply, the -- you
15 know, which really is contrary to all the deposition
16 testimony, you know, the city now says that it was the
17 impression, you know, of Mr. Latimer that the DWSD wasn't
18 being investigated but instead it was an investigation even
19 though it was centered on the local economic development. If
20 your Honor reads the deposition designations that we
21 attached, I mean it's absolutely clear from the very first
22 situation where Mr. Shukla, who was the chief engineer at
23 DWSD, was being -- you know, was interviewed by the FBI, and
24 it was absolutely clear that -- you know, that DWSD issues
25 and the sinkhole issue, in particular, were being

1 investigated by the government, and it was not -- it was not
2 disclosed. And, you know, Mr., you know, Latimer's, you
3 know, interpretation that somehow, you know, he might have
4 thought that something else was the center the transaction,
5 it's just not -- it's just not credible, but it's not really
6 relevant either, you know. The fact is that knowing that
7 there was an investigation here of the contracting and
8 subcontracting, you know, process, you know, would have, you
9 know, required that it be disclosed given that it was a
10 material piece of information and they had undertaken in the
11 letter of intent to disclose such events.

12 You know, next, your Honor, you know, their latest
13 argument is as well that Mr. Ferguson -- companies they
14 believe only got \$3 million of the -- you know, of the, you
15 know, total amount, and that's not relevant either. The
16 reality is that -- you know, that Inland and D'Agostini and
17 various other contractors also had inflated, you know -- you
18 know, charges here in part because they were paying, you
19 know, kickbacks and they needed to inflate their bills, but
20 the issue is not what Mr. Ferguson got. The question is what
21 is the total amount of the overcharges. And based upon both,
22 you know, their own expert, you know, at the time --
23 engineering firms' estimate as to what it would cost and
24 MIDD's expert's estimate as to what it would cost and based
25 upon the allegations that the city had filed in connection

1 with -- in its intervention complaint, it's clear that the
2 total amount of the overcharges, you know, is much closer to
3 \$26 million than to any other number.

4 THE COURT: How do you deal with the challenge that
5 the city makes to the weight or credibility that should be
6 given to your expert's conclusion regarding the damages?

7 MR. BRILLIANT: Yes, your Honor. I think the first
8 thing is, your Honor, the expert has 26 years of experience,
9 you know, creating estimates. He had the benefit of all of
10 the information that the city had at the time that it let out
11 the contracts plus about half of the information as to when
12 the project -- you know, half the information about what had
13 happened on the project, you know, through the process, and
14 he was able to come up with a number based upon his expertise
15 as to what it would cost. And his number was very consistent
16 with the numbers of NTH, the city's, you know, expert, you
17 know, as they disclose in the complaint, and -- you know, and
18 so I think it's very credible.

19 Also, your Honor, he points out in his declaration,
20 you know, a number of the really extraordinary, you know,
21 charges that exist, which kind of gives you a sense of the
22 magnitude of the -- you know, of the fraud here, the amount
23 of fees charged, you know, for security, the amount of fees
24 charged for -- you know, for pumping and various other things
25 which were, you know, many multiples of what they would

1 ordinarily, you know, cost, so it's -- I think, your Honor,
2 their -- you know, their argument is, you know, completely,
3 you know, misplaced as to, you know, the validity of -- you
4 know, of his analysis. I think it was an appropriately, you
5 know, done analysis, and I think it's -- you know, the result
6 of it, you know -- you know, withstands, you know, scrutiny,
7 you know, here.

8 You know, the last thing with respect to damages,
9 your Honor, is there -- you know, this was a -- you know,
10 intended to be a global settlement, which resolves not just
11 the -- you know, the issues with respect to, you know, the --
12 you know, the sinkhole, you know, collapse and the repair but
13 also with respect to certain other things that were, you
14 know, outstanding in connection with the disputes between the
15 parties at the time. Now, it's not disputed at all that the
16 amount of the -- you know, of the repair, you know, was
17 passed along, you know, pursuant to this contract, you know,
18 to -- you know, to MIDD. I don't think that -- that's not
19 disputed, but instead what they dispute is there was a \$17
20 million credit to the ultimate, you know, total amount of,
21 you know -- you know, system debt, the amount of investment,
22 so to speak, that was -- you know, existed in the assets that
23 were transferred, you know, to MIDD, and the \$17 million --
24 the evidence is pretty clear, your Honor, when you read
25 the -- you know, the -- you know, the transcripts that the

1 \$17 million comes from the -- is a deduction related to
2 things unrelated, you know, to the transfer of the MIDD
3 assets. It had to do with a dispute over interest rates, a
4 dispute regarding, you know -- you know, some radio issues
5 and various other things, so it's completely unrelated to
6 these issues, so there's no -- there's no double counting
7 here, you know, in connection with the -- you know, with the
8 issues.

9 In connection, your Honor, with, you know, other
10 issues, you know, they raise issues as to the credibility of
11 Commissioner Marrocco in connection, you know, with his, you
12 know, recollection, you know, relating to the representations
13 made by Mercado. I would point your Honor to the deposition
14 transcript of Mr. Hupp, who, although not present at the
15 meeting where, you know, Judge, you know, Feikens asked Mr.
16 Marrocco and Mr. Mercado to go into the room and, you know,
17 resolve the issues, but -- you know, but he talks about the
18 fact that, you know, MIDD was very concerned about, you
19 know -- you know, whether there were overcharges here, and
20 that was an issue for them. And then I'd also say that --
21 your Honor, that if you read the deposition transcript, there
22 is nothing inconsistent between the declaration and the
23 deposition transcript or between the deposition transcript at
24 various times when Mr. Watson asked questions of Mr.
25 Marrocco. Instead he would ask him a couple questions about

1 conversations that he had about representations. Then he'd
2 move on to something else before he, you know -- you know,
3 would tie it all down. Then he would come back to it. He'd
4 get a little bit more information, and then he would -- came
5 back to it a third time, you know. You know, the problem
6 with -- you know, with depositions is -- you know, especially
7 when you hop around like that is you get whatever information
8 you ask for, and you don't get anything, you know, more than
9 that. And when your Honor reads the transcript, it'll be
10 very clear to your Honor that Mr. Marrocco's testimony didn't
11 change. It's just that by jumping around and getting half
12 the story here and half the story there and a little bit
13 more, you know, at the end, he just got different pieces of
14 it, but none of it is inconsistent with each other. And the
15 fact that he didn't get -- you know, Mr. Marrocco never had
16 the opportunity to say that about -- he says he had this
17 meeting and this conversation with Mr. Mercado and what the
18 representation was because that's all that was asked. No,
19 you know, question as to about, you know, what else, you
20 know, occurred, you know, around it.

21 So, your Honor, I think at this point I'm going to
22 sit down and reserve some time for rebuttal, but, you know,
23 from our perspective, I think we have, you know, established
24 the likelihood of success, a strong likelihood of success on
25 our claim and on the -- you know, the dollar amount that we

1 seek to have allowed for voting purposes.

2 THE COURT: Thank you, sir.

3 MR. WATSON: Good morning, your Honor. Jerome
4 Watson appearing on behalf of the debtor, City of Detroit. I
5 got involved in this matter about three weeks ago, and my
6 partner, Mr. LaPlante, at that time told me, "Well, this is
7 sort of litigation light, this bankruptcy litigation."
8 Judge, I haven't seen anything light about this over the last
9 three weeks, and I thank you for reading all the paper we've
10 submitted.

11 Macomb's claim, we submit, is woefully weak, and I
12 agree with virtually nothing they said, but I would like to
13 start off with a timeline because I think that's important
14 for our arguments. In August 2004 the 15 Mile Road sewer
15 collapsed. Nine months later, March 2005, the repairs were
16 completed. In 2005 and 2006, the city allocated the full
17 cost of those repairs to Macomb. In March 2006, Macomb filed
18 a petition before Judge Feikens charging that allocation and
19 also discussing costs that were incurred. In the summer of
20 2006, the parties started negotiating a potential resolution
21 of their claims against each other. Late summer, early fall
22 2006, according to Mr. Hupp, Macomb's attorney, a tentative
23 settlement was reached between Mercado and Marrocco as to the
24 cost of the 15 Mile Road repairs.

25 In March 2007, Judge Feikens issued an opinion

1 deciding for Detroit saying Macomb was responsible for all
2 the repairs, and that scuttled that tentative decision that
3 Macomb and Detroit reached, so they had to start all over.

4 In the spring of 2008, Feikens arranged for a
5 facilitation. Judge Feikens arranged for a facilitation
6 before Mr. O'Brien, and settlement discussions were commenced
7 spring 2008 for the resolution of all complaints in the sale
8 of the Macomb Interceptor system from Detroit to Macomb.

9 In June -- and this is an important date -- June
10 2008 Mercado resigns. He's gone by June 2008. According to
11 Attorney Hupp, Mr. Mercado wasn't a part of the negotiations
12 that eventually resulted in the sale.

13 May 2009 the global settlement agreement was entered
14 into, and that agreement specifically resolved all disputes,
15 all disputes related to the costs for repairs of the
16 interceptor system.

17 A year, four months later, September 2010, the
18 acquisition agreement was entered into. Under that
19 agreement, the system is sold to Macomb, and the parties
20 waived and released all claims regarding the costs of the
21 sewer collapse and any other projects. The settlement and
22 the release agreement was separately entered into at that
23 time. Three months after that, 12-2010, Kilpatrick and
24 Ferguson were indicted along with others.

25 First, I want to talk about MIDD's fraud claims.

1 They fail as a factual proposition, number one. MIDD bases
2 its fraud claims on two contingents. First, according to
3 MIDD, Mr. Mercado on more than one occasion told Mr. Marrocco
4 that the 1368 repair costs were fair and accurate. 1368 was
5 the sewer system -- was the number of the contract for the
6 sewer system that collapsed, so that's number one.

7 Representations from Mercado to Marrocco that the repair
8 costs were fair and accurate, and Marrocco said Mercado told
9 him this on more than one occasion.

10 Secondly, they say that the city knew that the FBI
11 and U.S. Attorney were investigating 1368 excessive charges,
12 and Detroit violated at least the acquisition agreement, and
13 they say the letter of intent as well, by not apprising
14 Macomb prior to the September 2010 closing on the acquisition
15 agreement that this investigation was proceeding forward.

16 There are four witnesses that negotiated the deal in
17 question. Those witnesses are all experienced attorneys.
18 For Macomb it was Mr. Misterovich, who was a Macomb employee
19 but an attorney as well, and Mr. Hupp, a Bodman attorney
20 who's very experienced. For Detroit the primary negotiators
21 were Mr. Jacobs, a Dykema attorney, and Mr. Walter, who's now
22 retired, but a very experienced attorney for Detroit. There
23 was some assistance given by a rate consultant, Bart Foster,
24 but those were the key guys in the negotiations. As I
25 mentioned, Mercado wasn't a part of the negotiations. They

1 really started right about the time he left.

2 The Detroit witnesses, including the two who
3 negotiated, all testified very clearly that the
4 reasonableness of the cost for the repair charges was never
5 discussed, didn't come up at all. I asked both Mr. Hupp and
6 Mr. Misterovich about that, and they gave testimony which was
7 kind of evasive. Neither of them clearly said that the
8 reasonableness of the charges for the repair costs was
9 negotiated or discussed during those negotiations. So what
10 does Macomb base its claim on then? It bases its claim
11 almost entirely on the alleged statements made by Mercado to
12 Marrocco. And I examined at some length Mr. Marrocco about
13 this. In fact, there were three separate times it came up.
14 Contrary to what Macomb's attorney says, the first two times
15 I clearly pinned the guy down, clearly pinned him down. It's
16 right there in the record. He said there was all there was.
17 The first time he said, "Well, there was a discussion in
18 2007, and Mercado said that the charges for these repairs was
19 fair and accurate." And then there were other discussions,
20 but he couldn't recall the date of those nor could he recall
21 other details. Well, later on in the deposition I asked him
22 could he recall some of the other details, and that time he
23 said, yeah, I can recall two discussions. There were two
24 discussions. One occurred during 2004 while the repairs were
25 being made about six weeks after the collapse. And I asked

1 about trucks on the scene, and there seemed to be too much
2 stuff out there, and were we paying for all that. Marrocco
3 said, "Oh, no, we're not." And then the next discussion was
4 the spring of 2005 when I asked about pretty much the same
5 thing, all this cost we're incurring, and Marrocco said,
6 "Well, I'm checking everything. This is a fair and accurate
7 cost that's being charged for this system." I asked him if
8 there was any other discussions. No, that's all there was.

9 Then at the close of the deposition, I wanted to
10 confirm that he told me that was all there was, that there
11 wasn't anything else, and at first he said yes, but then he
12 came up with two other discussions. He said there was a
13 discussion in his office where basically Mercado said, "Well,
14 if there's any problem, we'll give you a credit," and then he
15 said -- didn't say what the time period was. Then he said
16 there was a discussion in Mercado's office where about the
17 same thing was said, so one in his office, one in Mercado's
18 office, no time frame. So I had three separate versions of
19 the statements, alleged commitments that Mercado made to
20 Marrocco. So I'm waiting, Judge, to try to -- thinking,
21 well, what will he say in his declaration because a
22 declaration will be filed. The declaration was filed, and
23 there was yet another story, and I would like to pull out
24 that declaration. That was Exhibit 1 to Macomb's brief. And
25 in that declaration, he says something way more specific than

1 anything he ever said in his testimony. He says that he knew
2 Mercado -- paragraph 12 of his declaration, "I knew Mercado
3 to be the director of the Detroit Water and Sewerage
4 Department at the time that the work on the 15 Mile and Hayes
5 Road repair project occurred and, thus, inquired of him
6 whether there had been any irregularities on the repair
7 project to cause the total charges to exceed 52 million."
8 Paragraph 13, "Mercado responded in the negative and
9 represented on behalf of the city that the amounts in Exhibit
10 1 in Schedule 3.8 at Exhibit 3, page 48, were legitimately
11 incurred and paid," and then he goes on to say, "In reliance
12 on these representations, we entered into the contract."
13 We've got a problem with that testimony, Judge. If you look
14 at Schedule 3.8 at Exhibit 3, page 48 -- and, unfortunately,
15 I don't think in Macomb's brief they attached all the pages,
16 so 48 isn't there, so I have to go to our brief and go to --
17 I believe it's Exhibit 20. No. Exhibit -- maybe it is
18 Exhibit 20. Exhibit 20 and go to page 48. I go to Exhibit
19 20, page 48, and I don't know if the Court has it. It says
20 "Schedule 3.8" at the top.

21 THE COURT: One moment. Oh, this is attached to
22 your reply brief or your original brief?

23 MR. WATSON: Original brief, Exhibit 20.

24 THE COURT: Do you have a PDF page number for me?

25 MR. WATSON: I really don't.

1 THE COURT: What's the name of the document?

2 MR. WATSON: It's Schedule 3.8. It's one of the --
3 it's behind -- in Exhibit 20, almost to the end, about three
4 or four pages, maybe five pages from the end. It's a one-
5 page document that lists all the charges for the sale of the
6 system.

7 THE COURT: Hold on. I'm getting there. I have it,
8 sir.

9 MR. WATSON: Okay. If you look at the top, it says
10 "Schedule 3.8, Computation of Purchase Price as of June 30,
11 2010." I think the parties admit that Mr. Foster prepared
12 this in conjunction with the acquisition agreement. The
13 point, Judge, is this document is a computation which would
14 have been made no sooner than June of 2010. Mr. Mercado left
15 the City of Detroit's employ in June 2008, two years before.
16 There is no way this document was discussed by Mercado and
17 Marrocco in 2008, so Marrocco's affidavit is just wrong, to
18 put it mildly. Though we have four versions of what
19 happened, one of which -- the most specific version which was
20 relied on in this courtroom -- that's what they mentioned.
21 They were relying on the stuff in the affidavit -- is just
22 dead wrong. We submit that Marrocco's testimony is not
23 credible and should not form the basis of a fraud claim, and
24 for that reason alone, their claim should be dismissed.

25 They also claim fraud stating that numerous Detroit

1 witnesses who were interviewed by the FBI or the U.S.
2 Attorney's Office knew about these excessive costs, and these
3 excessive costs were being evaluated, these alleged excessive
4 costs. As a factual matter, all of our witnesses have denied
5 that when they were interviewed or when they testified before
6 the grand jury the issue of excessive costs even came up.
7 Mr. Latimer was the witness who was interviewed the most. He
8 was interviewed three or four times, testified twice before
9 the grand jury. He was the head of the DWSD contracts and
10 grants department. He said that the investigation from what
11 he could tell entailed was focused on whether there was
12 favoritism shown by Mr. Ferguson -- to Mr. Ferguson in the
13 awarding of contracts. And specifically he said he was asked
14 a lot of questions about the local economic development
15 department which could give credit to small businesses and
16 Detroit-based businesses, and that credit was used in
17 determining who might get contracts. Mr. Shukla did say when
18 he was interviewed 1368 came up, but there was nothing that
19 came up about excessive costs. The city's attorney, Mr.
20 Walter, testified that he couldn't recall 1368 even coming
21 up, and certainly there was nothing about excessive costs.
22 Not one of our witnesses could remember anything, any
23 questions about excessive costs, and most said that 1368 did
24 not even come up.

25 The other thing they claim in regard to the fraud

1 claim is that, well, the city knew about an investigation,
2 and that investigation should have been reported. The city
3 had to disclose that investigation, and I saw that Mr.
4 Brilliant in his argument pointed to the letter of intent
5 that was attached to the May 2009 settlement agreement. I
6 think we pointed it out in our brief, Judge, that letter of
7 intent is not even -- the letter of intent clause he cited is
8 not even applicable.

9 Too many documents here, but Exhibit 19 to our brief
10 is the settlement agreement, and Exhibit D to Exhibit 19 is
11 the letter of intent. Mr. Brilliant referred to paragraph 9
12 of the letter of intent, the obligations under paragraph 9,
13 and says based on paragraph 9 we had to apprise him of any
14 claims. However, looking at paragraph 14 of the letter of
15 intent -- perhaps I could read it in appropriate part.
16 Paragraph 14 is binding effect. "Except for paragraphs 5 and
17 10 through 13 hereof, the provisions of which the parties
18 acknowledge and agree are legally binding upon them, this
19 letter of intent is not contractual in nature and will not
20 give rise to any legally binding obligation on the part of
21 any of the parties hereto." Thus, the paragraph they're
22 relying on, paragraph 9, isn't binding on the parties, and,
23 therefore, the claim could not be premised on paragraph 9.
24 The other problem they've got is that none of the
25 witnesses who were deposed testified about any information

1 that would necessarily lead to a claim that impacted the
2 system. Under the acquisition agreement, to the extent the
3 city had an obligation to report, it only had to report
4 claims that conceivably could impact the sale of the system.
5 The investigation, as far as the city was aware, was an
6 investigation of Mr. Ferguson, being given advantage in
7 getting contracts. On the 1368 system, Mr. Ferguson didn't
8 even have a contract with the city. His contract was with
9 Inland. He was a subcontractor, and just because Ferguson
10 was a subcontractor on 1368 did not mean that the sale to
11 Macomb was somehow impacted.

12 The bottom line, we feel, Judge, is that all of our
13 witnesses, Latimer, Walter, Shukla, had no idea they say from
14 the investigation of the FBI and the questions they answered
15 of excessive charges, nor did they know that there was any
16 potential claim that could impact the system.

17 Macomb also says, well, but what about the due
18 diligence list. There's this due diligence list with a lot
19 of questions, and Detroit had an obligation to respond to
20 that. Mr. Jacobs in his testimony talked about that. He
21 said, "Well, I hadn't seen the list. We think it was
22 something that was created by Mr. Hupp, Macomb's attorney,
23 probably as hearsay, but we've agreed that it could be
24 admitted," but that list, that due diligence list, came up in
25 Mr. Hupp's deposition. It was made an exhibit to his

1 deposition, Exhibit 7 to his deposition. And in the
2 deposition actually Macomb questioned him about this due
3 diligence list and asked him about three questions, 29, 30,
4 and 32, which Mr. Brilliant, in effect, covered as he was
5 arguing the matter. And so I followed up with him, and I
6 asked him did he -- was he aware of any misstatement by
7 Detroit in answering those three questions when they gave to
8 him their answers. He admitted that he was not aware of any
9 of the responses being wrong when they were made by Detroit,
10 so he's admitted that, as far as he's concerned, he can't say
11 when Detroit made these representations that any of them were
12 wrong.

13 Based on that, we submit as a factual matter Macomb
14 has not proven fraud. A fraud claim has to be proven with
15 specificity, concrete evidence. There's nothing here even
16 approaching fraud that they've proven on this record.

17 Next, I want to move to damages. The first point we
18 would like to -- I would like to discuss is MIDD's reliance
19 on the Kilpatrick jury verdict in the complaint filed by
20 Detroit. As far as the jury verdict, they rely on the
21 indictment allegations which indicate that Detroit overpaid
22 Ferguson by \$23.7 million. That's what the indictment said.
23 The jury -- under the jury verdict, Ferguson was found guilty
24 of extortion, meaning that he got some work improperly,
25 probably at the expense of other contractors, but the

1 extortion jury verdict doesn't mention anything about the
2 \$23.7 million, and it doesn't establish that there was a
3 \$23.7 million overpayment. It doesn't even establish that
4 Ferguson did not do the work, and it doesn't establish that
5 Ferguson overcharged or anyone else overcharged for the work
6 they did.

7 There's also some confusion I would like to
8 straighten out now about that \$23.7 million and 1368. 1368
9 was a regular contract at DWSD for \$50 million, a unit price
10 contract given to Inland. That means for the lining work and
11 point repair work Inland would do in working on sewers, they
12 would pay -- be paid a certain amount per unit of work they
13 did. That contract was for \$50 million. There was an
14 amendment to that contract for \$10 million, which brought it
15 up to 60 million. Ferguson was an Inland subcontractor on
16 that contract. Now, when the collapse occurred -- and that
17 was an emergency -- the City of Detroit couldn't wait four or
18 five months to go through the regular process and get another
19 contract. They had to do it on an emergency basis. Macomb
20 tries to make a lot out of that, but you couldn't follow the
21 regular practice to do this. And Judge Feikens had given
22 Mayor Kilpatrick authority to enter into contracts to do
23 things on an emergency basis to get the job done. So there
24 was an emergency contract which was called Amendment 2 to
25 1368. That was 35 million. Then there was another one,

1 Amendment 3 to 1368, that was 23 million, so 58 million was
2 the contract amount for the repairs to the Macomb Interceptor
3 system. There were two other amendments to 1368, 4 was 12
4 million, 5 was 8 million, so overall 1368 was 138 million, 58
5 of which was for the emergency sewer repairs. Of that 58
6 million on the emergency sewer repairs, we've established
7 through the affidavit of Mr. Latimer that Ferguson was paid a
8 total of \$3,017,000. The emergency sewer repairs was a --
9 the ledge is short here, and I can't keep my notes. They
10 keep slipping off. The emergency sewer repairs was a huge
11 job. It was an immense project. The sewer was 11 feet in
12 diameter, and there was no way a guy like Ferguson could
13 handle most of the costs, so he got the \$3 million. The rest
14 of his \$20 million was on the other parts of 1368, and
15 there's just no evidence that Ferguson didn't earn the \$3
16 million. In fact, the only person who really knows about the
17 repairs that was on the scene every day was Remesh Shukla,
18 who ran the operation. He was there 12 hours a day, seven
19 days a week. He said Inland was not paid for any
20 subcontractors unless they submitted certified audited signed
21 invoices, and he said there was absolutely no overcharges.
22 That was his testimony. We don't think Macomb has
23 established that there were 23 million of overcharges. They
24 haven't established there were any.

25 The testimony of Lyle Winn doesn't help them out.

1 What Winn did is he took the initial estimate and got 20,000
2 pages of documents from Macomb, looked at the estimate and
3 said, "Well, gee, that 35 or 33 is too high. It should be
4 28." And so he said the repairs should have been 28. It
5 cost 54 in total. The difference is 26. That's your
6 damages. That analysis is flawed. Mr. Shukla testified that
7 once they got out there, that project was much larger -- a
8 much bigger project than they thought it was with the initial
9 estimate by NTH. As I said, NTH was our expert. NTH helped
10 to work out the initial 33 or \$35 million estimate. The
11 project was more immense. Shukla testified that they thought
12 they would have to go down 75 feet. They had to go down 100
13 feet. There was way more water than they thought of. The
14 sinkhole kept growing larger and larger, and my favorite,
15 which didn't come out in our brief at all, was to plug that
16 sinkhole. You got two 11-foot in diameter ends that broke
17 sort of in the middle. You got to plug this end. You got to
18 plug that end because you can't do anything until you stop
19 that flow, and so first they tried to use a bulkhead. That
20 didn't work on each end. Then they tried to use sandbags.
21 That didn't work. So finally -- and this is all in Shukla's
22 deposition -- they sunk down 2,000 bags of cement on both
23 sides, 2,000 this side, 2,000 that side. That stopped the
24 flow, but then that cement hardened. They couldn't dynamite
25 it out. They had to pick it out, and so that was an immense

1 cost. None of these things were taken into account by Winn.
2 He admitted he didn't take anything into account. He didn't
3 even consider the reasons why the costs might have been
4 greater. We don't think his opinion is worth much of
5 anything.

6 THE COURT: How do you deal with Macomb's assertion
7 that in a legal proceeding -- I can't now recall which one,
8 but in a legal proceeding the city itself did assert
9 overcharges on this project?

10 MR. WATSON: Probably with a bit of embarrassment,
11 Judge, but legally we're right. What the rule of law
12 there -- is there, if you assert something in one case, even
13 if it's in a pleading -- and this was in our complaint, the
14 initial pleading -- it can't be used against you in another
15 case. We cited that in our brief. And the fact of the
16 matter is after we got into the case and did more analysis of
17 what was going on, the 23 or \$26 million was too much, and
18 the 23 came from Inland -- or came from Macomb. We just
19 incorporated that into our brief, so that doesn't bind us.
20 And based on the discovery in this case, certainly that 23
21 million or 26 million is way too much. In fact, our position
22 is that, if anything, Inland underpaid for the system because
23 the basic deal was they would pay system debt to purchase it.
24 That system debt was, in effect, 110 million, not 90 million.
25 They negotiated down at least 20 million.

1 I'm talking too long. I want to mention the merger
2 clauses because that's a pretty good legal issue in this
3 case. It's our position that the merger clauses of the
4 settlement agreement and the acquisition agreement totally
5 refute MIDD's claim. This is a case in which the settlement
6 and then the acquisition agreement were negotiated by four
7 experienced attorneys. Those were the guys doing the
8 negotiation, and the agreements reflect exactly what they
9 decided upon. The merger clause in the settlement agreement
10 expressly states that it settles any and all claims,
11 representations. It's a very broad merger clause, and it
12 also -- the settlement agreement also indicates that it
13 settles all claims for the costs of repairs. It directly
14 covers what they're claiming. All claims for the cost of
15 repairs are expressly covered by the settlement agreement,
16 and then there's a merger clause saying there's nothing else,
17 no other agreements, representations, anything, and this is
18 by four experienced attorneys, Bodman and -- a Bodman
19 attorney and a Dykema attorney were the two lead attorneys,
20 and they're trying to get around that. We don't think they
21 can. What they try to say is, well, fraudulent inducement
22 can get around it. A fraud can get around it. Well, in this
23 case, it can't. For both a contract claim and a fraud claim,
24 you can't use parol evidence to vary the terms of the
25 agreement. You might be able to use parol evidence for a

1 fact that might impact the agreement or what they're saying,
2 we wouldn't have entered into it had we known these facts.
3 In this case, what they're saying, Judge, is that the
4 agreement they entered into, which was we'll pay all the
5 system debt less credits we negotiate for the purchase of
6 this system -- they're trying to make a new agreement. What
7 they're saying is, okay, we'll pay all system debt plus the
8 reasonable cost of the repairs for 1368 two and three and
9 then take into account credits, and that's the deal. That's
10 not the deal. That's a new deal. The deal was you pay the
11 debt less credits, and that was it. Even if the Court is
12 inclined to buy their argument that, well, these are just
13 some facts which, in effect, defeat the agreement, that
14 doesn't work in this case because you can't bring in parol
15 evidence if your reliance on the evidence is not reasonable
16 and if the evidence directly contrasts the -- or contradicts
17 the terms of the merger clause in the agreement. Here it was
18 not justifiable for them to rely on something Mercado
19 allegedly told Marrocco years before and before the
20 negotiations even started. Further, it was not reasonable or
21 justifiable for Macomb to sign a deal in which they're
22 claiming that, well, we knew Detroit had promised that the
23 repair costs were reasonable when the deal had an express
24 provision that says it totally settles any claims in regard
25 to repair costs. Why would you sign that deal if there's

1 some provision out there or you want a provision or you've
2 gotten a promise saying you only pay reasonable costs, not
3 the total costs? It wasn't reasonable, and -- for them to
4 rely on the Mercado statements, and that defeats the claim,
5 and plus the agreements totally defeat the claim. Quantum
6 meruit -- their claims were quantum meruit. When there's a
7 contract in place, quantum meruit won't lie. There's a
8 contract in place here.

9 And, finally, I want to have Ms. Hathaway talk about
10 the governmental immunity. Their fraud claims fail as a
11 matter of law because the contract basically covers all the
12 fraud claims they assert. If you're alleging fraud based on
13 provisions which are covered by contract, your fraud claims
14 cannot lie. Thank you, your Honor.

15 THE COURT: Thank you, sir.

16 MS. HATHAWAY: Thank you, your Honor. There's
17 some -- I don't completely understand Ms. Badalamenti's
18 argument, so I'm afraid I'm going to have to back up a little
19 bit. There is a Michigan statute that provides that the
20 governmental entity is immune from tort liability. She
21 talked a little bit about issues about whether or not this
22 was a governmental function. I don't really think there's
23 any question that transferring a government asset to another
24 government entity is a government function, so the issue
25 becomes whether -- what are tort claims and what are contract

1 claims, and we've covered this a little bit in our brief, but
2 it's become a little mucked up, so let me just briefly
3 indicate a fraud claim involving a contract can only arise if
4 there is something external to the contract that creates a
5 duty independent of the contract. They've tried to sort of
6 say, well, there's fraud, the contract was a fraud, there was
7 fraud in the inducement, but you have to -- you have to back
8 up and assess it intellectually. There's a contract, and
9 there's an issue of whether the contract was breached. There
10 are claims extrinsic to the contract, fraud, fraud in the
11 inducement, innocent misrepresentation. Those are all torts,
12 and they are extrinsic to the contract. We've cited an awful
13 lot of cases in our brief on point, you know. The big case
14 in Michigan is the Fultz versus Commercial Union, I think it
15 is, case, but -- so we have -- clearly all of the fraud parts
16 are tort, and they're barred by governmental immunity.

17 THE COURT: So your position is a city can commit
18 fraud and not have to pay damages for it?

19 MS. HATHAWAY: They can commit fraud and they cannot
20 be sued in tort for it. You know, it may be unfair. There's
21 case law directly on point.

22 THE COURT: What else is there?

23 MS. HATHAWAY: Contract. They can still bring a
24 contract claim against the city claiming a breach of
25 contract, but you cannot -- if, in fact, the contract was

1 breached, you can seek damages. Now, the case that they
2 relied on in their reply brief, this Valentini case, is a
3 contract case, and, in fact, I think that Ms. Badalamenti
4 even admitted --

5 THE COURT: What do you mean when you say "it's a
6 contract case"?

7 MS. HATHAWAY: The case they cite, Valentini, is a
8 case brought in contract claiming that they are entitled to
9 more money under the contract because of a misunderstanding
10 or a misrepresentation of the amount that was due, and in
11 that case it was based on the terms of the contract. If you
12 look at Valentini, there is no discussion of governmental
13 immunity in the case. It is a case purely talking about the
14 terms of the contract. I looked, your Honor, and I couldn't
15 find any cases where a fraud claim had been allowed against
16 any government entity outside of a contract because it is
17 barred by governmental immunity. It may not seem fair, but
18 that's what governmental immunity is. And we actually cited
19 cases in our brief that say fraud is still a governmental
20 immunity case, so that brings it down to what are their
21 contract claims. And in our brief, I went through what the
22 contract claims were in some detail, and --

23 THE COURT: Well, but pause there. Claimant argues
24 that although it's a fraud claim nominally, the damages are
25 contract damages because the way they're calculated is what

1 was paid versus what should have been paid under the
2 contract.

3 MS. HATHAWAY: And damages is not -- under a
4 contract, you can only get economic loss. That is true. But
5 the issue about whether or not it's within the contract or
6 without the contract, outside of the contract to which
7 governmental immunity applied would be duty. It's not
8 damages. It's duty. And if you look at the Fultz case or
9 Hart or Rinaldo, the threshold inquiry is whether plaintiff's
10 allegations of a violation of a legal duty, separate and
11 distinct from the contract obligation. They allege there is
12 a -- there is an obligation outside of the contract not to
13 commit fraud. Outside the contract it's a tort. If it's
14 inside the contract, it's not barred by governmental
15 immunity. So their contract claims aren't barred by
16 governmental immunity, but their allegations of fraud, fraud
17 in the inducement, all of those things are barred by
18 governmental immunity because they are extrinsic to the
19 contract and set up by a duty outside of the contract, and
20 it's a duty issue, not a damages issue. It is true in
21 contract you can only get your economic loss, whereas in tort
22 theoretically you can get other things, but that's not what
23 sets it in and out of the contract. It's the duty, and the
24 duty --

25 THE COURT: Well, in this case, didn't the city

1 represent in a contract context that there were no such
2 investigations, as the claimant asserts, which gave rise to
3 its claim?

4 MS. HATHAWAY: No. What they cite is the letter of
5 intent that was signed long ago -- well, actually, to tell
6 you the truth, your Honor, we've never found a signed copy.
7 I don't think anybody has found a signed copy. The letter of
8 intent has that statement in it, but, as Mr. Watson
9 indicated, the letter of intent itself says that these are
10 not binding provisions, so it's -- the letter of intent is --

11 THE COURT: Well, what's the point if it's not
12 binding?

13 MS. HATHAWAY: Because it was intent that was later
14 put into a settlement agreement and later put into an
15 acquisition agreement. The letter of intent here, an
16 unsigned letter of intent that contains a provision that says
17 it doesn't survive after the expiration of the letter of
18 intent can't be used to void or increase what's in the
19 settlement agreement and what is in the acquisition
20 agreement, both of which contain specific statements that
21 there are no other integration clauses and statements that
22 there are no other statements outside of it and, you know,
23 the settlement agreement relating the rates which was all,
24 you know -- specifically says -- and this was entered into
25 after all of that -- Detroit and Macomb waive and release any

1 claims with regard to the following matters: the cost of all
2 projects and contracts shown on 3.8 to the MIDD agreement --
3 that's what we're talking about here -- and the calculation
4 of all credits, charges, and adjustments set forth in that
5 schedule.

6 THE COURT: And your contention is that waives a
7 concealed fraud claim?

8 MS. HATHAWAY: Concealed fraud claim is a -- a
9 concealed fraud claim is a tort, but, yes, there was nothing
10 in the settlement agreement. There was nothing in the
11 acquisition agreement that said that there were no
12 investigations. And remember the --

13 THE COURT: That's a different question. Your
14 argument is that what you just read me waives a concealed
15 fraud claim.

16 MS. HATHAWAY: It waives all claims.

17 THE COURT: So the answer to my question is yes?

18 MS. HATHAWAY: Yes. There were two other releases,
19 and --

20 THE COURT: All right. I can give you one more
21 minute.

22 MS. HATHAWAY: No. I'm essentially done.

23 THE COURT: Oh, all right.

24 MS. HATHAWAY: There were two other releases as
25 well. Mr. Watson may have something to add.

1 MR. MONTGOMERY: I believe that I would have
2 something, yes.

3 MR. WATSON: Yeah, yeah.

4 THE COURT: Time is up.

5 MR. MONTGOMERY: Forty-five minutes up, your Honor?

6 THE COURT: It is. In fact, Mr. Montgomery, I have
7 to ask you why you're here at all.

8 MR. MONTGOMERY: Oh, yes, your Honor, of course.

9 THE COURT: I can't help but feel some distress that
10 the city is paying for two sets of lawyers to defend this
11 claim or --

12 MR. MONTGOMERY: Well, your Honor --

13 THE COURT: -- defend this objection to claim.

14 MR. MONTGOMERY: Of course. Your Honor, you may
15 recall that when we first appeared on this matter, we said
16 the significance of it to us was that we wanted to make sure
17 that our issues as retirees in the plan process were not
18 unduly affected by what we thought was a false and
19 inappropriate claim that might affect the voting in Class 14.
20 That was the reason why we were joining the objection on
21 behalf of the city. We continue to believe that that is a
22 potentially material issue. We won't know if we were right
23 or we were wrong until next Monday, but that is why this
24 assertion of a \$26 million claim is potentially quite
25 important to the way issues of both best interest and unfair

1 discrimination are fought.

2 THE COURT: Fair enough, but isn't it the fact that
3 your briefs raise virtually identical issues?

4 MR. MONTGOMERY: Actually, if you will recall, your
5 Honor, Macomb protested that we were being more aggressive on
6 the res judicata issue than the city was. In fact, were I be
7 arguing in front of you, I would be arguing the gates, not
8 the evidence, that I believe block Macomb from being able to
9 go forward, and so, your Honor, just in extreme summary form,
10 we think that if you look at the transcript of the hearing
11 before Judge Feikens in which the settlement was announced,
12 it is perfectly clear from that settlement that the cost of
13 repairs was part of the 2009 settlement; that both
14 experienced counsel was there and experienced clients were
15 there. It was not just an interest issue. It was a cost of
16 repair issue. There's two settlement agreements and a
17 determination by Judge Cleland that any damages that might
18 arise out of these facts and circumstances were speculative,
19 and we think that was concluded by -- or conclusively proven
20 by the use of their expert witness, who didn't rely on his
21 own work, who was forced to concede that he didn't know the
22 competing facts and circumstances that might give rise to a
23 different conclusion, and, therefore, your Honor, we think
24 everything boils down to the narrow question, since the
25 contracts block the basic claims, whether or not a fraud

1 claim can survive a governmental immunity assertion where the
2 basic business that was being undertaken was one of operating
3 a utility. It wasn't the commission of the fraud that was
4 the business just like the Blackwell case, your Honor, you
5 know. You can hire somebody. Whether you fail to disclose
6 city finances in an improper manner, you're still barred by
7 governmental immunity because the community was entitled to
8 hire you as a governmental function. So, your Honor, in the
9 shortest form, that is what I would have said in more words,
10 and I think --

11 THE COURT: All right. Thank you.

12 MR. MONTGOMERY: Thank you.

13 MR. BRILLIANT: Your Honor, we just have a very
14 short amount in rebuttal. Ms. Badalamenti will have some
15 issues as well. I'm just going to tick off some things
16 pretty quickly. I think generally, your Honor, the city's
17 argument is just, you know, too cute by half, you know, all
18 across the board starting with respect to the Marrocco, you
19 know, testimony. As I said, you know, in our opening, your
20 Honor should look at it. There's nothing inconsistent. With
21 respect to the particular paragraph that -- you know, that
22 counsel complains about, he's just basically taking it out
23 of -- you know, out of context. You know, I suspect, your
24 Honor, this is what happens when you do a declaration that's
25 written by lawyers. All he says -- he's not saying that --

1 he's not saying that he reviewed the schedule that was
2 created in 2010 with Mr. Mercado and that Mr. Mercado agreed
3 to it. What he says is Mercado responded in the negative and
4 represented on behalf of the city that the amounts that are
5 in Exhibit 1 -- that the amount, the amount that they paid,
6 you know, as being, you know -- you know -- you know, the
7 amount for the costs were legitimately incurred and paid, so
8 it's not that this somehow dates the -- you know, the -- you
9 know, the conversation after the schedule was met. All he
10 was saying was that that amount that showed up in --
11 ultimately showed up in the schedule was represented by Mr.
12 Mercado as being legitimate.

13 Your Honor, you know, the issue with respect to the
14 letter of intent, you know, they say, you know, well, it
15 wasn't binding on them. As your Honor points out, well, then
16 what was the purpose for it? Of course they had this
17 obligation during the diligence period to provide the
18 information. They didn't. Even if, you know, their view is
19 that they weren't required to do it, that just falls into a
20 different category of -- you know, of fraud under Michigan
21 law, and it just becomes silent fraud. When you know that
22 the other party is interested in the information, that they
23 view it as material, and you don't fully, you know, disclose
24 it, you're still liable as if you, you know, made a
25 fraudulent, you know, statement, so it doesn't really -- you

1 know, their difference is without, you know, any legal
2 significance.

3 With respect to the diligence checklist that Mr.
4 Hupp pointed out, they say that it's hearsay. It's not
5 hearsay, Judge. We're not giving it to you for the proof of
6 what's asserted as being true. We know it's not true.
7 That's the point. We're giving it to you to show that they
8 made a misrepresentation here, so it's not being offered for
9 purposes of whether or not Mr. Jacobs and Mr. Walter were
10 telling the truth when they said this. It's being offered
11 for the fact that this is what they told us, that it's the
12 representation, you know, that they made is clearly not
13 hearsay and should be given the weight that it's entitled to.

14 As for the issue of Mr. Hupp saying that -- you
15 know, that he wasn't aware at the time that they made
16 representations that they made any wrongful representations,
17 well, of course, that's right. If we would have known that
18 they were misrepresenting the fact that there were, you know,
19 overcharges or, you know, that there wasn't a governmental
20 investigation, the deal wouldn't have closed. And the fact
21 that he doesn't know today whether or not there were any
22 misrepresentations is the fact that he's not the counsel
23 that's involved in investigating and prosecuting, you know,
24 these issues.

25 Now, your Honor, the best one is this issue about

1 the case that takes place next door in front of Judge
2 Cleland. Now, counsel tells you, well, things have changed.
3 Well, your Honor, I ask you to take judicial notice and go on
4 the docket sheet, and what you're going to find out is that
5 case is still ongoing. It hasn't ended. Certain parties
6 have settled and given, you know, the city, you know, notes
7 and -- you know, and money, which they're keeping even
8 though, you know -- you know, basically double -- getting
9 double paid, but more importantly, the case is ongoing. And
10 has counsel filed an amended complaint to say they no longer
11 believe these things or anything of that sort? No. He's
12 still moving forward with the same pleadings, and he's making
13 exact contradictory arguments to the arguments that he's
14 making, you know, here today in front of your Honor.

15 Now, again, they say, well, you know -- you know, in
16 order for it to be, you know, legally -- you can say whatever
17 you want in one case and something different in another case,
18 but that's not quite right, you know. Rule 11 applies.
19 There's good faith obligations to the various courts. More
20 importantly than that, judicial estoppel prohibits you from
21 staying in one court and getting some kind of advantage.
22 Here they filed a motion to intervene in the case based upon,
23 you know, this complaint. They were successful in that.
24 Maybe it creates judicial estoppel. Maybe it doesn't. But
25 the point is, your Honor, because we're only at a summary

1 hearing here, it just shows that we have a likelihood of
2 success here on this issue because they are in another court
3 making representations to another court against other third
4 parties. They're continuing to do it, and they're asserting
5 the very opposite of what they're saying, you know, here
6 today.

7 Your Honor, you know, I would just ask you to read
8 these cases about the integration. I guess the one case I
9 would say that may be of particular interest to you is the --
10 I think it's pronounced Abbo case. I'm not going to waste a
11 lot of your time here. I hope your Honor would read it.
12 But, you know, what's interesting here, party says, "You want
13 to buy this property? It's got five" -- you know, five -- I
14 think it's five acres of lakefront property, sign a contract,
15 contract doesn't, you know, require that it be, you know,
16 lakefront property, sign the agreement, close the
17 transaction. He then finds out that he doesn't have five
18 acres of lakefront property. It was misrepresented to him.
19 He sues for fraud. They say, "Whoa, you got a merger
20 integration agreement," only representations contained in the
21 agreement, didn't represent, you know, that it's got five
22 pages -- five acres of lakefront property in the actual
23 purchase agreement. Court below throws out the case, goes up
24 to the Michigan appellate court. The Michigan appellate
25 court says this is ridiculous. The person was given a

1 representation as to what he was -- what he was -- what he
2 was buying. Turned out to be false. Therefore, it was
3 fraudulent in the inducement. The merger clause does not,
4 you know, bar him from bringing a claim even though that
5 representation wasn't in the -- you know, wasn't in the case.
6 This whole concept that they raise about, you know -- you
7 know, reasonable notice makes no sense.

8 The reason, your Honor, I started you in -- when I
9 talked about their complaint with the issue of what it is
10 that they were intervening on -- and I don't know if your
11 Honor remembers, but it basically said that they were
12 intervening on, you know, the sewer contract with respect to
13 items two and three, amendments two and three, you know. And
14 the reason I did that was because now they say, oh, you know,
15 all the damage claims, all this other stuff, involved the
16 other part of the contract. Well, that's just not right,
17 your Honor. You know, the -- you know, the issue here is
18 with respect to, you know, the alleged 23 million with
19 respect to two and three.

20 Your Honor, you know, they breached the contract.
21 They acted in bad -- undoubtedly acted in bad faith. They
22 knew about the investigation. They knew it was relevant to
23 DWSD. They didn't disclose it. They contractually agreed to
24 disclose these types of things. They misrepresented the fact
25 that there weren't claims against subcontractors. Mr.

1 Marrocco's testimony is basically unrefuted. Nobody says
2 that he didn't have this conversation, you know, with Mr.
3 Mercado nor could they other than, you know, Mr. Mercado, who
4 we would have had testify here today if he wasn't,
5 unfortunately, you know, unavailable as he is no longer in
6 prison, but he's in a halfway house and has, you know -- you
7 know, left the state and we were not able to subpoena him.
8 But the bottom line here is, your Honor, what the city, you
9 know, did was wrong, you know. You know, the good news is,
10 you know, the wrongdoers are gone, but, you know, their
11 actions cost other parties significant amount of money which
12 needs to be -- needs to be recouped and should be, you know,
13 compensated. And what's really, in my mind, you know, most
14 upsetting about this situation is although the wrongdoers,
15 you know, seem to be gone, the people that are still there,
16 you know, try to justify everything that happened and to
17 pretend that, you know, what was done, you know, wasn't wrong
18 and didn't take advantage of people in an unlawful, you know,
19 and fraudulent manner. I think Ms. Badalamenti has a few
20 quick comments, and then we'll be done, your Honor. No, your
21 Honor. Actually, she says that we're done. We thank you --

22 THE COURT: Okay.

23 MR. BRILLIANT: -- your Honor, for, you know,
24 your --

25 THE COURT: Right.

1 MR. BRILLIANT: -- diligence to this and --

2 MS. BADALAMENTI: Thank you, Judge.

3 THE COURT: Okay. My intent is to give you an
4 estimate of the claim, little more, and to do that at
5 Monday's status conference at ten o'clock. All right. So we
6 will continue this matter until then.

7 MR. BRILLIANT: Thank you, your Honor.

8 (Proceedings concluded at 12:46 p.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

July 22, 2014

Lois Garrett

