

August 1, 2008

In regards to: WI Stats. Section 893.80(1) state-law claim

City Clerk of Milwaukee
ATTN: CLAIMS
200 E. Wells St., Room 205
Milwaukee, WI 53202-3567

CITY OF MILWAUKEE

2008 AUG 21 PM 2:04

RONALD D. LEONHARDT
CITY CLERK

Dear City Clerk of Milwaukee,

This document is a state-law claim against the City of Milwaukee as per WI. State Statutes Section 893.80(1). The claimants are James Mikecz and Theresa Costello, 8630 W. Burdick Ave. Milwaukee, WI 53227, home phone 541-6652. Mr. Mikecz is a dedicated City of Milwaukee Firefighter with over 32 years of service and can be reached at M.F.D. Engine 29, phone number 286-5329. Ms. Costello is a Medical Technician and can also be reached at cell phone number 418-6652. The claimants assert that through no fault of their own, they were forced to spend \$8399.41 to repair a storm sewer located on City property.

The circumstances of the claim are as follows;

Date of incident: Discovered by Gene Wagner Plumbing on May 21, 2008.

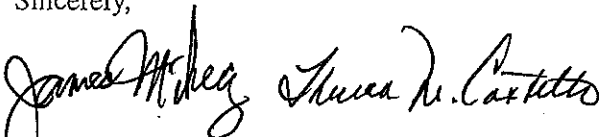
Location of incident: West of claimant's property at 8630 W. Burdick Ave. on City owned land between City sidewalk and street.

Description of incident: The claimants were informed by Wagner Plumbing on 5/21/08 that the storm sewer servicing their 8630 Burdick Ave. property needed to be replaced on City owned property. The plumber stated that the cause was tree root penetration due to roots from City owned tree (document from plumber enclosed).

Background of incident: In the same general area of City owned property, the water main has been repaired 3 or 4 times by the City and/or their agents with the use of heavy machinery putting undue force and large loads on underlying structures including the storm sewer.

Statement of relief sought: The claimants seek reimbursement of \$8399.41 spent in the repair/replacement of a storm sewer on City property caused by City negligence. The negligence was in the form of the following; tree root penetration due to roots from City owned tree and repetitive heavy loads by use of heavy machinery by the City and/or their agents. The total includes earlier roto-rooting and investigative plumbing work prior to discovery by plumber and subsequent disclosure to claimants on 5/21/08. Documents enclosed for the following amounts; \$355.34, \$346.07, \$1498.00, and \$6200.00.

Sincerely,


James Mikecz and Theresa Costello

CITY OF MILWAUKEE
RECEIVED
2008 AUG 21 PM 3:23
OFFICE OF
CITY ATTORNEY

Gene A. Wagner Plumbing Co., Inc
2017 So. 60th St.
Milwaukee, WI 53219
Phone – 541-9217
Fax – 541-9486
Master Plumbers License #222399
Contract

Date: April 29, 2008

James Mikecz
8630 W Burdick Ave
Milwaukee, WI 53227
(414) 541-6652 Home

We hereby submit specifications and estimates for:

Contractor to furnish all labor, materials and equipment for work as described as follows including all required permits.

PARTIAL STORM SEWER REPLACEMENT

- Contractor shall excavate in road on West side of home, and from existing excavation on Owner's property shall use pipe bursting equipment and pull a new storm sewer from one excavation to other existing excavation and replace approximately Forty(40) lineal feet of storm sewer with SDR 17 Plastic pipe and approved fittings.
- The section to be replaced has very heavy roots.

ROAD REPAIRS

- Contractor shall repair road that is disrupted in scope of this work.

NOTE: This contract amount is in addition to previous contract dated March 31, 2008.

LANDSCAPING

- No landscaping of any kind is included in this contract or replacement of any grass, trees, shrubs or plant life of any kind.

UTILITY AND ANY UNDERGROUND SERVICE LINES

- Contractor not responsible for any utility and any underground service lines damaged by contractor due to unmarked lines by diggers hotline, or lines not marked by owner.

We propose to furnish material and labor – complete and in accordance with above specifications for the sum of: **Six Thousand Two Hundred Dollars (6,200.00).**

Terms: ½ Down Payment Due Upon Acceptance of this Contract and Previous Contract of \$1,498.00, Down Payment of Three Thousand Eight Hundred Forty Nine Dollars (\$3,849.00).

Remaining Balance Due On Or Before 60 Days After Job Completion.

This proposal may be withdrawn by us if not accepted within 15 days

Authorized Signature Gene A. Wagner Sr. 4.29.08
Gene A. Wagner

Acceptance of Contract-

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as described above.

Date _____ Signature _____

NOTICE OF LIEN RIGHTS AND TERMS AND CONDITIONS ATTACHED ARE MADE A PART HEREOF.

Notice of Lien Rights

As required by the Wisconsin Construction lien law, Contractor hereby notifies owner that persons or companies furnishing labor or materials for construction, improvement or repair on owner's land may have lien rights on owner's land and building if not paid. Those entitled to lien rights, in addition to the undersigned contractor, are those who contract directly with the owner or those who give the owner notice within (60) sixty days after they first furnish labor or materials for the construction, improvement or repair. Accordingly, owner probably will receive notices from those who furnish labor or materials for the construction, improvement or repair, and should give copy of each notice received to his mortgage lender, if any. Contractor agrees to cooperate with the owner and his lender, if any, to see that all potential lien claimants are duly paid.

Terms and Conditions

1. All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance.
2. Acceptance of Work : Owner agrees to inspect all work promptly and to notify contractor in writing, of deficiencies or defects in labor or materials, if any, within ten days, failure to give such notice shall constitute a full waiver of any patent defects. Written notice of latent defects shall be given in writing within 10 days after discovery, or the same shall be deemed waived. No action shall be commenced by owner against contractor until 30 days after delivery of such notice nor more than six (6) months thereafter.
3. Unless otherwise stated on the face hereof, all invoices for labor or materials shall be due and payable net 30 days after date.
4. Sums not paid when due shall bear interest at the rate of 1 1/2% per month, 18% annually.
5. Owner shall pay all costs incurred in collection of past due sums, including actual attorney fees and court costs.

Special Conditions

Unfavorable soil conditions such as wet or unstable ground or rock which require the use of shields, blasting, rock removal, additional bedding/backfilling or cradling, pumps, tight sheeting, or special equipment will be dealt with on a "Time and Material" basis. We also reserve the right to terminate and withdraw from this contract in the event of interference, unusual difficulties or unforeseen obstacles.

Gene A. Wagner Plumbing Co., Inc.
2017 So. 60th St.
Milwaukee, WI 53219
414-541-9217 - Office
414-541-9486 - Fax
Master Plumber #222399

Date: May 21, 2008

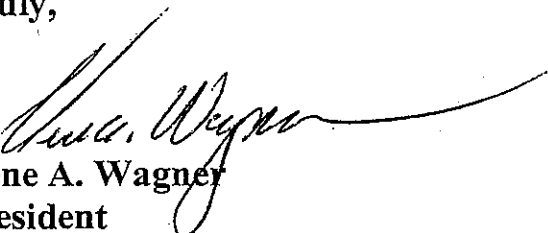
James Mikecz
8630 W Burdick Ave
Milwaukee, WI 53227
(414) 541-6652

Re: Partial Storm Sewer Replacement

Dear Mr. Mikecz:

The cause of tree roots penetration was due to roots from City owned tree.

Truly,


Gene A. Wagner
President

Gene A. Wagner Plumbing Co., Inc.
2017 So. 60th St.
Milwaukee, WI 53219
414-541-9217 - Office
414-541-9486 - Fax
Master Plumber #222399
INVOICE

GENE WAGNER PLUMBING
2017 SOUTH 60TH ST
MILWAUKEE, WI 53219
414/541-9217

TERMINAL ID.: 26420003
MERCHANT #: 000440001324376

MASTERCARD SWIPE
XXXXXXXXXX7692 EXP:XX/XX
SALE
BATCH: 000034 INU: 000001
Jul 24, 08 15:13
RRN: 000134392815 AUTH:02516B

TOTAL \$2000.00

Date: May 21, 2008

Job Number: 63162

Name: James Mikecz
8630 W Burdick Ave
Milwaukee, WI 53227

JAMES MIKECZ

CUSTOMER COPY

Description of Work: Contract work.

AS PER CONTRACT

6,200.00

Total

\$6,200.00

Amount Now Due: \$6,200.00

*Paid by CC #
Amount \$4200.00*

*Paid in full
now by CC
7/24/08*

*Cheryl Kstake
Account Receivables*

GENE A. WAGNER PLUMBING CO., INC.
COMPLETE PLUMBING SERVICE
MASTER PLUMBER LICENSE #222399

Phone: 541-9217
 Fax: 541-9486

2017 South 60th Street

CUSTOMER: JAMES MIKECZ PURCHASE ORDER NO: _____
 ADDRESS: 730 W BURDICK AVE JOB NO: 61695

OWNER OR AGENT MUST SIGN: I authorize and order the work described hereon, upon the terms and conditions set forth below and on the reverse side hereof. I represent that I am either the owner of the property or the owner's agent, and have authority to order said work. Unless a fixed price for labor and materials appears on the face hereof, all charges for work performed and materials installed shall be on a time and materials basis. **OWNER OR AGENT ACKNOWLEDGES AND HAS READ REVERSE SIDE OF THIS FORM.**

Owner or agent agrees to pay the cost, including labor and materials, for contractor to remove any sewer or drain cleaning equipment which becomes entangled in a sewer or drains because of disrepair, tree roots or improper plumbing installation.

CUSTOMER PHONE NO: _____

	Date	AM	PM
Travel Time	12:00		PM
Arrival Time	12:22		PM
Departure Time	3:00		PM

	Date	AM	PM
Travel Time			
Arrival Time			
Departure Time			

NOTICE! All owner's or agent's must initial time recorded above. This is the time you will be billed. NO EXCEPTIONS.

**TERMS: NET
 UPON COMPLETION!**

WORK AT: - SAME -
 PERMITS: _____
 AUTHORIZED WORK TO BE DONE:

- ATTEMPT TO CLEAR STORM SEWER.
SEWER COLLAPSED AT 30' (GIVE OR TAKE)
CAMERA NEEDED.

TAX @ 5.6%: \$ 18.84
 LABOR: \$ 286.50
 MATERIALS: \$ 40.00

GENE A. WAGNER PLUMBING CO., INC.
COMPLETE PLUMBING SERVICE
MASTER PLUMBER LICENSE #222399

Phone: 541-9217
 Fax: 541-9486

2017 South 60th Street

CUSTOMER: JAMES MIKEY PURCHASE ORDER NO: _____
 ADDRESS: 8630 W. BURDICK JOB NO: 62799

OWNER OR AGENT MUST SIGN: I authorize and order the work described hereon, upon the terms and conditions set forth below and on the reverse side hereof. I represent that I am either the owner of the property or the owner's agent, and have authority to order said work. Unless a fixed price for labor and materials appears on the face hereof, all charges for work performed and materials installed shall be on a time and materials basis. **OWNER OR AGENT ACKNOWLEDGES AND HAS READ REVERSE SIDE OF THIS FORM.**

Owner or agent agrees to pay the cost, including labor and materials, for contractor to remove any sewer or drain cleaning equipment which becomes entangled in a sewer or drains because of disrepair, tree roots or improper plumbing installation.

CUSTOMER PHONE NO: 541-6652

	Date	AM	PM
Travel Time	<u>9:15</u>		
Arrival Time	<u>9:45</u>		
Departure Time	<u>10:45</u>		

	Date	AM	PM
Travel Time			
Arrival Time			
Departure Time			

NOTICE! All owner's or agent's must initial time recorded above. This is the time you will be billed. NO EXCEPTIONS.

**TERMS: NET
 UPON COMPLETION!**

WORK AT: SAME

PERMITS: NONE

AUTHORIZED WORK TO BE DONE: TELEVISE STORM SEWER - LOCATED
+ MARKED GENE WAGNER WILL MEET
WITH OWNER

TV EQUIP	<u>175.00</u>
SERVICE	<u>143.25</u>
LABOR TOTAL	<u>318.25</u>
AX	<u>17.82</u>