

October 9, 2018  
Formal  
Agenda

**BUDGET,  
FINANCE, AND  
AUDIT STANDING  
COMMITTEE**




CITY CLERK 2018 OCT 2 PM 4:10

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Irvin Corley, Jr.  
Executive Policy Manager  
Marcell R. Todd, Jr.  
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Thomas Stephens, Esq.  
David Teeter  
Theresa Thomas

TO: Detroit City Council  
FROM: David Whitaker, Director   
Legislative Policy Division  
DATE: October 1, 2018  
RE: Report on Gaming Tax Revenue through August 2018

For Council's review, the attached schedules present the gaming tax revenue activity through August 2018 and prior fiscal years.

In the second month of the fiscal year the casinos reported a combined gross revenue increase of 8.08% compared to the second month of the prior fiscal year. The first two months combined show a 4.05% increase over the same period in the prior year. Broken out by casino, MGM's annual receipts are up by 9.9%, Motor City's are up by 3.76% and Greektown's are up by 11.08%, compared with the second month in the prior fiscal year.

In the second month of the fiscal year, the City collected \$18.46 million in gaming tax revenue, which was 39.19 % greater than August 2017, as reflected in Chart 1. Chart 2 "Monthly Detroit Gaming Tax Collections" through a twelve-month moving average trend line shows an increase of 4.12% since last July among the combined casino tax revenues. Based on existing data, there is projected to be surplus of \$3.96 million for the fiscal year for a gaming revenue total of \$184.73 million, a 3.21% increase over last year.

Adjusted gross casino gaming receipts were reported at \$120.48 million for the month of August 2018 as shown in Chart 1A. This represented an 8.08% gain compared with August 2017. Chart 2A "Monthly Detroit Gaming Receipts" through a twelve-month moving average trend line shows growth of 1.83% among the combined casino receipts.

MGM and Motor City are each paying 12.9% of gross gaming receipts to the City, while Greektown Casino is paying 11.9% of gross gaming receipts and is broken out as follows. By state law, all casinos are now paying 10.9% of gross gaming receipts to the City as wagering tax. The casinos also have an additional 1% payment because of the 2002 amended development agreement with the City. Additionally, if a casino reaches \$400 million in receipts in a calendar year, like MGM and Motor City, then an additional 1% is paid to the City per the amended development agreement of 2002.

There is not a complete one-to-one relationship between the adjusted gross receipts and the tax revenue collection increases when comparing prior years, due to two factors. First, there is the fact that MGM and Motor City casinos began paying the City 1% less due to the permanent casinos opening on October 3 and November 29 of 2007. This reduction to the City is part of state Public Act 306 of 2004, when the legislature amended Public Act 69 of 1997, which was the original casino gaming legislation. P.A. 306 increased the wagering tax by 6% of which 2% went to the City of Detroit. P.A. also allowed that when the permanent casino had been certified by the state gaming board as having operated for 30 consecutive days and once the City determined the project was complete, 5% of the 6% additional wagering tax would be eliminated, with the remaining 1% allocated to the City where the casino is being operated. Greektown continued to pay the 6% additional wagering tax – 4% to the state, 2% to the City – until its permanent status was agreed to by the Administration and approved by the State Gaming Commission, which occurred on March 9, 2010.

Second, the amended development agreement of August 2002 between the City and the casinos, which is separate from the state law, has all casinos, beginning in January 2006, paying an additional 1% over the state law, plus another 1% when the casino reaches \$400 million in gross receipts in a calendar year. For the thirteenth year, MGM and Motor City are projected to exceed \$400 million in the calendar year and increase gaming tax collections by \$10.6 million between September and December. MGM reached \$400 million in August and Motor City is projected to do so in October.

#### Attachments (5)

cc: Auditor General  
John Hill, CFO  
John Naglick, Finance Director  
Tanya Stoudemire, Budget Director  
Renee Short, Budget Manager  
James George, Agency CFO  
Stephanie Washington, Mayor's Office

Table 1

Wagering Tax History and Tax Projections - All Casinos

|  | Total Adjusted Gross Receipts FY 13-14 | Chng. over prior year | Total Adjusted Gross Receipts FY 14-15 | Chng. over prior year | Total Adjusted Gross Receipts FY 15-16 | Chng. over prior year | Total Adjusted Gross Receipts FY 16-17 | Chng. over prior year | Total Adjusted Gross Receipts FY 17-18 | Chng. over prior year | Total Adjusted Gross Receipts FY 18-19 | Chng. over prior year |
|--|--|-----------------------|--|-----------------------|--|-----------------------|--|-----------------------|--|-----------------------|--|-----------------------|
| July   | \$ 112,324,111.14                      | 0.29%                 | \$ 111,335,628.63                      | -0.88%                | \$ 114,773,549.99                      | 3.09%                 | \$ 118,452,544.37                      | 3.21%                 | \$ 119,025,164.52                      | 0.47%                 | \$ 119,352,251.03                      | 0.27%                 |
| August   | \$ 112,898,452.02                      | -3.45%                | \$ 112,662,906.77                      | -0.21%                | \$ 107,454,382.18                      | -4.62%                | \$ 115,907,952.67                      | 7.86%                 | \$ 111,475,141.33                      | -3.82%                | \$ 120,481,280.32                      | 8.08%                 |
| September  | \$ 106,340,200.54                      | -6.78%                | \$ 103,111,649.21                      | -3.04%                | \$ 107,566,002.33                      | 4.31%                 | \$ 112,167,563.98                      | 4.29%                 | \$ 113,650,378.92                      | 1.32%                 | \$ -                                   | -100.00%              |
| October  | \$ 108,324,815.12                      | -4.17%                | \$ 113,375,138.17                      | 6.63%                 | \$ 112,839,250.36                      | -0.47%                | \$ 110,737,995.50                      | -1.86%                | \$ 112,667,682.55                      | 1.74%                 | \$ -                                   | -100.00%              |
| November   | \$ 111,841,042.99                      | -0.90%                | \$ 106,779,739.55                      | -4.53%                | \$ 108,679,663.84                      | 1.78%                 | \$ 111,502,032.31                      | 2.60%                 | \$ 113,084,415.06                      | 1.42%                 | \$ -                                   | -100.00%              |
| December   | \$ 107,124,733.60                      | -9.40%                | \$ 118,134,341.40                      | 10.28%                | \$ 125,463,371.75                      | 6.20%                 | \$ 116,004,871.10                      | -6.82%                | \$ 116,166,313.36                      | -0.63%                | \$ -                                   | -100.00%              |
| January  | \$ 96,048,307.53                       | -9.54%                | \$ 111,021,844.76                      | 15.59%                | \$ 109,066,698.11                      | -1.76%                | \$ 112,004,791.29                      | 2.69%                 | \$ 111,494,603.74                      | -0.46%                | \$ -                                   | -100.00%              |
| February   | \$ 110,608,613.45                      | -0.62%                | \$ 114,422,344.27                      | 3.45%                 | \$ 116,400,992.94                      | 1.73%                 | \$ 117,241,823.84                      | 0.72%                 | \$ 110,086,016.70                      | -6.10%                | \$ -                                   | -100.00%              |
| March  | \$ 124,936,684.16                      | -7.29%                | \$ 123,903,906.42                      | -0.83%                | \$ 124,949,116.99                      | 0.84%                 | \$ 131,203,575.63                      | 5.01%                 | \$ 138,618,493.30                      | 5.85%                 | \$ -                                   | -100.00%              |
| April  | \$ 112,273,443.83                      | -6.47%                | \$ 120,548,875.91                      | 7.37%                 | \$ 122,356,901.35                      | 1.50%                 | \$ 120,997,540.75                      | -1.11%                | \$ 124,023,991.41                      | 2.50%                 | \$ -                                   | -100.00%              |
| May  | \$ 114,508,495.99                      | -1.73%                | \$ 119,615,053.34                      | 4.63%                 | \$ 118,534,756.46                      | -1.07%                | \$ 119,945,966.90                      | 1.19%                 | \$ 124,659,270.12                      | 3.93%                 | \$ -                                   | -100.00%              |
| June   | \$ 109,007,620.90                      | 4.96%                 | \$ 109,930,191.80                      | 0.85%                 | \$ 109,612,340.75                      | -1.20%                | \$ 113,073,887.16                      | 4.11%                 | \$ 119,116,145.61                      | 5.34%                 | \$ -                                   | -100.00%              |
| TOT RECEIPTS thru FY   | \$ 1,324,236,621.27                    | -3.88%                | \$ 1,365,041,620.23                    | 3.08%                 | \$ 1,376,687,027.05                    | 0.85%                 | \$ 1,400,148,545.50                    | 1.70%                 | \$ 1,414,067,616.62                    | 0.99%                 | \$ 239,833,531.35                      | -83.04%               |
| ReceiPTS thru Cal Yr.  | \$ 1,349,503,615.26                    | -4.75%                | \$ 1,332,782,569.59                    | -1.24%                | \$ 1,376,408,436.95                    | 3.27%                 | \$ 1,385,601,766.53                    | 0.67%                 | \$ 1,400,536,681.31                    | 1.08%                 | \$ 967,832,052.23                      | -30.90%               |
| Wagering Tax - pre 9/2004 (State)  | 12.90%                                 |                       | 12.90%                                 |                       | 12.90%                                 |                       | 12.90%                                 |                       | 12.90%                                 |                       | 12.90%                                 |                       |
| Wagering Tax - post 9/2004 (State)   | 1.00%                                  |                       | 1.00%                                  |                       | 1.00%                                  |                       | 1.00%                                  |                       | 1.00%                                  |                       | 1.00%                                  |                       |
| Wagering Tax - post 1/2006 (Dev)   | 11.90%                                 |                       | 11.90%                                 |                       | 11.90%                                 |                       | 11.90%                                 |                       | 11.90%                                 |                       | 11.90%                                 |                       |
| Wagering Tax FYTD  | \$ 157,584,157.93                      |                       | \$ 162,439,952.81                      |                       | \$ 163,825,756.22                      | 0.85%                 | \$ 166,617,676.91                      |                       | \$ 168,274,046.38                      |                       | \$ 28,540,190.23                       |                       |
| \$400 M (Dev. Agrmt) after permanent opens   |  |                       |  |                       |  |                       |  |                       |  |                       |  |                       |
| Wagering Tax FYTD  |  |                       |  |                       |  |                       |  |                       |  |                       |  |                       |
| Add'l 1% after casino reaches \$400M during calendar year (Dev Agrmt)                  | \$ 10,211,576.83                       | -4.08%                | \$ 10,061,311.75                       | -1.47%                | \$ 10,465,401.23                       | 4.02%                 | \$ 10,599,827.55                       | 1.28%                 | \$ 10,708,230.46                       | 1.02%                 | \$ 4,126,657.37                        |                       |
| Total Revenue FYTD   | \$ 167,795,734.76                      | -3.89%                | \$ 172,501,264.56                      | 2.80%                 | \$ 174,291,157.45                      | 1.04%                 | \$ 177,217,504.46                      | 1.68%                 | \$ 178,982,276.84                      | 0.9958%               | \$ 32,666,847.60                       |                       |
| First 2 Month's Receipts   | \$ 225,222,563.16                      | -1.62%                | \$ 223,998,635.40                      | -0.54%                | \$ 222,227,932.17                      | -0.79%                | \$ 234,365,497.04                      | 5.46%                 | \$ 230,500,305.85                      | -1.65%                | \$ 239,833,531.35                      | 4.05%                 |
| Last 10 Month's Receipts   | \$ 1,099,014,058.11                    |                       | \$ 1,141,043,084.83                    |                       | \$ 1,154,459,094.88                    |                       | \$ 1,165,783,048.46                    |                       | \$ 1,183,567,310.77                    |                       | \$ -                                   |                       |
| Ratio of 2 Month to 10 Months est. last 10 months' receipts est. total annual receipts | 487.97%                                |                       | 509.40%                                |                       | 519.49%                                |                       | 497.42%                                |                       | 513.48%                                |                       | 509.95%                                |                       |
| Fiscal Year's Wagering Tax (est)   |  |                       |  |                       |  |                       |  |                       |  |                       |  |                       |
| Budget   | \$ 170,000,000.00                      |                       | \$ 168,000,000.00                      |                       | \$ 169,042,005.00                      |                       | \$ 175,200,000.00                      |                       | \$ 177,780,000.00                      |                       | \$ 180,779,000.00                      |                       |
| Surplus/Deficit  | \$ (2,204,265.24)                      |                       | \$ 4,501,264.56                        |                       | \$ 5,249,152.45                        |                       | \$ 2,017,504.46                        |                       | \$ 1,202,276.84                        |                       | \$ 3,955,136.87                        |                       |

Chart 1

### Monthly Comparison Detroit Gaming Tax Collections By Fiscal Year

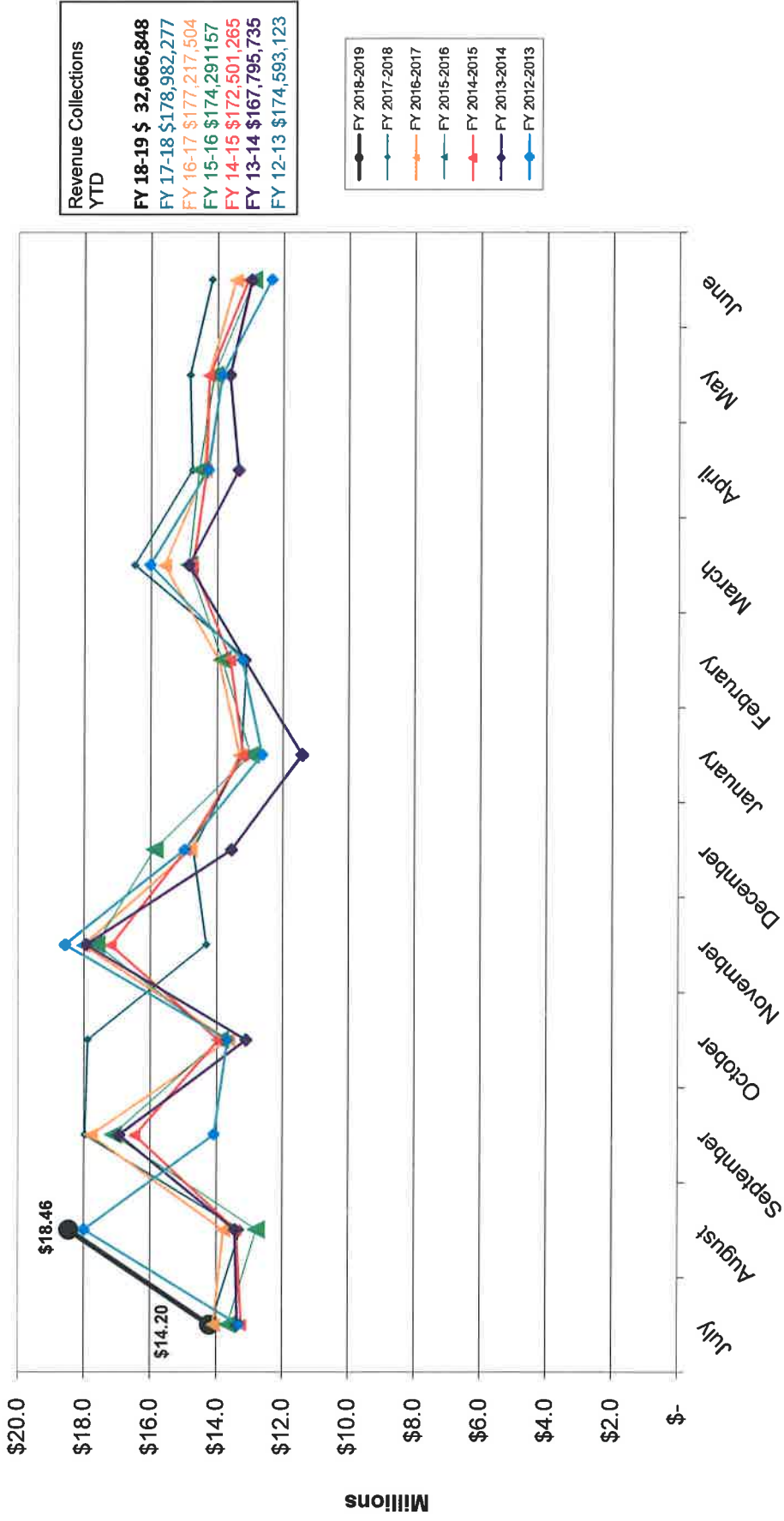


Chart1A

### Monthly Comparison Adjusted Gross Casino Gaming Receipts By Fiscal Year

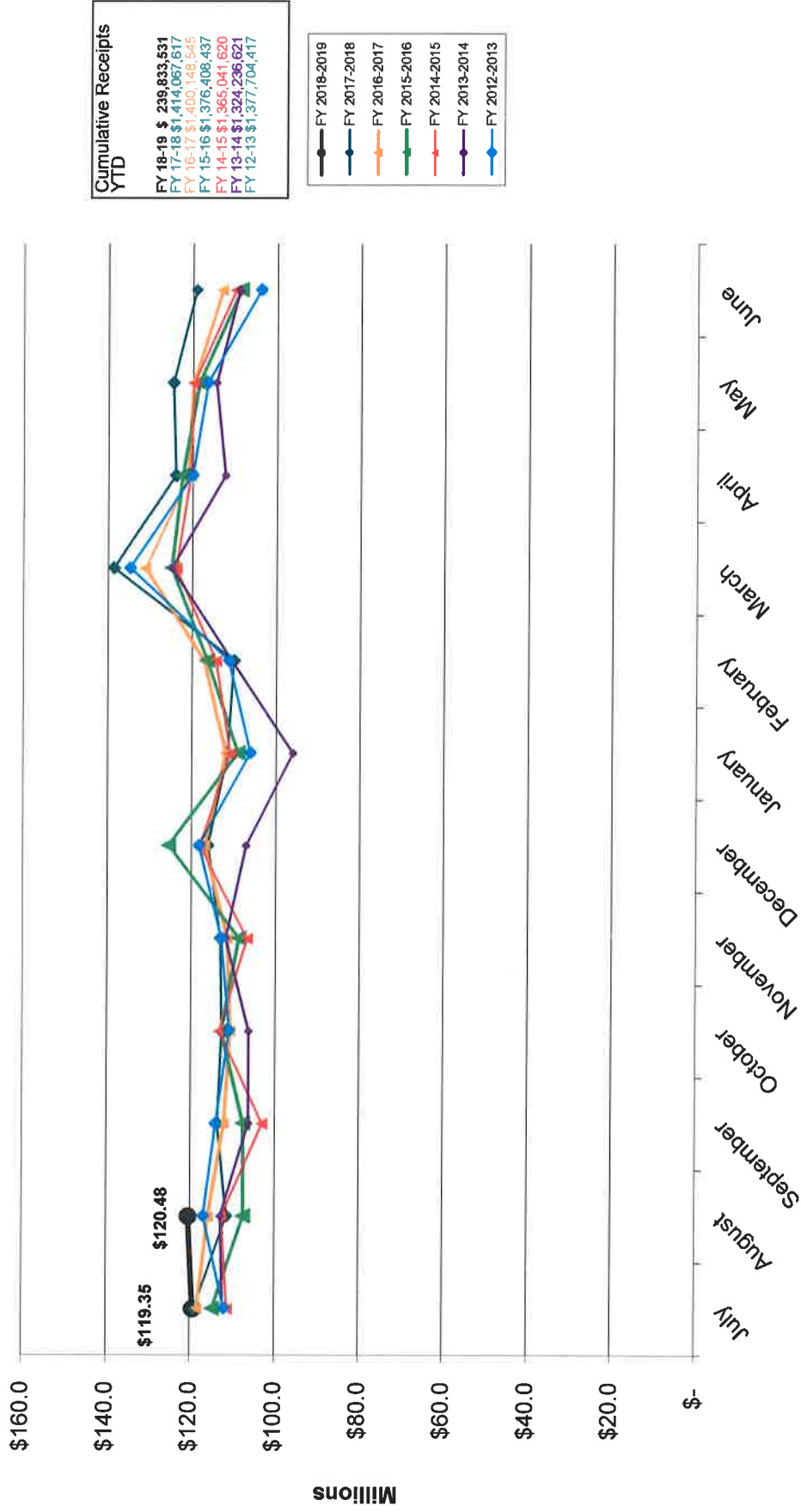


Chart 2

### Monthly Detroit Gaming Tax Collection History

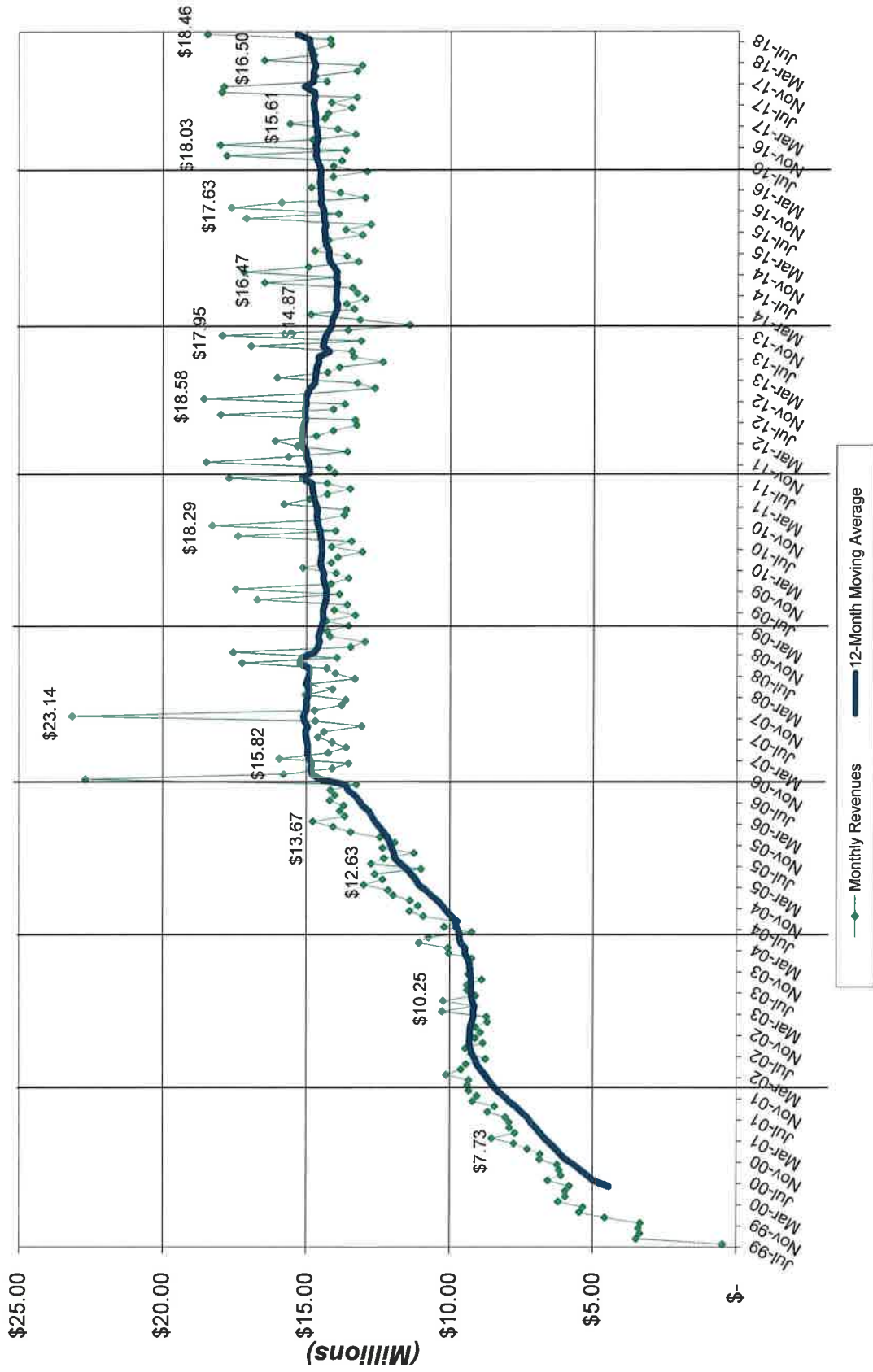
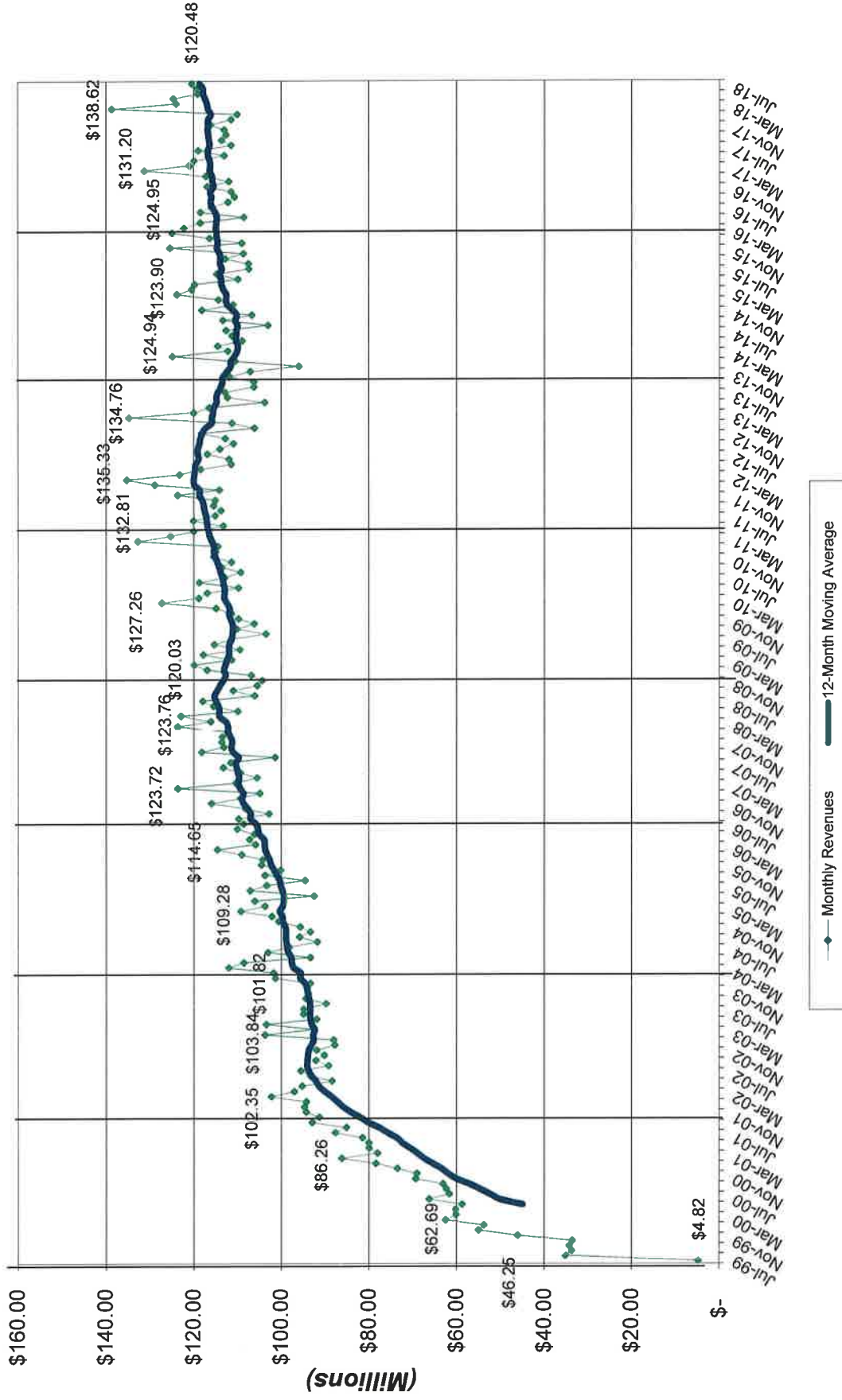


Chart 2A

Monthly Adjusted Gross Casino Gaming Receipt History







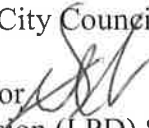
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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director   
Legislative Policy Division (LPD) Staff

DATE: October 1, 2018

RE: **Council Approval of Detroit Water and Sewerage Department (DWSD) budget and retail rates**

During the Budget, Finance and Audit Standing Committee meeting on Wednesday, September 26, 2018, Detroit Water and Sewerage Department's (DWSD) Chief Financial Officer Thomas Naughton claimed that orders of the United States District Court in Detroit (Hon. Sean F. Cox) somehow authorize DWSD to refuse to submit their budget and retail water and sewer rates to City Council for approval.

Specifically, Mr. Naughton stated in response to the Chair's direct question: "...[W]e did not bring the budget, and that's based on a court order dated December 15, 2015, based on recommendations of the root cause committee." (The DWSD discussion begins with 15:40 remaining on the digital counter)

Mr. Naughton's statement to the committee echoes DWSD Director Gary Brown's attached memorandum dated July 10, 2018, attempting to justify their continuing refusal to seek Council approval of their budget (including budget amendments) and retail rates: "Judge Sean Cox's December 15, 2015 Order (entered in anticipation of the bifurcation of DWSD into a separate regional wholesale system and a Detroit retail operation) **reiterated the powers granted to the BOWC under Article 7, Chapter 12.**" (emphasis added)<sup>1</sup>

<sup>1</sup> It should be noted that: 1) Neither Mr. Brown nor Mr. Naughton is a lawyer; 2) Mr. Naughton in particular is relatively new to his current position, and to LPD's understanding he had no personal involvement in the court proceedings, either in bankruptcy or the long-running DWSD oversight litigation in the courts of

**This cryptic remark about “powers granted to the BOWC” (Board of Water Commissioners) begs the real question: what, if anything did Judge Cox ever order regarding City Council review of DWSD’s budget and retail rates? The simple answer is: nothing.**

The referenced court order is attached. It has been thoroughly examined by LPD. Focused overwhelmingly on labor relations issues, and the then-ongoing establishment of the Great Lakes Water Authority (GLWA), it does not authorize DWSD to violate the Charter or the Code by exempting this City government department from seeking City Council approval of its budget and retail rates. Indeed it does not even refer to limiting Council’s authority in any way.<sup>2</sup> Furthermore, LPD has examined many, many other court orders and documents from that litigation, without finding any applicable authority for DWSD’s position.

Given that LPD was not actively participating in the litigation, it has been our query: Is there a court order that actually authorizes DWSD’s position? Because from LPD’s reading no such authority can be found in the December 15, 2015 order.

LPD has over the course of the last 2.5 years repeatedly documented that DWSD, the administration and the Law Department have failed produce any such relevant court order. Such an order would be the absolute minimum they would need to justify their course of action in this regard, in the face of the mandatory requirements of Charter Sections 8-208 and 9-507, and Section 56-3-12(c) of the City Code. (These provisions are quoted again below for the committee’s convenience.)

Whether Council’s resolutions and LPD’s legal analysis and conclusions about Council’s Charter-mandated powers are right or wrong, it is incumbent on DWSD, the administration and the Law Department to undertake the formal proceedings necessary to establish that, rather than continuing to delay, pretending that they have not been put on notice of the dispute, shirking their obligations, and sending uninformed new employees to council meetings to reiterate incorrect information.

To review, here are the specific provisions of the City Charter and Code that DWSD is violating, violations that the Law Department is refusing to timely address through the Charter-mandated dispute resolution provisions of Section 7.5-208:

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Judge Cox and, before that, of Hon. John Feikens, between 1977 and 2014; and 3) LPD has previously explained on multiple occasions why the City Charter and City Code require DWSD to seek and obtain Council’s approval for their budget and retail rates. LPD has gone so far as to draft the attached mandamus complaint for filing when the unwieldy requirements of the 2012 Charter for Council legal action in such cases of dispute with the administration can finally be met. A copy of that draft complaint has been provided to the Law Department, which the Charter expressly makes responsible for its enforcement, months ago.

<sup>2</sup> Where Judge Cox ordered disregard of a Charter provision on December 15, 2015, he did so clearly and explicitly, stating “Further, DWSD is not bound by Section 6-405 of the City’s Charter, which outlines the City Civil Service Commission.” (Page 13) LPD respectfully submits that this fact, together with the order’s total silence regarding Sections 8-208 and 9-507 of the Charter, and Section 56-3-12(c) of the City Code, are fatal to DWSD’s shotgun-style reliance on unspecified provisions of this order, in an attempt to undermine City Council’s lawful authority in violation of the Charter and the Code.

- Section 8-208 of the City Charter, with respect to the City of Detroit’s budget, states “Consideration of the budget shall be completed by the City Council as provided by ordinance.”
- Section 9-507 of the City Charter states “Any agency of the City may, with the approval of the City Council, charge an admission or service fee to any facility operated, or for any service provided, by an agency. The approval of the City Council shall also be required for any change in any such admission or service fee.” (Retail water and sewerage rates are, and must be legally defined as, fees for services provided by DWSD. DWSD is a department of City government, as acknowledged by Judge Cox in his final court orders.)
- Section 56-3-12(c) of the Detroit City Code states that “The rate to such users [of DWSD’s services] shall be established by the board of water commissioners and shall be approved by the city council in accordance with state and local law.”

As LPD most recently reiterated in its summary of the water workshop DWSD provided for Council in May 2018 : “...[I]t will be extremely difficult, if not effectively impossible, for Council to affect DWSD’s water affordability policies until its lawful budget- and rate-approval authority is restored.” (emphasis in original) The importance of these policies to quality of life for many residents of the City of Detroit can hardly be overstated. Under the Charter, City Council is fully empowered to act as a check and balance on the administration in such public policy debates implicating fiscal, public health and human rights concerns of the City and its residents. Continuing to pretend otherwise is completely unacceptable. The time has come to resolve the issue of City Council’s seat at the policy making table regarding DWSD.

Recent changes in the way that drainage fees are calculated have resulted in tripling some residents’ monthly water and sewerage bills. Affordability and resulting availability of water is even more of an issue now. It is therefore vitally important that rate discussions be brought before Council so that residents can be fully informed on all issues that necessitate such increases.<sup>3</sup>

If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.

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<sup>3</sup> Moreover, unpaid water bills can be used as the basis for tax foreclosure. MCL 123.162.



**TO:** Detroit City Council President Brenda Jones  
Members of the Detroit City Council  
David Whitaker, Director, Legislative Policy Division

**FROM:** Gary Brown, Director  
Thomas Naughton, Chief Financial Officer  
Detroit Water and Sewerage Department

**DATE:** July 10, 2018

**RE:** Legislative Policy Division Request for Budget & Rate Information for FYs 19 & 20

This represents the Detroit Water and Sewerage Department (DWSD), Finance Division's responses to a request from Detroit City Council's Legislative Policy Division (LPD) for information regarding the DWSD's amended two-year budgets for fiscal years 2018-19 and 2019-20. The City of Detroit Board of Water Commissioners formally approved DWSD's FY2019 and FY2020 amended budget on June 20, 2018, after holding the required public hearing. On July 11, 2018, DWSD will make an informational presentation to this Honorable Body regarding the approved budget and answer questions. For your consideration and review in advance of the presentation, our responses to the requests for information from the LPD/City Council are itemized below:

1. Does the DWSD plan on coming to City Council for approval of the FY 2019 rates and FY 2019 and FY 2020 amended budgets?

DWSD Response: DWSD will not seek City Council approval of FY2019 rates or the FY2019 and FY2020 amended budgets as it is not required to do so. Pursuant to Sec. 7-1202 of the 2012 Detroit City Charter, the *Board of Water Commissioners* directs the DWSD in the supply of water drainage and sewerage services within the City and establishes the rates to be paid by the owner or occupant of each house or building using water, drainage or sewerage services.<sup>1</sup> Judge Sean Cox's December 15, 2015 Order<sup>2</sup> (entered in anticipation of the bifurcation of DWSD into a separate regional wholesale system and a Detroit retail operation) reiterated the powers granted to the BOWC under Article 7, Chapter 12. The Court also stated the BOWC rates shall be developed to satisfy

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<sup>1</sup> This charter-mandated power to direct DWSD and establish the retail rates for Detroit customers is separate from its (former) charter-mandated power to set wholesale rates for customers outside the city limits. As a result of the bifurcation of DWSD into a Detroit retail operation governed by the BOWC and a regional wholesale system with a separate governing body (Great Lakes Water Authority), the BOWC no longer sets wholesale rates for customers inside or outside the City.

<sup>2</sup> *United States v City of Detroit, et al*, United States District Court case No. 77-cv-71100-SFC



the revenue requirements established by the GLWA for water and sewer service as well as the expenses of operating the local water and sewer infrastructure, consistent with the Water and Sewer Services Agreement approved and executed by the City and the Authority.<sup>3</sup> Lastly, the Order states in the event the BOWC fails to comply with the requirements of the Water and Sewer Services Agreement with respect to rate-setting, billing, collection and enforcement for the local water and sewer systems, the GLWA may assume that responsibility. DWSD's budget and obligations under the Water and Sewer Services Agreement are based on rates and these matters fall within the purview of the BOWC, only.

Furthermore, the City's Comprehensive Annual Financial Report clearly designates DWSD as an enterprise agency. As such, the Uniform Budgeting and Accounting Act, MCL 141.421 *et. seq.* does not require DWSD to have its budget approved by City Council.<sup>4</sup> Lastly, DWSD's revenues are not considered during the City's Revenue Estimating Conference (Sec. 8-213, Detroit City Charter) because DWSD is an enterprise agency that does not require a general fund subsidy.

While this response is not intended to be a formal statement of DWSD's legal position, absent a federal court order or a super-majority vote of an Ad Hoc Root Cause Committee to do so, DWSD will not seek City Council approval for rates or budgets; rather, it will continue to make informational presentations.

2. According to Attachment 2, rate increases are 4% for both Water and Sewer in FY 2019. Does this mean that the "retail rate" increases 4% for both Water and Sewer in FY 2019? However, Water's Gross Retail Sales increase 1.6% in FY 2019 and Sewer's Gross Retail Sales increase 10.2% in FY 2019. Only the Service Charges component of both Water and Sewer Retail Sales increase by 4% in FY 2019. Please explain what the 4% rate increase represents and how it was derived. Please also provide detailed information supporting the development of the 4% rate increase.

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<sup>3</sup> As this Honorable Body is aware, since Detroit is no longer a municipal water and sewerage system that serves more than 40% of the population of the state, Sec. 5e of the Home Rule City Act, requiring the governing body to vote on rates, is inapplicable. (MCL 117.5e)

<sup>4</sup> "Budget" means a plan of financial operation for a given period of time, including an estimate of all proposed expenditures from the funds of a local unit and the proposed means of financing the expenditures. **Budget does not include . . . (c) An enterprise fund.** (MCL141.422a)



DWSD RESPONSE:

Water Retail Revenue has two components, the water volume rate and the fixed service charge. Both rates were increased 4%; however, in estimating total retail revenue we anticipate water volumes will decrease by 2% in FY 2019. When factoring in the volume reduction, the net increase in retail revenue was reduced to 1.6%.

Sewer Retail Revenue is comprised of three elements, the Detroit disposal rate, a fixed service charge, and the drainage charge. The Detroit disposal rate and fixed service charges were increased by 4%; however, we again expect sewerage volumes to decrease by 2% in FY 2019.

The drainage charge rate was actually lowered from \$661 in FY 2018 to \$598 in FY 2019, but the residential and faith-based customer classes will be included for the first time under the Billable Impervious Acreage (BIA) methodology for assessing drainage charges in FY 2019.

Each year we determine the revenue requirement of Water and Sewer Funds based on contractual obligations under the lease, projected operating expenses, and estimates of non-retail revenues.

3. During the presentation made to City Council on May 4, 2018 regarding DWSD issues, consultants indicated that rates have been increasing nationwide in the 15 to 20% area in some communities. How does DWSD keep the Water and Sewer rates fair and affordable in accordance with its strategic priorities? How can this be achieved when DWSD faces high fixed costs, especially with respect to infrastructure costs, when a sizable segment of its customers hover around or below the poverty level?

DWSD RESPONSE:

DWSD works to keep rates fair and affordable through several initiatives, such as smart investments in infrastructure, focusing on preventative maintenance to reduce emergency repairs, reducing non-revenue water loss, initiating green infrastructure projects to reduce consumption of sewer and drainage services, and improving collections rates. Affordability efforts include working with customers to reduce their water consumption by offering water audits to discover and eliminate leaks, installing low flow toilets, referring customers to state assistance programs and third party assistance programs such as THAW. Our payment plan program and WRAP program offer assistance to customers who are struggling to pay water bills. We continue to explore options for poverty stricken customers who require long term assistance paying water bills, but we must be careful to avoid any program that violates the Headlee Amendment or the Supreme Court Opinion in *Bolt*.



4. DWSD estimates the GLWA Allocation (i.e., "Wholesale Charges") for Water to be \$41.0 million in FY 2019, a \$5.2 million or 14.5% increase from FY 2018 (Attachment 3). Please explain the reason for the increase. Does GLWA alone develop the wholesale rates and charges or does DWSD have any input in the development of the wholesale rates and charges? Please provide detailed information supporting the development of DWSD's Water wholesale rates and charges for FY 2019.

DWSD RESPONSE:

In the DWSD FY 2019 approved budget, we anticipated a 2% annual inflationary increase from the GLWA in wholesale water charges. GLWA established those rates independently, with the assistance of the engineering firm of Black & Veatch, which recently completed the first phase of a "units of service" study. DWSD's wholesale water charge was increased by \$5,700,000 in response to the findings in the engineering study. The second phase of the study is underway and may alter the initial findings. DWSD personnel have had an opportunity to comment on and/or dispute the methodology used to perform the "units of service" study.

While DWSD does not have direct input in the development of wholesale rates and charges, the City of Detroit has two members appointed to the GLWA board, which sets wholesale rates and charges for Detroit and all suburban community members.

5. DWSD estimates the GLWA Allocation (i.e., "Wholesale Charges") for Sewer to be \$188.5 million in FY 2019, a \$13.8 million or 7.9% increase from FY 2018 (Attachment 4). Please explain the reason for the increase. Please provide detailed information supporting the development of DWSD's Sewer wholesale rates and charges for FY 2019.

DWSD RESPONSE:

In the DWSD FY 2019 approved budget, we anticipated a 2% annual inflationary increase from GLWA, which established those rates independently. Regarding FY 2019, after undertaking an engineering analysis, GLWA made an upward adjustment of DWSD's wholesale sewerage charge by \$4,800,000, driven mainly by years of deferred maintenance that has diminished the effectiveness of DWSD combined sewerage overflow control structures.

6. When will the GLWA wholesale charges be finalized? Will the FY 2018-2019 amended budget be amended for the final charges?



DWSD RESPONSE:

The GLWA Board finalized the wholesale charges at its meeting on June 20, 2018. DWSD plans to amend the FY2018-2019 budget to reflect final wholesale charges during the first quarter of FY2019.

7. What is the Obligation to GLWA (\$27,696,300 for Sewer and \$33,438,800 for Water) in the FY 2018-2019 amended budget?

DWSD RESPONSE:

The Obligation Payable to GLWA is the amortization of principal and interest allocated to DWSD for its share of debt. As part of the lease transaction in which the City leased the regional water and sewer system of the DWSD to GLWA, all DWSD revenue bonds outstanding as of December 31, 2015, including those purchased by the Michigan Finance Authority under its state revolving loan program, were assumed by GLWA with the consent of bondholders.

Per the Water and Sewer Services agreement between DWSD and GLWA dated June 12, 2015 and the Master Bond Ordinances dated October 7, 2015, as amended, the Detroit retail class continues to pay its allocated share of debt service revenue requirements associated with improvements to the local water and sewer systems. Payments on the debt service incurred by GLWA on the outstanding revenue bonds assumed as of December 31, 2015 are to be allocated using an agreed-upon percentage of total debt service associated with bond financed local improvements over the life of such bonds, though the bonds themselves continue to be secured by the net revenue of GLWA, which includes all revenue payable by the Detroit retail class. Subsequent to June 30, 2017, the parties reached a tentative agreement on the debt allocation, subject to board approval. During 2018, as a result of continued negotiations on the allocation percentage and as highlighted on the MOU term sheet, DWSD revised its obligation payable to GLWA in the amount of \$455,000,000 and \$370,000,000 in the Water Fund and Sewage Disposal Fund, respectively. This was approved by the BOWC on June 20, 2018.

8. Please provide the FY 2018-2019 and FY 2019-2020 amended budgets in detail by appropriation and object. Also, actual data from FY 2016-2017 and FY 2017-2018 by appropriation and object for comparison purposes would be appreciated.

DWSD RESPONSE:

The FY 2016-2017 and FY 2017-2018 actual data are currently in Fusion with the exception of the FY 2019 budget which will be loaded in Fusion by the OCFO-Budget Department. The FY 2020 budget was developed at "appropriation-level" detail and is not available at the object-level.





9. DWSD estimates Water's Bad Debt Expense for FY 2019 to total \$6.1 million, or \$4.7 million less than the FY 2018 budget of \$10.8 million, a 43% drop. Please explain the reason for the decrease. Is the amount of delinquent accounts receivable due from DWSD water customers going down? Have collections on water bills improved in the last year? What is the current collection rate, and what is the assumed collection rate for FY 2019? What is the current level of water shut offs and how does this compare to last year at this time? What programs are in place to mitigate the number of water shut offs?

DWSD RESPONSE:

DWSD expects Water's Bad Debt expense to decrease according to the current trend of collection efforts. Collection rates have continued to improve over the last few years from a low of approximately 81% in 2014 to as high as 92% in 2017. This increase can be attributed to improved processes and procedures, which includes increased management of tax rolls, modified service interruption procedures, benefits of customer assistance programs, improved payment systems, attention to the full scope of factors affecting affordability, and additional staffing in the Customer Service and Collections departments. Service interruptions have been on the decline year over year. During FY2017 we completed 11,633 service interruptions. In FY 2018, service interruptions decreased by 66% to 3,941. Currently, we have a number of assistance programs in place to help residents that qualify, including WRAP and our payment plan program, and this encourages regular payment history. DWSD and GLWA contribute more than \$3 million a year to the WRAP program.

See also, information on the City's Website: [www.detroitmi.gov/water](http://www.detroitmi.gov/water).

10. DWSD estimates Sewer's Bad Debt Expense for FY 2019 to total \$27.7 million, or \$5.4 million higher than the FY 2018 budget of \$22.3 million, a 24.4% increase. Please explain the reason for the increase. Given that the sewer charges are on the same bill as the water bill, shouldn't the collection rate for sewer charges be about the same for water charges?

DWSD RESPONSE:

In fact, water and sewer charges are not always on the same bill due to the nature of drainage charges and some "sewer only" or "water only" accounts. We bill parcels for drainage charges independently in many cases. For example, two separate water services may be associated with one parcel (e.g., duplexes, condos, etc.). Some properties require no water service (e.g., parking lots, vacant commercial properties.) There are drainage only accounts and since we cannot interrupt drainage services we must pursue civil action



and/or place the delinquent amount owed on the tax roll (on commercial parcels) to enforce payment. Civil litigation can be costly and time consuming with uncertain outcomes and sometimes ineffective, which affects the collection rate. Collection rates generally improved when we placed debt on the tax roll.

11. When will you present the DWSD FY 2018-2019 and FY 2019-2020 capital budgets?

DWSD RESPONSE:

The FY 2019-2023 five year capital budget was approved by the BOWC on May 16, 2018. See attached materials.

12. Why aren't any capital expenses budgeted for Water in FY 2018-2019?

DWSD RESPONSE:

Capital expenses are budgeted in the Improvement and Extension (I&E) fund. The FY 2019 total Water I&E budget is \$50,117,400.

13. According to page 19 of the City of Detroit and Sewerage Department financial statements as of June 30, 2017 (Attachment 9), the FY 2019 bond debt service (principal and interest) requirement for Water and Sewer is \$38.6 million and \$29.3 million, respectively. Where is this budgeted in the FY 2019 Water and Sewer budgets?

DWSD RESPONSE:

Subsequent to June 30, 2017, GLWA and DWSD agreed to a new allocation in a Memorandum of Understanding (MOU). Please refer to the response to question #7.

14. Also according to Attachment 9, total outstanding bonds payable (principal only) as of June 30, 2017 is \$545.8 million and \$416.6 million for Water and Sewer, respectively. Based on the FY 2019 Water and Sewer capital improvement plans, how much in bonds payable could be added for Water and Sewer in five (5) years that could impact rates in the future? Meanwhile, is DWSD attempting to use cash as much as possible for Water and Sewer capital expenses?

DWSD RESPONSE:

Our current plan is to allocate the \$50 million lease payments to fund both post-bifurcation debt service and capital projects. As such, anticipated lease revenue will pay for both leveraged and pay-as-you go capital expenses. This approach to funding capital should have no immediate impact on retail rates.

15. According to page 81 of the City of Detroit's financial statements as of June 30, 2017 (Attachment 10), GLWA assumed \$2.3 billion and \$3.3 billion in Water and Sewer bonds,



respectively according to the lease agreement and resulting bifurcation. As of June 30, 2017, DWSD management estimates Sewer's and Water's percentage portion of these bonds on DWSD's books to be 11.4 percent and 20.5 percent, respectively. As of June 30, 2017, GLWA and DWSD were still working to resolve the allocation percentage. What is the status of the negotiations on the Water and Sewer allocation percentage of the debt assumed by GLWA?

DWSD RESPONSE:

These negotiations were completed resulting in a Memorandum of Understanding (MOU) approved by the BOWC on June 20, 2018, in which DWSD was allocated \$455,000,000 and \$370,000,000 in the Water Fund and Sewage Disposal Fund, respectively. The allocation percentages no longer apply. See attached MOU.

16. What pay increases are projected for DWSD employees in FY 2018-2019?

DWSD RESPONSE:

Pay increases have not been decided. Any increases will likely be funded by overtime savings, savings from vacancy rate including employee turnover and other sources as needed.

17. Why do fringe benefits increase \$3.1 million or 28.1% in FY 2018-2019?

DWSD RESPONSE:

In FY 2018, fringes were under estimated. The FY 2019 fringe rate is 7.39% greater than FY 2018. The fringe rate used to prepare the FY 2019 budget was 43.53%. DWSD mistakenly used a fringe rate of 36.14% in FY 2018.

18. Why are utilities expenses down \$2.8 million in FY 2018-2019? What do utilities expenses include?

DWSD RESPONSE:

Utility expenses include gas, electricity, steam, water and sewerage. DWSD estimated the utility allocation between DWSD and GLWA facilities in previous years. We have more information and experience now. The FY 2019 utility budget is based on FY 2018 actuals.

19. Where is the GLWA \$50 million annual lease payment in the budget?

DWSD RESPONSE:

The lease payment is budgeted in the Improvement and Extension Funds in the amount of \$22,500,000 and \$27,500,000 in the Water and Sewage Disposal Funds, respectively.



20. How much of the annual \$50 million Lease revenue due to DWSD is being applied to pay debt service in the FY 2018-2019 amended budget?

DWSD RESPONSE:

All of the post-bifurcation water debt service will be funded by the lease payment. This includes an estimated \$2.8 million for water debt service.

21. Why are the DWSD FY 2017-2018 restated budgets for both Water and Sewer different than the amended budget in the City's ERP? The ERP shows Water's FY 2017-2018 amended appropriations budget at \$200.2 million and the DWSD restated Water budget was \$128.5 million. The ERP shows Sewer's FY 2017-2018 amended appropriations budget at \$291.5 million and the DWSD restated Sewer budget was \$296.5 million. Please explain the differences.

DWSD RESPONSE:

The restated budget was not an amended budget. DWSD used the term "restated budget" to represent the contract terms of the same budget. The water and sewerage charges were grossed up for owner's equity. The bad debt was grossed up to show gross retail sales. Simply stated, it is a different compilation of the same BOWC approved budget. We were unable to identify the ERP budget numbers stated in your question.

22. Why are drainage charges to residential customers up so much for FY 2018-2019? What major programs are in place to mitigate residential drainage charges? What is the timetable for implementing drainage charges for industrial, commercial, City of Detroit, Wayne State, Tax-Exempt and Faith-Based customers?

DWSD RESPONSE:

Many parcels had already been charged for drainage based on either the size of the water meter or the percentage of billable acres compared to total acres ("class system"). Effective October 2016, the drainage charge was imposed on *all* non-residential and non-faith-based customers and effective July 1, 2018, was imposed on *all* residential and faith-based customers based on a billable impervious acres (BIA) methodology that captures every parcel contributing water run-off into DWSD's combined sewerage overflow system. This methodology will result in a net increase in drainage revenue for FY 2019, and will create a more equitable allocation of drainage costs among DWSD retail customers. In FY 2019, the drainage rate was actually decreased from \$661 per acre (FY 2018 rate) to \$598 per acre.

Further, 56% of residential customers will see a *decrease* in their drainage charge based on the BIA methodology. Programs to mitigate residential drainage charges include a 25% automatic credit (which includes a credit for downspout disconnection), parcels with less



than .02 impervious acres are not subject to the drainage charge, and any customer may request a site assessment if they dispute the amount of impervious acres attributed to their parcel or if they would like a consultation whether removal of impervious surfaces will lower their drainage charge bill.

23. Stormwater Management is a new appropriation in FY 2019. 13 new staff positions and 3 staff transferred from Operations support this new program. What will the Stormwater Management Group and appropriation in FY 2018-2019 do? How will they keep drainage costs down?

DWSD RESPONSE:

The Stormwater Management Group (SMG) manages the Drainage Charge Program, drainage charge engineering projects, customer inquiries, post construction stormwater ordinance and permit issuance, capital partnership administration and management, stormwater management practice inspection and construction oversight, stormwater permit compliance engineering and administration, administration and management of permit compliance and technical support contract. Generally, stormwater management projects divert run-off away from and out of the combined sewerage overflow system, which should collectively reduce the volume treated sewage costs allocable to the DWSD retail system, and which will likely reduce an individual customer's BIA assessment.

The two keys to lowering drainage costs for all customers are: (1) incentivizing greenspace infrastructure projects to reduce the amount of stormwater that flows into the combined sewerage overflow system and (2) high collection rates, whereby all customers are billed at the same equitable rate and pay their fair share of the cost to treat stormwater runoff.

24. How do the results of the new "Term Sheet" negotiated with GLWA and approved by the BOWC on April 4, 2018 impact the FY 2018-2019 budget? Please detail the benefits and obligations to DWSD that will occur in the FY 2017-2018 and FY 2018-2019 budgets such as reduction in debt service.

DWSD RESPONSE:

DWSD experienced a variety of benefits from the recently negotiated Term Sheet, now codified in the MOU. Debt service was reduced to \$455 million and \$370 million for water and sewer, respectively, and is now fixed. DWSD will also be credited \$5.6 million with the final Sewer lookback adjustment. DWSD will not budget for Extraordinary Repair & Replacement (ER&R). GLWA will transfer to DWSD a total of \$51.66 million. Finally, the Term Sheet simplifies the funding requirements for the Master Bond Ordinance and Water and Sewer Services Agreement.



25. Section 10 of the "Term Sheet" requires DWSD to develop a quarterly budget to actual report for revenues and expenses for Operations and Maintenance, Improvements and Extensions, and Construction Bond activities. If this has been developed, please provide a copy.

DWSD RESPONSE:

The report has not been developed yet. The first report is due the first quarter of FY2019.

26. What is the amount for City of Detroit provided services to DWSD such as the OCFO and Central Staff Services in the DWSD FY 2018-2019 amended budget?

DWSD RESPONSE:

The BOWC approved budget includes \$2,043,100 for staff services.

27. What is the allocated IT shared service of \$7.4 million in DWSD's FY 2018-2019 amended budget?

DWSD RESPONSE:

The Information Technology shared service cost is for information technology services that GLWA provides DWSD through the shared services agreement. There are nine separate services that DWSD pays for through this agreement. The services are for software and hardware support for a range of software packages related to retail water & sewerage services provided to DWSD retail customers. Examples of the software supported are retail meter reading technology, customer service and billing software, See-Click-Fix, work order and asset management software, and geographic information system. GLWA also provides hardware support from desktop and network support to system interface support.

28. What is the FY 2018-2019 revenue budget for fire hydrant maintenance that is billed to the Detroit Fire Department?

DWSD RESPONSE:

The fire hydrant maintenance is a DWSD expense. We do not bill the Detroit Fire Department for hydrant maintenance.

29. What is the total number of vacant positions for DWSD as of May 31, 2018? Please provide a year-to-date budgeted versus actual FTE report for both Water and Sewer.



DWSD Response:

| Month          | Budget | Actual | Vacant |
|----------------|--------|--------|--------|
| July 2017      | 579    | 488    | 91     |
| August 2017    | 579    | 488    | 91     |
| September 2017 | 579    | 486    | 93     |
| October 2017   | 579    | 506    | 73     |
| November 2017  | 579    | 510    | 69     |
| December 2017  | 579    | 508    | 71     |
| January 2018   | 579    | 522    | 57     |
| February 2018  | 579    | 529    | 50     |
| March 2018     | 579    | 520    | 59     |
| April 2018     | 579    | 529    | 50     |
| May 2018       | 579    | 539    | 40     |

30. Page B48-8 of the City's Four-Year Financial Plan adopted by City Council and approved by the Financial Review Commission (Attachment 7) shows that the Deputy Director position for DWSD is not budgeted in FY 2019. Please explain.

DWSD RESPONSE:

The Deputy Director's title in the payroll system is included under the Executive Management Team.

31. Page B48-10 of the Four-Year Financial Plan (Attachment 8) shows that the Chief Financial Officer position is not budgeted in FY 2019. Please explain.

DWSD RESPONSE:

The Chief Financial Officer's title in the payroll system is included under the Executive Management Team.

32. How does DWSD's liquidity look at May 31, 2018, especially for the Sewer Fund? What is the amount owed to GLWA as of May 31, 2018 for loans to DWSD?



DWSD RESPONSE:

The combined Sewer Funds' cash balance is \$57.1 million as of May 31, 2018.

33. Why are the WRAP contributions less for FY 2018-2019?

DWSD RESPONSE:

Under the Water and Sewer Services Agreement, WRAP program funding equals 0.5% of the base budgeted operating revenues for the Detroit Local Systems for each fiscal year. Therefore, the funding amount will vary annually. Also, fiscal year 2018 included some carryover expenses from FY 17.

We hope you have found these responses helpful and informative.





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

DETROIT CITY COUNCIL,

Plaintiffs,

Case No.

vs.

Hon.

DETROIT WATER AND SEWERAGE DEPARTMENT,

MIKE DUGGAN in his official capacity as

**COMPLAINT AND PETITION**

Mayor of the City of Detroit, and MELVIN

**FOR WRIT OF MANDAMUS**

BUTCH HOLLOWELL in his official capacity as

Corporation Counsel of the City of Detroit,

Defendants.

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*Attorney for Plaintiffs:*

**COMPLAINT AND PETITION FOR WRIT OF MANDAMUS**

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint. However, the transaction or occurrence alleged in the complaint arises in part out of two (2) resolved federal civil actions: 1) *United States of America vs. City of Detroit, et al, Case No. 77-71100 (US ED MI) (Hon. Sean F. Cox)*; and 2) *In Re City of Detroit, Case No. 13-53846-swr (US ED MI Bankruptcy Court) (Hon. Steven W. Rhodes)*

\_\_\_\_\_  
(s)

Plaintiffs, by and through their Counsel, for their Complaint and Petition for Writ of Mandamus, pursuant to MCR 3.305 and all other relevant provisions of law as stated in this Complaint, say as follows:

**Introductory Statement**

The filing of this action is necessitated by the clear, mandatory terms of the Detroit City Charter and Code of Ordinances, together with Defendants' continuous failure and refusal to comply with them in 2016 and 2017 by annually submitting the retail water and sewerage rates for the City of Detroit, and the Detroit Water and Sewerage Department (DWSD) budget, to Plaintiff Detroit City Council for their approval as required by the Charter and the Code.

## JURISDICTION AND VENUE

1. This Honorable Court has subject matter jurisdiction over this action pursuant to MCL 600.605, MCR 2.605 and MCR 3.305.
2. This Honorable Court has personal jurisdiction over Defendants named herein because they are a public agency and public officials of the City of Detroit, respectively, who are sued in their official capacities in order to enforce the performance of their official duties, MCR 2.201(C)(5), for violation of the City of Detroit's own Charter and ordinances.
3. Venue is proper in this Honorable Court because the wrongs alleged in this complaint have occurred and continue to occur in Wayne County, and the Defendants are located in and have their principal places of business in Wayne County.

## PARTIES

4. Plaintiff Detroit City Council is the legislative body of the City of Detroit, pursuant to Section 4-101 of the Charter of the City of Detroit.
5. Defendant Detroit Water and Sewerage Department (DWSD) is the retail water and sewer utility for the City of Detroit, a department of City government pursuant to Section 7-1201 of the Charter of the City of Detroit, whose scope of responsibilities are further defined by orders entered in the resolved federal civil actions of: 1) *United States of America vs. City of Detroit, et al, Case No. 77-71100 (US ED MI) (Hon. Sean F. Cox)*; and 2) *In Re City of Detroit, Case No. 13-53846-swr (US ED MI Bankruptcy Court) (Hon. Steven W. Rhodes)*, and by subsequent Memoranda of Understanding, Leases, Shared Services Agreements and other documents executed by DWSD and the Great Lakes Water Authority (GLWA).
6. Defendant Mike Duggan is the Mayor of the City of Detroit, pursuant to Section 5-101 of the Charter of the City of Detroit, and is responsible for appointing the members of the Board of Water Commissioners, pursuant to Section 7-1201 of the Charter of the City of Detroit. He is sued in his official capacity only.
7. Defendant Melvin Butch Hollowell is the Corporation Counsel of the City of Detroit, pursuant to Section 7.5-201 of the Charter of the City of Detroit, and is responsible for representation and legal counsel of both the City of Detroit as a body corporate, and of agents and officials of the City of Detroit, including but not limited to implementing mandatory prelitigation Intra-Government Dispute Resolution procedures, pursuant to Section 7.5-208 of the Charter of the City of Detroit. He is sued in his official capacity only.

## SUBSTANTIVE ALLEGATIONS

8. At all times relevant herein, the Detroit Water and Sewerage Department (DWSD) has been a department of city government of the City of Detroit.

9. Before 2016, DWSD provided wholesale water and sewer services to communities throughout southeastern Michigan.
10. Since January 1, 2016, DWSD has been bifurcated into the retail provider of water and sewer services within the City of Detroit, and has leased its infrastructure to the Great Lakes Water Authority (GLWA) as the new regional wholesale provider of water and sewer services to communities throughout southeastern Michigan.
11. In 1977 the United States Environmental Protection Agency (EPA) sued DWSD under the Clean Water Act, and that litigation (*United States of America vs. City of Detroit, et al, Case No. 77-71100 (US ED MI) (Hon. Sean F. Cox)*) remained pending until 2013 and was briefly reinstated in 2015, with Judge Cox serving as a mediator in negotiations that led to bifurcation of DWSD and GLWA, and also entering orders regarding procedures to be followed by DWSD, including, *inter alia*, which contracts DWSD is required to submit to Detroit City Council for approval. Significantly, Judge Cox never ordered that the retail water and sewerage rates for the City of Detroit and the Detroit Water and Sewerage Department budget are not required to be submitted to Plaintiff Detroit City Council for their approval as required by the Charter and the Code.
12. In 2013 the City of Detroit, acting by and through a state-appointed emergency manager, filed for bankruptcy protection (*In Re City of Detroit, Case No. 13-53846-swr (US ED MI Bankruptcy Court) (Hon. Steven W. Rhodes)*). The bankruptcy court appointed Judge Cox to mediate the negotiations that led to bifurcation of DWSD and GLWA. The City of Detroit continues to operate its municipal government pursuant to the Plan of Adjustment entered into and confirmed by the bankruptcy court. Nothing in the Plan of Adjustment or any other bankruptcy court order or GLWA agreement requires that the retail water and sewerage rates for the City of Detroit and the DWSD budget are not required to be submitted to Plaintiff Detroit City Council for their approval as required by the Charter and the Code.
13. In 2015, while DWSD and GLWA were in the process of bifurcation, and after the Memorandum of Understanding in September 2014 that created the GLWA and left DWSD responsible for retail water and sewer services within the City of Detroit, Defendants submitted DWSD's retail rates and budget to Detroit City Council for approval, as required by the Charter and the Code. Plaintiff Detroit City Council initially rejected DWSD's proposed retail rate increase, and then approved it after further proceedings.
14. In 2016 and 2017, Defendants failed and refused to submit DWSD's retail rates and budget to Detroit City Council for approval, in violation of the Charter and the Code.
15. On or about April 18, 2017, Plaintiff Detroit City Council duly approved the attached Resolution to Establish City Council's Authority over DWSD Rates and Budget Under the City Charter and City Code, or to Invoke Section 7.5-208 of the Charter.

16. On or about May 18, 2017, Plaintiff's counsel requested of Defendant Hollowell in writing a meeting between the Detroit City Council President and Defendant Duggan, pursuant to Section 7.5-208 of the City Charter, requiring mandatory prelitigation Intra-Government Dispute Resolution procedures.
17. Plaintiff's counsel has on multiple occasions attempted to meet and confer with Defendant Hollowell to cost-effectively and lawfully resolve this matter, as specifically set forth in the attached correspondence dated June 6, 2017, but Defendant Hollowell has continuously failed and refused to substantively respond, necessitating the filing of this action to enforce compliance by Defendants with the Charter and the Code.
18. Section 8-208 of the City Charter, with respect to the City of Detroit's budget, states "Consideration of the budget shall be completed by the City Council as provided by ordinance."
19. Section 9-507 of the City Charter states "Any agency of the City may, with the approval of the City Council, charge an admission or service fee to any facility operated, or for any service provided, by an agency. The approval of the City Council shall also be required for any change in any such admission or service fee." Retail water and sewerage rates are, and must be legally defined as, fees for services provided by DWSD. DWSD is a department of City government.
20. Section 56-3-12(c) of the Detroit City Code states that "The rate to such users [of DWSD's services] shall be established by the board of water commissioners and shall be approved by the city council in accordance with state and local law."
21. Defendants have taken the position, which is unsupported by the plain language of the Charter and the Code, that since the unelected Board of Water Commissioners establishes DWSD's retail rates and budget, and the unelected Financial Review Commission created by the state legislature as part of the "grand bargain" achieved in the bankruptcy has authority over the City's finances, DWSD's retail rates and budget are not required to be submitted to Plaintiff Detroit City Council for approval, contrary to the plain language and common sense meaning the Sections 8-208 and 9-507 of the City Charter, and Section 56-3-12(c) of the Detroit City Code, *supra*.
22. Defendants have continuously failed and refused to implement Section 7.5-208 of the City Charter, requiring mandatory prelitigation Intra-Government Dispute Resolution procedures, although Defendant Hollowell in particular, as Corporation Counsel, is responsible for enforcing the provisions of the Charter, pursuant to Section 7.5-209 of the Charter, thus necessitating the filing of this action.
23. Pursuant to MCR 3.305 an action for mandamus may be brought in Circuit Court.
24. To obtain a writ of mandamus, a plaintiff must show that: 1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled; 2) the defendant has a clear

legal duty to perform; 3) the act is ministerial in nature; and 4) the plaintiff has no other adequate equitable or legal remedy. See, e.g., *White-Bey v Dept. of Corrections*, 239 Mich App 221, 223-224; 608 NW2d 833 (1999); *In Re MCI Telecom Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999); *McKeighan v Grass Lake Twshp Supervisor*, 234 Mich App 194, 211-212; 593 NW2d 605 (1999)

25. Plaintiff has a clear legal right to have DWSD's retail rates and budget submitted to Detroit City Council for approval, as expressly required by Sections 8-208 and 9-507 of the City Charter, and Section 56-3-12(c) of the Detroit City Code, *supra*.
26. Defendants have clear legal duties to perform under Sections 8-208, 9-507 and 7.5-208 of the City Charter, and Section 56-3-12(c) of the Detroit City Code, *supra*.
27. Submitting DWSD's retail rates and budget to Detroit City Council for approval is a ministerial act.
28. Plaintiff has no other adequate equitable or legal remedy for Defendants' continuing violations of the Charter and ordinances of the City of Detroit; Defendants are the very parties who are charged by law with responsibility to enforce these laws, and Plaintiff cannot have any remedy in the absence of court action to enforce Defendants' clear legal duties.

#### **RELIEF REQUESTED**

Wherefore, Plaintiffs respectfully request that This Honorable Court Issue a Writ of Mandamus compelling Defendants to submit the retail water and sewerage rates for the City of Detroit, and the Detroit Water and Sewerage Department (DWSD) budget, to Plaintiff Detroit City Council for their approval as required by the City Charter and the City Code of Ordinances, together with all such other and further relief as the Court deems necessary, appropriate and warranted by the law and the facts.

Respectfully submitted:

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*Attorney for Plaintiffs*



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Sean F. Cox  
United States District Court Judge  
District Court Case No. 77-71100

City of Detroit, *et al.*,

Defendants.

\_\_\_\_\_ /

**F I L E D**  
DEC 15 2015  
CLERK'S OFFICE  
DETROIT

**OPINION & ORDER**  
**ON JOINT MOTION FOR RELIEF FROM JUDGMENT**  
**FILED BY THE CITY OF DETROIT AND**  
**THE DETROIT WATER AND SEWERAGE DEPARTMENT**

In 1977, the United States Environmental Protection Agency initiated this case against the City of Detroit ("the City") and the Detroit Water and Sewerage Department ("DWSD"), alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* The violations alleged in this case, which are undisputed, involve the DWSD's wastewater treatment plant and its National Pollutant Discharge Elimination System ("NPDES") permit. Over the years, a number of other agencies and entities were made parties to this case.

This case was originally assigned to the Honorable John Feikens, who presided over this action for decades, during which time he took various actions aimed at allowing the DWSD to achieve compliance with its NPDES permit and the Clean Water Act. This case was reassigned to this Court on November 24, 2010, following Judge Feikens's retirement. At that time, the Michigan Department of Environmental Quality ("MDEQ") was addressing renewed permit violations and attempting to negotiate yet another remedial plan.



As set forth more fully in prior opinions and orders (*see, e.g.*, Docket Entry Nos. 2397 & 2528), this Court concluded that the DWSD had not achieved even short-term compliance with its NPDES permit, as it self-reported new violations shortly after signing an Administrative Consent Order. This Court further concluded that the record in this case established that, unless more fundamental corrective measures were taken to address the underlying root causes of non-compliance, the DWSD would remain in a recurring cycle where the DWSD is cited for permit violations, the DWSD and the MDEQ agree to a detailed remedial plan, but the DWSD is unable to follow it and is again cited for the same type of violations. Rather than order a remedy on its own, without input from City leaders, the Court took a somewhat unorthodox approach. This Court created a court-ordered committee (“the Root Cause Committee”) to devise and propose a workable plan to address and remedy the underlying root causes of the DWSD’s inability to comply with its NPDES permit and the Clean Water Act.

On November 4, 2011, this Court adopted the Root Cause Committee’s Plan of Action, and its proposed procurement policy, and ordered its implementation. Thereafter, the DWSD hired its first permanent Director since 2008, who began working on implementing the changes ordered.

Significantly, this Court’s November 4, 2011 Order (Docket Entry No. 2410) also included a number of directives that concerned labor issues (“the Court’s November 4<sup>th</sup> Labor Mandates”):

Specifically, the Court hereby **ORDERS** that:

1. The Director of the DWSD, with the input and advice of union leadership, shall develop a DWSD employee training program, a DWSD employee assessment program, and a DWSD apprenticeship training program.

2. Any City of Detroit Executive Orders imposing furlough days upon City employees shall not apply to DWSD employees.
3. The DWSD shall act on behalf of the City of Detroit to have its own CBAs that cover DWSD employees ("DWSD CBAs"). DWSD CBAs shall not include employees of any other City of Detroit departments. The Director of the DWSD shall have final authority to approve CBAs for employees of the DWSD.
4. The Court hereby strikes and enjoins any provisions in current CBAs that allow an employee from outside the DWSD to transfer ("bump") into the DWSD based on seniority. Future DWSD CBAs shall adopt a seniority system for the DWSD that does not provide for transfer rights across City of Detroit Departments (ie., does not provide for "bumping rights" across city departments).
5. DWSD management must be able to explore all available means and methods to achieve compliance with its NPDES permit and the Clean Water Act. DWSD CBAs shall not prohibit subcontracting or outsourcing and the Court hereby strikes and enjoins any provisions in current CBAs that prohibit the DWSD from subcontracting or outsourcing.
6. DWSD CBAs shall provide that excused hours from DWSD work for union activities are limited to attending grievance hearings and union negotiations, with prior notification to DWSD management. The Court strikes and enjoins any current CBA provisions to the contrary.
7. DWSD CBAs shall include a three-year time period pertaining to discipline actions.
8. The Director of the DWSD shall perform a review of the current employee classifications at the DWSD and reduce the number of DWSD employee classifications to increase workforce flexibility. Future DWSD CBAs shall include those revised employee classifications.
9. DWSD CBAs shall provide that promotions in the DWSD shall be at the discretion of management and based upon skill, knowledge, and ability, and then taking seniority into account. The Court strikes and enjoins and current CBA provisions to the contrary.
10. Past practices on operational issues shall not limit operational changes initiated by management with respect to DWSD CBAs.

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11. The Court strikes and enjoins any provisions in existing CBAs that prevent DWSD management from assigning overtime work to employees most capable of performing the necessary work within a classification, at the discretion of management. DWSD CBAs shall provide that management has the discretion to assign overtime work to employees most capable of performing the necessary work within a classification, at the discretion of management.

12. Any existing work rules, written or unwritten, or past practices that are contrary to these changes are hereby terminated.

13. The Court enjoins the Wayne County Circuit Court and the Michigan Employment Relations Commission from exercising jurisdiction over disputes arising from the changes ordered by this Court. The Court also enjoins the unions from filing any grievances, unfair labor practices, or arbitration demands over disputes arising from the changes ordered by this Court.

(Docket Entry No. 2410 at 5-7).

Soon after, three labor unions whose members include employees of the DWSD (Michigan AFSCME Council 25, AFSCME Local 207, and the Senior Accountants and Appraisers Association "SAAA") filed motions seeking to intervene in this action. This Court denied those motions to intervene as untimely. All three of those unions filed interlocutory appeals with the United States Court of Appeals for the Sixth Circuit.

On March 27, 2013, after having entered a number of orders in this action, this Court issued an Opinion and Order Terminating Second Amended Consent Judgment and Closing this Case. Thereafter, the City filed an appeal. At that time, the interlocutory appeals filed by two of the three<sup>1</sup> labor unions who had sought to intervene in this case were still pending in the Sixth Circuit.

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<sup>1</sup>AFSCME Council 25 dismissed its appeal.

On April 8, 2013, the Sixth Circuit reversed this Court's denial of the motions to intervene filed by AFSCME Local 207 and SAAA. *United States v. City of Detroit*, 712 F.3d 925 (6th Cir. April 8, 2013). It appears from certain language contained in the Opinion that, at that time it was issued, the Panel may not have been aware that this Court had already closed this case. *See, e.g. United States v. City of Detroit*, 712 F.3d at 931 (stating that "despite significant progress" the underlying district court case "cannot be expected to end any time soon") and at 932 (stating that "intervention can be limited on a prospective basis" allowing the unions to participate "in new matters" including "participation in shaping future remedial efforts").

In any event, the Sixth Circuit remanded for a limited grant of intervention as to AFSCME Local 207 and SAAA. In that opinion, the majority noted that interested parties "should not be able to join at a late stage and re-litigate issues that they watched from the sidelines." *Id.* at 932. The majority nevertheless reversed and remanded "for a limited grant of intervention." In doing so, the majority stated that "the scope of intervention can be limited on a prospective basis," that the "district court can confine the issues the Unions may raise, limiting intervention to matters that are forum-appropriate" and "[g]iven the district court's greater familiarity with this case and interest in managing its own docket, the district court retains broad discretion in setting the precise scope of intervention." *Id.* at 933. The majority noted, however, that "the core of the Unions' purpose for intervention must be participation in shaping future remedial efforts" and noted that "getting all interested parties to the table promotes an effective and fair solution." *Id.* at 932-33.

This Court intended to hold a status conference with the parties, including the two intervening unions, after issuance of the Mandate. But before the Mandate issued as to the Sixth

Circuit's April 8, 2013 decision,<sup>2</sup> however, the City of Detroit filed a Notice of Appeal in this action. (Docket Entry No. 2532).<sup>3</sup>

After the City filed its Notice of Appeal, the City filed for bankruptcy protection under Chapter 9 of the United States Bankruptcy Code. The City's appeal was held in abeyance pending resolution of the bankruptcy petition pursuant to 11 U.S.C. § 362 of the Bankruptcy Code.

During the City of Detroit's bankruptcy proceedings, the Honorable Steven Rhodes ordered the City and other parties to mediate issues concerning the DWSD and the potential creation of a regional authority to manage the DWSD system. The undersigned was appointed as the mediator of those matters.

In September of 2014, the City and the counties of Macomb, Oakland, Wayne, along with the State of Michigan, executed a Memorandum of Understanding ("MOU") to establish a regional water and sewer/storm water authority to be called the Great Lakes Water Authority (the "GLWA"). The GLWA has since been established and it has entered into a lease agreement with the City pertaining to the regional assets of the DWSD system. The lease agreement has been executed, but will not be effective until certain conditions have been met, by no later than January 1, 2016.

Pursuant to the MOU, the GLWA will operate all regional water and sewer systems and

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<sup>2</sup>The Mandate issued on May 31, 2013.

<sup>3</sup>The City of Detroit's May 22, 2013 Notice of Appeal indicated that the City is appealing several orders issued in this case, including, but not limited to, the November 4, 2011 Order and the March 27, 2013 Opinion & Order Terminating Second Amended Consent Judgment And Closing This Case.

make lease payments to the City, to be applied to either the City's local infrastructure improvements or the City's share of DWSD debt service. Thus, the GLWA will operate the main assets of the system, such as water-treatment plants and the wastewater treatment plant. The City will only manage and operate the local water and sewer infrastructure in Detroit. The parties anticipate that by January 1, 2016, the GLWA will be fully operational, operating and managing the main assets of the system, and that a new, scaled-down version of the DWSD ("DWSD-R") will be operating only the local infrastructure in Detroit.

Given these changed circumstances, the City and the DWSD asked this Court to entertain a Motion for Relief from Judgment, pursuant to Fed. R. Civ. P. 60(b)(6), so that this Court can clarify the applicability of its previous Orders in this case to the City's new local retail water and sewer operation. Significantly, the relief requested by the City/DWSD included this Court ruling that the November 4, 2011 Order would still apply prospectively. They submitted an initial proposed order that contained the specific relief requested. (*See* Docket Entry No. 2559-2 at 7-8).<sup>4</sup>

Because this Court lacked jurisdiction to grant any relief due to the City's pending appeal in the Sixth Circuit, the City and the DWSD asked this Court to make an indicative ruling under Fed. R. Civ. P. 62.1. This Court issued an order on October 14, 2015, indicating that the case should be remanded to this Court for consideration of the requested relief. (Docket Entry No. 2563).

At roughly this same time, the Honorable Thomas J. Tucker, at this Court's

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<sup>4</sup>The City/DWSD later filed alternative proposed orders (*see* Docket Entry Nos. 2561-2 and 2566-1).

recommendation, appointed the Honorable Victoria Roberts as a judicial mediator for the purpose of facilitative mediation of labor relations matters regarding the DWSD-R/Great Lakes Water Authority. That order was entered in connection with the bankruptcy proceeding. In connection with that mediation, Judge Roberts met with the City/DWSD and with numerous unions, including but not limited to the three unions that are parties to this case (AFSCME Council 25, AFSCME Local 207, and SAAA). (See Ex. 1 to this Memorandum Opinion).

On October 30, 2015, the Sixth Circuit issued an Order granting a limited remand so that this Court could consider and rule upon the Joint Motion for Relief.

Thereafter, on November 5, 2015, this Court issued an Order (Docket Entry No. 2565) that explained the course of events and “ORDER[ED] that, if any party to this case opposes any portion of the relief requested by the City and/or the DWSD in the proposed orders (Docket Entry Nos. 2559-2 & 2561-2), that party shall file a brief of no more than 25 pages no later than November 23, 2015.”<sup>5</sup> (*Id.* at 3). That order expressly noted that SAAA and AFSCME Local 207 are now parties to this case and granted AFSCME Council 25 the right to intervene in this case because the Court concluded that AFSCME Council 25 should also have an opportunity to voice any objections to the relief requested by the City/DWSD and/or to propose alternative relief.

Thus, mindful of the Sixth Circuit’s observation that “getting all interested parties to the table promotes an effective and fair solution,” this Court allowed AFSCME Council 25 to intervene, and also expressly gave AFSCME Local 207 and SAAA an opportunity to voice any objections to the relief requested by the City/DWSD and/or to propose alternative

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<sup>5</sup>That date was later extended to November 30, 2015, at the request of Judge Roberts.

**relief before any rulings were made by this Court. That is, this Court gave all three<sup>6</sup> unions the opportunity to address the requested relief concerning future remedial efforts.**

Notably, however, the only party that filed any objections to any of the relief requested by the City/DWSD – including the request that the Court rule as to any labor mandates prospectively – was AFSCME. Although this Court expressly gave SAAA the opportunity to address the relief requested by the City/DWSD, SAAA declined to do so. SAAA elected not to file any objections – or anything else for that matter<sup>7</sup> – in this case and chose to “watch from the sidelines.”

In the mediation, Judge Roberts spent a tremendous amount of time with the City/DWSD and the various unions whose members include employees of the DWSD, over the course of several weeks. With the patient guidance of Judge Roberts, the City/DWSD and AFSCME Council 25 and AFSCME Local 207 were able to resolve a wide ranges of disputes, including but not limited to disputes over any labor mandates that should apply prospectively in this case.

The City/DWSD and AFSCME Council 25 and AFSCME Local 207 ultimately agreed to a Stipulated Order Regarding Labor Matters which was entered by this Court on December 14, 2015.

In addition, the City/DWSD and AFSCME (both AFSCME Council 25 and AFSCME Local 207) were able to resolve AFSCME’s minor stated objections to the order sought by the

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<sup>6</sup>Although several other unions whose members include employees of the DWSD participated in the mediation conducted by Judge Roberts, only the three unions discussed herein sought to intervene in this case.

<sup>7</sup>SAAA did not make any requests for an alternative order, request an evidentiary hearing, or request any alternative procedure for dealing with the pending motion.



City/DWSD. With no other party having voiced any objection to any of the provisions in the requested order, and the Court having reviewed the proposed order and finding its terms to be necessary and appropriate, this Court issued the Order on December 15, 2015.

Having reviewed that Stipulated Order Regarding Labor Matters, having reviewed all filings by the City/DWSD and AFSCME, and having not heard from any other party in this action as to any modifications of this Court's November 4<sup>th</sup> Labor Mandates that should be applied prospectively, the Court hereby **ORDERS** the following:

The Court **ORDERS** the following as its 2015 Labor Mandates that shall apply prospectively to the City/DWSD and any labor unions that were not a party to the December 14, 2015 Stipulated Order Regarding Labor Matters:

1. DWSD, with the input and advice of any or all involved/affected unions, must establish training or apprentice programs.
2. If the City of Detroit should choose to implement furlough days for its employees in the future, whether DWSD implements them for DWSD employees will be the subject of bargaining with its involved/affected unions.
3. The DWSD shall act on behalf of the City of Detroit to have its own Collective Bargaining Agreements that cover DWSD employees ("DWSD CBAs"). DWSD CBAs shall not include employees of any other City of Detroit departments. No DWSD CBAs will become effective prior to Board of Water Commissioners' approval.
4. DWSD, in its reasonable discretion and consistent with its operational needs and staffing requirements, may allow employees displaced from other City of Detroit departments to bump into DWSD, and exercise their seniority rights in their union. These employees can displace the least senior employee in a related lower classification requiring similar job skills, provided the employee can perform the duties of the new position as reasonably determined by

DWSD. In addition, employees seeking to bump must have the necessary skills, training, education, performance, attendance, expertise, competency, certifications, licensing and ability to perform the job, as determined by DWSD in its reasonable discretion and consistent with its operational needs. Bumping must permit (or not interfere with) DWSD's compliance with applicable state and federal environmental and other laws. Bumps must be done without loss of city-wide seniority.

5. DWSD management must be able to explore all available means and methods to achieve compliance with its National Pollutant Discharge Elimination System Permit ("NPDES") permit and the Clean Water Act. Thus, if DWSD intends to outsource work currently performed by DWSD union-represented employees, the current provisions in existing CBAs will apply. In situations where no CBAs exist as of the date of this Order, DWSD should provide timely notice to the affected unions of its intent to outsource or subcontract. If a union wishes to have an opportunity to perform work for which subcontracting bids are sought, any union may submit a proposal to DWSD's Director on a timely basis, proposing that Unions perform the same work instead of it being outsourced. Contractor and union proposals must be evaluated by the same qualifications and quality standards. The DWSD shall retain the work with the union if the union proposal demonstrates that: (a) members of the collective bargaining unit have the necessary skill, expertise and experience to perform the work; (b) members can perform the work in a manner that permits (or does not interfere with) the DWSD's compliance with state and federal environmental and other applicable laws; (c) the cost of the union proposal is reasonably close to the lowest bid from contractors; and (d) its proposal reasonably addresses the work that needs to be done. Taking these considerations into account, DWSD will make the final decision concerning what competitive proposal[s] to accept.

6. Working Stewards, Chief Stewards and Union officials may request time off from supervisors for Weingarten representation duties, labor management meetings, special conferences, grievance processing and investigation (up to and including arbitration), and negotiating collective bargaining agreements. In deciding whether to grant or deny requests, supervisors may take into account DWSD's operational needs and need to comply with applicable state and federal environmental and other laws. Supervisors must be reasonable in granting or denying such requests, and must do so in

writing. Excused hours for these purposes will be part of the Union official's paid work day.

7. DWSD CBAs shall include a (2) two year period pertaining to discipline actions.

8. DWSD retains the ability to reduce employee classifications in order to increase workforce flexibility, based on operational needs.

9. DWSD has the right to promote employees, in its reasonable discretion, taking into account skill, knowledge, ability, training, education, seniority, expertise, performance, attendance and discipline history.

10. Past practices on operational issues shall not limit operational changes initiated by management with respect to DWSD CBAs. Although efforts have been made to address past practices, vestiges of past practices may still exist. The Court's intention is that past practices not impede the future operation of DWSD and that intention is expressed in this paragraph.

11. The Court prohibits any CBA from containing provisions which prevent management from exercising reasonable discretion to assign overtime work to employees most capable of performing the necessary work within a classification. DWSD CBAs must provide that management has the reasonable discretion to assign overtime work to employees most capable of performing the necessary work within a classification, consistent with operational needs.

12. Any existing work rules, written or unwritten, or past practices that are contrary to these changes are hereby terminated. It may be the case that current contracts still contain provisions prohibited by this mandate. It may also be the case that past practices – unwritten – are still being engaged in. This paragraph addresses the intention that this Order will override anything to the contrary.

13. This Court previously enjoined the Wayne County Circuit Court and Michigan Employment Relations Commission ("MERC") from exercising jurisdiction over the changes ordered by the Court. These changes are certain provisions of the November 4, 2011, October 5, 2012, December 14, 2012, and March 27, 2013 Orders, and are referred to as Labor Orders. This injunction is modified as follows:

(a) Except as provided in this Order, labor claims filed or later filed that challenge actions of DWSD which were ordered or specifically permitted by the Labor Orders, are permanently enjoined unless dismissed with prejudice by the parties.

(b) Upon execution of this Order, the injunction previously issued is modified to return jurisdiction to Wayne County Circuit Court, MERC and grievance arbitrators for those claims challenging DWSD actions which were neither ordered nor specifically permitted by Labor Orders. These labor claims may proceed whether filed before or after this Order's date.

(c) There are also certain pending claims where the parties disagree as to whether or not DWSD's actions, which were challenged with such claims, were ordered or specifically permitted to be taken by the Labor Orders. For such claims, the tribunal where the matter is pending will decide whether DWSD's actions were ordered by Labor Orders. This shall occur also for claims yet to be filed.

**IT IS FURTHER ORDERED** that while DWSD is a unitary department of the City of Detroit, the DWSD Human Resource division may continue its autonomous administrative structure, meaning that the division must report to the Director of DWSD and shall not have any reporting requirements to the similar function of the City of Detroit. Further, DWSD is not bound by Section 6-405 of the City's Charter, which outlines the City Civil Service Commission.

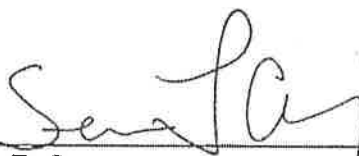
**IT IS FURTHER ORDERED** that these above-quoted Labor Mandates and above rulings are the entire sum and substance of all labor or union employment rulings which will govern DWSD henceforth, as orders from this Court. These 2015 Labor Mandates and this Opinion and Order replace the November 4, 2011 Order and its attachments, which are

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prospectively null and void due to their replacement with this Order, yet remain the historical law of the case retroactively. Additionally, those Orders issued from this Court which concern labor or union employment matters at DWSD are hereby null and void prospectively and are replaced by this Order. Those Orders remain the historical law of the case retroactively. This includes but is not limited to: the November 4, 2011 Order and attachments, the August 23, 2012 Order, the October 5, 2012 Order, the December 14, 2012 Order, the January 30, 2013 Order, and the March 27, 2013 Order.

**IT IS FURTHER ORDERED** that any party to this litigation may seek relief from this Court to request modifications of the 2015 Labor Mandates, starting one year after entry of this Order, and for as long as the 2015 Labor Mandates are in effect. This Court will grant modification if there is not a demonstrable need for the continuation of the mandate(s) at issue.

**IT IS FINALLY ORDERED**, that, with the entry of the December 14, 2015 Stipulated Order Regarding Labor Mandates, and the December 15, 2015 Order, and the issuance of this Opinion & Order, this Court has resolved the pending motion. The Court directs the City, pursuant to Docket Entry No. 2564, to advise the Sixth Circuit that this Court has decided the motion.

  
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Sean F. Cox  
United States District Judge

Dated: December 15, 2015