

**STATE OF MICHIGAN
IN THE WASHTENAW COUNTY CIRCUIT COURT**

SANDRA HAHN, individually and as
representative of a class of similarly-situated
persons and entities,

Plaintiff,

v.

Case No. 20-000732-CZ
Hon. David S. Swartz

CITY OF ANN ARBOR, a municipal
corporation,

Defendant.

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**DEFENDANT CITY OF ANN ARBOR'S ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES AND RELIANCE ON JURY DEMAND**

Defendant City of Ann Arbor hereby answers Plaintiff's Complaint as follows:

INTRODUCTION

1. As to the allegations in Paragraph 1 of the Complaint, Defendant admits only that Plaintiff has selectively quoted one sentence from *Wolgamood v Village of Constantine*, 302 Mich 384, 404-405 (1942), and it denies all remaining allegations therein as untrue.

2. As to the allegations in Paragraph 2 of the Complaint, Defendant admits only that Plaintiff's Complaint purports to challenge the reasonableness of Defendants water, sewer and stormwater rates and charges, but denies that such allegations are warranted. Defendant denies the remaining allegations in paragraph 2 of the Complaint as untrue.

3. As to the allegations in Paragraph 3 of the Complaint, Defendant admits that Plaintiff has selectively quoted a portion of sentence from an unpublished Court of appeals decision that is referred to in *Mich Ass'n of Home Builders v City of Troy*, 504 Mich 204, 220 (2019), but Defendant denies the remaining allegations therein as untrue. In further response, Defendant states that Plaintiff has intentionally and inappropriately mislabeled the Defendant's charges as "overcharges" in the Complaint because they are not called that and are not overcharges, and use of that term in the Complaint in reference to the City's water, sanitary sewer, and stormwater charges is incorrect and misleading.

4. As to the allegations in Paragraph 4 of the Complaint, Defendant states that it need not respond to the legal conclusions set forth therein, and it further denies each and every allegation, including subparts, as untrue. Defendant further states the alleged charges are not unlawful taxes and are otherwise not unlawful as alleged.

JURISDICTION AND VENUE

5. As to the allegations in Paragraph 5 of the Complaint, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs.

6. As to the allegations in Paragraph 6 of the Complaint, Defendant admits it is a municipality located in Washtenaw County, Michigan, and maintains separate funds for its water, sanitary sewer and stormwater systems and prepares financial statements for each fund, but denies all remaining allegations therein as untrue.

7. As to the allegations in Paragraph 7 of the Complaint, Defendant admits that venue in this Court is proper, but it denies as untrue Plaintiff's alleged basis for the Court's jurisdiction. In further response, Defendant states that if the class is not certified that this case should be removed to District Court because the amount in controversy will be insufficient for this Court to retain jurisdiction.

GENERAL ALLEGATIONS

8. As to the allegations in Paragraph 8 of the Complaint, Defendant admits only that Plaintiff appears to have selectively paraphrased information from the City's webpage regarding its water system at (<https://www.a2gov.org/departments/water-treatment/Pages/Water-Supply-and-Treatment.aspx>), but denies that Plaintiff's paraphrasing is complete or entirely accurate and leaves Plaintiff to her proofs.

9. As to the allegations in Paragraph 9 of the Complaint, Defendant admits only that City water rates are typically reviewed annually and recommended to City Council for adoption as an ordinance amendment after a public hearing process.

10. As to the allegations in Paragraph 10 of the Complaint, Defendant neither admits nor denies that Plaintiff has received water service from the City and paid for such service because neither the Complaint nor Summons contains her address and Defendant lacks of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs. Defendant denies that its water rates are "imposed," and states affirmatively that they are lawfully established as rates applicable to persons choosing

to reside and conduct business in the City of Ann Arbor and use the water system. Defendant denies all remaining allegations therein as untrue, and further answers that Defendant's Code of Ordinances, Chapter 27, Section 2:22a(1), states the following relating to the regulations for connecting to the City's water system:

(1) Except as provided in subsection (2), The owner of any house, building or property that is used for human occupancy, employment, recreation, or other purposes, and abutting on any street, alley or right-of-way in which a public water main is available, is required at the owner's expense, to install and maintain suitable potable water facilities therein (as required by Michigan building code(s)) and, except as provided below, to connect the facilities directly to a City of Ann Arbor owned water main in accordance with the provisions of this chapter, provided that the public water main is within 200 feet of the property line, or if required by the Washtenaw County Health Department. Such connection must be completed within 90 days after the date of official notice to do so by the city. The city will determine which main will serve which properties and structures, and will determine the point of connection to the water main for each property.

11. As to the allegations in Paragraph 11 of the Complaint, Defendant admits only that Plaintiff appears to have paraphrased selective information from parts of the City's webpage regarding its wastewater system at (<https://www.a2gov.org/departments/waste-water-treatment/pages/default.aspx>), but it denies that Plaintiff's paraphrasing is complete or entirely accurate and leave Plaintiff to her proofs.

12. As to the allegations in Paragraph 12 of the Complaint, Defendant admits only that City sanitary sewer rates are typically reviewed annually and recommended to City Council for adoption as an ordinance amendment after the public hearing process and whereby customers pay their appropriate share in compliance with Michigan law.

13. As to the allegations in Paragraph 13 of the Complaint, Defendant neither admits nor denies that Plaintiff has received sewer service from the City and paid for such service because neither the Complaint nor Summons contains her address and Defendant lacks of

sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs. Defendant denies that its water rates are “imposed,” and states affirmatively that they are lawfully established as rates applicable to persons choosing to reside and conduct business in the City of Ann Arbor and use the sewer system. Defendant denies that Plaintiff has completely and accurately stated and characterized the sewer connection regulations and further answers that Defendant’s Code of Ordinances, Chapter 28, Section 2:42.2(7), states the following relating to the connection and maintenance requirements and responsibilities; cost of obligations, states the following relating to the requirements for connecting to the City’s sewer system:

(7) Connection to sewer required.

A. Except as provided in subsections C and D, the owner of any house, building, or property which is used for human occupancy, employment, recreation, or other purposes, and abutting on any street, alley, or right-of-way in which the POTW is available, is required, at the owner's expense, to install and maintain suitable wastewater disposal facilities therein (as required by Chapter 100 of the Code) and to connect the facilities directly to the POTW (except under conditions described in section 2:42.2(7)(B)) in accordance with the provisions of this chapter within 90 days after date of official notice to do so, provided that the POTW is within 200 feet (61 meters) of the property line, or if required by the Washtenaw County Health Department or its successor. All wastewater from these houses, buildings, or properties shall be discharged to the POTW. Any septic tanks, cesspools, or similar wastewater disposal facilities shall, upon connection to the POTW either be emptied of wastes and refilled with suitable material to prevent collapse or removed.

B. An owner of any house, building, or property in the city which is used for human occupancy, employment, recreation, or other purposes, and abutting on any street, alley, or right-of-way may indirectly connect to the POTW provided either of the following conditions have been met:

i. A joint use agreement exists between the City of Ann Arbor and the sewer owner that allows City of Ann Arbor residents to transport discharge to the POTW for treatment and/or disposal.

ii. The owner of the house, building, or property has irrevocable permission, running with the property to be served, that allows the owner to transport discharge to the POTW for treatment and/or disposal and the City of Ann Arbor has an agreement with the sewer owner to comply with all the provisions of Chapter 28 of the City of Ann Arbor City Code and all tap fees and improvement or capital recovery charges have been paid.

C. Subsection A shall not apply to any persons served by a privately constructed, owned, operated, and maintained wastewater sewer and wastewater treatment facility that discharges directly to a natural outlet in accordance with the provisions of this chapter and applicable state and federal laws.

D. If a property becomes subject to the requirements of subsection A because it is annexed into the city by petition of the city to the State Boundary Commission or its successor, or because it is annexed as the result of mutual resolutions of the City of Ann Arbor and a neighboring township that adjust the city-township boundary, and if the POTW is available and within 200 feet (61 meters) of the property line on the date the annexation of the property is final, the official notice from the city to connect within 90 days provided for in subsection A will not be sent to the owner of the property before 18 months have elapsed after the date the annexation of the property is final. All the other provisions of subsection A still apply.

14. As to the allegations in Paragraph 14 of the Complaint, Defendant admits that the City maintains a stormwater system that is separate from its sanitary sewer system. In further response, the City's stormwater system is used not only to collect and convey stormwater, but also provides, among many other things, detention, various forms of treatment, and both vegetative and structural methods and maintenance to increase ground filtration. Defendant denies all remaining allegations in Paragraph 14 of the Complaint as untrue.

15. As to the allegations in Paragraph 15 of the Complaint, Defendant neither admits nor denies that Plaintiff has been assessed and paid for her use and benefit from the City's stormwater system and service because neither the Complaint nor Summons contains her address and Defendant lacks of sufficient knowledge or information upon which to form a belief as to the

truth of the allegations and thereby leaves Plaintiff to her proofs. In further response to Paragraph 15 of the Complaint, Defendant admits only that the users of the City stormwater system pay fees to the City, which are used for purposes of regulating, operating, maintaining, and improving said system, and Defendant denies all remaining allegations therein as untrue.

16. As to the allegations in Paragraph 16 of the Complaint, Defendant denies the allegations therein as untrue.

THE RATE OVERCHARGES

17. As to the allegations in Paragraph 17 of the Complaint, Defendant denies the allegations therein as untrue and further answers that the City's water and sanitary sewer rates and charges are based on annual studies, reviews, assessments, evaluations and updates of system and financial plans and needs to determine the funds required to properly and continually provide the services and operate and maintain the systems, and then the City sets rates whereby users of the systems pay their appropriate share in compliance with Michigan law.

18. As to the allegations in Paragraph 18 of the Complaint, Defendant denies Plaintiff's characterization that any amount in the City's water and sewer funds was excessive. Defendant also denies that its water and sewer charges are "imposed," and states affirmatively that they are established as rates applicable to persons choosing to reside and conduct business in the City of Ann Arbor and who use and benefit from the water and sewer systems. Further, Plaintiff's allegations fail to identify the source(s) of the specific amounts referenced therein, and Defendant neither admits nor denies such allegations for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs. Answering further, among other things, the City's financial statements for its water and sewer funds reflect substantial capital investment projects, one of which includes a wastewater treatment plant upgrade project at a cost of approximately \$160 million.

19. As to the allegations in the first two sentences of Paragraph 19 of the Complaint, Defendant denies the allegations therein as untrue and further answers that the City's stormwater system rates and charges are based on annual studies, reviews, assessments, evaluations and updates of system and financial plans and needs to determine the funds required to properly and continually provide the services and operate and maintain the system, and then the City sets rates whereby users of the system pay their appropriate share in compliance with Michigan law. Answering the third sentence in Paragraph 19 of the Complaint, Defendant denies Plaintiff's characterization that any amount in the City's stormwater fund was excessive, and Defendant also denies that its stormwater charges are "imposed," and states affirmatively that they are established as rates applicable to persons choosing to reside and conduct business in the City of Ann Arbor and who use and benefit from the stormwater system. In further response to said third sentence, Plaintiff's allegations fail to identify the source(s) of the specific amounts referenced therein, and Defendant neither admits nor denies such allegations for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs.

20. As to the allegations in Paragraph 20 of the Complaint, Defendant denies the allegations therein as untrue.

21. As to the allegations in Paragraph 21 of the Complaint, Plaintiff fails to identify the source(s) of the specific amounts referenced therein, and Defendant neither admits nor denies such allegations for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs. Defendant denies the remaining allegations in Paragraph 20 of the Complaint as untrue.

22. As to the allegations in Paragraph 22 of the Complaint, Defendant denies the allegations therein as untrue.

23. As to the allegations in Paragraph 23 of the Complaint, Defendant admits that its Forestry Department manages its urban forest, but denies the remaining allegations therein as untrue.

24. As to the allegations in Paragraph 24 of the Complaint, Defendant denies the allegations therein as untrue.

25. As to the allegations in Paragraph 25 of the Complaint, Defendant denies the allegations therein as untrue.

26. As to the allegations in Paragraph 26 of the Complaint, Defendant denies the allegations therein as untrue.

27. As to the allegations in Paragraph 27 of the Complaint, Defendant denies the allegations therein as untrue.

28. As to the allegations in Paragraph 28 of the Complaint, Defendant admits only that Plaintiff has selectively quoted a single sentence from page 46 of the City's FY20 Budget and states that Plaintiff uses the quoted statement out of context, and misconstrues and draws improper conclusions from it. Defendant denies all remaining allegations therein as untrue.

29. As to the allegations in Paragraph 29 of the Complaint, Defendant denies the allegations therein as untrue.

30. As to the allegations in Paragraph 30 of the Complaint, Defendant admits only that it retained Stantec in 2017 to provide a Water and Sewer Cost of Service Study, and it denies the remaining allegations therein as untrue.

31. As to the allegations in Paragraph 31 of the Complaint, Defendant denies the allegations therein as untrue.

32. As to the allegations in Paragraph 32 of the Complaint, Defendant admits only that it retained Stantec in 2017 to provide a Stormwater Cost of Service Study, and it denies the remaining allegations therein as untrue.

33. As to the allegations in Paragraph 33 of the Complaint, Defendant denies the allegations therein as untrue.

34. As to the allegations in Paragraph 34 of the Complaint, Defendant denies the allegations therein as untrue.

35. As to the allegations in Paragraph 35 of the Complaint, Defendant denies the allegations therein as untrue.

36. As to the allegations in Paragraph 36 of the Complaint, Defendant denies the allegations therein as untrue.

37. As to the allegations in Paragraph 37 of the Complaint, Defendant admits only that Plaintiff has quoted Section 15.5 of the City of Ann Arbor Charter, and Defendant denies all remaining allegations therein as untrue.

CLASS ALLEGATIONS

38. As to the allegations in Paragraph 38 of the Complaint, Defendant admits that MCR 3.501 provides for class actions, but it denies that Plaintiff's Complaint contains the factual allegations necessary under that Court Rule and applicable law to be certified as a class action.

39. As to the allegations in Paragraph 39 of the Complaint, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs.

40. As to the allegations in Paragraph 40 of the Complaint, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations that Plaintiff's claims are typical of claims of possible members of the undefined class she seeks to represent, and therefore leaves Plaintiff to her proofs. Defendant denies as untrue that it engaged in any wrongful conduct and denies as untrue, for reasons in this Answer, that Plaintiff or any intended class member has been injured by any conduct of Defendant.

41. As to the allegations in Paragraph 41 of the Complaint, Defendant denies as untrue that it engaged in any wrongful conduct and denies as untrue for reasons in this Answer, and states affirmatively that it has not acted wrongfully as to Plaintiff or any member of the class she seeks to represent.

42. As to the allegations in Paragraph 42 of the Complaint, Defendant denies the allegations therein, including all subparts, as untrue. Defendant further denies the legal conclusions alleged which are not factually supported and disregard the questions of fact that would not be common to whatever class members are intended.

43. As to the allegations in Paragraph 43 of the Complaint, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs. Defendant further states the Complaint contains no allegations regarding the time period Plaintiff claims to have been a water, sewer and stormwater customer that are necessary to establish her standing and interests in fairly and adequately representing the class.

44. As to the allegations in Paragraph 44 of the Complaint, Defendant neither admits nor denies the allegations contained therein for lack of sufficient knowledge or information upon which to form a belief as to the truth of the allegations and thereby leaves Plaintiff to her proofs.

COUNT I

UNJUST ENRICHMENT UNREASONABLE WATER AND SEWER RATES AND CHARGES

45. As to the allegations in Paragraph 45 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

46. As to the allegations in Paragraph 46 of the Complaint, this paragraph selectively cites to or paraphrases from *Mapleview Estates v City of Brown City*, 258 Mich App 412 (2003), and that citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

47. As to the allegations in Paragraph 47 of the Complaint, Defendant denies the allegations therein as untrue.

48. As to the allegations in Paragraph 48 of the Complaint, Defendant denies the allegations therein as untrue and specifically denies any improper conduct or collection of money to which the Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to the Defendant's rate payors. In further response, there have been no overcharges.

49. As to the allegations in Paragraph 49 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

50. As to the allegations in Paragraph 50 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

COUNT II

**UNJUST ENRICHMENT – VIOLATION OF MCL 141.91
WATER AND SEWER RATES AND CHARGES**

51. As to the allegations in Paragraph 51 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

52. As to the allegations in Paragraph 52 of the Complaint, Defendant admits only that Plaintiff has cited and partially quoted from MCL 141.91, and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

53. As to the allegations in Paragraph 53 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

54. As to the allegations in Paragraph 54 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

55. As to the allegations in Paragraph 55 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

56. As to the allegations in Paragraph 56 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

57. As to the allegations in Paragraph 57 of the Complaint, Defendant denies the allegations therein as untrue.

COUNT III

UNJUST ENRICHMENT – CHARTER VIOLATION WATER AND SEWER RATES AND CHARGES

58. As to the allegations in Paragraph 58 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

59. As to the allegations in Paragraph 59 of the Complaint, Defendant admits only that Plaintiff has cited and partially quoted City Charter §15.4(a), and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

60. As to the allegations in Paragraph 60 of the Complaint, Defendant denies the allegations therein as untrue. In further response Plaintiff selectively ignores and fails to consider the entirety of Charter Section 15.4 and to fully understand the entirety of the purpose for which rates have been set, including, among other things, full cost of service.

61. As to the allegations in Paragraph 61 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

62. As to the allegations in Paragraph 62 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

63. As to the allegations in Paragraph 63 of the Complaint, Defendant denies the allegations therein as untrue.

COUNT IV

**ASSUMPSIT – MONEY HAD AND RECEIVED
UNREASONABLE WATER AND SEWER RATES AND CHARGES**

64. As to the allegations in Paragraph 64 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

65. As to the allegations in Paragraph 65 of the Complaint, this paragraph selectively cites to or paraphrases from *Mapleview Estates v City of Brown City*, 258 Mich App 412 (2003), and that citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

66. As to the allegations in Paragraph 66 of the Complaint, Defendant denies the allegations therein as untrue, and it denies that Defendant's water and sewer rates have been or are arbitrary, capricious, and unreasonable.

67. As to the allegations in Paragraph 67 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which the Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to the Defendant's rate payors. In further response, there have been no overcharges.

68. As to the allegations in Paragraph 68 of the Complaint, Defendant denies the allegations therein as untrue and because there were no excess amounts paid to the Defendant.

69. As to the allegations in Paragraph 69 of the Complaint, Defendant denies the allegations therein as untrue, and because the charges were not illegal and therefore charges paid are not recoverable via a claim of assumpsit. In further response, there have been no overcharges.

COUNT V

**ASSUMPSIT – MONEY HAD AND RECEIVED
VIOLATION OF MCL 141.91
WATER AND SEWER RATES AND CHARGES**

70. As to the allegations in Paragraph 58 [sic - duplicate]¹ of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

71. As to the allegations in Paragraph 59 [sic - duplicate] of the Complaint, Defendant admits only that Plaintiff has partially quoted from MCL 141.91, and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

72. As to the allegations in Paragraph 60 [sic - duplicate] of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

73. As to the allegations in Paragraph 61 [sic - duplicate] of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

74. As to the allegations in Paragraph 62 [sic - duplicate] of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

¹ Count V begins with paragraph 58 which is an error in the consecutive numbering of allegations. Defendant's Answer notes this duplication of paragraphs 58-69.

75. As to the allegations in Paragraph 63 [sic - duplicate] of the Complaint, Defendant denies the allegations and legal conclusions therein as untrue.

76. As to the allegations in Paragraph 64 [sic - duplicate] of the Complaint, Defendant denies the allegations therein as untrue and because the fees were not illegal and therefore not recoverable via a claim of assumpsit. In further response, there have been no overcharges.

COUNT VI

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS WATER AND SEWER RATES AND CHARGES

77. As to the allegations in Paragraph 65 [sic – duplicate] of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

78. As to the allegations in Paragraph 66 [sic – duplicate] of the Complaint, Defendant admits only that Plaintiff has partially quoted City Charter §15.4(a), and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

79. As to the allegations in Paragraph 67 [sic - duplicate] of the Complaint, Defendant denies the allegations therein as untrue. In further response, Plaintiff selectively ignores and fails to consider the entirety of Charter Section 15.4 and to fully understand the entirety of the purpose for which rates have been set, including, among other things, full cost of service.

80. As to the allegations in Paragraph 68 [sic - duplicate] of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

81. As to the allegations in Paragraph 69 [sic - duplicate] of the Complaint, Defendant denies the allegations and legal conclusions therein as untrue.

82. As to the allegations in Paragraph 70 of the Complaint, Defendant denies the allegations therein as untrue and because the fees were not illegal and therefore not recoverable via a claim of assumpsit. In further response, there have been no overcharges.

COUNT VII

UNJUST ENRICHMENT UNREASONABLE STORMWATER RATES AND CHARGES

83. As to the allegations in Paragraph 71 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

84. As to the allegations in Paragraph 72 of the Complaint, this paragraph selectively cites to or paraphrases from *Mapleview Estates v City of Brown City*, 258 Mich App 412 (2003), and that citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

85. As to the allegations in Paragraph 73 of the Complaint, Defendant denies the allegations therein as untrue, and it denies that Defendant's water and sewer rates have been or are arbitrary, capricious, and unreasonable.

86. As to the allegations in Paragraph 74 of the Complaint, Defendant denies the allegations therein as untrue and specifically denies any improper conduct or collection of money to which the Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to the Defendant's rate payors. In further response, there have been no overcharges.

87. As to the allegations in Paragraph 75 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

88. As to the allegations in Paragraph 76 of the Complaint, Defendant denies the allegations therein as untrue.

COUNT VII

**UNJUST ENRICHMENT – VIOLATION OF MCL 141.91
STORMWATER RATES AND CHARGES**

89. As to the allegations in Paragraph 77 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

90. As to the allegations in Paragraph 78 of the Complaint, Defendant admits only that Plaintiff has partially quoted from MCL 141.91, and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

91. As to the allegations in Paragraph 79 of the Complaint, Defendant denies the allegations therein as untrue for the reasons stated] in this Answer, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

92. As to the allegations in Paragraph 80 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

93. As to the allegations in Paragraph 81 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

94. As to the allegations in Paragraph 82 of the Complaint, Defendant denies the allegations therein as untrue. In further response, there have been no overcharges.

95. As to the allegations in Paragraph 83 of the Complaint, Defendant denies the allegations therein as untrue.

COUNT IX

UNJUST ENRICHMENT – CHARTER VIOLATION STORMWATER RATES AND CHARGES

96. As to the allegations in Paragraph 84 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

97. As to the allegations in Paragraph 85 of the Complaint, Defendant admits only that Plaintiff has partially quoted City Charter §15.4(a), and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

98. As to the allegations in Paragraph 86 of the Complaint, Defendant denies the allegations therein as untrue. In further response, Plaintiff selectively ignores and fails to consider the entirety of Charter Section 15.4 and to fully understand the entirety of the purpose for which rates have been set, including, among other things, full cost of service.

99. As to the allegations in Paragraph 87 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

100. As to the allegations in Paragraph 88 of the Complaint, Defendant denies the allegations therein as untrue and because there were not overcharges. In further response, there have been no overcharges.

101. As to the allegations in Paragraph 89 of the Complaint, Defendant denies the allegations therein as untrue.

COUNT X

**ASSUMPSIT – MONEY HAD AND RECEIVED
UNREASONABLE STORMWATER RATES AND CHARGES**

102. As to the allegations in Paragraph 90 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

103. As to the allegations in Paragraph 91 of the Complaint, this paragraph selectively cites to or paraphrases from *Mapleview Estates v City of Brown City*, 258 Mich App 412 (2003), and that citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

104. As to the allegations in Paragraph 92 of the Complaint, Defendant denies the allegations therein as untrue, and it denies that Defendant's water and sewer rates have been or are arbitrary, capricious, and unreasonable.

105. As to the allegations in Paragraph 93 of the Complaint, Defendant denies the allegations therein as untrue and specifically denies any improper conduct or collection of money to which the Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to the Defendant's rate payors. In further response, there have been no overcharges.

106. As to the allegations in Paragraph 94 of the Complaint, Defendant denies the allegations therein as untrue and because there were no excess amounts paid to the Defendant.

107. As to the allegations in Paragraph 95 of the Complaint, Defendant denies the allegations therein as untrue, and because the charges were not illegal and therefore charges paid

are not recoverable via a claim of assumpsit. In further response, there have been no overcharges.

COUNT XI

**ASSUMPSIT – MONEY HAD AND RECEIVED
VIOLATION OF MCL 141.91
STORMWATER RATES AND CHARGES**

108. As to the allegations in Paragraph 96 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

109. As to the allegations in Paragraph 97 of the Complaint, Defendant admits only that Plaintiff has partially quoted from MCL 141.91, and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

110. As to the allegations in Paragraph 98 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

111. As to the allegations in Paragraph 99 of the Complaint, Defendant denies the allegations and legal conclusions therein as untrue. In further response, there have been no overcharges.

112. As to the allegations in Paragraph 100 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

113. As to the allegations in Paragraph 101 of the Complaint Defendant denies the allegations and legal conclusions therein as untrue.

114. As to the allegations in Paragraph 102 of the Complaint, Defendant denies the allegations therein as untrue and because the fees were not illegal and therefore not recoverable via a claim of assumpsit. In further response, there have been no overcharges.

COUNT XII

ASSUMPSIT – MONEY HAD AND RECEIVED CHARTER VIOLATIONS STORMWATER RATES AND CHARGES

115. As to the allegations in Paragraph 103 of the Complaint, Defendant incorporates herein by reference its answers to each of the preceding paragraphs as if set forth fully herein.

116. As to the allegations in Paragraph 104 of the Complaint, Defendant admits only that Plaintiff has partially quoted City Charter §15.4(a), and said quote and citation and this paragraph do not contain allegations against the Plaintiff and, therefore, requires no answer.

117. As to the allegations in Paragraph 105 of the Complaint, Defendant denies the allegations therein as untrue. In further response, Plaintiff selectively ignores and fails to consider the entirety of Charter Section 15.4 and to fully understand the entirety of the purpose for which rates have been set, including, among other things, full cost of service.

118. As to the allegations in Paragraph 106 of the Complaint, Defendant denies the allegations therein as untrue, and specifically denies any improper conduct or collection of money to which Defendant was not entitled, because, among many reasons, the charges having been for the benefit of the water and sewer systems and benefits provided by those systems to Defendant's rate payors. In further response, there have been no overcharges.

119. As to the allegations in Paragraph 107 of the Complaint, Defendant denies the allegations and legal conclusions therein as untrue.

120. As to the allegations in Paragraph 108 of the Complaint, Defendant denies the allegations therein as untrue and because the fees were not illegal and therefore not recoverable via a claim of assumpsit. In further response, there have been no overcharges.

AFFIRMATIVE DEFENSES

Defendant states its Affirmative Defenses to the Complaint as follows:

1. Plaintiff's claims are barred because Defendant's water and sanitary sewer and stormwater rates and charges were, and are, reasonable.

2. Defendant's water and sanitary sewer and stormwater rates and charges were, and are, based on accepted methodology and in accord with state and federal regulations.

3. Plaintiff failed to plead facts in support of her claim that Defendant's water, sanitary sewer and/or stormwater rates and charges were, or are, arbitrary, capricious, or unreasonable.

4. Plaintiff failed to plead facts demonstrating that the rates charged were not necessary.

5. Defendant's rates for the delivery of water and sewer and stormwater services are commensurate with other neighboring communities of like size, age, and population.

6. Plaintiff failed to plead facts demonstrating that Defendant derived a "benefit" from rate payors, to which it was not entitled and was therefore unjustly enriched.

7. Defendant's rate payors benefit from Defendant's delivery of water and sewer and stormwater services.

8. Plaintiff failed to plead facts demonstrating that Defendant levied a tax in violation of MCL 141.91.

9. Plaintiff cannot establish that MCL 141.91 creates a remedy or authorizes a private right of action for refunds or compensatory damages.

10. Plaintiff has not demonstrated that rate payors paid amounts in excess of those allowable under the law.

11. Plaintiff failed to plead facts demonstrating that Defendant violated its Charter, specifically Charter Section 15.4(a).

12. Plaintiff misrepresents and/or misconstrues Defendant's costs, expenditures, projects, and revenues related to the delivery of water and sanitary sewer and stormwater services.

13. Plaintiff's claims are barred because the infrastructure improvements, projects, inspection, maintenance, repairs, and replacements are reasonably related to the delivery of water and sewer and stormwater services, and their funding is appropriate.

14. The Complaint does not allege facts supporting the conclusory allegations that Defendant's charges are unrelated to water and sewer and stormwater functions.

15. Plaintiff's Complaint is frivolous and defense thereof places an unnecessary and unjustifiable burden on municipal resources.

16. Plaintiff failed to plead facts demonstrating how any alleged Charter violation(s) are actionable in assumpsit or unjust enrichment.

17. Plaintiff failed to plead facts demonstrating the existence of an illegal tax or exaction.

18. The Complaint fails to allege facts required for the class action certification sought by Plaintiff.

19. The Complaint fails to state claims upon which the relief requested can or may be granted.

20. Plaintiff has not demonstrated a right to, and has otherwise failed to state or support a claim for equitable, injunctive, or declaratory relief.

21. Plaintiff has failed to state a claim or support a claim for injunctive relief.

22. The Complaint fails to allege facts showing that Plaintiff's monetary claims are within the Court's jurisdiction.

23. Court adjudications on the issues raised in the Complaint do not require class certification and any such certification before those issues are adjudicated would be premature and serve to unnecessarily complicate and increase the cost of litigation, with the only benefit of same being to Plaintiff's lawyers.

24. Plaintiff has not alleged facts demonstrating that maintenance of a class action would be a superior method of adjudicating this matter.

25. Plaintiff cannot show that separate adjudication of distinct claims would lead to inconsistent results or would be less cost-effective.

26. Plaintiff has not demonstrated that common questions of law and fact predominate over questions affecting individual members of the putative class.

27. Plaintiff has not alleged facts sufficient to demonstrate that she has standing in her own right, or as a representative of a putative class.

28. Plaintiff lacks the legal capacity to sue where she is not a rate payor and/or the sole owner of real property within Defendant's boundaries.

29. Plaintiff has failed to plead facts sufficient to demonstrate that she is a rate payor within Defendant's boundaries.

30. Plaintiff has failed to plead facts demonstrating ownership of real property within the Defendant's boundaries.

31. The Complaint contains no allegations supporting the requested relief for appointment of a Receiver (characterized by Plaintiff as a "Trustee").

32. Plaintiff has failed to state a claim against this Defendant as she has not pled specific facts showing that her claims or the claims of the class she seeks to represent fall within any exception to governmental immunity.

33. Plaintiff's claims are barred by the application of governmental immunity and/or sovereign immunity.

34. Plaintiff has failed to plead in avoidance of governmental immunity.

35. Plaintiff has failed to mitigate her alleged damages.

36. Plaintiff's claims are barred by the applicable statutes of limitations.

37. Plaintiff suffers from unclean hands, having engaged in conduct which is inequitable, unfair and deceitful, and therefore is not entitled to relief in equity.

38. Plaintiff's claims are barred by the doctrine of laches.

39. Plaintiff's claims are barred in whole or in part by the doctrine of equitable estoppel.

40. Plaintiff's claims are barred in whole or in part by res judicata.

41. Plaintiff's Complaint is barred in whole or in part because the alleged class is incapable of ascertainment.

42. Plaintiff's claims are barred by the doctrine of waiver and/or acquiescence.

43. Plaintiff's claims are barred by the statute of frauds.

44. Plaintiff's Complaint fails to conform to the requirements of MCR 2.113(F), and should be deemed defective, and dismissed.

45. Plaintiff has failed to plead a cognizable cause of action for assumpsit.

46. There is no actual controversy giving rise to an actual claim.

47. Defendant's water, sanitary sewer and/or stormwater rates and charges are reasonably proportionate to the actual costs of providing water, sanitary sewer and/or stormwater services.

48. Defendant's water, sanitary sewer and/or stormwater rates constitute a valid user fee rather than a tax subject to the requirements of the Headlee Amendment, Mich. Const. Art. 9, Sec. 31.

49. Plaintiff's claims are barred in whole or in part by the Revenue Bond Act, MCL 141.101 et seq.

50. The allegations set forth in Plaintiff's Complaint misstate and misrepresent the City's actual costs, expenditures, projections, and/or revenues.

51. The Defendant's water, sanitary sewer and/or stormwater charges, either in whole or in part, were authorized by charter prior to the ratification of the Headlee Amendment and therefore, do not require voter approval.

52. The Defendant's water, sanitary sewer and/or stormwater charges, either in whole or in part, were authorized by law prior to the ratification of the Headlee Amendment and therefore, do not require voter approval.

53. The Defendant's water, sanitary sewer and/or stormwater rates constitute valid regulatory service charges for voluntary use by the Plaintiff of the City's water, sanitary sewer and/or stormwater services.

54. Plaintiff, as a user of Defendant's water, sanitary sewer and/or stormwater services, receives a direct and measurable individual benefit from the provision of the services.

55. Plaintiff has suffered no damages.

56. Plaintiff has failed to mitigate her damages.

57. Plaintiff's damages are barred by setoff insofar as Plaintiff has failed to pay her appropriate share of system costs, and any damages must be offset by these unpaid amounts.

58. Plaintiff's Complaint is barred in whole or in part because the alleged class is incapable of ascertainment.

59. Plaintiff and members of the purported class have been unjustly enriched by their failure to pay their appropriate share of water, sanitary sewer and/or stormwater system costs.

60. Plaintiff lacks standing to assert any of the alleged claims.

61. Plaintiff has not rebutted the presumption that the disputed charges are valid fees under Michigan law.

62. No refund of the disputed fees is warranted.

63. Plaintiff's claims are barred to the extent that Plaintiff or any members of the proposed class have not paid the disputed fees.

64. Plaintiff's claims are barred to the extent that Plaintiff or any members of the proposed class have not had a lien on their property enforced as a result of the non-payment of the disputed fees.

65. Plaintiff may not maintain this action as a class action. The Complaint fails to satisfy the requirements of maintaining a class action under Michigan law, including without limitation those requirements set forth in MCR 3.501.

66. Plaintiff's claims are barred in whole or in part because the class is not so numerous that joinder of all members is impracticable.

67. Plaintiff's claims are barred in whole or in part because no common questions of fact or law exist among alleged class members sufficient to merit class action treatment.

68. Plaintiff's claims are barred in whole or in part because the claims of the class representative are not typical of those of the class.

69. Plaintiff's claims are barred in whole or in part because the class representative and/or class counsel will not adequately represent the interests of unnamed or absent class members.

70. Plaintiff's claims are barred in whole or in part because the prosecution of separate actions by individual members of the putative class would not create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class.

71. Plaintiff's claims are barred in whole or in part because questions of law or fact common to members of the putative class do not predominate over any question affecting any individual members of the putative class.

72. Plaintiff's claims are barred in whole or in part because the maintenance of this action as a class action will not superior to other available methods of adjudication in promoting the convenient administration of justice.

73. Plaintiff's claims are barred in whole or in part because there are inherent conflicts within the purported class.

74. At all relevant times, the City's water, sanitary sewer and/or stormwater system rates were lawfully established by properly adopted and duly noticed ordinances following public hearing, without objection by Plaintiff.

75. Plaintiff's claims are barred in whole or in part by the doctrine of waiver and/or acquiescence.

76. Plaintiff's claims are barred in whole or in part by the doctrine of voluntary payment.

77. Plaintiff's claims for a refund will fail where Plaintiff and the proposed class, as taxpayers, will ultimately fund and refunds, thereby creating an undue hardship on the City.

78. The form of Plaintiff's Complaint is improper due to lack of compliance with MCR 2.113(E)(2) (each paragraph limited to a single set of circumstances).

79. The form of Plaintiff's Complaint is improper due to lack of compliance with MCR 2.111(A)(1) (each allegation must be clear, concise and direct).

80. All Defendant's decisions and actions in connection with this matter, at all relevant times, complied with the Constitution, the laws of the State of Michigan and Defendant's Charter and Ordinances; were based on proper procedure; were supported by competent, material and substantial evidence on the record; and represented the reasonable exercise of discretion granted by law.

81. Defendant affirmatively states that it was guided by and strictly observed all legal duties and obligations imposed by operation of law and otherwise; and further, that all actions of its agents, servant and/or employees were careful, prudent, reasonable, proper and lawful.

82. All decisions of Defendant relating to this matter were reasonable and rationally related to a legitimate governmental purpose.

83. Plaintiff failed to appeal the allegedly excess stormwater charges as provided for under the City's Code of Ordinances Chapter 33, Section 2:219 and thus, she failed to exhaust her available administrative remedies and her claims relating to stormwater charges are not ripe.

84. Plaintiff's claims relating to stormwater charges are barred by the 1-year appeal period in Section 2:219 of the City's Code of Ordinances.

85. Defendant reserves the right to plead additional affirmative defenses as they become known through discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendant, City of Ann Arbor, requests that this Court find in its favor and deny all relief requested in the Complaint and enter a judgment of no cause of action on all Counts and dismiss all of Plaintiff's claims and award Defendant its costs and attorneys fees so wrongfully incurred in the defense of this Complaint.

DEMAND FOR REPLY

As provided in MCR 2.110(B)(5) and MCR 2.108(A)(5), Defendant demands that Plaintiff serve and file a Reply to this Answer within 21 days, that specifically and separately states Plaintiff's position regarding Defendant's Answers to the allegations in the Complaint numbered 1-120, and Defendant's Affirmative Defenses numbered 1-48.

RELIANCE ON JURY DEMAND

Defendant City of Ann Arbor relies upon the jury demand previously filed by the Plaintiff in the above-captioned matter and thereby demands a trial by jury in the above-captioned matter.

Respectfully submitted,

CITY OF ANN ARBOR

/s/ Steven P. Joppich

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Dated: October 15, 2020

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2020, I electronically filed *Defendant City of Ann Arbor's Answer to Complaint, Affirmative Defenses and Reliance on Jury Demand* with the Clerk of the Court using the MiFile System which will send notice of such filing to all MiFile filers of record.

/s/ Dawn M. Bagozzi
Legal Assistant
Ann Arbor City Attorney's Office