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TO: City of Detroit Water and Sewerage Department Board of Water Commissioners'  
Legal and Government Affairs Committee

FROM: Debra N. Pospiech, Esq., Chief General Counsel

RE: Drainage Charge Litigation

DATE: August 18, 2023

In December 2020, the Michigan Supreme Court vacated a 2018 Court of Appeals decision upholding the city's drainage charge and returned the cases of *Binns vs. City of Detroit* and *DAART vs. City of Detroit* back to the Court of Appeals to conduct factual discovery. Wayne County Circuit Court Judge Patricia Perez Fresard acted as special master for the Court of Appeals and presided over the discovery proceedings.

On August 8, 2023, the Honorable Judge Fresard issued a report to the Court of Appeals with proposed findings of fact and made conclusions of law that the Detroit Water and Sewerage Department stormwater drainage charge is a valid fee. In an exhaustive, 53-page report, Judge Fresard, found that the charge is based on regulatory activity, that it is proportional to the cost of service provided to each customer, and the City's assumptions and estimates relied upon in determining and allocating costs are reasonable, data-informed, and based on best practices. Further, the drainage charge is voluntary in that customers can significantly limit charges by implementing green stormwater infrastructure practices. Thus, the charge meets the constitutional test the Michigan Supreme Court set out in *Bolt v. Lansing*. The court also emphasized that plaintiffs failed to adduce any countervailing evidence. The parties have 21 days to file objections to the report and then the Court of Appeals will issue another ruling.

The report is extremely thorough and addressed every component of the constitutional test to determine the legality of our fee. The team of legal, engineering and financial experts who designed this revised methodology back in 2015 ensured our drainage charge would withstand legal challenges, and after years of litigation we are pleased that, once again, a judge has ruled in our favor.

Thank you for your attention. We will keep you apprised of further developments.

DNP

Attachment – Report to Court of Appeals