



DETROIT
**Water & Sewerage
Department**

Office of General Counsel

Water Board Building
735 Randolph Street
Detroit, MI 48226

Phone: (313) 964-9802
Fax: 313-842-6472
detroitmi.gov/dwsd

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made on the date indicated by the execution of this Agreement, by and between the Detroit Water and Sewerage Department ("DWSD") and The Stroh Companies, Inc. ("Customer") (each individually referred to herein as a "Party," and collectively referred to herein as the "Parties").

RECITALS

WHEREAS, historically DWSD has provided the Customer with water, sewer, and drainage services to several parcels within the City of Detroit, covering a total of 31.38 acres ("Original Property"); and

WHEREAS, prior to November of 2016, DWSD billed drainage charges toward Account #30-1033.300 for the total 31.38 acres representing the entire campus associated with 200 and 300 River Place Drive, Detroit, Michigan 48207; and

WHEREAS, Customer sold several parcels prior to the year 2000 but continued to pay billing statements representing the total 31.38 acres resulting in overbilled amounts; and

WHEREAS, DWSD incorrectly billed Customer for drainage charges already assessed to other active accounts; and

WHERE, DWSD owes a credit adjustment to Customer for the double-billed drainage charges; and

WHEREAS, Customer currently maintains six (6) separate accounts with DWSD, listed herein, with a total outstanding balance of \$56,117.70 as of December 31, 2018; and

WHEREAS, DWSD and Customer have agreed to a credit adjustment of \$56,117.70 to be applied across all six (6) accounts resulting in a \$0 balance for each account through the end of 2018 as a compromise offer for the overbilled amounts; and

WHEREAS, Customer acknowledges that the overbilled amounts exceed the proposed \$56,117.70 credit and has waived its right to an audit of the accounts that overbilled for drainage charges; and

WHEREAS, Customer has agreed to remain current on all billing statements issued for the six (6) active accounts starting January 2019; and

WHEREAS, DWSD has an interest in settling this matter and resolving any billing issues that may impede the collection of current and future bills.

AGREEMENT

NOW THEREFORE, for and in consideration of the acts, covenants, representations, payments, warranties and releases set forth below, the parties agree as follows:

1. **Accounts.** Customer currently maintains six (6) actively billed accounts with DWSD. The following breakdown provides each account number and its respective past due amount as of December 31, 2018:

▪ Account #930-6086.300	-	\$195.00
▪ Account #930-6084.300	-	\$15,895.00
▪ Account #40-0377.300	-	\$4,645.31
▪ Account #40-0374.300	-	\$11,309.18
▪ Account #912-3629.300	-	\$22,056.23
▪ Account #912-3634.300	-	\$2,016.98
Total		<u>\$56,117.70</u>

2. **Payments.** For and in consideration of this settlement agreement, the Parties have agreed to settle all six (6) accounts as follows:
- a. Customer will be credited \$56,117.70 to be applied to each respective account as detailed above.
 - b. Customer will make monthly payments in the amount reflected on Customer's monthly billing statement as it relates to water, sewerage and drainage charges, so that Customer remains current on all present and future billing statements as of January 2019.
3. **Customer Accounts.** Customer will remain current on all Accounts from the date of this Agreement and forward.
4. **Collection of Past Due Amounts.** DWSD agrees to suspend all collection actions on the accounts including liens, civil lawsuits and/or disconnection of water service.
5. **Default.** If Customer fails to adhere to any obligation set forth in this Agreement, DWSD may, without notice to the Customer, terminate this Agreement and all outstanding arrearages will become immediately due and owing and DWSD may proceed with all legal remedies to collect the arrearages, including liens, foreclosure of liens, civil litigation and/or disconnection of water service. Notwithstanding the preceding sentence, the Customer will not be deemed to have failed to adhere to a payment obligation hereunder unless Customer fails to pay the undisputed portion of such payment obligation within forty-five (45) days of written notice to Customer from DWSD of such failure.
6. **Representations and Warranties.** Each party represents and warrants that it has full authority to make this Agreement. Each party further represents and warrants that the person signing

this Agreement on its behalf has the full authority to bind that party to all the terms of this Agreement.

7. **No Inducements.** Each party to this Agreement declares and represents that this Agreement is being made without relying on any statement, representation, or omission by any other party to this Agreement, or any third party, that is not expressly contained herein. Each party further declares and represents that it has made such investigation of the law and facts relating to the matters addressed in this Agreement or that may arise as a consequence thereof, as each such party deems necessary, and that it shall not claim that this Agreement is the result of the mistake (whether unilateral or mutual, of law or fact), incapacity, fraud, or misrepresentation (whether innocent, negligent, or intentional).
8. **Knowing, Free and Voluntary Execution.** Each party to this Agreement declares and represents that it has carefully read this Agreement, fully understands its content, has relied solely and completely on its own judgment and upon the advice and counsel of its attorneys, and had executed this Agreement freely and voluntarily and without any impairment, duress or coercion whatsoever.
9. **Receipt of Consideration.** The parties to the Agreement each acknowledge receipt of consideration that is fair, good and sufficient for entering into this Agreement.
10. **Severability.** In case any one or more provisions set forth in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, any such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.
11. **Counterparts.** This Agreement may be executed in counterparts, and if so executed, each counterpart shall have the full force and effect of an original.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
13. **No Admission of Liability.** This Agreement is a compromise of disputed claims and its terms are in no way to be construed as an admission of liability on the part of any party. This Agreement is merely intended to avoid the expense and inconvenience of litigation.
14. **Successors and Assigns.** This Agreement shall be binding upon each party and its heirs, representative, successors, and assigns, and shall inure to the benefit of the other party and its heirs, representatives, successors and assigns.
15. **Release and Covenant Not to Sue.** In executing this Agreement, Customer, on behalf of itself, its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person Customer represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges

the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of past, present and/or future actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, that, with respect to any parcel owned or occupied by Customer at any time, challenge the City's per-acre drainage charge or any other charge in its entirety and/or based on the fact that it seeks to recover the costs incurred by the City to operate, manage, treat and dispose of storm water and surface water runoff (including but not limited to infiltration and inflow as defined under 40 C.F.R. § 35.2005(b)(20)-(21)).

Also, in executing this Agreement, Customer, on behalf of itself, its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person Customer represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the City, and each of its successors and assigns, present and former agents, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever known or unknown, which arise from the beginning of time that, with respect to any parcel owned or occupied by Customer at any time, that concern or relate to (1) the legality of the City's per-acre drainage charges; (2) the City's calculation or assessment of the per-acre drainage charges; (3) the components of costs included in the per-acre drainage charges; and/or (4) the City's efforts to charge and/or collect the per-acre drainage charges. This provision does not release any future claim regarding any fees, charges, tax or other cost the City or DWSD may seek in the future.

This release does not extend to future claims that challenge the administered application of the City's retail drainage charge rate to a particular parcel, -- e.g., a claim that the City has miscalculated the impervious surface area of a particular property or has failed to properly record and deduct paid charges from drainage amounts owed.

16. **Entire Agreement.** This Agreement sets forth the entire, integrated agreement between DWSD and CUSTOMER with respect to the subject matter hereof and supersedes all prior written and unwritten negotiations, agreements, proposals, and understandings with respect to the subject matter hereof. No obligations, agreements, or understandings shall be implied from any of the terms or provisions of this Agreement. This Agreement shall not be orally amended, modified, superseded or cancelled, it being specifically understood that any of the terms, covenants, representations and conditions contained herein may be amended only by written instrument executed by all the parties hereto.
17. **Contact Information.** All reports, notifications, requests and other communications required under this Agreement shall be mailed, hand delivered or emailed to:

City of Detroit Water and Sewerage Department


Attn: Office of General Counsel
735 Randolph Street
Detroit, MI 48226
Email: bahrjac@detroitmi.gov


18. **Term of Agreement.** This Agreement is intended to bind the parties in the absence of fraud or material misrepresentation of fact. This Agreement is effective as of the date the last signature is affixed.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives.

DETROIT WATER AND SEWERAGE
DEPARTMENT

THE STROH COMPANIES, INC.

By: 
Name: Gary R. Brown
Title: Director
Dated: 2/26/19

By: 
Name: Mark K. Tuttle
Title: Vice President - CFO
Dated: 3/5/19