

STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT

WILLIAM NOFAR, individually and as  
representative of a class of  
similarly-situated persons and entities,

Case No. 2020-183155-CZ  
Hon. Judge Nanci Grant

Plaintiff,

v.

CITY OF NOVI, MICHIGAN  
a municipal corporation,

**HEARING DATE:**  
June 1, 2022

Defendant.

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Gregory D. Hanley (P51204)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, MI 48073  
(248) 544-1500  
*Attorneys for Plaintiff and the Class*

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Thomas R. Schultz (P42111)  
Steven P. Joppich (P46097)  
Stephanie Simon Morita (P53864)  
Rosati Schultz Joppich & Amtsbuechler PC  
27555 Executive Drive, Suite 250  
Farmington Hills, MI 48331-3550  
(248) 489-4100  
*Attorneys for Defendant*

Randal S. Toma (P56166)  
Randal Toma & Associates PC  
500 S. Old Woodward Ave., Floor 2  
Birmingham, MI 48009  
(248) 948-1500  
*Attorneys for Plaintiff and the Class*

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**PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY  
DISPOSITION AS TO COUNTS I AND II OF HIS COMPLAINT<sup>1</sup>**

- I. **THE COURT MUST APPLY THE *BOLT* STANDARD FOR CHALLENGING UNLAWFUL TAXES TO PLAINTIFF'S CLAIMS UNDER THE PROHIBITED TAXES BY CITY'S AND VILLAGES ACT, MCL 141.91**

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<sup>1</sup> In his motion, Plaintiff inadvertently stated that he sought summary disposition as to Counts I and II of the Complaint. Plaintiff actually seeks summary disposition under **Count II** (Unjust Enrichment – Violation of MCL 141.91) and **Count V** (Assumpsit – Violation of MCL 141.91). Plaintiff's mistake should have been apparent to the City from his statement that “[t]his motion is based solely on the unlawful tax claims . . . . This motion seeks a determination that the portion of the charges the City imposed . . . which generated revenues that the City used to cash-finance a major new sewer facility . . . constituted unlawful taxes that were imposed in violation of MCL 141.91.” Motion, pp. 2-3 (emphasis added). Nonetheless, Plaintiff agrees to withdraw the motion as it relates to Count I and will proceed at this point only with respect to Count II.

The City claims *Bolt's* analysis can only apply to Headlee claims because claims under MCL 141.91 lack Headlee's legislative "guardrails" such as the one-year limitations period. But that argument ignores the existence of MCL 141.91; if the legislature wanted Headlee to be the only means to challenge an unlawful tax, it would have repealed MCL 141.91. Moreover, courts have repeatedly applied the *Bolt* analysis outside the Headlee context. *See, e.g., People v. Cameron*, 319 Mich. App. 215, 222; 900 N.W.2d 658 (2017) (applying *Bolt* factors where the plaintiff was challenging a state exaction, which is outside the scope of Headlee); *Dawson v. Sec'y of State*, 274 Mich. App. 723, 744-46; 739 N.W.2d 339 (2007) (applying the *Bolt* factors to claims challenging a driver responsibility fee as an unlawful tax under a variety of theories, not including Headlee); *Westlake Transp., Inc. v. Mich. PSC*, 255 Mich. App. 589, 604, 662 N.W.2d 784 (2003) (applying *Bolt* factors to a state exaction). It also is important to note that the law defining the distinction between taxes and user fees existed long before both Headlee and *Bolt*. In fact, in *Bolt*, the Supreme Court relied on pre-Headlee tax cases such as *Bray v. Dep't of State*, 418 Mich. 149, 161-62; 341 N.W.2d 92 (1983) and *Vernor v. Sec'y of State*, 179 Mich. 157, 167-69; 146 N.W. 338 (1914) to support its three-part test.

**II. PLAINTIFF IS NOT REQUIRED TO PROVE THAT THE CITY'S OVERALL RATES ARE UNREASONABLE IN ORDER TO PROVE THAT THE CITY'S RATES HAVE IMPOSED AN UNLAWFUL TAX**

Where a plaintiff challenges municipal utility rates both as an unlawful tax and as unreasonable under the common law, two separate tests apply. The question of whether the overall Rates are unreasonable applies only to common law unreasonable rate claims. Although reasonableness is a question of fact for the jury, whether a charge is a tax or a user fee is a question of law for the Court. *Bolt v. City of Lansing*, 459 Mich. 152, 158; 587 N.W.2d 264 (1998) ("Whether the storm water service charge imposed by Ordinance 925 is a 'tax' or a 'user fee' is a question of law that this Court reviews de novo.").

**III. THE COURT SHOULD REJECT THE CITY'S NEWFOUND CHALLENGE TO PLAINTIFF'S STANDING, WHICH IS BASED UPON THE CITY'S DISTORTION OF ITS "CONNECTION CHARGES."**

In a brand-new argument it has never advanced, the City claims that “connection fees” it has collected since 2015 exceed the “initial \$10 million payment to Oakland County” for the Retention Facility and because Plaintiff did not pay “connection charges,” he has no standing to contest the City’s funding of the Retention Facility. City Br. at p. 3. This argument – which is reliant upon the Court concluding that the Retention Facility was financed **solely** by “connection charges” -- is a diversion and cannot defeat summary disposition for at least four independently dispositive reasons.

First, the City’s argument about the use of “connection fee” revenue to finance the Retention Facility is contradicted by the repeated admissions of the City officials described at p. 6-10 of the initial Brief. Indeed, the admissions were so pervasive that, in his Affidavit the City submitted in opposition to the Motion, Mr. Johnson was tasked with walking back the admissions, averring that “when I indicate in **memorandums, letters, reports, presentations or testimony** that ‘rates’ were used to pay for the HRSDS Retention Facility, I am including in that statement the availability for the amounts collected for connection charges, as well as usage fees.” Johnson Affidavit (Exhibit 1 to City’s Br.) at para. 9 (emphasis added).

And after Plaintiff filed his initial brief, the City produced the report of its expert, Eric Rothstein, who stated as follows:

And, the fact that the Retention Facility was funded through reserves as opposed to through debt does nothing to rehabilitate the dubious nature of the objection, for similar reasons. **Though customers in the applicable class period were charged rates that enabled reserve funding of the Retention Facility**, those same customers did not pay charges that recover costs of assets that were already fully funded by previous ratepayers. [Exhibit 1 hereto at p. 21 (excerpts from Report) (emphasis added)].

These admissions show that, as a factual matter, the Retention Facility was financed by rates paid by Plaintiff and the Class and not by so-called “connection charges.”

Second, the City’s “standing” argument could only even potentially have merit if the City proved that every single dollar it used to finance the Retention Facility came from “connection charges” and it used no money generated by usage charges (i.e., rates). But the City provides **no**

**evidence** that it **exclusively** used revenues from “connection fees” to pay the County for the Retention Facility. To the contrary, Johnson’s Affidavit makes clear that, at best, the City used a combination of connection fees and usage charges to pay for the Facility. *See* Johnson Affidavit at para. 9 (stating that when he said that “rates” were used “to pay for the HRSDS Retention Facility, I am including in that statement the availability for the amounts collected for connection charges, **as well as usage fees**”) (emphasis added). All the City does is argue that the “connection fees” it has collected during the Class Period exceed the amount that it has paid Oakland County for the Retention Facility. *See, e.g.*, City Br. at p. 2. That proves nothing, however, because it is equally true that the usage charges collected during the Class Period far exceed the amount that it has paid Oakland County for the Retention Facility. *See* chart at p. 11 of City’s Brief.

Third, in its haste to concoct yet another unjustifiable defense, the City forgot something basic: the Retention Facility is a sewer system improvement, but the “connection fees” the City collects are not only for connection to the sewer system but also for connection to the water supply system. The \$13 million in total connection fees the City claims to have collected between FY 2015 and FY 2021 includes millions of dollars of water connection fees.<sup>2</sup> The actual **sewer** “connection fees” collected during the class period (July 1, 2015 through June 30, 2020) and confirmed by Novi Resp. 2089, Exhibit 2 hereto (including cropped version of the relevant section), are as follows:

<b>FY 16</b>	<b>FY 17</b>	<b>FY 18</b>	<b>FY 19</b>	<b>FY 20 (est)</b>	<b>Total</b>
\$960,970	\$987,330	\$1,537,822	\$2,067,281	\$705,000	\$6,258,403

And it is clear that not even this amount could have been used to finance the Retention Facility because, as the City conceded in 2019 (long before it paid for the Retention Facility) the connection fees are collected “from new users to offset **previous** and future capital needs.” *See* Exhibit 3 hereto. In other words, at least part of the connection fee revenues collected during the Class Period were used

to “offset previous” capital expenditures and therefore could not have been used to finance the Retention Facility. Thus, it is a mathematical impossibility that the 10+ million dollar Retention Facility was totally paid for with “connection fee” revenues collected during the Class Period. To the contrary, it is a mathematical **certainty** that at least part of the Retention Facility costs must have been funded by rate revenues. Thus, the standing argument fails.

Fourth and finally, the City cites no authority which allows it to perform an after-the-fact allocation of all of the sewer “connection fees” it collected during the Class Period to a particular major improvement (the Retention Facility) to the exclusion of all other improvements and other expenses of the sewer system. To the contrary, the City’s connection fees cannot legally be used to finance the Retention Facility because the connection charges either (1) are intended to cover the pro rata cost of the entire sewer system allocated to new users, or (2) are designed to recover the costs of particular water and sewer **lines** installed in new areas of the City to serve new users of the system. In this regard, the City’s ordinance provides that sewer “connection” charges are based on the “current costs of sewer system construction” *See* Ordinance Section 34-145 (Exhibit 4 hereto).

Moreover, the City informs its residents that “new users of the system pay for all water and sewer line additions” and “Novi’s rates do not contain any amount for expansion of the system.” *See* Exhibit 6 hereto. This confirms that the “connection fees” are earmarked for “expansion of the system” to new areas and therefore were not, and could not be, earmarked for the Retention Facility, which is not an “expansion of the system” or a “water and sewer line addition.”

KICKHAM HANLEY PLLC

RANDAL TOMA & ASSOCIATES PC

By: /s/ Gregory D. Hanley  
Gregory D. Hanley (P51204)  
*Counsel for Plaintiff and the Class*  
Dated: May 25, 2022

By: /s/Randal S. Toma (with permission)  
Randal S. Toma (P56166)  
*Co-counsel for Plaintiff and the Class*

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<sup>2</sup> The City’s ordinance requires water connection fees to be used for the construction of water system improvements. *See, e.g.*, Ordinance Section 34-21.1 (Exhibit 5 hereto).

**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2022, I served the foregoing document on all counsel of record using the Court's electronic filing system.

/s/ Kim Plets  
Kim Plets

4857-3619-7666 v.2

# EXHIBIT - 1

April 15 | 2022

Expert Report of  
**Eric P. Rothstein**  
in the Matter of

William Nofar v. City of Novi, MI, Case No: 2020-183155-CS  
State of Michigan in the Circuit Court for the County of Oakland



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Galardi Rothstein Group

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1 complaining ratepayers are being asked to do exactly what prior (and future)  
2 ratepayers will be asked to fund.

3 The practical reality is that Novi's current customers, like all utility customers,  
4 benefit from prior customers' investments that put in place a (depreciating) system to  
5 which they can connect and receive service. Equitably, current users are asked to pay  
6 to renew and replace these assets, as well as pay their share of system upgrades.  
7 Future users are asked to pay for their shares of system capacity and will likewise be  
8 responsible to pay for asset renewals and replacements.

9 In particular with regard to the Retention Facility, it is noteworthy that this facility  
10 is required not solely to manage sewage for future customers where current  
11 customers might haltingly question reserve fund financing. Rather, the Retention  
12 Facility is required to meet regulatory requirements related to current customers flows,  
13 and was prudently upsized to ensure the system could meet its future regulatory  
14 obligations to handle current and prospective customers' flows.

15 The notion that one can single out a particular asset and decry the selected form  
16 of capital finance does violence to well-established principles of ratemaking that  
17 recognize that rates must be developed for the system as a whole. There is no such  
18 thing as "The Retention Facility Charges" - this is a fiction of the Plaintiff. In the same  
19 way that there is no such thing as charges for individual sewers, or lift stations. Sewer  
20 users' potential claims that they should not have to pay for specific pipelines that don't  
21 happen to carry their waste (for example because their homes are located closer to  
22 major interceptors) or that have extended service lives would be properly viewed in a  
23 rate regulation context as frivolous. Plaintiff's claims that they should not be required  
24 to pay for Retention Facility assets, sized to manage current and future flows, is no  
25 less problematic.

26 And, the fact that the Retention Facility was funded through reserves as opposed  
27 to through debt does nothing to rehabilitate the dubious nature of the objection, for  
28 similar reasons.<sup>45</sup> Though customers in the applicable class period were charged  
29 rates that enabled reserve funding of the Retention Facility, those same customers  
30 did not pay charges that recover costs of assets that were already fully funded by  
31 previous ratepayers. Rate-making practice does not involve parsing out cost

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<sup>45</sup> Supporting my view that even the most liberal reading of the Bolt vs Lansing decision does not require utilities to debt finance assets or unravel system-wide (rather than asset specific) ratemaking practice.

1 investments required to protect public health and welfare. The threat of litigation that  
2 only materially benefits a plaintiff's attorney casts an undue pall on local governments  
3 already challenged to meet increasing regulatory requirements and service demands.

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5 Respectfully submitted on April 15, 2022.



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8 Eric Rothstein, Principal

9 Galardi Rothstein Group

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# EXHIBIT - 2

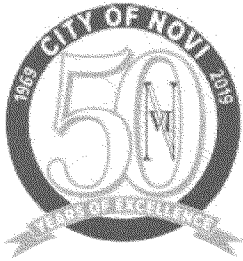
**CITY OF NOVI**  
**Water & Sewer Fund Budget (excluding SAD's)**

ACCOUNT NUMBER	DESCRIPTION	WATER		SEWER		WATER & SEWER - COMBINED						% allocation water	% allocation sewer	NOTES	
		2019-20 Estimated	2020-21 Budget	2019-20 Estimated	2020-21 Budget	2015-16 Actual	2016-17 Actual	2017-18 Actual	2018-2019 Actual	2019-20 Estimated	2020-21 Budget				
<b>Revenue</b>															
592-000.00-410.000	Sewer service charges	-	-	11,140,000	11,700,000	\$ 10,578,216	\$ 11,169,488	\$ 11,233,431	\$ 11,465,224	\$ 11,140,000	11,700,000	0%	100%		
592-000.00-411.000	Water sales	11,515,000	11,875,000	-	-	13,186,231	11,884,854	11,903,090	11,654,696	11,515,000	11,875,000	100%	0%		
592-000.00-412.000	Water installations	335,000	320,000	-	-	322,046	447,328	294,737	360,785	335,000	320,000	100%	0%		
592-000.00-413.000	Industrial waste charges (IWC)	-	-	265,000	300,000	320,394	348,163	343,049	230,911	265,000	300,000	0%	100%		
592-000.00-413.501	HSP charges	-	-	1,000	500	613	776	709	277	1,000	500	0%	100%		
592-000.00-414.000	Sewer inspection fees	-	-	15,000	15,000	13,050	16,470	11,070	13,950	15,000	15,000	0%	100%		
592-000.00-415.000	Penalty and interest	100,000	95,000	100,000	95,000	195,716	196,365	201,343	190,521	200,000	190,000	50%	50%		
592-000.00-508.451	Federal Grants - SAW Grant	-	-	42,000	-	-	569,178	543,438	(25,411)	42,000	-	0%	100%		
592-000.00-665.950	Gain on disposal of assets	5,581	-	5,581	-	-	-	-	7,790	11,162	-	50%	50%		
592-000.00-665.000	Miscellaneous income	3,750	3,750	3,750	3,750	50,031	121,267	10,037	5,940	7,500	7,500	50%	50%		
	<b>TOTAL Revenue</b>	<b>11,959,331</b>	<b>12,293,750</b>	<b>11,572,331</b>	<b>12,114,250</b>	<b>24,666,297</b>	<b>24,753,889</b>	<b>24,540,903</b>	<b>23,904,683</b>	<b>23,531,662</b>	<b>24,408,000</b>				
										<b>23,531,662</b>	<b>24,408,000</b>				
<b>OPERATING EXPENSES</b>															
	Personnel Services	F 911,163	890,034	559,263	552,334	1,261,519	1,427,010	1,528,689		1,470,422	1,442,365	n/a	n/a		
	Supplies	F 33,468	35,050	33,468	35,050	61,387	83,621	107,218		69,631	70,100	n/a	n/a		
	Depreciation														
	Other Services and Charges	10,737,075	11,159,799	11,246,831	11,253,119	21,920,936	19,980,756	20,326,644		22,075,741	22,412,916	n/a	n/a		
	<b>TOTAL OPERATING EXPENSES</b>	<b>11,681,706</b>	<b>12,084,883</b>	<b>11,839,562</b>	<b>11,840,503</b>	<b>23,243,842</b>	<b>21,491,387</b>	<b>21,962,550</b>		<b>23,615,794</b>	<b>23,925,381</b>				
	<b>NET OPERATING LOSS</b>	<b>277,625</b>	<b>208,867</b>	<b>(267,231)</b>	<b>273,747</b>	<b>1,422,455</b>	<b>3,262,502</b>	<b>2,578,353</b>		<b>(84,132)</b>	<b>482,619</b>				
592-000.00-662.148	Interest on SAD 148 Salow's Walnut Hill sewer	-	-	845	739	1,267	1,161	1,056	950	845	739	0%	100%		
592-000.00-662.149	Interest on SAD 149 Eubanks water	614	553	-	-	1,054	860	788	572	614	553	100%	0%		
592-000.00-662.151	Interest on SAD 151 Austin water	1,630	1,494	-	-	2,593	2,232	1,792	1,630	1,630	1,494	100%	0%		
592-000.00-662.152	Interest on SAD 152 Shawood water	2,547	2,315	-	-	3,242	3,010	2,779	2,548	2,547	2,315	100%	0%		
592-000.00-662.162	Interest on SAD 162 Pioneer sanitary	-	-	2,483	1,862	4,989	4,275	3,305	2,498	2,483	1,862	0%	100%		
592-000.00-662.163	Interest on SAD 163 Pioneer water	2,075	1,557	-	-	4,170	3,574	2,762	2,088	2,075	1,557	100%	0%		
592-000.00-662.165	Interest on SAD 165 Connemara water	1,496	1,098	-	-	2,691	2,292	1,895	1,496	1,496	1,098	100%	0%		
592-000.00-662.168	Interest on SAD 168 West Lake Dr water	1,262	1,010	-	-	2,126	1,861	1,594	1,251	1,262	1,010	100%	0%		
592-000.00-662.170	Interest on SAD 170 Maybury	-	-	-	-	8,895	2,506	(0)	-	-	-	100%	0%		
592-000.00-662.171	Interest on SAD 171 Echo Valley water	746	597	-	-	1,493	1,153	896	746	746	597	100%	0%		
592-000.00-662.172	Interest on SAD 172 Blomfield & Bentley H2O	1,040	225	-	-	4,268	2,942	1,904	682	1,040	225	100%	0%		
592-000.00-662.173	Interest on SAD 173 Conemara/Galway Dr H2O	323	241	-	-	652	570	488	405	323	241	100%	0%		
592-000.00-662.176	Interest on SAD 176 Woodham Rd	1,862	1,719	-	-	2,292	2,148	2,006	1,862	1,862	1,719	100%	0%		
592-000.00-662.179	Interest on SAD 179 Vistas of Novi	11,779	10,938	11,779	10,938			38,342	24,722	23,558	21,876	50%	50%		
592-000.00-662.180	Interest on SAD 180 Andes Hills Watermai	8,251	7,817	-	-	8,251	8,686	8,251	8,251	8,251	7,817	100%	0%		
592-000.00-662.181	Interest on SAD 181 Knightsbridge Gate	1,498	1,311	1,498	1,311			5,090	6,608	2,996	2,621	50%	50%		
592-000.00-662.182	Interest on SAD 182 Dixon Rd Sanitary Se	-	-	11,270	11,103			10,980	11,746	11,270	11,103	0%	100%		
592-000.00-664.000	Interest on investments	629,827	124,945	629,827	124,945	885,390	1,139,453	1,224,757	1,200,065	1,259,654	249,889	50%	50%		
592-000.00-664.400	Interest on interfund borrow - CIP Fund	282,785	262,268	282,785	262,268				7,250	565,569	524,535	50%	50%		
592-000.00-664.500	Unrealized gain (loss) on investment	(50,000)	45,000	(50,000)	45,000	584,422	(871,505)	(520,654)	857,804	(100,000)	90,000	50%	50%		
592-000.00-665.275	Donations - 092-50 Flint Street Phase1	33,671	-	33,671	-					67,342	-	50%	50%		
592-000.00-666.001	Donated water & sewer lines (developers)	-	-	-	-	3,384,960	3,340,468	3,032,458	1,820,021	-	-	50%	50%		
592-000.00-666.002	Sewer tap connection fees	-	-	705,000	675,000	960,970	987,330	1,537,822	2,067,281	705,000	675,000	0%	100%		
592-000.00-666.003	Water tap connection fees	699,000	675,000	-	-	991,348	821,738	633,606	947,745	699,000	675,000	100%	-		
	<b>NET OPERATING LOSS AND CAPITAL CONTRIBUTIONS</b>	<b>\$ 1,630,406</b>	<b>\$ 1,138,088</b>	<b>\$ 1,629,158</b>	<b>\$ 1,133,166</b>	<b>\$ 6,846,822</b>	<b>\$ 5,446,068</b>	<b>\$ 5,992,351</b>	<b>\$ 6,968,223</b>	<b>\$ 3,259,563</b>	<b>\$ 2,271,251</b>				
										<b>3,269,958</b>	<b>2,753,868</b>				
										<b>3,269,958</b>	<b>2,753,868</b>				

Donations - Use of Public Property	699,000	675,000	-	-	3,384,960	3,340,468	3,032,458	1,820,021	67,874
Donated water & sewer lines (developers)	-	-	-	-	3,384,960	3,340,468	3,032,458	1,820,021	-
Sewer tap connection fees	-	-	705,000	675,000	960,970	987,330	1,537,822	2,067,281	705,000
Water tap connection fees	699,000	675,000	-	-	991,348	821,738	633,606	947,745	699,000

# EXHIBIT - 3

## MEMORANDUM



**TO:** PETE AUGER, CITY MANAGER  
**FROM:** CARL JOHNSON, FINANCE DIRECTOR  
**SUBJECT:** WATER & SEWER RATES  
**DATE:** JULY 16, 2019

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The Finance Department has analyzed the water and sewer rates for fiscal year 2019-2020. In our review of rates, we look at both operating and capital costs of the system. The largest impact to the City's operating costs of the water and sewer systems are the changes in rates our providers of water and sewer services charge us (Great Lake Water Authority "GLWA" and Oakland County Water Resource Common "OCWRC"). During the current fiscal year, GLWA anticipates costs related to water purchases will remain consistent with the prior year (slight decrease). OCWRC has projected the City's costs for sewer to increase by 9%, collectively for all three systems the City operates. Other operating costs include salaries and fringes, equipment, maintenance and cleaning costs which are estimated to increase by inflation. Efficiencies in operations over the past few years has allowed the City to have minimal or no rate increases and will allow the significant sewer cost increase projected in the current year to be addressed over time. In an effort to cover the current operating costs and some of the current year capital costs, we have recommended to City Council to increase the variable water rate by 2% or 7 cents per 1,000 gallons consumed and increase the variable sewer rate by 3% or 12 cents per 1,000 gallons consumed. There were no increases to the fixed charges to either water or sewer. The average user with a 5/8" meter will only see a 1.6% increase or \$14.55 annual increase to their bill. The new rates will generate approximately \$2.8 million of net cash flow, which is available to pay for any capital outlay and debt.

In addition to the operating costs of the system, the City must also manage the Water and Sewer Fund's capital reserve. Included in the projected \$2.8 million cash flow above is approximately \$2 million in tap in fees from new users to offset previous and future capital needs. The Fund has \$20 million of construction projects that were originally budgeted in FY 2019 that will now take place during FY 2020. There are an additional \$2.8 million of projects budgeted in FY 2020, \$4 million in FY 2021 and \$4 million in FY 2022. Included in the \$20 million of projects from FY 2019 is a \$12 million project with OCWRC and Wayne County for improvements to the Huron Rouge Sewer Disposal System. OCWRC and Wayne County have shared with the City they anticipate another \$12 million of necessary improvements to the system over the next 5-10 years. Total anticipated capital projects, as mentioned above, over the next three years are approximately \$42.8 million.

As part of the annual rate setting, we also look at the overall cash reserves of the Water and Sewer Fund. In reviewing the reserves, we take into consideration items such as a catastrophe reserve, future capacity needs and capital needs along with cash needed for SAD's to construct water and sewer lines for new customers (cash advances with long-term payback).

As an example of a major catastrophic event; DPW reviewed the simultaneous collapse of a 27 inch sanitary sewer under I-96 (south of 12 Oaks Mall, east of Novi Road) and the failure of a 36 inch water main (south of 14 Mile adjacent to Maple Manor). They estimated this event would cost the Water and Sewer Fund approximately \$3.2 million (water main) and \$3.6 (sewer) to repair. In catastrophic event scenarios repairs can instantaneously compound, therefore a conservative reserve to have available would be \$6 million - \$10 million.

In fiscal year 2018, the Walled Lake – Novi Wastewater Treatment Plant retention basin required capacity improvements. The cost of construction cost was \$1.75 million. In addition, the Nine Mile Road Gravity Relief Sewer Project which will provide redundancy and improve service is estimated to cost \$6.5 million. As Novi continues to develop and the number of customers increases additional capacity will need to be addressed with future projects.

Currently the Water and Sewer Fund has approximately \$68 million of reserves at June 30, 2019. Estimated cash reserve needed for the following items:

Catastrophic Event	\$6,000,000 - \$10,000,000
CIP FY 2020-2025	\$43,000,000
Future SAD's	\$5,000,000
Future Capacity	<u>\$5,000,000 - \$10,000,000</u>
 Total Estimate	 \$59,000,000 - \$73,000,000

We will continue to monitor the water and sewer rates and cash reserve balance on an annual basis and make recommendations as needed to adjust them as facts and circumstances change. Special thanks to the DPW team for their assistance and support with our annual analysis!



# EXHIBIT - 4

Sec. 34-145. - Sanitary rates and charges for the Huron-Rouge System, Novi-Walled Lake Arm, and the Novi Commerce Sewer Exchange System.

(a) The rates and charges to users of the system shall be as follows:

(1) *Consumption charge.* Except as otherwise provide, each premises within the city connected to the sanitary sewer system shall pay a consumption charge based on the amount of water used as shown by the water meter installed in each premises or, where no water meter is located, a flat rate per quarter to be charged in accordance with the schedule of rates set by resolution of the council. Those premises located, within the Novi-Walled Lake Arm and connected to the sanitary sewer system, shall pay a consumption charge based on a flat rate per quarter to be charged in accordance with the schedule of rates set by resolution of the council.

(2) *Sewer connection charge.* In addition to all other charges as provided in this division, all premises connected directly (or indirectly) to the sanitary sewer system of the city shall pay a sewer connection charge in accordance with the current resolution of the city council setting the amount of such charge on the basis of the current costs of sewer system construction, as amended from time to time by the council.

a. *Intent.* This section is intended to apply in those instances in which the city has determined that it would be in the public interest, and would further the public health, safety, and general welfare, to construct sanitary sewer within the city without establishing a special assessment district or like method of charge therefore, including, without limitation, the construction of a sanitary sewer system to provide service for all or a substantial portion of the city served by the public sanitary sewer system. The users of the system shall be responsible for the cost of construction.

b. *Connection fee requirement.* Based upon the intent set forth in subsection (a), above, any owners of property connecting to any sanitary sewer constructed by the city after January 1, 1976, who have not paid for the installation of such public sanitary sewer by the way of (1) a special assessment, or (2) a specific debt service charge for connection to the particular sanitary sewer, or (3) by the property owner otherwise contributing a fair share to the capital expense of construction of the particular water main with respect to the property served, shall pay an connection fee prior to connecting to said water main, as provided in this section.

c. *Amount of connection fee.* Any owners of property required to pay an connection fee pursuant to subsection (b) above shall pay a per tap unit charge in accordance with the current resolution of the city council setting the amount of such charge on the basis of the current cost of sanitary sewer construction, as amended from time to time by the council.

d. *Payment of sewer connection charge.* The sewer connection charges provided in subpart

(a)(2), and all other connection charges, debt service charges, lateral availability fees and availability connection charges required for connection to the City of Novi sewer system shall be paid in full prior to the issuance of a building permit, or prior to a site preconstruction meeting, whichever comes first; or in the case of an existing building, prior to the issuance of a plumbing permit for connection to the system, except as provided in subpart (a)(2)b, below.

- e. *Installment payment of connection charges.* In those cases when a new commercial, industrial or office development is determined to require more than one tap unit factor the owner may elect to pay one-fifth of the sewer connection charges, debt service charges, lateral availability fees and availability connection charges (with the exception of those charges imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the city is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of such charges and fees in sixteen (16) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes.
- f. *Financial hardship provision.* In those cases where a single-family residential property owner demonstrates a financial hardship, the owner may elect to pay one-fifth of such connection charges (with the exception of those charges imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the city is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of the connection charges in sixteen (16) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes. For purposes of this section, an owner demonstrates a financial hardship by demonstrating a maximum household income at or below the Oakland County Income Limits for Community Development Block Grant (CDBG) Income Eligibility—Low Income Category, as the same may be revised from time to time.
- g. *Subsequent changes in use.* Once a property has been connected to the system subsequent changes in the character of the use of said property (including partial or total destruction, removal or abandonment of any or all improvements thereon) shall not abate the obligation to continue the payments of the charges and fees assigned at the time of connection; and if subsequent changes in the use of the property increase the amount of sewage emanating from the property, the city may increase the charges and

fees assigned to the property and the charges and fees computed on the basis of the increased use shall be payable in the same manner as such charges and fees are payable in the first instance.

h. *Prepayment of installment agreement.* At any time during the installment period, the balance of said connection fee may be prepaid by paying the balance then due, together with all accumulated interest thereon.

i. *No abatement of payment.* Once connected to the system, partial or total destruction, removal or abandonment of any or all structures or improvements located on property subject to the sewer connection fee shall not abate the obligation to pay the fee in total.

(b) The rates and charges established pursuant to subsection (a) shall be based upon a methodology which complies with applicable federal and state statutes and regulations. The amount of the rates and charges shall be sufficient to provide for debt service and for the expenses of operation, maintenance and replacement of the system as necessary to preserve the same in good repair and working order. The amount of the rates and charges shall be reviewed annually and revised when necessary to ensure system expenses are met and that all users pay their proportionate share of operation, maintenance and equipment replacement expenses.

(c) The rates and charges for operation, maintenance and replacement hereby established shall be uniform within the area serviced by the City of Novi. No free service shall be allowed for any user of the sanitary sewer system.

(d) All customers of the City of Novi sanitary sewer system shall receive an annual notification, either printed on the bill or enclosed in a separate letter, which will show the breakdown of the sanitary sewer bill into its components for:

(1) Operation, maintenance and replacement; and

(2) Debt service, if any.

(Ord. No. 71-28, § 5.01, 1-25-71; Ord. No. 7628.00C, Pt. I, § 4.01, 9-7-76; Ord. No. 79-28.00D, Pt. II, 6-4-79; Ord. No. 90-28.24, Pt. I, 2-5-90; Ord. No. 91-28.28, Pt. II, 10-21-91; Ord. No. 92-28.29, Pts. I, II, 8-24-92; Ord. No. 07-37.33, Pt. II, 3-5-07)

# EXHIBIT - 5

Sec. 34-21.1. - Water main availability fee.

- (a) *Intent.* This section is intended to apply in those instances in which the city has determined that it would be in the public interest, and would further the public health, safety, and general welfare, to construct water main within the city without establishing a special assessment district or like method of charge therefore, including, without limitation, the construction of a transmission main to provide water service for all or a substantial portion of the city served by the public water system, or a water main that would have the effect of creating a "loop" in a portion of the water system consistent with good engineering practices. In such instances of construction by the city, properties that are thus provided access to public water service through a city-constructed water line are benefited by the availability of that water service. Recognizing a partial benefit to the water system at large of additional users, the city has concluded that properties that take advantage of available city-constructed lines should not be responsible for payment of the entire cost of construction, but should, in view of the receipt of the benefit of water service availability, be responsible for some contribution toward the cost of construction.
- (b) *Connection fee requirement.* Based upon the intent set forth in subsection (a), above, any owners of property connecting to any water mains constructed by the city after January 1, 1976, who have not paid for the installation of such public water main by the way of (1) a special assessment, or (2) a specific debt service charge for connection to the particular water main, or (3) by the property owner otherwise contributing a fair share to the capital expense of construction of the particular water main with respect to the property served, shall pay an connection fee prior to connecting to said water main, as provided in this section.
- (c) *Amount of connection fee.* In the construction of water main, as described, above in this section, the city has constructed water lines sized with sufficient capacity to service and/or loop relatively large areas of the city. Accordingly, rather than sizing such lines at eight (8) inches in diameter to service individual properties, the city-constructed lines have generally been sized larger than, and in most cases some multiple of, eight (8) inches in diameter. Thus, it has been concluded that the formula for allocating the fair and proportionate share of cost as between the system at large and individual property owners shall be based upon the cost of constructing only an eight-inch water line with which the property to be charged would be connected, recognizing that such cost changes from time-to-time in the marketplace, and taking into consideration the time/price differential. Therefore, any owners of property required to pay an connection fee pursuant to subsection (b) above shall pay a per tap unit charge in accordance with the current resolution of the city council setting the amount of such charge on the basis of the current cost of water main construction, as amended from time to time by the council.
- (d) *Payment of connection fee.* The water system connection charges established by this article and by resolution of the city council shall be paid in full prior to the issuance of a building permit, or in

the case of an existing building prior to issuance of a plumbing permit for connection to the water system, except as provided in subsections (e) and (f), below.

- (e) *Installment payment of connection fee.* In those cases when a new commercial, industrial or office development is determined to require more than one tap unit factor the owner may elect to pay one-fifth of such connection charges (with the exception of those charges imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the city is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of the connection charges in sixteen (16) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes.
- (f) *Financial hardship program.* In those cases where a single-family residential property owner demonstrates a financial hardship, the owner may elect to pay one-fifth of such connection charges (with the exception of those charges imposed to recoup the cost of infrastructure built pursuant to a special assessment district, or otherwise financed by private landowners, to whom the city is returning any portion of such charges) prior to the issuance of a building permit and the remaining four-fifths of the connection charges in sixteen (16) quarterly installments plus interest at eight (8) percent. The unpaid balance shall be a lien on the property and upon failure of the owner to pay the same may be added to the next tax roll of the city and collected in the same manner in all respects as provided by law for the collection of taxes. For purposes of this section, an owner demonstrates a financial hardship by demonstrating a maximum household income at or below the Oakland County Income Limits for Community Development Block Grant (CDBG) Income Eligibility—Low Income Category, as the same may be revised from time to time.
- (g) *Subsequent changes in use.* Once a property has been connected to the system subsequent changes in the character of the use of said property (including partial or total destruction, removal or abandonment of any or all improvements thereon) shall not abate the obligation to continue the payments of the connection charges assigned at the time of connection; and if subsequent changes in the use of the property increase the amount of sewage emanating from the property, the city may increase the connection charges assigned to the property and the service charge computed on the basis of the increased use shall be payable in the same manner as such charges are payable in the first instance.
- (h) *Prepayment of installment agreement.* At any time during the installment period, the balance of said connection fee may be prepaid by paying the balance then due, together with all accumulated interest thereon.
- (i) *No abatement of payment.* Once connected to the system, partial or total destruction, removal or abandonment of any or all of the improvements or structures located on property subject to the

water connection fee shall not abate the obligation to pay the fee in total.

(Ord. No. 03-37.29, Pt. II, 5-19-03; Ord. No. 05-37.31, Pt. I, 1-9-06; Ord. No. 07-37.33, Pt. I, 3-5-07)



# EXHIBIT - 6



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# WATER AND SEWER RATES & UTILITY PAYMENT

[Water Rates](#)

[Sanitary Sewer Rates](#)

[Facts](#)

[Utility Payment](#)

## Water Rates (for bills rendered after 8/2/21)

Meter Size	Quarterly
5/8"	56.00
1"	80.00
1 1/2"	174.00
2"	232.00
3"	665.00
4"	850.00
6"	1,778.00
8"	2,114.00
10"	2,425.00

\$3.43 per 1,000 gallons of usage.

## Sanitary Sewer Rates (for bills rendered after 8/2/21)

Meter Size	Quarterly
5/8"	30.00
1"	50.00
1 1/2"	85.00
2"	105.00
3"	320.00
4"	410.00
6"	850.00
8" or larger	995.00

\$4.33 per 1,000 gallons of usage

\$107.89 flat rate (Huron Rouge)

\$104.47 flat rate (Walled Lake Arm/Novi Commerce)

\$78.55 flat rate (Lower Park / 75' of Walled Lake Park)



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New users of the system pay for all water and sewer line additions. Therefore, Novi's rates do not contain any amount for expansion of the system.

3. Nearly 80% of the water and sewer system is complete and paid for. As a result, the only outstanding water or sewer debt is for the North Huron Rouge Valley Sewage debt, with the final payment in 2009 (no direct City debt for Novi's infrastructure).

4. Over 75% of the City's water & sewer budget (excluding depreciation) is for payments to the City of Detroit Board of Water Commissioners and Water Resources Commissioner for water and wastewater services.

Novi has one of the lowest markups on Detroit's water rate. Our mark up of 17.35% is far below the 125% average markup of most communities.

If you have questions about our water or sewer rates, please contact us at 248-347-0440.

## Utility Billing and Payment - Water and Sewer

[Clicking here](#) will open a new browser window where you search for water and sewer billing information or pay your bills.

### PUBLIC WORKS

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FIELD OPERATIONS DIVISION

FLEET ASSET DIVISION

ROADS COMMITTEE

SNOW REMOVAL

WATER AND SEWER DIVISION

CLASS ACTION

WATER AND SEWER RATES &  
UTILITY PAYMENT

CROSS CONNECTION CONTROL

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LAWN WATERING

NEW LEAD FREE REQUIREMENTS

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