NOTICE OF PONTIAC CITY COUNCIL MEETING
MARCH 23, 2021
at 6:00 p.m.

THE MEETING WILL BE HELD ELECTRONICALLY

The City Council of the City of Pontiac will hold a Study Session on March 23, 2021 at 6:00 p.m. This meeting will be held electronically as allowed by the amended Open Meetings Act. The agenda for the Study Session is attached. The Pontiac City Council gives notice of the following:

1. **Procedures.** The public may view the meeting electronically through the following method.

   http://pontiac.mi.us/council/pontiactv/index.php

2. **Public Comment.** For individuals who desire to make a public comment, please submit your name and comment in writing to **publiccomments@pontiac.mi.us.** Additionally, you may submit your public comment in writing directly to the Office of the City Clerk during regular business hours. All public comments must be received no later than 5:30 p.m. on March 23, 2021. Public comments are limited to three (3) minutes. The City Clerk will read your comments during the public comment section of the meeting.

3. **Persons with Disabilities.** Persons with disabilities may participate in the meeting through the methods set forth in paragraph 2. Individuals with disabilities requiring auxiliary aids or services in order to attend electronically should notify the Interim City Clerk, Garland Doyle at (248) 758-3200 or clerk@pontiac.mi.us at least 24 hours in advance of the meeting.

Dated 3-19-2021, 5:00 p.m.
Garland S. Doyle, Interim City Clerk
City of Pontiac
47450 Woodward Ave. Pontiac, MI 48342 Phone: (248) 758-3200

PONTIAC CITY COUNCIL

It is this Council's mission "To serve the citizens of Pontiac by committing to help provide an enhanced quality of life for its residents, fostering the vision of a family-friendly community that is a great place to live, work and play."

Website: http://pontiaccityclerk.com/city-council-meetings

Garland S. Doyle, M.P.A.
Interim City Clerk

STUDY SESSION
March 23, 2021
6:00 P.M.
220th Session of the 10th Council

Call to order

Roll Call

Authorization to Excuse Councilmembers

Approval of the Agenda

Approval of the Minutes
1. March 16, 2021

Public Comment

Agenda Items

Resolutions
City Clerk
2. Resolution to approve Humble Design, 180 N Saginaw a 501(c)(3) nonprofit organization in Pontiac as a recognized nonprofit organization in the community for the purpose of obtaining a charitable gaming license.

Department of Public Works (DPW)
3. Resolution for Martin Luther King Jr Blvd Bridge Preventive Maintenance through the Local Bridge Program

4. Resolution for Orchard Lake Road Bridge Preventive Maintenance through the Local Bridge Program

5. Resolution to Authorize the Mayor to Sign MDOT Funding Agreement (Contract No. 21-5028) for the Construction of the W Walton Blvd Concrete Pavement Repair Project

Economic Development
6. Resolution to approve the establishment of an Industrial Development District (IDD) for 2100 S. Opdyke Road

7. Resolution to approve Speculative Building Designation for 2100 S Opdyke, LLC

Finance

8. Resolution to approve AT&T as the telecommunications and internet provider or the City for April 1, 2021-April 1, 2024

Mayor's Office

9. Resolution to extend Landlord Cares Act Program

Communication from the City Clerk

10. Memorandums from Nick Curcio, Esq., The Curcio Law Firm regarding Medical Marihuana and the Planning Commission
    a. Attorney Memorandum regarding Locational Requirements for Marijuana Growers and Processors
    b. Attorney Memorandum regarding Planning Commission's Failure to Act on City Council Referral
    c. Attorney Memorandum regarding Planning Commission Holdovers

Adjournment

Upcoming Special Presentations

March 30, 2021

1. Office of the City Clerk Medical Marihuana Application Review Process Monthly Update
2. Snow Emergency Plan Update
3. Upcoming Infrastructure and Capital Improvement Projects for Calendar Year 2021.

#1

MINUTES

Official Proceedings
Pontiac City Council
219th Session of the Tenth Council

Call to order
A Formal Meeting of the City Council of Pontiac, Michigan was called to order electronically, on Tuesday, March 16, 2021 at 6:00 p.m. by Council President Kermit Williams.

Point of Privilege – Katie Reiter, Senator Bayer's Office

Invocation – Council President Kermit Williams

Pledge of Allegiance

Roll Call

Members Present	Attendance	Location
Miller	Remotely	Pontiac, Oakland County, MI
Pietila	Remotely	Pontiac, Oakland County, MI
Shramski	Remotely	Pontiac, Oakland County, MI
Williams	Remotely	Pontiac, Oakland County, MI

Mayor Waterman was present.
Clerk announced a quorum.

Authorization to Excuse Councilmembers
21-72 **Motion to excuse Councilmembers Carter, Waterman and Taylor-Burks for personal reasons.** Moved by Councilperson Pietila and second by Councilperson Shramski.

Ayes: Miller, Pietila, Shramski and Williams
No: None
Motion Carried

Council President Pro Tem Randy Carter arrived remotely from Oakland County at 6:11 p.m.

Amendments and Approval of the Agenda
21-73 **Motion to add communication from the Mayor as item #2 and remove all other items accept Public Hearing on the establishment of an Industrial Development District (IDD) for 2100 S. Opdyke Road as item #3.** Moved by Councilperson Miller and second by Councilperson Shramski.

Ayes: Shramski, Williams, Carter and Miller
No: Pietila
Motion Carried

Approval of the Agenda
21-74 **Motion to approve agenda as amended.** Move by Councilperson Miller and second by Councilperson Carter.

Ayes: Shramski, Williams, Carter and Miller
No: Pietila

Motion Carried

Approval of Minutes

21-75 **Approve meeting minutes for March 9, 2021.** Moved by Councilperson Miller and second by Councilperson Shramski.

Ayes: Williams, Carter, Miller, Pietila and Shramski
No: None
Motion Carried

Communication from the Mayor

Response to Council Resolution regarding the Phoenix Center Closing
The communication is attached as Exhibit A

Public Hearing

Council President Kermit Williams opened up the public hearing for the establishment of an Industrial Development District (IDD) for 2100 S. Opdyke Road at 6:34 p.m.

There were no comments.

Council President Kermit Williams closed public hearing at 6:35 p.m.

Public Comment

One (1) individual submitted public comment read by the City Clerk

Adjournment

President Kermit Williams adjourned the meeting at 6:38 p.m.

_____
GARLAND S DOYLE
INTERIM CITY CLERK

Exhibit A

Garland Doyle

From: Kermit Williams
Sent: Tuesday, March 16, 2021 10:30 AM
To: Garland Doyle
Cc: Monique Sharpe
Subject: FW: Response to Council resolution re Phoenix closing

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Doyle I will read this tonight. I have given you a copy for the record

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From: Mayor Deirdre Waterman
Sent: Friday, March 12, 2021 7:40 PM
To: Kermit Williams; Patrice Waterman; Mary Pietila; Doris Taylor Burks; Megan Shramski; Gloria Miller; Monique Sharpe
Subject: FW: Response to Council resolution re Phoenix closing

Greetings Council members,
In response to the resolution passed at the March 9, 2021 meeting, I asked Atty George Contis to prepare this explanation of the virtual closing process for your information.

Mayor Waterman:

In response to your inquiry; in the era of the COVID-19 pandemic, due to the larger number of participants in attendance at a commercial (vs. residential purchase or refinance) closing, most title companies (Seaver Title Agency included) insist on conducting commercial closings in escrow or virtually as they lack the facilities (appropriately sized and socially distanced conference rooms) to safely conduct a closing and observe all necessary protocols. Accordingly, in connection with Council's approved Resolution of March 9, there is not a location available for a Council representative to attend the closing.

In the case of the City's closing on the acquisition of the Ottawa Towers (and all related property) under the Global Settlement Agreement and the City's sale of the Ottawa Towers properties and entering into the Phoenix Center Parking Lease, all of the City's closing documents were appropriately executed by you and notarized (if so required) on Thursday, February 25th and delivered in escrow to the title company that same day, and the documents remain with the title company and shall not be released until the transactions close and we authorize the release of those documents.

In addition to delivery of all relevant closing documents by all parties (which has occurred on the City's behalf in connection with its acquisition and immediate sale as outlined above), the other parties must also deliver their closing documents and closing funds with the title company (from their own funds and those of their lenders / investors). Until these additional requirements are met, a virtual or escrow closing cannot occur.

The satisfaction of the aforementioned other conditions could occur in: i) less than a moment's notice; ii) or over a period of days. I trust the above adequately responds to your question.

Regards,

George A. Contis
Giarmarco, Mullins & Horton, P.C.
101 West Big Beaver Road, Suite 1000
Troy, Michigan 48084-5280

From: Mayor Deirdre Waterman <DWaterman@pontiac.mi.us>
Sent: Wednesday, March 10, 2021 6:41 PM
To: George A. Contis <gcontis@gmhlaw.com>; Matthew Gibb <MGibb@pontiac.mi.us>
Cc: Matthew Gibb <gibblaw@hotmail.com>
Subject: Response to Council resolution re Phoenix closing

Counselor, Please provide me with your overview of how the virtual closing will occur. I want to respond to council's resolution request that they be included and advised of 48 hours in advance of any events associated with the closing. Thanks

#2

RESOLUTION

MICHIGAN LOTTERY
Charitable Gaming Division
Box 30023, Lansing, MI 48909
OVERNIGHT DELIVERY:
101 E. Hillsdale, Lansing MI 48933
(517) 335-5780
www.michigan.gov/cg

LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES

(Required by MCL.432.103(K)(ii))

At a _____ meeting of the _____
REGULAR OR SPECIAL — TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD

called to order by _____ on _____
DATE

at _____ a.m./p.m. the following resolution was offered:
TIME

Moved by _____ and supported by _____

that the request from Humble Design Inc. of Pontiac,
NAME OF ORGANIZATION — CITY

county of Oakland,
COUNTY NAME

asking that they be recognized as a nonprofit organization operating in the community for the purpose of obtaining charitable gaming licenses, be considered for _____.
APPROVAL/DISAPPROVAL

APPROVAL		DISAPPROVAL	
Yeas:	_____	Yeas:	_____
Nays:	_____	Nays:	_____
Absent:	_____	Absent:	_____

I hereby certify that the foregoing is a true and complete copy of a resolution offered and adopted by the _____ at a _____
TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD — REGULAR OR SPECIAL

meeting held on _____,
DATE

SIGNED: _____
TOWNSHIP, CITY, OR VILLAGE CLERK

_____
PRINTED NAME AND TITLE

_____
ADDRESS

COMPLETION: Required.
PENALTY: Possible denial of application.

UNITED STATES OF AMERICA

The State of Michigan

Department of Licensing and Regulatory Affairs

Lansing, Michigan

This is to Certify that the annexed copy has been compared by me with the record on file in this Department and that the same is a true copy thereof.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

LICENSING AND REGULATORY AFFAIRS ★ Corporations, Securities & Commercial Licensing Bureau ★

Sent by Facsimile Transmission

1435772

In testimony whereof, I have hereunto set my hand, in the City of Lansing, this 17th day of February, 2017

Julia Dale

Julia Dale, Director
Corporations, Securities & Commercial Licensing Bureau

BCS/CD-502 (Rev. 10/08)

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

FILED

JUN 26 2009

Administrator
BUREAU OF COMMERCIAL SERVICES

Date Received	(FOR BUREAU USE ONLY)
	ADJUSTED PURSUANT TO TELEPHONE AUTHORIZATION Elyse W. Germack
	This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Tran Info:1 15081966-1 06/24/09
Chk#: 1831 Amt: $20.00
ID: ELYSE GERMACK

Name
Elyse W. Germack

Address
261 E. Maple Road

City | State | Zip Code
Birmingham | MI | 48009

Document will be returned to the name and address you enter above. If left blank document will be mailed to the registered office.

EFFECTIVE DATE:

70313K

ARTICLES OF INCORPORATION

For use by Domestic Nonprofit Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is:

HUMBLE DESIGN, INC.

ARTICLE II

The purpose or purposes for which the corporation is organized are:

Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Housing for needy families

ARTICLE III

1. The corporation is organized upon a NONSTOCK basis.
(Stock or Nonstock)

2. If organized on a stock basis, the total number of shares which the corporation has authority to issue is _____. If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences and limitations of the shares of each class are as follows:

ARTICLE III (cont.)

3. a. If organized on a nonstock basis, the description and value of its real property assets are: (if none, insert "none")

NONE

b. The description and value of its personal property assets are: (if none, insert "none")

NONE

c. The corporation is to be financed under the following general plan:

PUBLIC DONATIONS

d. The corporation is organized on a DIRECTORSHIP basis.
(Membership or Directorship)

ARTICLE IV

1. The name of the resident agent at the registered office :

ELYSE W. GERMACK

2. The address of the registered office is:

261 E. MAPLE ROAD BIRMINGHAM, Michigan 48009
(Street Address) (City) (ZIP Code)

3. The mailing address of the registered office, if different than above:

_____, Michigan _____
(Street Address or P.O. Box) (City) (ZIP Code)

ARTICLE V

The name(s) and address(es) of the incorporator(s) is (are) as follows:

Name	Residence or Business Address
ELYSE W. GERMACK	261 E. MAPLE ROAD BIRMINGHAM MI 48009

Use space below for additional Articles or for continuation of previous Articles. Please identify any Article being continued or added. Attach additional pages if needed.

ARTICLE VI.

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the Statement of Purpose hereof. The property of this corporation is irrevocably dedicated to [your 501(c)(3) exempt purpose(s)] and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member thereof, or to the benefit of any private individual.

ARTICLE VII.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

ARTICLE VIII.

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for charitable purposes.

ARTICLE IX.

The initial Directors of the corporation are: Ana G. Smith of Birmingham, Michigan and Treger Strasberg of Birmingham, Michigan, Christine Krempel of Birmingham, Michigan, and Lynn Sirich of Birmingham, Michigan.

I, (We), the incorporator(s) sign my (our) name(s) this 22nd day of June, 2009.

Elyse W. Cohen

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: OCT 14 2009

HUMBLE DESIGN INC
C/O ELYSE WILLIAMS
261 E MAPLE RD
BIRMINGHAM, MI 48009

Employer Identification Number:
27-0410088
DLN:
17053252339049
Contact Person:
JENNIFER NICOLIN ID# 95152
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
170(b)(1)(A)(vi)
Form 990 Required:
Yes
Effective Date of Exemption:
June 26, 2009
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC

Letter 947 (DO/CG)

Monarch Investments, LLC
18 W. Huron Street Pontiac, Michigan 48342
Ph. 248-338-2450 Fax. 248-332-1330 greg@monarch-investments.com

March 12, 2021

Vern Gustafsson
Planning Manager
City of Pontiac
47450 Woodward Ave.
Pontiac, MI 48342

RE: 180 N Saginaw

Dear Vern,

I purchased the building at 180 N Saginaw St., Pontiac, MI 48342 34 years ago, in 1986. I still own the building to this day.

The building houses Humble Design and they have been our tenants since January 2014. Humble Design serves 3 residents a week by supplying them essential goods for the home. Humble Design is an excellent tenant-not only for me but for the community as well.

We are keeping Humble Design as a tenant in our downtown location.

Any further information you would like, I will be glad to supply it to you.

Sincerely,

Jim Cunningham
Owner and Management
Monarch Investments, LLC
18 W. Huron St., Ste. 1
Pontiac, MI 48342

#3

RESOLUTION

CITY OF PONTIAC
OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Mayor, Council President, and City Council Members

FROM: Abdul H. Siddiqui, City Engineer

DATE: March 03, 2021

RE: **MDOT Local Bridge Funding Applications**

The City of Pontiac has been notified that the Michigan Department of Transportation (MDOT) is accepting applications for 2021 Local Bridge funding. Through required inspections, the two bridges referenced in the attached resolutions have been identified as possible candidates for rehabilitation and/or replacement.

Selected projects that include structure rehabilitation, replacement, and approach construction may be eligible for a maximum of 95 percent participation from federal and/or state funds. If the City is awarded funding for one or all of the referenced bridges, the funding will be made available during the 2024 fiscal year.

Please be advised, with no City definitive funding source for bridge rehabilitation and/or replacement, it is in the City's best interest to apply for said funds.

Based on the information above, it is my recommendation that the attached resolution be acted upon favorably by the City Council, authorizing the appropriate Department of Public Works to sign said application on behalf of the City of Pontiac.

AHS

attachments

RESOLUTION FOR MLK JR BLVD BRIDGE PREVENTIVE MAINTENANCE THROUGH THE LOCAL BRIDGE PROGRAM

On a motion duly made by Council Member _____ seconded by Council Member _____ and passed with __ Ayes and __ Nays, it was moved to adopt the following resolution:

WHERE AS, the condition of the bridge listed below has deteriorated to such an extent that preventive maintenance is necessary and

WHERE AS, the budget of the City of Pontiac will not allow preventive maintenance of this bridge without additional funds from other sources.

THEREFORE BE IT NOW RESOLVED that the City of Pontiac request local bridge program funds for preventive maintenance of the MLK Jr Blvd over the Grand Trunk Western Railroad Bridge for the year 2024.

I hereby certify the above is a true and correct copy of a resolution unanimously adopted by the City of Pontiac at a meeting held on _____.

ATTEST:

Garland Doyle
Acting City Clerk

Dated:

Drafted by:

Garland Doyle
City of Pontiac
47450 Woodward Ave
Pontiac, MI 48342

Subscribed and sworn to before me on the above date:

_____
Notary Public, _____, Michigan
My Commission Expires: _____

#4

RESOLUTION

RESOLUTION FOR ORCHARD LAKE ROAD BRIDGE REHABILITATION THROUGH THE LOCAL BRIDGE PROGRAM

On a motion duly made by Council Member _____ seconded by Council Member _____ and passed with __ Ayes and __ Nays, it was moved to adopt the following resolution:

WHERE AS, the condition of the bridge listed below has deteriorated to such an extent that rehabilitation is necessary and

WHERE AS, the budget of the City of Pontiac will not allow rehabilitation of this bridge without additional funds from other sources.

THEREFORE BE IT NOW RESOLVED that the City of Pontiac request local bridge program funds for rehabilitation of the Orchard Lake Road over the Clinton River Bridge for the year 2024

I hereby certify the above is a true and correct copy of a resolution unanimously adopted by the City of Pontiac at a meeting held on _____.

ATTEST:

Garland Doyle
Acting City Clerk

Dated:

Drafted by:

Garland Doyle
City of Pontiac
47450 Woodward Ave
Pontiac, MI 48342

Subscribed and sworn to before me on the above date:

_____
Notary Public, _____, Michigan
My Commission Expires: _____

#5

RESOLUTION

CITY OF PONTIAC
OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Mayor, Council President, and City Council Members

FROM: Abdul H Siddiqui, PE, City Engineer

DATE: March 23, 2021

RE: **MDOT W Walton Blvd Concrete Pavement Repair Construction Funding Agreement (Contract No. 21-5028)**

The Michigan Department of Transportation (MDOT) has prepared and delivered the attached funding agreement for construction of the W Walton Blvd Concrete Pavement Repair Project. The construction for this project is mostly funded through Federal Highway Infrastructure Program Urban funds and Federal Surface Transportation Funds totaling $3,003,800. The total estimated cost of the project is $3,669,900, with the City's portion of the project being $666,100. This project is budgeted in fiscal year 2021/22.

The funding is provided based on competitive application. These projects go through an MDOT bid letting and are awarded and funded by MDOT. The City will be responsible for our match on the project as stated above.

It is the recommendation of the Department of Public Works, Engineering Division that the City sign the attached MDOT funding agreement for construction of the W Walton Blvd Concrete Pavement Repair Project:

WHEREAS,	The City of Pontiac has received the funding agreement from the Michigan Department of Transportation, and;
WHEREAS,	The Department of Public Works, Engineering Division has reviewed the subject agreement, and;
WHEREAS,	The project is budgeted in the 2021/22 Major Street budget,
NOW, THEREFORE, BE IT RESOLVED,	The Pontiac City Council authorizes the Mayor to sign the MDOT funding agreement for construction of the W Walton Blvd Concrete Pavement Repair Project.

AHS

attachments

STP & HIPU

DA

Control Section	STU 63000
Job Number	206951CON
Project	21A0(280)
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	21-5028

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF PONTIAC, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in the City of Pontiac, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated February 26, 2021, attached hereto and made a part hereof:

PART A - FEDERAL PARTICIPATION
Concrete pavement repair work along W Walton Boulevard from the west city limits of Pontiac to Baldwin Road; including concrete curb and gutter, sidewalk ramp, pedestrian signal, pavement marking, and permanent signing work; and all together with necessary related work.

PART B - NO FEDERAL PARTICIPATION
Street lighting conduit, wiring, and handhole installation work within the limits as described in PART A; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

SURFACE TRANSPORTATION PROGRAM
HIGHWAY INFRASTRUCTURE PROGRAM - URBAN

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except for construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has informed the DEPARTMENT that it adopted new administrative rules (R 325.10101, et. seq.) which prohibit any governmental agency from connecting and/or reconnecting lead and/or galvanized service lines to existing and/or new water main. Questions regarding these administrative rules should be directed to EGLE. The cost associated with replacement of any lead and/or galvanized service lines, including but not limited to contractor claims, will be the sole responsibility of the REQUESTING PARTY.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in accordance with the following:

PART A
Federal Surface Transportation Funds in combination with Federal Highway Infrastructure Program Urban Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at the established Federal participation ratio equal to 81.85 percent with Federal Highway Infrastructure Program Urban Funds limited to $100,631. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B
The PART B portion of the PROJECT COST is not eligible for Federal participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses.

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will promptly cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhere to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Michigan Department of Environment, Great Lakes, and Energy (EGLE), it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Michigan Department of Environment, Great Lakes, and Energy (EGLE), shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement,

of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as written below.

CITY OF PONTIAC

By_____
Title:

By_____
Title:

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By_____
Department Director MDOT

February 26, 2021

EXHIBIT I

CONTROL SECTION	STU 63000
JOB NUMBER	206951CON
PROJECT	21A0(280)

ESTIMATED COST

CONTRACTED WORK

	PART A	PART B	TOTAL
Estimated Cost	$3,669,900	$26,600	$3,696,500

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$3,669,900	$26,600	$3,696,500
Less Federal Highway Infrastructure Program Urban Funds	$ 100,631	$ -0-	$ 100,631
Less Federal Surface Transportation Funds	$2,903,169	$ -0-	$2,903,169
BALANCE (REQUESTING PARTY'S SHARE)	$ 666,100	$26,600	$ 692,700

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.

1. Engineering

   a. FAPG (6012.1): Preliminary Engineering

   b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts

   c. FAPG (23 CFR 635A): Contract Procedures

   d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

2. Construction

   a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims

   b. FAPG (23 CFR 140B): Construction Engineering Costs

   c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies

   d. FAPG (23 CFR 635A): Contract Procedures

   e. FAPG (23 CFR 635B): Force Account Construction

   f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.

C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.

D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than $100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.

H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.

O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.

Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

a. Agencies expending a total of $500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than $500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than $1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.

2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

   Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

   a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

   b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

      With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

   c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

   d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.

C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.

D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

APPENDIX B
TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

    a. Withholding payments to the contractor until the contractor complies; and/or

    b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

#6

RESOLUTION

CITY OF PONTIAC
OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable City Council President and City Council Members

FROM: Linnette Phillips, Director, Economic Development

THROUGH: Mayor Deirdre Waterman

DATE: February 9, 2021 moved to February 16, 2021 moved to March 2, 2021 moved to March 16, 2021, moved to March 23, 2021

RE: **ECONOMIC DEVELOPMENT**

Updated Resolution for the Establishment of an Industrial Development District (IDD) at 2100 S. Opdyke

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2100 S Opdyke LLC is requesting that the City of Pontiac establish an Industrial Development District on parcel 64-19-03-200-025 as provided in PA 198 of 1974 commonly known as 2100 S. Opdyke. Prior to the District being established, a Public Hearing is required. The Public Hearing was held Tuesday, March 16, 2021.

The owners purchased the property from Williams International. The property at 2100 Opdyke is the former GM facility. A Formal Site Plan was summited and approved by the COP Planning Division, December 8, 2020 to construct a 711,360 sq.ft. building for purpose of providing a multi-tenant industrial facility.

No construction has commenced at this time, however, the owners have received letters of interest from two prospective tenants to relocate to the site. The facility would be classified as a "spec" facility and meet the criteria for PA 198 Industrial Development District.

RESOLUTION ON FOLLOWING PAGE

CITY OF PONTIAC CITY COUNCIL

RESOLUTION FOR ESTABLISHING AN INDUSTRIAL DEVELOPMENT DISTRICT AT 2100 S OPDYKE

WHEREAS, pursuant to PA 198 of 1974, as amended (M.C.L.A. 207.551 et. seq.), after a duly noticed public hearing, held on March 16, 2021, this Pontiac City Council, by resolution, has the authority to establish an Industrial Development District, as defined in M.C.L.A. 207.553(2), within the City of Pontiac;

WHEREAS, 2100 S Opdyke, LLC ("**Petitioner**") is the owner of that certain real property located in the City of Pontiac and legally described below (the "**Property**");

WHEREAS, pursuant to M.C.L.A. 207.554(2), Petitioner is the owner of 100% of the state equalized value of the industrial property located within the proposed Industrial Development District;

WHEREAS, Petitioner has petitioned the Pontiac City Council to establish an Industrial Development District on the Property;

WHEREAS, construction, acquisition, alteration, or installation of a proposed facility has not commenced at the time of filing the request to establish the proposed Industrial Development District;

WHEREAS, written notice has been given by certified mail to all owners of real property located within the district, and to the public by newspaper advertisement in the Oakland Press and/or public posting of the hearing on the establishment of the proposed Industrial Development District;

WHEREAS, a public hearing was held at which all owners of real property within the proposed Industrial Development District and all residents and taxpayers of the City of Pontiac were afforded an opportunity to be heard thereon; and

WHEREAS, the Pontiac City Council deems it to be in the public interest of the City of Pontiac to establish the Industrial Development as proposed:

NOW, THEREFORE BE IT RESOLVED, by the Pontiac City Council, that the following described parcel of landed situated in the City of Pontiac, Oakland County, and State of Michigan, to wit:

LAND IN THE CITY OF PONTIAC, OAKLAND COUNTY, MICHIGAN, BEING PART OF LOTS 8 & 9, A PART OF "ASSESSOR'S PLAT NO. 110", A PART OF SECTION 3, T. 2N., R. 10 E., AS RECORDED IN LIBER 52 OF PLATS, PAGE 26 OF OAKLAND COUNTY RECORDS, LYING WITHIN THE FOLLOWING DESCRIBED PARCEL: COMMENCING AT THE NORTHEAST PROPERTY CONTROLLING CORNER OF SECTION 3 (AS PREVIOUSLY SURVEYED), T. 2 N., R. 10 E., CITY OF PONTIAC,

OAKLAND COUNTY, MICHIGAN; THENCE S 00°36'21" W ALONG THE EAST LINE OF SAID SECTION 3, 1215.50 FEET; THENCE N 89°23'39" W 60.00 FEET TO A POINT, SAID POINT BEING THE INTERSECTION OF THE SOUTH LINE OF CAMPUS DRIVE (WIDTH VARIES) WITH THE WEST LINE OF OPDYKE ROAD (120 FEET WIDE); THENCE S 00°36'21" W ALONG THE WEST LINE OF OPDYKE ROAD, 1331.66 FEET TO THE POINT OF BEGINNING; THENCE S 00°36'21" W ALONG THE WEST LINE OF OPDYKE ROAD, 728.35 FEET TO A POINT OF DEFLECTION; THENCE S. 00°24'47" E. ALONG THE WEST LINE OF OPDYKE ROAD, 901.82 FEET TO THE NORTHEAST CORNER OF UNIT 5 OF CENTERPOINT BUSINESS CAMPUS CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE MASTER DEED THEREOF RECORDED IN LIBER 16667, PAGE 11, OAKLAND COUNTY RECORDS, AND DESIGNATED AS OAKLAND COUNTY CONDOMINIUM PLAN NO. 1004, AND ANY AMENDMENTS THERETO, AS LAST AMENDED BY EIGHT AMENDMENT TO MASTER DEED RECORDED IN LIBER 35596, PAGE 855, OAKLAND COUNTY RECORDS; THENCE THE FOLLOWING FIVE (5) COURSES ALONG THE NORTH LINE OF SAID UNIT 5 AND UNITS 21, 22, 40, AND 24 OF SAID CENTERPOINT BUSINESS CAMPUS CONDOMINIUM: (1) S 89°35'13" W 35.00 FEET, AND (2) N 00°24'47" W 20.00 FEET, AND (3) 210.91 FEET ALONG A CURVE TO THE LEFT (RADIUS 215.00 FEET, CENTRAL ANGLE 56°12'23", LONG CHORD BEARS S 61°29'01" W 202.56 FEET) TO A POINT OF REVERSE CURVATURE, AND (4) 226.24 FEET ALONG A CURVE TO THE RIGHT (RADIUS 225.00 FEET, CENTRAL ANGLE 57°36'46", LONG CHORD BEARS S 62°11'13" W 216.83 FEET), AND (5) N 89°00'24" W 706.20 FEET; THENCE N 00°59'36" E 1815.00 FEET; THENCE S 89°00'24" E 1080.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,939,980 SQUARE FEET OR 44.536 ACRES OF LAND.

SUBJECT TO ANY EASEMENT AND OR RIGHTS OF WAY RECORDED OTHERWISE.

is established as an Industrial Development District pursuant to the provisions of PA 198 of 1974, as amended, to be known as Oakland Logistics Industrial Development District.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Council of Pontiac, County of Oakland, Michigan, as a _____ meeting held on _____.

_____

City of Pontiac Interim Clerk

#7

RESOLUTION

CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable City Council President and City Council Members

FROM: Linnette Phillips, Director, Economic Development

THROUGH: Mayor Deirdre Waterman

DATE: February 16, 2021 moved to March 2, 2021, moved to March 16, 2021, moved to March 23, 2021

RE: **ECONOMIC DEVELOPMENT**

Resolution to Approve Speculative Building Designation for 2100 S Opdyke, LLC

2100 S Opdyke LLC is requesting the City of Pontiac approve the building at 2100 S Opdyke designation as a speculative building. The designation of "Speculative" provides for the Michigan Economic Development Corporation (MEDC) in partnership with local communities to offer incentives to encourage the development of speculative building projects. By doing so, programs are aimed at increasing availability of high-quality, single or multi-tenant building space that potentially attract businesses considering new or expanded space in our community.

The owners purchased the property from Williams International. The property at 2100 Opdyke is the former GM facility. A Formal Site Plan was submitted and approved by the COP Planning Division, December 8, 2020 to construct a 711,360 sq.ft. building for purpose of providing a multi-tenant industrial facility.

No construction has commenced at this time, however, the owners have received letters of interest from two prospective tenants to relocate to the site. The facility would be classified as a "spec" facility and meet the criteria for PA 198 Industrial Development District.

RESOLUTION ON FOLLOWING PAGE

CITY OF PONTIAC CITY COUNCIL

RESOLUTION TO APPROVE SPECULATIVE BUILDING DESIGNATION FOR 2100 S OPDYKE

WHEREAS, 2100 S Opdyke, LLC ("**Petitioner**") is the owner of that certain real property located in the City of Pontiac and legally described below, (the "**Property**").

WHEREAS, on December 8, 2020, Petitioner received Final Site Plan approval from the City of Pontiac Planning Division to construct an approximately 711,360 sq. ft. building (the "**Building**") for the purpose of providing a multi-tenant industrial facility on the Property;

WHEREAS, on _____, ___, 2021, the Pontiac City Council, acting under the authority of PA 198 of 1974, as amended (M.C.L.A. 207.551 et. seq.) , approved Resolution No. _____ , designating the Property as an Industrial Development District;

WHEREAS, as of the date of this Resolution, Petitioner has not identified specific users for the Building;

WHEREAS, Petitioner has requested the Pontiac City Council to designate the Building as a multi-tenant Speculative Building, as defined in M.C.L.A. 207.553(8), and upon the conditions set forth in M.C.L.A. 207.559(4);

WHEREAS, as a condition of the adoption of this Resolution, the Building must be constructed less than nine (9) years before the filing of the application for the industrial facilities exemption certificate; and

WHEREAS, the Building otherwise qualifies under M.C.L.A. 207.559(2)(e).

NOW, THEREFORE BE IT RESOLVED, by the Pontiac City Council, that:

Section 1. The Building, to be located on the following described parcel of land situated in the City of Pontiac, Oakland County, and State of Michigan, to wit:

LAND IN THE CITY OF PONTIAC, OAKLAND COUNTY, MICHIGAN, BEING PART OF LOTS 8 & 9, A PART OF "ASSESSOR'S PLAT NO. 110", A PART OF SECTION 3, T. 2N., R. 10 E., AS RECORDED IN LIBER 52 OF PLATS, PAGE 26 OF OAKLAND COUNTY RECORDS, LYING WITHIN THE FOLLOWING DESCRIBED PARCEL: COMMENCING AT THE NORTHEAST PROPERTY CONTROLLING CORNER OF SECTION 3 (AS PREVIOUSLY SURVEYED), T. 2 N., R. 10 E., CITY OF PONTIAC, OAKLAND COUNTY, MICHIGAN; THENCE S

00°36'21" W ALONG THE EAST LINE OF SAID SECTION 3, 1215.50 FEET; THENCE N 89°23'39" W 60.00 FEET TO A POINT, SAID POINT BEING THE INTERSECTION OF THE SOUTH LINE OF CAMPUS DRIVE (WIDTH VARIES) WITH THE WEST LINE OF OPDYKE ROAD (120 FEET WIDE); THENCE S 00°36'21" W ALONG THE WEST LINE OF OPDYKE ROAD, 1331.66 FEET TO THE POINT OF BEGINNING; THENCE S 00°36'21" W ALONG THE WEST LINE OF OPDYKE ROAD, 728.35 FEET TO A POINT OF DEFLECTION; THENCE S. 00°24'47" E. ALONG THE WEST LINE OF OPDYKE ROAD, 901.82 FEET TO THE NORTHEAST CORNER OF UNIT 5 OF CENTERPOINT BUSINESS CAMPUS CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE MASTER DEED THEREOF RECORDED IN LIBER 16667, PAGE 11, OAKLAND COUNTY RECORDS, AND DESIGNATED AS OAKLAND COUNTY CONDOMINIUM PLAN NO. 1004, AND ANY AMENDMENTS THERETO, AS LAST AMENDED BY EIGHT AMENDMENT TO MASTER DEED RECORDED IN LIBER 35596, PAGE 855, OAKLAND COUNTY RECORDS; THENCE THE FOLLOWING FIVE (5) COURSES ALONG THE NORTH LINE OF SAID UNIT 5 AND UNITS 21, 22, 40, AND 24 OF SAID CENTERPOINT BUSINESS CAMPUS CONDOMINIUM: (1) S 89°35'13" W 35.00 FEET, AND (2) N 00°24'47" W 20.00 FEET, AND (3) 210.91 FEET ALONG A CURVE TO THE LEFT (RADIUS 215.00 FEET, CENTRAL ANGLE 56°12'23", LONG CHORD BEARS S 61°29'01" W 202.56 FEET) TO A POINT OF REVERSE CURVATURE, AND (4) 226.24 FEET ALONG A CURVE TO THE RIGHT (RADIUS 225.00 FEET, CENTRAL ANGLE 57°36'46", LONG CHORD BEARS S 62°11'13" W 216.83 FEET), AND (5) N 89°00'24" W 706.20 FEET; THENCE N 00°59'36" E 1815.00 FEET; THENCE S 89°00'24" E 1080.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,939,980 SQUARE FEET OR 44.536 ACRES OF LAND.

SUBJECT TO ANY EASEMENT AND OR RIGHTS OF WAY RECORDED OTHERWISE.

is hereby declared and approved as a multi-tenant Speculative Building pursuant to PA 198 of 1974, as amended (M.C.L.A. 207.551 et. seq.).

Section 2. The Building shall be designated as a multi-tenant Speculative Building for a period of twelve (12) years from and after its construction, unless revoked earlier as provided in M.C.L.A. 207.565.

Section 3. An application for Industrial Facilities Exemption Certificate may be submitted by the owner or lessee of the Building, as provided in M.C.L.A. 207.555.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Council of Pontiac, County of Oakland, Michigan, as a _____ meeting held on _____ _____.

_____

Clerk

Oakland Logistics Park

THE CITY OF PONTIAC MICHIGAN

FLINT DEVELOPMENT

davidson ARCHITECTURE + ENGINEERING

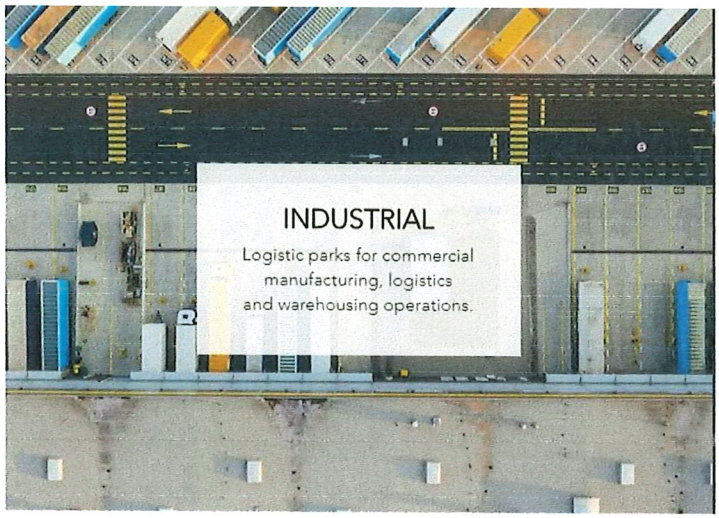
NF ENGINEERS 1969 – 2019

Developer

FLINT DEVELOPMENT

Founders & Partners

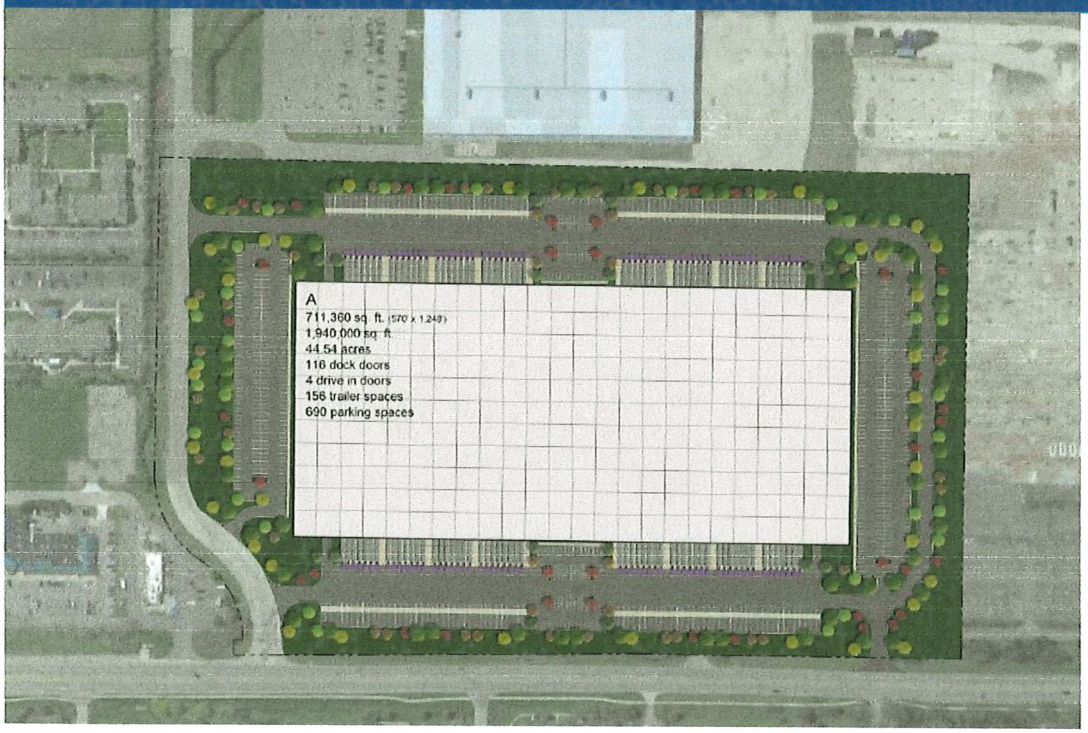
- Hunter Harris
  hunter@flintdevelopment.com
- Devin Schuster
  devin@flintdevelopment.com



Property

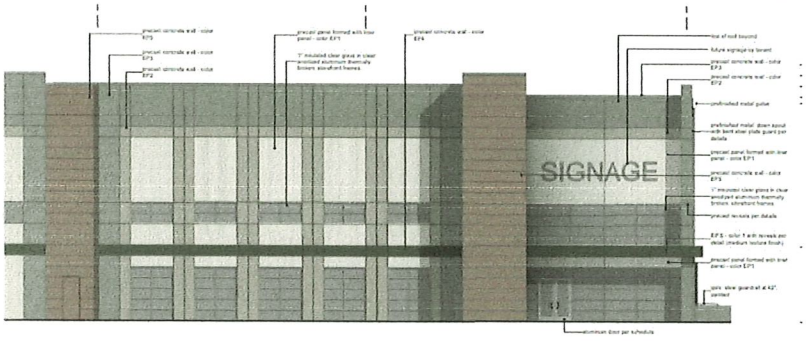
- 2100 S. Opdyke Rd.
- 44.54 +/- acres
- Former site of the General Motors Pontiac Assembly Plant
- Flint Development (2100 S Opdyke, LLC) recently purchased the property from 4GW Real Estate Investments, LLC (Williams International)

Project



- 711,360 sq. ft.
- $55M investment in Pontiac
- Class A industrial facility
- Speculative development designed to accommodate a wide range of potential industrial, manufacturing, and technology users.
- No committed users/tenants at this time.

Design



Final Site Plan Approval

- Granted December 8, 2020:

CITY OF PONTIAC
Department of Building Safety & Planning
PLANNING & ZONING DIVISION

Mayor Deirdre Waterman

December 8, 2020

Mr. Hunter Harris
2100 S Opdyke LLC
6510 Rainbow Avenue
Mission Hills, Kansas 66208

Delivered via email
hunter@finbledevelopment.com

RE: SPR 20-24 FINAL SITE PLAN APPROVAL
2100 S OPDYKE ROAD | PARCEL NO. 64-19-03-200-025
OAKLAND LOGISTIC PARK

Dear Mr. Harris:

Please be advised that Site Plan Application SPR 20-24 has been granted Final Site Plan approval by the Planning Division. The Planning & Development Manager completed a review based on Final Site documents dated November 6, 2020 prepared by Nowak & Fraus Engineers. The document complied with the Planning Commission conditional approval on October 21, 2020, which allowed the Planning & Development Manager authorization to grant Final Site Plan Approval.

Next steps are submission of construction documents to City Engineering and Building & Safety Departments, Waterford Regional Fire Department, Oakland County Water Resources Commission and Road Commission for Oakland County for final approval and/or permitting.

Respectfully Submitted,

Vern Gustafsson
Planning & Development Manager | Planning & Zoning Division

47450 Woodward Ave | PONTIAC, MICHIGAN 48342
TELEPHONE: (248) 758-2800

Project Benefits

- $55M investment in the City of Pontiac.
- Increased job creation, with an estimated 500-700 new jobs at full occupancy.
- Increased property tax revenues to the City of Pontiac.
- Substantial economic activity in the midst of the COVID-19 pandemic.
- Class A industrial facility catering to heavy market demand from booming e-commerce sales and other market trends.
- Transformation of vacant and underutilized property into a productive asset.

Increased Property Tax Revenues

- **$12,600** – Current annual taxes to the City of Pontiac.

- **$143,000** – Estimated annual taxes to the City of Pontiac upon completion of the Project, even with a PA 198 abatement.

Without Project	$	12,607
With Project & PA 198	$	143,004
Percentage Increase		**1034%**

Example PA 198's

- **Oakland County:** 21 communities authorized Industrial Facility Exemptions (IFTs) in 2019-2020, creating $537 million of taxable value.

- **City of Pontiac**: 5 active IFTs, creating $14.7 million of taxable value:

Entity	IFT #	Taxabale Value	50% Rate Subject to IFT	Property Taxes
General Motors	2007-634	$ 3,960,460	31.1002	$ 123,171
General Motors	2012-264	$ 3,420,690	31.1002	$ 106,384
General Motors	2014-429	$ 813,490	31.1002	$ 25,300
Challenge Mfg	2014-447	$ 5,724,080	25.1002	$ 143,676
General Motors	2016-148	$ 777,590	31.1002	$ 24,183
Totals		**$ 14,696,310**		**$ 422,714**

PA 198 Process

- Two (2) remaining steps to PA 198:

  1. March 16, 2021 – Hold public hearing to consider the establishment of an Industrial Development District, and adopt resolutions establishing the District and declaring the building as a multi-tenant speculative building.

  2. Future/TBD – After tenants are identified, City Council will then consider whether to approve the application for PA 198 exemption.

- Establishing the District tonight does not obligate the City to approve the exemption.
- The exemption will be considered by the City at a later date after tenants are identified.
- No benefit to the Developer. 100% of property taxes (and any exemptions) flow through to the tenants.
- PA 198 is a powerful marketing tool to attract the best and most desirable tenants to the City, along with their accompanying jobs and economic impact.

#8

RESOLUTION

CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable City Council President Williams and City Council Members

FROM: Darin Carrington, Finance Director

DATE: March 3, 2021

RE: Renewal of Contract with AT&T

The City of Pontiac has recently been making changes and improvement to the City's telecommunications infrastructure. Recently the City Council approved a new phone system with Ring Central for an improved and updated cloud base phone system.

The current contract with AT&T is set to expire on April 1, 2021. The Administration is submitting a proposed extension to the AT&T contract for a total of 3 additional years. AT&T has been providing telecommunication services to the City for a number of years, dating back to the mid 1990's. Currently they provide all of our telecommunication needs, including internet, for the City Hall and 50th District Court.

The new contract would reduce the amount of services that AT&T provides which will yield some costs savings. Currently, AT&T provides both voice and internet service for the City. Under the proposed contract extension, AT&T will only be providing the City's internet service.

With the new AT&T agreement, along with the recently approved Ring Central phone system, the City will be able to implement an improved system, realize some costs savings and provide more efficient service for employees, residents and customers.

Following is a summary of the differences in price and services to be provided by AT&T with the new contract:

1- The new contract does not include voices services as that will be provided by the new RingCentral Cloud VoIP services that is being implemented.

2- The new contract eliminates expensive data connection between City

Hall and District Court. New Internet service will be installed at District Court and VPN will be provided for network access between the 2 buildings.

3- The monthly price in the new contract will be $1,848.00 vs. $6,099.65 in the existing contract. This will result in a monthly savings for $4,251.65, annually $51,019.80 for data network services.

The Administration hereby requests that Council approves the new agreement with AT&T and adopt the following resolution:

Whereas, AT&T, the City's current telecommunications and internet provider has presented the City with proposals for these services for a period of three years; and,

Whereas, the Mayor and Finance Director have reviewed the proposals, have recommended that proposals are accepted, and have certified available funding.

Now Therefore, Be It Resolved, that the City Council approves the proposal from AT&T to provide telecommunication and internet services as outlined in the summary sheet and the separate agreements attached in this resolution.

Attached is the price sheet detailing all the charges that I summarized above plusthe new documents for all the services provided by AT&T in the next three years.

If the council agrees with the renewal here is a resolution needed to pass:

Whereas, AT&T, the City's current telecommunications and internet provider has presented theCity with proposals for these services for a period of three years; and,

Whereas, the Mayor and Finance Director have reviewed the proposals, have recommended that proposals are accepted, and have certified available funding.

Now Therefore, Be It Resolved, that the City Council approves the proposal from the AT&T toprovide telecommunication and internet services as outlined in the summary sheet and the separate agreements attached in this resolution.

AT&T Contracts Costs - New Proposed a			
Service Address	**Contract Name w/Service Description**	**AT&T Contract Name**	**Bandwidth**
47450 Woodward	**AT&T Dedicated Internet**	AT&T ADI Internet	100mb
70 N Saginaw	**AT&T Dedicated Internet**	AT&T ADI Internet	100mb
			Total - ADI
Both Locations	AT&T ASE and AVPN Management	ASE NOD, AVPN Mgmt w/T1	
Both Locations	AT&T T1 for AVPN Management		
Both Locations	MPLS Port		
Both Locations	AT&T Monthly Taxes		
			Total Costs

Monthly Savings	
Annual Savings	

ınd Expiring Contract - Data Network Only

New Monthly Costs	New Annual Costs	Current Costs	Annual Costs	Notes
$884.00	$10,608.00	$1,054.00	N/A	Current is 100mb MIS @ CH
$884.00	$10,608.00	$0.00	N/A	No Internet Service at District Court
$1,768.00		$1,054.00	$12,648.00	
		$2,823.00	$33,876.00	Including all costs for CH/DC
		$1,621.00	$19,452.00	Including all costs for CH/DC
		$221.00	$2,652.00	Including all costs for CH/DC
$80.00	$960.00	$380.65	$4,567.80	
$1,848.00	**$22,176.00**	**$6,099.65**	$73,195.80	

$4,251.65
$51,019.80

AT&T MA Reference No. eMSA UA III
AT&T PS Contract ID MIS14241407

AT&T

AT&T DEDICATED INTERNET PRICING SCHEDULE

Customer	AT&T
City of Pontiac Street Address: 47450 WOODWARD AVE City: PONTIAC State/Province: MI Zip Code: 48342-5009 Country: US	AT&T Corp.
Customer Contact (for Notices)	**AT&T Contact (for Notices)**
Name: Frank Antown Title: Administrator Street Address: 47450 WOODWARD AVE City: PONTIAC State/Province: MI Zip Code: 48342-5009 Country: US Telephone: 7347871517 Email: fantoun@pontiac.mi.us	Name: Street Address: City: State/Province: Zip Code: Country: Telephone: Email: Sales/Branch Manager: SCVP Name: Sales Strata: Sales Region: **With a copy (for Notices) to:** AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com
AT&T Solution Provider or Representative Information (if applicable) ☒	
Name: William Bartley Company Name: AIE Solutions LLC (U) Agent Street Address: City: Port Huron State: MI Zip Code: 48060 Country: US Telephone: 2489619291 Fax: Email: orders@aiesolutions.com Agent Code: 44054	

This Pricing Schedule is part of the Agreement between AT&T and Customer referenced above.

Customer (by its authorized representative)	**AT&T** (by its authorized representative)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

AT&T MA Reference No. eMSA UA III
AT&T PS Contract ID MIS14241407

AT&T DEDICATED INTERNET PRICING SCHEDULE

1. SERVICES

Service	Service Publication Location
AT&T Dedicated Internet (ADI) - ADI Express	http://serviceguidenew.att.com/sg_flashPlayerPage/MIS
AT&T Bandwidth Services	http://serviceguidenew.att.com/sg_flashPlayerPage/BWS
AT&T Wi-Fi Services - AT&T Business Wi-Fi	http://serviceguidenew.att.com/sg_flashPlayerPage/AWS

2. PRICING SCHEDULE TERM AND EFFECTIVE DATES

Pricing Schedule Term	36 months
Pricing Schedule Term Start Date	Effective Date of this Pricing Schedule
Effective Date of Rates and Discounts	Effective Date of this Pricing Schedule

3. MINIMUM PAYMENT PERIOD

Service Components	Percent of Monthly Service Fees Due Upon Termination Prior to Completion of Minimum Payment Period	Minimum Payment Period per Service Component
All Service Components	50%	Longer of 12 months or until the end of the Pricing Schedule Term

4. RATES

Section I: AT&T Dedicated Internet

Table 1: ADI Self – Installation

Discount: 100.00%

ADI Speed	Undiscounted ADI	Undiscounted ADI w/ Managed Router
Ethernet	$1,500.00	$1,500.00**

**Pricing available for ADI speeds of 100 Mbps and below and with electrical interfaces only

Table 2: On-Site Installation

Discount: 100.00%

ADI Speed	Undiscounted ADI w/ Managed Router Only
Ethernet	$1,500.00

AT&T DEDICATED INTERNET
PRICING SCHEDULE

Table 3: Hi Cap Flex Billing Option – Ethernet (10 Mbps to 1 Gbps) - Group 1, 2, and 3
Available bandwidth levels are subject to qualification at time of each order and may vary.

Bandwidth	Discounted Ethernet Access Monthly Fee Group 1	Discounted Ethernet Access Monthly Fee Group 2	Discounted Ethernet Access Monthly Fee Group 3	Minimum Bandwidth Commitment		Undiscounted Incremental Usage Fee Per Mbps
				Undiscounted ADI w/ Customer Router Monthly Fee	Undiscounted ADI w/ AT&T Managed Router Monthly Fee	
10 Mbps	$400.00	$421.00	$635.00	$268.00	$396.00	$198.00
20 Mbps	$420.00	$449.00	$758.00	$449.00	$577.00	$144.25
50 Mbps	$524.00	$572.00	$968.00	$813.00	$955.00	$95.50
100 Mbps	$604.00	$651.00	$1,280.00	$1,400.00	$1,555.00	$77.75
150 Mbps	$610.00	$677.00	$1,412.00	$1,800.00	$1,965.00	$65.50
250 Mbps	$900.00	$900.00	$1,667.00	$2,150.00	$2,240.00	$44.80
400 Mbps	$1,100.00	$1,100.00	$2,201.00	$2,700.00	$3,380.00	$42.25
500 Mbps	$1,100.00	$1,100.00	$2,239.00	$3,500.00	$4,325.00	$43.25
600 Mbps	$1,100.00	$1,100.00	$2,807.00	$4,096.00	$4,840.00	$40.33
1000 Mbps	$1,300.00	$1,300.00	$3,184.00	$4,505.00	$5,620.00	$28.10
Discount:				**82.00%**	**82.00%**	**82.00%**

Table 4: Hi Cap Flex Billing Option – Ethernet (2 Gbps to 10 Gbps) – Group 1, 2, 3, and 4
Available bandwidth levels are subject to qualification at time of each order and may vary.

Bandwidth	10 Gbps Discounted Ethernet Access Monthly Fee Group 1	10 Gbps Discounted Ethernet Access Monthly Fee Group 2	10 Gbps Discounted Ethernet Access Monthly Fee Group 3	10 Gbps Discounted Ethernet Access Monthly Fee Group 4	Minimum Bandwidth Commitment		Undiscounted Incremental Usage Fee Per Mbps
					Undiscounted ADI w/ Customer Router Monthly Fee	Undiscounted ADI w/ AT&T Managed Router Monthly Fee	
2 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$9,091.00	$12,276.00	$30.69
3 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$13,309.00	$17,981.00	$29.97
4 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$16,015.00	$21,591.00	$26.99
5 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$18,196.00	$24,553.00	$24.55
6 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$21,309.00	$28,768.00	$23.97
7 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$24,218.00	$32,727.00	$23.38
8 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$26,953.00	$36,387.00	$22.74
9 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$28,931.00	$39,069.00	$21.71
10 Gbps	$4,000.00	$6,397.00	$10,151.44	NA	$30,909.00	$41,716.00	$20.86
Discount:					**82.00%**	**82.00%**	**82.00%**

AT&T DEDICATED INTERNET
PRICING SCHEDULE

Section II: Additional Service Fees

Moving Fee (during hours)	$1,000 per location
Additional Moving Fee (outside standard operating hours – 8:00 a.m. to 5:00 p.m. Monday through Friday)	Additional $500.00 per location

Section III: AT&T Business Wi-Fi (ABW)
No discounts apply.

AT&T Business Wi-Fi (ABW) per AP per month Rate	$30.00

End of Pricing Schedule

at&t

Customer Signature Page

Customer	AT&T
City of Pontiac Street Address: 47450 WOODWARD AVE City: PONTIAC State/Province: MI Zip Code: 48342-5009 Country: US	AT&T Corp.
Customer Contact (for notices)	**AT&T Contact (for notices)**
Name: Frank Antown Title: Administrator Street Address: 47450 WOODWARD AVE City: PONTIAC State/Province: MI Zip Code: 48342-5009 Country: US Telephone: 7347871517 Fax: Email: fantoun@pontiac.mi.us Customer Account Number or Master Account:	Street Address: City: State/Province: Zip Code: Country:

AT&T Solution Provider or Representative Information (if applicable)				
Name: William Bartley	Company Name: AIE Solutions LLC (U)			
Agent Street Address: 525 Court Street	City: Port Huron	State: MI	Zip Code: 48060	Country: United States
Telephone: 2489619291	Fax:	Email: orders@aiesolutions.com	Agent Code: 44054	

Customer signature serves as a signature of each document listed below. Edits to appended documents, as originally presented by AT&T, are rejected. Listed documents become effective upon execution of all documents identified by Contract ID below.

Documents Appended:	Contract IDs:
MASTER_AGREEMENT click here for details or http://serviceguide.att.com/masteragreement/	
AT&T_MANAGED_INTERNET_SERVICE_PRICING_SCHEDULE_CONTRACT_ID_7854849.pdf	7854849

If Customer is purchasing Voice Over IP services, the following additional language applies:

The undersigned, on behalf of Customer, acknowledges that Customer has received and understands the advisories concerning the circumstances under which E911 service may not be available, as stated in the AT&T Business Voice over IP Services Service Guide found at http://serviceguidenew.att.com/sg_flashPlayerPage/BVOIP. Such circumstances include, but are not limited to, relocation of the end user's CPE, use of a non-native or virtual telephone number, failure in the broadband connection, loss of electrical power, and delays that may occur in updating the Customer's location in the automatic location information database.

Customer (by its authorized representative)
By:
Name:
Title:
Date:

#9

RESOLUTION

CITY OF PONTIAC
OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable City Council President Kermit Williams, and City Council Members

FROM: Honorable Mayor Deirdre Waterman

CC: Linnette Phillips, Economic Development Director
Michael J. Wilson, Building and Safety

DATE: March 18, 2021

RE: **Resolution to Approve Waiver of Rental Inspection Fees for Tenant Non-Payment or Stay of Eviction for Qualified Landlords**

To provide a one-time waiver of rental inspection fees by the City of Pontiac, for landlords who have been impacted by tenants unable to pay rent due to the impacts of the COVID 19 Novel Coronavirus. As such, the following resolution is recommended for your consideration:

WHEREAS, the City of Pontiac in the midst of the Pandemic is offering relief for Qualifying Pontiac Landlords, and;

WHEREAS, the City of Pontiac would waive one time the rental inspection fee for Qualifying Landlords, and;

WHEREAS, the Mayor is proposing along with City Council to pass along this relief gesture to qualifying landlords until June 30, 2021,

NOW THEREFORE be resolved that the City Council in solidarity with the Mayor hereby authorizes the waiver of fees for qualifying landlords until June 30, 2021.

CITY OF PONTIAC
OFFICIAL MEMORANDUM
Executive Branch

TO: Honorable City Council President Williams and City Council Members

FROM: Michael J. Wilson, Building Official

THROUGH: Mayor Deirdre Waterman

DATE: March 17, 2021

RE: Waiver of Rental Inspection Fee for Qualified Landlords

On January 19, 2021 City Council unanimously approved Resolution 20-606 Authorizing the waiver or rental inspection fees for eligible landlords.

The option is available through June 30, 2021. To commence the program, an application has been created and a process to review and establish which applicants meet eligibility requirements for waiver of fees. We are working in cooperation with both Oakland County and 50th District Court to verify eligibility.

This program is for all landlords who have retained tenants who are behind in rent. Eligible landlords must meet at least one of the following conditions:

a) Have applied for and received federal CARES Act mortgage assistance through Oakland County as a result of tenants not paying rent;

b) Have not evicted renters who are behind in rent as a result of a stay of eviction order from Oakland County Circuit Court;

c) Have received federal assistance to cover a portion of rent for their tenants in the form of Housing choice vouchers, Section 8 project based rental assistance, LIHTC program or;

d) Have a federally backed mortgage or multifamily mortgage loan and have not evicted tenants for non-payment of rent since April 1, 2020.

DR. DEIRDRE WATERMAN
MAYOR
CITY OF PONTIAC

March 18, 2021

Re: Waiver of Rental Inspection Fees

Pontiac Landlords

The City of Pontiac will provide a one-time waiver of rental inspection fees for eligible landlords who have been impacted by tenants, unable to pay rent due to the COVID-19 Coronavirus.

This program is for all landlords who have retained tenants who are behind in rent. Eligible landlords must meet at least one of the following conditions:

- have applied for and received federal CARES Act mortgage assistance through Oakland County as a result of tenants not paying rent;
- have not evicted renters who are behind in rent as a result of a stay of eviction order from Oakland County Circuit Court;
- have received federal assistance to cover a portion of rent for their tenants in the form of Housing Choice Vouchers, Section 8 project based rental assistance, Low-Income Housing Tax Credit, LIHTC, program or
- have a federally backed mortgage or multifamily mortgage loan and have not evicted tenants for non-payment of rent since April 1, 2020.

Landlords who have expiring rental certificates of compliance and are otherwise in good standing, and who have already completed the required CARES Act process with Oakland County, and who may be receiving payment assistance can request to have rental inspection fees waived through June 30th.

Landlords applying for the waiver of Pontiac rental inspection fees must have made application for reimbursement of non-payment by a tenant to Oakland County and/or have a stay of eviction issued by the Circuit Court.

Included with this letter is an application for your use. Please return the application to the Department of Building and Safety, 47450 Woodward Avenue, Pontiac, MI 48342 or email to inspections@pontiac.mi.us if you believe you qualify. Please contact Meloney Bishop at 248-758-2840 regarding any questions.

Respectfully,

Deirdre Waterman,
Mayor

Michael J. Wilson,
Building Official

Enclosure: Rental Waiver Application

47450 Woodward Avenue • Pontiac, Michigan 48342
Direct: (248) 758-3181 • Appointments: (248) 758-3326 • Fax: (248) 758-3292
E-mail: DWaterman@pontiac.mi.us • www.pontiac.mi.us
https://www.facebook.com/pontiacmayor/

CITY OF PONTIAC
DEPARTMENT OF BUILDING AND SAFETY
47450 WOODWARD AVENUE
PONTIAC, MICHIGAN 48342
PH.: 248-758-2800 / FAX: 248-758-2827
inspections@pontiac.mi.us

RENTAL INSPECTION WAIVER APPLICATION

The Building & Safety Department will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, handicap, or political beliefs.

I. RENTAL INFORMATION			
Registration Number:		Parcel Number:	
RENTAL ADDRESS:		STATE MI	COUNTY OAKLAND
OWNER/MANAGER INFORMATION		TENANT INFORMATION	
Last Name First Name		Last Name First Name	
Home Address		Home Number:	
City/State/Zip		Cell Number	
Cell Number:		Email Address:	
Home Number:	Fax Number:		
Email Address:			

Do you have additional rental properties in the City of Pontiac? _____ Yes _____ No

OFFICIAL USE ONLY

Date Received:	Approved:
Verified:	Denied:
Signature:	Decision Date:

Rev: 02/23/21 mjw

#10
COMMUNICATION FROM THE CITY CLERK

GARLAND S. DOYLE, M.P.A.
Interim City Clerk
FOIA Coordinator

SHEILA GRANDISON
Deputy City Clerk

OFFICE OF THE CITY CLERK
47450 Woodward Avenue
Pontiac, Michigan 48342
Phone: (248) 758-3200
Fax: (248) 758-3160

MEMORANDUM

TO: Honorable City Council

FR: Garland S. Doyle, Interim City Clerk

DA: March 18, 2021

RE: Memorandums from Nick Curcio, Esq., The Curcio Law Firm regarding Medical Marihuana and the Planning Commission

As you are aware, City Attorney Anthony Chubb, Giarmarco, Mullins & Horton, P.C. issued a legal opinion on April 29, 2020 regarding conditional rezoning obligations/Glenwood Plaza. In the opinion, it states that the conditional rezoning agreement approved by the City Council on January 21, 2020 "allows zoning and uses nonconforming with the relevant provisions of Pontiac Zoning Ordinance Amendment No. 2363 to the extent its requirements are inconsistent. Therefore, pending applications submitted by Pharmaco must be timely reviewed. Further, upon determination that they are in compliance with all requirements of Ordinance 2357 (B) applicable to growing operations, such licenses shall be issued by the City Clerk's Office." I have informed your honorable body, Mayor Waterman and City Attorney Chubb on several occasions that his opinion is asking me to issue a license when it is not permitted by Ordinance 2363.

Despite my concern, Mayor Waterman and City Attorney Chubb along with the developer Rubicon Capital LLC continue to apply pressure to myself as the City Clerk and has asked this Council to force me to issue licenses (permits) to their prospective tenants (Pharmaco Inc and Family Rootz).

On February 16, 2021 during the Clerk's Response to Glenwood Plaza Medical Marihuana Project, I informed the City Council that it would be illegal for me to issue a license to any medical marihuana grower or processor applicant at the Glenwood site. Ordinance 2363 does not permit growers or processors to be licensed outside of the Cesar Chavez or Walton Blvd Overlay Districts. My statement is recorded in the February 16, 2021 approved minutes.

As a result of my concern that the City Administration (Mayor and City Attorney) are asking me to perform what I believe is an illegal act, I felt that this was necessary for me to seek my own independent legal counsel to protect myself from any civil or criminal liability. I retained Nick Curcio, Esq. Attorney Curcio practice primarily focuses on municipal and zoning law.

I asked Attorney Curcio the following questions:

1. Whether, and in what circumstances, the zoning ordinance allows parcels outside the Medical Marihuana Overlay District (MMODs) to be approved for marijuana-related uses. To help clarify the issue, I asked for an opinion as to whether the Planning Commission is authorized to grant a special exemption permit for a marijuana grower or processor at a location outside of the MMODs. Also I asked if a conditional rezoning agreement could authorize the Planning Commission to do so, without rezoning the property in question to be part of an MMOD.

Attorney Curcio's memo regarding locational requirements for marijuana growers and processors dated March 9, 2021 is on the agenda as item 10a. Attorney Curcio's opinion validates my position that Ordinance 2363 does not currently permit growers or processors to be licensed outside of the Cesar Chavez or Walton Blvd Overlay Districts. It would be a violation of Ordinance 2363 and illegal for me as the City Clerk to issue any grower or processor a license (permit) if they are located outside of the Cesar Chavez or Walton Blvd Overlay Districts. If the City wants to permit growing and processing at the Glenwood site, then the City Council would have to amend Ordinance 2363.

2. In addition, I asked for an opinion as to whether the Planning Commission has a duty to review the proposed ordinance and make an up-or-down recommendation to the City Council.

Attorney Curcio's memo regarding Planning Commission's failure to act on City Council referral dated March 9, 2021 is on the agenda as item 10b.

3. Finally, I asked for an opinion as to whether planning commissioners are legally permitted to continue serving after their reappointments were rejected by City Council. If so, whether there is any limitation on their ability to do so.

Attorney Curcio's memo regarding Planning Commission holdovers dated March 9, 2021 is on the agenda as item 10c.

cc: Mayor Waterman
City Attorney Anthony Chubb

#10a

Memorandum

C|L|F
THE CURCIO LAW FIRM

Attorney Memorandum[1]

To: Garland Doyle, Pontiac City Clerk
From: Nick Curcio, Attorney
Re: Locational Requirements for Marijuana Growers and Processors
Date: March 9, 2021

In 2019, the City of Pontiac adopted Ordinance Number 2363 to establish zoning requirements for medical marijuana facilities.[2] Among other things, the ordinance establishes three medical marijuana overlay districts (MMODs), known as the Walton Boulevard MMOD, the Cesar Chavez MMOD, and the C-2 downtown MMOD. The stated purpose of MMODs is to "provide for the placement of Medical Marihuana[3] related uses . . . with a goal of minimizing potential adverse impacts on adjacent property owners, neighbors, and the City."[4] Over the last year, questions have arisen as to whether, and in what circumstances, the zoning ordinance allows parcels outside the MMODs to be approved for marijuana-related uses. To help clarify this issue, you asked for my opinion as to whether the Planning Commission is authorized to grant a special exception permit for a marijuana grower or processor at a location outside of the MMODs. You also asked if a conditional rezoning agreement could authorize the Planning Commission to do so, without rezoning the property in question to be part of an MMOD.

For the reasons described below, I believe the answer to both of those questions is "no." If called upon to interpret the City's zoning ordinances, a reviewing court would likely conclude that the MMODs are the exclusive locations in the City where growers and processors can legally operate. While the zoning ordinance expressly allows other

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[1] This memo is one of several that you asked me to prepare as your privately retained legal counsel. During our initial consultation, you explained to me that you felt pressured to take actions in your role as City Clerk that you believed to be contrary to applicable law. Accordingly, you asked for my opinion on various legal issues to help you decide how to respond to those pressures. Please note that I do not represent or have any relationship with the City of Pontiac. Pursuant to Section 4.202(a) of the Pontiac City Charter, the City Attorney is responsible for "supervising the conduct of all the legal business of the City and its departments."

[2] The statements of fact in this opinion are based primarily on your representations to me during our initial consultation. For the most part, I have not independently verified those representations.

[3] Notably, both the City's zoning ordinance and various state statutes use an antiquated spelling of "marijuana" that includes an "h" instead of a "j." This memo uses the more modern spelling except where quoting directly from ordinance or statutory text.

[4] Pontiac Zoning Ordinance § 3.1101.

types of medical marijuana facilities to be located outside of the MMODs subject to a special exception permit, it makes no such allowance for grower and processor uses. Accordingly, the City cannot reasonably interpret the zoning ordinance to provide such an allowance, nor can it create such an allowance through a contract with a private party. Rather, the only scenarios in which a parcel that is currently outside of an MMOD could be lawfully approved for grower or processor uses would be if: (1) the parcel is rezoned to be within an MMOD; or (2) the City amends the zoning ordinance to allow medical marijuana growers and processors in other locations, either as permitted uses or special exception uses.

By way of further explanation, there are several sections of the zoning ordinance that are relevant to answering the question posed above. First, section 2.201 explains the distinction between the different designations for zoning uses in the City of Pontiac. A "permitted use" is one that is clearly compatible with a given zoning district and therefore "require[s] a minimum of limitations." Permitted uses are allowed "by right," subject only to site plan review to the extent required by section 6.202. A "special exception use," by contrast, is a use "presenting potential injurious effect upon residential and other property, unless authorized under specific imposed conditions." In particular, special exception uses require a special exception permit issued by the Planning Commission pursuant to a more rigorous review process provided in article 6, chapter 3 of the zoning ordinance. If the zoning ordinance does not authorize a defined use as either a permitted use or a special exception use in a particular zoning district, section 2.202 provides that the use is prohibited in that district.

Pursuant to section 2.204 of the zoning ordinance, a table labeled "Table 2" lists "the uses that may be permitted in each zoning district." In doing so, it uses different symbols to distinguish uses that are permitted by right from those that require a special exception permit. Among other things, Ordinance Number 2363 amends Table 2 to include five different types of medical marijuana facilities, each of which is defined and

authorized by the Michigan Medical Marihuana Facilities Licensing Act. The new sections of Table 2 appear as follows:

Commercial, Office, and Service Uses												
	Residential Districts			Commercial Districts					Industrial Districts			
	R-1	R-2	R-3	C-0	C-1	C-2	C-3	C-4	M-1	M-2	IP-1	
Medical Marihuana Grower									o	o	o	Section 2.544
Medical Marihuana Processor									o	o	o	Section 2.545
Medical Marihuana Provisioning Centers				*		o	o	*	*	o	o	Section 2.546
Medical Marihuana Safety Compliance Facility				*		o	o	*	*	o	*	Section 2.547
Medical Marihuana Secure Transporter				*		o	o	*	*	o	*	Section 2.548

*Special Exception Permit Uses outside the Medical Marihuana Overlay Districts

o Principal Permitted Uses in the Medical Marihuana Overlay Districts

As shown above, the rows in the table for grower and processor uses are identical, with both having a circle symbol (o) in the M-1, M-2, and IP-1 columns. According to the key below the table, that symbol indicates that a use is a principal permitted use in the MMODs. In otherwords, when a parcel is zoned M-1, M-2, or IP-1 with an MMOD overlay designation, grower and processor uses are permitted by right. Notably, the rows in the table for grower and processor uses do not include any asterix symbols (*), which indicate that a use can be authorized via special exception permit for parcels outside the MMODs. By contrast, the rows for the other three types of medical marijuana uses contain asterix symbols in various columns.

In addition to Table 2, there are several other sections in the zoning ordinance that are potentially relevant to the question posed. For each use type, Ordinance Number 2363 creates a new zoning section that provides locational and other regulatory requirements. For example, section 2.544 pertains to grower facilities, and states in a subsection entitled "Licensing" that "Medical Marihuana Grower uses are not permitted

outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts." Section 2.545 pertains to processors and has a nearly identical provision. By contrast, sections 2.546, 2.547, and 2.548, which pertain to provisioning centers, safety compliance facilities, and secure transporters, respectively, state that each of those uses may be located outside of the MMODs. For example, section 2.546 states: "No More than five (5) Provisioning Centers shall be established in the C-1, C-3, and C-4 zoned properties combined outside the Medical Marihuana Overlay Districts." Sections 2.547 and 2.548 include similar language.

The final relevant section of Ordinance Number 2363 is section 3.1106, which provides: "Medical Marihuana uses outside the Medical Marihuana Overlay Districts are subject to Planning Commission approval following the Standards for Approval of Section 6.303 for Special Exception Permits, and Article 2, Chapter S, Development Standards for Specific Uses."

In my opinion, these sections collectively indicate that growers and processors can only be located in the MMODs, where they are permitted by right. I understand that some have suggested otherwise, asserting that section 3.1106 allows all five types of medical marijuana uses to locate outside of the MMODs if the Planning Commission approves a given location by issuing a special exception permit. This reading of the ordinance is contrary to two principal rules of legal interpretation, and therefore is not legally viable. First, when possible, courts must "give every word meaning, and should seek to avoid any construction that renders any part of a statute surplus or ineffectual."[5] As the Supreme Court has explained, "when there is tension, or even conflict, between sections of a statute, this Court has a duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them."[6] Here, if section 3.1106 is read to allow all five types of medical marijuana uses to locate outside of the MMODs, the sections of the ordinance that expressly prohibit growers and processors from locating outside of the MMODs (*i.e.*, Table 2 and sections 2.544 and 2.545) would be superfluous and ineffectual. On the other hand, all of the relevant sections can be easily harmonized by reading section 3.1106 more narrowly, so that its reference to "Medical Marihuana uses outside the Medical Marihuana Overlay Districts" refers only to the

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[5] *In re Turpening Estate*, 258 Mich App 464, 465; 671 NW2d 567 2003).

[6] *Nowell v Titan Ins Co*, 466 Mich 478, 483; 648 NW2d 157 (2002).

three specific types of uses that are expressly allowed to locate outside of the MMODs pursuant to other sections (*i.e.*, provisioning centers, safety compliance facilities, and secure transporters). This reading is perfectly consistent with the text of the ordinance, in that it does not require giving any words or phrases irregular meanings.

A second relevant principal of interpretation is that when two sections of a statute or ordinance are in conflict with each other, the more specific provision takes precedence over the more general one.[7] This rule is thought to help courts give effect to the legislature's intent, on the theory that "the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence."[8] Here, to the extent that the various provisions of the zoning ordinance are in conflict with each other, the provisions that directly address the locational requirements for growers and processors are more specific than section 3.1106, which refers to medical marijuana uses more generally. Accordingly, a court would likely find that the more specific provisions that prohibit growers and processors from locating outside of the MMODs take precedence over any language in section 3.1106 that might suggest otherwise.

Aside from the interpretive issue involving section 3.1106, some have suggested that the Court of Appeals's decision in *Reilly v Marion Township*[9] empowers the Planning Commission to grant special exception permits for growers and processors outside of the MMODs, even if the text of the ordinance does not do so. This suggestion is based on a fundamental misunderstanding of the holding in *Reilly*. In that case, the Court considered a narrow issue of interpretation involving the Marion Township zoning ordinance: whether the zoning board was authorized to grant a special exception permit for a commercial trucking operation even though commercial trucking was not specifically listed in the zoning ordinance as a special exception use permitted in any zoning district.[10] The court concluded that the zoning board had the power to do so, because language in the ordinance specifically "empowered [the board] to add to the list

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[7] *See, e.g., Bruwer v Oaks* (On Remand), 218 Mich App 392, 396; 554 NW2d 345 (1996).
[8] Scalia & Garner, Reading Law: The Interpretation of Legal Texts (St. Paul: Thomson/West, 2012), p 183.
[9] 113 Mich App 584, 317 NW2d 693 (1982).
[10] *Id.* at 588-589.

of special use exceptions those exceptions deemed necessary to protect adjacent properties, the general neighborhood, and its residents and workers."[11]

There are at least three reasons why the decision in *Reilly* has no bearing on the question you posed above. First, unlike the ordinance in *Reilly*, the Pontiac Zoning Ordinance is not silent as to whether the various medical marijuana facilities are allowed as special exception uses. Rather, Table 2 and other sections of the ordinance specifically indicates that some are and some are not. This fact alone distinguishes the present circumstance from *Reilly*. Second, also unlike the ordinance in *Reilly*, the Pontiac Zoning Ordinance does not include any language indicating that the Planning Commission can add to the list of uses that are permitted by special exception permit. Third, it is questionable whether *Reilly* remains good law after the passage of the Michigan Zoning Enabling Act (MZEA). In *Whitman v Gallien Township*,[12] the Court of Appeals held that the MZEA, which was enacted in 2006, "require[es] that a zoning ordinance specifically enumerate the land uses and activities that are eligible for special-use status."[13] In doing so, the court seemed to indicate that the open-ended list of special exception uses at issue in the *Reilly* may not comply with the new requirements in the MZEA.[14]

Finally, some have suggested that the City can allow growers and processors to locate outside of the MMODs by entering into conditional rezoning agreements wherein the City agrees to rezone a parcel to a zoning designation that does not ordinarily allow growers or processors (*i.e.*, a zoning designation outside of the MMODs), but then provides in the agreement that the parcel can be used as a grower or processor via a special exception permit. In my opinion, the MZEA does not allow this type of arrangement. The relevant provision of the MZEA authorizes conditional rezoning agreements by providing that "[a]n owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map."[15] When used in the zoning context, the word "condition" refers to a "limitation[] on the use of the land and to protect nearby owners."[16] Accordingly, the purpose of a conditional rezoning

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[11] *Id.* at 588.
[12] 288 Mich App 672; 808 NW2d 9 (2010).
[13] *Id.* at 17.
[14] *Id.*
[15] MCL 125.3405.
[16] *City of Troy v Aslanian*, 170 Mich App 523, 528; 428 NW2d 703 (1988).

agreement is to place ***additional limitations*** on a specific parcel that would not otherwise exist under the zoning designation to which the property is being rezoned. For example, a community might choose to rezone a residential parcel to a commercial designation, but then provide by agreement that the parcel can only be used for a lower-intensity commercial use, like an ice cream store, rather than for any of the commercial uses ordinarily permitted in the district.[17] Importantly, nothing in the text of the statute indicates that a rezoning agreement can authorize a property owner to engage in uses that are not allowed in the zoning district to which the parcel is being rezoned. Such an arrangement is inconsistent with the common understanding of the word "condition," which refers to imposition of additional limitations rather than granting of additional rights. Therefore, if the City wishes to use conditional rezoning to allow growers or processors in new locations, the only permissible way to do so would be to rezone the parcel in question to an MMOD zoning designation. A reviewing court would likely determine that a rezoning agreement that rezones a parcel to a different zoning designation, outside of an MMOD, cannot authorize grower or processor uses to operate via special exception permit.

I hope this memo sufficiently answers your question. Please let me know if there is anything further I can do to assist with this issue.

[17] As one prominent commentator has explained, "To reduce controversy or concerns the applicant might volunteer to condition the zoning amendment to restrict the use of the parcel(s) to only a specific certain land use. For example an ice cream store rather than all the possible land uses in a commercial district. If the zoning amendment is approved something like a deed restriction is placed on the parcel so that only the restricted uses of the parcel are possible." Kurt H. Schindler, Michigan State University Extension, "All zoning does not have to include everything in the Michigan Zoning Enabling Act," August 19, 2015

CITY OF PONTIAC
ORDINANCE NO 2363

AN ORDINANCE TO AMEND ORDINANCE 2361 TO INCLUDE MEDICAL MARIHUANA FACILITY USES IN DESIGNATED OVERLAY DISTRICTS TO INCLUDE:

ARTICLE 2, CHAPTER 1, SECTION 2.101, TABLE 1-ZONING DISTRICTS, SPECIAL PURPOSE ZONING DISTRICTS;

ARTICLE 2, CHAPTER 2, SECTION 2.203, TABLE 2-USES PERMITTED BY DISTRICT;

ARTICLE 2, CHAPTER 5-DEVELOPMENT STANDARDS FOR SPECIFIC USES TO ADD SECTIONS 2.544, 2.545, 2.546, 2.547, AND 2.548;

ARTICLE 3-SPECIAL PURPOSE ZONING DISTRICTS TO ADD CHAPTER 11-MEDICAL MARIHUANA OVERLAY DISTRICTS, AND;

ARTICLE 7-DEFINITIONS TO ADD CHAPTER 2 AND CHAPTER 3, SECTIONS 7.202, 7.203 AND 7.301.

THE CITY OF PONTIAC ORDAINS:

Article 2 Chapters 1 and 2 Section 2.101 Table 1 and Section 2.203 Table 2 Zoning Districts is amended to add:

Abbreviation	General Zoning Districts	Abbreviation	Special Purpose Zoning Districts
To Remain The Same	To Remain The Same	--	--
		--	--
		MMOD	Medical Marihuana Overlay Districts

Amend Article 2 I Chapter 2 - Section 2.203 Table 2 (Uses Permitted By District). Not more than five (5) Medical Marihuana Provisioning Center Facilities are to be located in any one of the three Medical Marihuana Overlay Districts (MMOD), described in Section 3.1106.

Commercial, Office, and Service Uses												
	Residential Districts			Commercial Districts					Industrial Districts			
	R-1	R-2	R-3	C-0	C-1	C-2	C-3	C-4	M-1	M-2	IP-1	
Medical Marihuana Grower									o	o	o	Section 2.544
Medical Marihuana Processor									o	o	o	Section 2.545
Medical Marihuana Provisioning Centers					*	o	o	*	*	o	o	Section 2.546

Medical Marihuana Safety Compliance Facility	*	o	o *	*	o *	o *	o	Section 2,547
Medical Marihuana Secure Transporter	*	o	o *	*	o *	o *	o	Section 2,548

*Special Exception Permit Uses outside the Medical Marihuana Overlay Districts

O Principal Permitted Uses in the Medical Marihuana Overlay Districts

Article 2 Chapter 5 - Development Standards for Specific Uses is amended to add Sections 2.544, 2.545, 2.546, 2.547, and 2.548 as follows:

Section 2.544 - Medical Marihuana Grower Facilities

Grower means a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale to a Processor or Provisioning Center, as defined in the Medical Marihuana Facility Licensing Act ("MMFLA"). As used in this ordinance, Grower shall include Class A Growers, Class B Growers, and Class C Growers.

1. Class A Grower means a Grower licensed to grow not more than 500 marihuana plants.
2. Class B Grower means a Grower licensed to grow not more than 1,000 marihuana plants.
3. Class C Grower means a Grower licensed to grow not more than 1,500 marihuana plants.

A. General Provisions

1. Consumption, smoking, and inhalation of marihuana and/or alcohol shall be prohibited on the premises of Medical Marihuana Grower Facility, and a sign shall be posted on the premises of each facility indicating that consumption is prohibited on the premises.
2. The premises shall be open for inspection and/or investigation at any time by City investigators during the stated hours of operation and as such other times as anyone is present on the premises.
3. All activity related to the Medical Marihuana growing shall be done indoors.
4. Any Medical Marihuana Grower Facility shall maintain a log book and/or database identifying by date the amount of Medical Marihuana and the number of Medical Marihuana plants on the premises which shall not exceed the amount permitted under the Grower license issued by the State of Michigan. This log shall be available to law enforcement personnel to confirm that the Medical Marihuana Grower does not have more Medical Marihuana than authorized at the location and shall not be used to disclose more information than is reasonably necessary to verify the lawful amount of Medical Marihuana at the Facility.
5. The Medical Marihuana Grower Facility shall, at all times, comply with the MMFLA and the rules and regulations of the Department of Licensing and Regulatory Affairs – Bureau of Marihuana Regulations ("LARA"), as amended from time to time.

B. Security

1. Medical Marihuana Grower Facility shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras that operate 24-hours a day, 7-days a week. The video recordings shall be maintained in a secure, off-site location for a period of 30 days, and must be coordinated with the Oakland County Sherriff Department.

2. Any usable Medical Marihuana remaining on the premises of a Marihuana Grower while the Medical Marihuana Facility is not in operation shall be secured in a safe permanently affixed to the premises.

C. Space Separation

1. Unless permitted by the MMFLA, public areas of the Medical Marihuana Grower Facility must be separated from restricted or non-public areas of the Grower Facility by a permanent barrier.

2. Unless permitted by the MMMA, no Medical Marihuana is permitted to be stored or displayed in an area accessible to the general public.

D. Nuisance Prohibited

1. Medical Marihuana Grower Facilities shall be free from infestation by insects, rodents, birds, or vermin or any kind.

2. Medical Marihuana Grower Facilities shall produce no products other than useable Medical Marihuana intended for human consumption.

3. No Medical Marihuana Grower shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the Medical Marihuana Grower is operated.

E. Licensing

1. The license required by this chapter shall be prominently displayed on the premises of a Medical Marihuana Grower Facility.

2. Medical Marihuana Grower uses are not permitted outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts.

3 Medical Marihuana Growers are not permitted within the same facility with non-Medical Marihuana facility uses.

F. Disposal of Waste

1. Disposal of Medical Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with State law.

2. Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner as approved by the City so that they do not constitute a source of contamination in areas where Medical Marihuana is exposed.

3. That portion of the structure where the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the local Fire Department to ensure compliance with the Michigan Fire Protection Code.

G. Signage

1. It shall be prohibited to display any signs that are inconsistent with State and local laws and regulations.

2. It shall be prohibited to use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors or in violation of LARA regulations.

3. It shall be prohibited to use the symbol or image of a marihuana leaf in any exterior building signage.

4. No licensed Medical Marihuana Grower shall place or maintain, or cause to be placed or maintained, an advertisement of medical marihuana in any form or through any medium:

i. Within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school; and

ii. Within one hundred feet of a public or private youth center, public swimming pool or a church or other structure in which religious services are conducts.

H. Co-Location

1. There shall be no other accessory uses permitted within the same facility other than those associated with a Processor and Provisioning Center.

2. Multiple Class C licenses may be stacked in the same facility as defined by the MMFLA, and shall only be considered as one facility for the purposes of this subsection, provided that a separate application fee is paid for each Class C license.

I. Building Design

1. Floors, walls, and ceilings shall be constructed in such a manner that they may adequately cleaned and kept clean and in good repair.

2. Any buildings, fixtures, and other facilities shall be maintained in a sanitary condition.

3. All necessary building, electrical, plumbing, and mechanical permits shall be obtained for any portion of the structure in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marihuana are located.

Section 2.545 - Medical Marihuana Processor

Processor means a commercial entity that purchases marihuana from a Grower and that extracts resin from the marihuana or creates a Marihuana-infused product for sale and transfer in package form to a Provisioning Center.

A. General Provisions

1. The Processor shall comply at all times and in all circumstances with the MMFLA, and the general rules of LARA, as they may be amended from time to time.

2. Consumption, smoking, and inhalation of marihuana and/or alcohol shall be prohibited on the premises of Medical Marihuana Processor, and a sign shall be posted on the premises of each Medical Marihuana Processor indicating that consumption is prohibited on the premises.

3. The premises shall be open for inspection and/or investigation at any time by City investigators during the stated hours of operation and as such other times as anyone is present on the premises.

4. Any Processor Facility shall maintain a log book and/or database identifying by date the amount of Medical Marihuana and the number of Medical Marihuana product on the premises which shall not exceed the amount permitted under the Processor license issued by the State of Michigan. This log shall be available to law enforcement personnel to confirm that the Processor does not have more Medical Marihuana than authorized at the location and shall not be used to disclose more information than is reasonably necessary to verify the lawful amount of Medical Marihuana at the Facility.

5. Processor Facilities shall not produce any products other than those marihuana-infused products allowed by the MMFLA and the rules promulgated thereunder.

B. Security

1. Medical Marihuana Processor Facility shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras that operate 24-hours a day, 7-days a week. The video recordings shall be maintained in a secure, off-site location for a period of 30 days, and must be coordinated with the Oakland County Sherriff Department.

2. Any usable Medical Marihuana remaining on the premises of a Medical Marihuana Processor while the Medical Marihuana Facility is not in operation shall be secured in a safe permanently affixed to the premises.

3. All Medical Marihuana shall be contained within the building in an enclosed, locked Facility in accordance with the MM FLA, as amended.

C. Space Separation

1. Unless permitted by the MMFLA, public areas of the Medical Marihuana Processor Facility must be separated from restricted or non-public areas of the Processor Facility by a permanent barrier.

2. Unless permitted by the MMFLA, no Medical Marihuana is permitted to be stored or displayed in an area accessible to the general public.

D. Nuisance Prohibited

1. Processor Facilities shall be free from infestation by insects, rodents, birds, or vermin or any kind.

2. No Medical Marihuana Processor shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the Medical Marihuana Processor is operated.

E. Licensing

1. The license required by this chapter shall be prominently displayed on the premises of a Medical Marihuana Processor Facility.

2 Medical Marihuana Processor uses are not permitted outside the Cesar Chavez and Walton Blvd Medical Marihuana Overlay Districts.

3. Medical Marihuana Processors are not permitted within the same facility with non-Medical Marihuana facility uses.

F. Disposal of Waste

1. Disposal of Medical Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with State law.

2. Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner as approved by the City so that they do not constitute a source of contamination in areas where Medical Marihuana is exposed.

G. Signage

1. It shall be prohibited to display any signs that are inconsistent with State and local laws and regulations.

2. It shall be prohibited to use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors or in violation of LARA regulations.

3. It shall be prohibited to use the symbol or image of a marihuana leaf in any exterior building signage.

4. No licensed Medical Marihuana Processor shall place or maintain, or cause to be placed or maintained, an advertisement of medical marihuana in any form or through any medium:

i. Within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school; and

ii. Within one hundred feet of a public or private youth center, public swimming pool or a church or other structure in which religious services are conducts.

H. Co-Location

1. There shall be no other accessory uses permitted within the same facility other than those associated with a Grower and Provisioning Center.

2. The dispensing of Medical Marihuana of Medical Marihuana at the Processor Facility shall be prohibited.

I. Building Design

1. Floors, walls, and ceilings shall be constructed in such a manner that they may adequately cleaned and kept clean and in good repair.

2. Any buildings, fixtures, and other facilities shall be maintained in a sanitary condition.

Section 2.546 - Medical Marihuana Provisioning Center

Provisioning Center means a commercial entity that purchases marihuana from a Grower or Processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning Centers includes any commercial property where marihuana is sold at retail to registered, qualifying patients, or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the MMMA is not a Provisioning Center for purposes of this ordinance.

A. General Provisions

1. Medical Marihuana Provisioning Centers shall be closed for business, and no sale or other distribution of marihuana in any form shall occur upon the premises between the hours of 10:00 p.m. and 7:00 a.m.

2. Consumption, smoking, and inhalation of marihuana and/or alcohol shall be prohibited on the premises of a Medical Marihuana Provisioning Center, and a sign shall be posted on the premises of each Medical Marihuana Provisioning Center indicating that consumption is prohibited on the premises.

3. The premises shall be open for inspection and/or investigation at any time by City investigators during the stated hours of operation and as such other times as anyone is present on the premises.

B. Security

1. Medical Marihuana Provisioning Centers shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras that operate 24-hours a day, 7-days a week. The video recordings shall be maintained in a secure, off-site location for a period of 30 days, and must be coordinated with the Oakland County Sherriff Department.

2. Any usable Medical Marihuana remaining on the premises of a Medical Marihuana Provisioning Center while the Medical Marihuana Provisioning Center is not in operation shall be secured in a safe permanently affixed to the premises.

C. Space Separation

1. Unless permitted by the MMFLA public areas of the Medical Marihuana Provisioning Center must be separated from restricted or non-public areas of the Provisioning Center by a permanent barrier.

2. Unless permitted by the MMFLA, no Medical Marihuana is permitted to be stored or displayed in an area accessible to the general public.

3. Medical Marihuana may be displayed in a sales area only if permitted by the MMFLA.

D. Nuisance Prohibited

1. No Medical Marihuana Provisioning Center shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the Medical Marihuana Provisioning Center is operated.

E. Drive-Through

1. Drive-through windows on the premises of a Medical Marihuana Provisioning Center shall not be permitted.

F. Licensing

1. The license required by this chapter shall be prominently displayed on the premises of a Medical Marihuana Provisioning Centers.

2. All registered patients must present both their Michigan Medical Marihuana patient/caregiver ID card and Michigan state ID prior to entering restricted/limited areas or non-public areas of the Medical Marihuana Provisioning Center.

3. No more than five (5) Provisioning Centers shall be established in each of the Medical Marihuana Overlay Districts including Cesar Chavez, Walton Blvd, and C-2 Downtown Overlay Districts.

4. No More than five (5) Provisioning Centers shall be established in the C-1, C-3, and C-4 zoned properties combined outside the Medical Marihuana Overlay Districts.

5. Within the Cesar Chavez and Walton Blvd Overlay Districts Provisioning Centers are located in the C-3, M-1, and M-2 zoning districts.

6. Medical Marihuana Provisioning Centers are not permitted within the same facility with non-Medical Marihuana facility uses.

G. Disposal of Waste

1. Disposal of Medical Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with State law.

H. Signage

1. It shall be prohibited to display any signs that are inconsistent with local laws of regulations or State law.

2. It shall be prohibited to use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors or in violation of LARA regulations.

3. It- shall be prohibited to use the symbol or image of a marihuana leaf in any exterior building signage.

4. No licensed Medical Marihuana Provisioning Center shall place or maintain, or cause to be placed or maintained, an advertisement of medical marihuana in any form or through any medium:

i. Within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school; and

ii. Within one hundred feet of a public or private youth center, public swimming pool or a church or other structure in which religious services are conducts.

I. Co-Location

1. There shall be no other accessory uses permitted within the same Facility other than those associated with a Grower and Processor.

Section 2.547 - Medical Marihuana Safety Compliance Facility

Safety Compliance Facility means a commercial entity that receives marihuana from a medical marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinolds, returns the test results, and may return the marihuana to a Medical Marihuana Facility.

A. General Provisions

1. Consumption, smoking, and inhalation of marihuana and/or alcohol shall be prohibited on the premises of a Medical Marihuana Safety Compliance Facility, and a sign shall be posted on the premises of each Medical Marihuana Safety Compliance Facility indicating that consumption is prohibited on the premises.

2. The premises shall be open for inspection and/or investigation at any time by City investigators during the stated hours of operation and as such other times as anyone is present on the premises.

3. Any Medical Marihuana Safety Compliance Facility shall maintain a log book and/or a database identifying by date the amount of Medical Marihuana on the premises and form which particular source. The Facility shall maintain the confidentiality of qualifying patients in compliance with the MMMA, and MMFLA, as amended.

B. Security

1. Medical Marihuana Safety Compliance Facility shall continuously monitor the entire premises on which they are operated with surveillance systems that include security cameras that operate 24-hours a day, 7-days a week. The video recordings shall be maintained in a secure, off-site location for a period of 30 days, and must be coordinated with the Oakland County Sherriff Department.

2. Any usable Medical Marihuana remaining on the premises of a Medical Marihuana Safety Compliance Facility while the Medical Marihuana Safety Compliance Facility is not in operation shall be secured in a safe permanently affixed to the premises.

3. All Medical Marihuana shall be contained within the building in an enclosed, locked Facility in accordance with the MM FLA, as amended.

C. Space Separation

1. Unless permitted by the MMFLA, public areas of the Medical Marihuana Safety Compliance Facility must be separated from restricted or non-public areas of the Safety Compliance Facility by a permanent barrier.

2. Unless permitted by the MMFLA, no Medical Marihuana is permitted to be stored or displayed in an area accessible to the general public.

D. Nuisance Prohibited

1. No Medical Marihuana Safety Compliance Facility shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors detectable to normal senses beyond the boundaries of the property on which the Medical Marihuana Safety Compliance Facility is operated.

E. Licensing

1. The license required by this chapter shall be prominently displayed on the premises of a Medical Marihuana Safety Compliance Facility.

2. All registered patients must present both their Michigan Medical Marihuana patient/caregiver ID card and Michigan state ID prior to entering restricted/limited areas or non-public areas of the Medical Marihuana Safety Compliance Facility.

3. Medical Marihuana Safety Compliance uses are permitted in the Cesar Chavez, Walton Blvd, and C-2 Downtown Medical Marihuana Overlay Districts and in the C-1, C-3, C-4, M-1 and M-2 zoning districts outside the Medical Marihuana Overlay Districts.

4. Medical Marihuana Safety Compliance Facilities are not permitted within the same facility with non-Medical Marihuana facility uses.

F. Disposal of Waste

1. Disposal of Medical Marihuana shall be accomplished in a manner that prevents its acquisition by any person who may not lawfully possess it and otherwise in conformance with State law.

2. Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner as approved by the city so that they do not constitute a source of contamination in areas where Medical Marihuana is exposed.

G. Signage

1. It shall be prohibited to display any signs that are inconsistent with State and local laws and regulations.

2. It shall be prohibited to use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors or in violation of LARA regulations.

3. It shall be prohibited to use the symbol or image of a marihuana leaf in any exterior building signage.

4. No licensed Medical Marihuana Safety Compliance Facility shall place or maintain, or cause to be placed or maintained, an advertisement of medical marihuana in any form or through any medium:

   i. Within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school; and

ii. Within one hundred feet of a public or private youth center, public swimming pool or a church or other structure in which religious services are conducts.

H. Building Design

1. Floors, walls and ceilings shall be constructed in such a manner that they may adequately cleaned and kept clean and in good repair.

2. Any buildings, fixtures and other facilities shall be maintained in a sanitary condition.

Section 2.548 - Medical Marihuana Secure Transporter

Secure Transporter means a commercial entity located in this state stores marihuana and transports marihuana between medical marihuana facilities for a fee. A Secure Transporter shall comply at all times with the MMFLA and the rules promulgated thereunder.

A. General Provisions

1. Consumption and/or use of marihuana shall be prohibited at a facility of a Secure Transporter.

2. A vehicle used by a Secure Transporter is subject to administrative inspection by a law enforcement officer at any point during the transportation of medical marihuana to determine compliance with all state and local laws, rules, regulations and ordinances.

3. A Secure Transporter licensee and each stakeholder shall not have an interest in a Grower, Processor, Provisioning Center, or Safety Compliance Facility and shall not be a registered qualifying patient or a registered primary caregiver.

4. A Secure Transporter shall enter all transactions, current inventory, and other information as required by the state into the statewide monitoring system as required by law.

B. Secure Storage

1. Storage of medical marihuana by a Secure Transporter shall comply with the following:

   i. The storage facility shall not be used for any other commercial purpose.

   ii. The storage facility shall not be open or accessible in the general public.

   iii. The storage facility shall be maintained and operated so as to comply with all state and local rules, regulations and ordinances.

2. All marihuana stored within the facility shall be stored within enclosed, locked facilities in accordance with the MMFLA, as amended.

C. Sanitation

1. All persons working in direct contact with marihuana being stored by a Secure Transporter shall conform to hygienic practices while on duty, including but not limited to:

   i. Maintaining adequate personal cleanliness.

   ii. Washing hands thoroughly inadequate hand washing areas before starting work and at any other time when the hands may have become soiled or contaminated.

   iii. Refrain from having direct contact with marihuana if the person has or may have an illness, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, until the condition is correct

D. Disposal of Waste

1. Disposal of medical marihuana shall be accomplished in a manner that prevents its acquisition by a person who may not lawfully possess it and otherwise in conformance with State law.

2. Litter and waste shall be properly removed and the operating systems for waste disposal are maintained in an adequate manner as approved by the City so that they do not constitute a source of contamination in areas where medical marihuana is exposed.

E. Transport Driver

1. A Secure Transporter shall comply with all of the following:

2. Each driver transporting marihuana must have a chauffeur's license issued by the state.

ii. Each employee who has custody of marihuana or money that is related to a marihuana transaction shall not have been convicted of or released from incarceration for a felony under the laws of this state, any other state, or the United States within the past five (5) years.

iii. Each vehicle shall always be operated with a two-person crew with at least one individual remaining with the vehicle during the transportation of marihuana.

3. A route plan and manifest shall be entered into the statewide monitoring system, and a copy shall be carried in the transporting vehicle and presented to a law enforcement office upon request.

4. The medical marihuana shall be transported by one or more sealed containers and not be accessible while in transit.

5. A secure transporter vehicle shall not bear markings or other indication that it is carrying medical marihuana or a marihuana infused product.

F. Signage

1. It shall be prohibited to display any signs that are inconsistent with local laws of regulations or State law.

2. It shall be prohibited to use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors or in violation of LARA regulations.

3. It shall be prohibited to use the symbol or image of a marihuana leaf in any exterior building signage.

4. No licensed Medical Marihuana Secure Transporter shall place or maintain, or cause to be placed or maintained, an advertisement of medical marihuana in any form or through any medium:

i. Within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school; and

ii. Within one hundred feet of a public or private youth center, public swimming pool or a church or other structure in which religious services are conducts.

G. Licensing

1. The License required by this chapter shall be prominently displayed on the premise of a Medical Marihuana Secure Transporter use.

2 Medical Marihuana Secure Transporter uses are permitted in the Cesar Chavez, Walton Blvd, and C-2 Downtown Medical Marihuana and in the C-1, C-2, C-3, C-4, M-1 and M-2 zoning districts outside the Medical Marihuana Overlay Districts.

3. Medical Marihuana Secure Transporters are not permitted the same facility with non-Medical Marihuana facility uses.

Article 3 - Special Purposes - Zoning District is amended to add Chapter 11 as follows: Chapter 11- Medical Marihuana Districts

Section 3.1101 – Intent

The purpose of the Medical Marihuana Overlay District (MMOD) is to provide for the placement of Medical Marihuana related uses as authorized pursuant to State regulations with a goal of minimizing potential adverse impacts on adjacent property owners, neighborhoods, and the City.

Section 3.1102 - Medical Marihuana Overlay District Uses

The following Medical Marihuana uses in the Medical Marihuana Overlay Districts, provided the development also meets the Design & Building Standards set forth in Section 3.1112 and Article 2 Chapter 5 Development Standards for Specific Uses:

1. Provisioning Center;
2. Safety Compliance Facility;
3. Secure Transporter;
4. Grower; and
5. Processor.

Section 3.1103 - Medical Marihuana Overlay District Permitted Accessory Uses

1. Off-Street Parking, Loading and Unloading as required per Section 4.307; and
2. Any use that is not incidental to the permitted principal use.

Section 3.1104 - Medical Marihuana Uses Requiring Site Plan Review

All Medical Marihuana uses are subject to Site Plan Review set forth in Article 6, Chapter 2, Section 6.202

Section 3.1105 – Licensing

All operators of medical marihuana facilities must obtain a State of Michigan & City of Pontiac License.

Section 3.1106 - Medical Marihuana Uses Requiring Planning Commission Special Exception Permit

Medical Marihuana uses outside the Medical Marihuana Overlay Districts are subject to Planning Commission approval following the Standards for Approval of Section 6.303 for Special Exception Permits, and Article 2, Chapter 5, Development Standards for Specific Uses

Section 3.1107 - Standards for Special Exemption Approval

For consideration of Medical Marihuana uses by the Planning Commission, the Commission shall review each application for the purpose of determining that each Medical Marihuana facility on its location will:

1. Not impact surrounding residential neighborhoods.
2. Provide easy access for patients with accessible parking.
3. Be adequately served by utilities with sufficient capacity.
4. Corridors and streets have the capacity to accommodate potential increases in traffic volumes.
5. Demonstrate a safe and security environment, and uphold the public welfare of the community.
6. Do not add unintended or impromptu costs to City and municipal services.
7. Comply with Section 6.303 Standards for Approval in the Pontiac Zoning Ordinance.

Section 3.1108 - MMOD Location Description

Medical Marihuana Overlay District boundaries are established on the Medical Marihuana overlay district Maps. The Medical Marihuana Overlay District Maps may be a single sheet or composed of several map sheets and shall be kept on record in the City of Pontiac Clerk and Building safety offices.

The Medical Marihuana uses permitted in the MMOD must meet the following requirements:

A. OVERLAY #1: All properties along Walton Blvd and streets north of Walton Blvd, but not including areas north of Collier Road between the west side of Telegraph Road to Fuller Street including those contained within Overlay Map 1 for this MMOD.

   a. Not more than five (5) licenses to operate a Provisioning Center shall be awarded in this Overlay District #1.

B. OVERLAY #2: All properties along Cesar Chavez, starting from the Kennett Road Landfill and areas south to Cesar Chavez to W. Montcalm St

Not more than five (5) licenses to operate a Provisioning Center shall be awarded in this Overlay District #2. See Overlay Map #2 for this MMOD.

C. OVERLAY #3: All properties within C-2 Downtown zoned district.

a. Not more than five (5) licenses to operate a Provisioning Center shall be awarded in this Overlay District #3.

The Overlay District is an effective regulatory tool to implement the establishment of Medical Marihuana businesses in the City of Pontiac. An Overlay District is applied over one or more previously established zoning districts, establishing additional or stricter regulations, standards and criteria for Medical Marihuana uses in addition to those of the underlying zoning district.

Section 3.1109 - Permitted Uses in Commercial Districts (Non-Overlay)

In addition to MMOD Locations as described in Section 3.1108, all medical marihuana uses, excluding Medical Marihuana Grower and Processor, are permitted in C-1, C-3, C-4, M-1 and M-2 districts subject to all requirements under this Chapter 11, including but not limited to Section 3.11010 - Buffer Distance Restrictions. There shall be no more than five (5) Medical Marihuana Provisioning Centers allowed in all of C-1, C-3, C-4, zoning districts combined, and shall be awarded based on the highest scoring applications received for those proposed qualifying locations that are not in one of the three Overlay Districts described in Section 3.1108 above.

Section 3.11010 - Buffer Distance Restrictions

A. The proximity of the proposed medical marihuana facility shall not be less than:

1. 1,000 feet from an operational public or private school;

2. 500 feet from an operational commercial childcare organization (non-home occupation) that is licensed and registered with the State of Michigan Department of Health and Human Services or its successor agency;

3. 500 feet from a public park with playground equipment;

4. 500 feet from a religious institution that is defined as tax exempted by the Oakland County Assessor; and

5. Applicable only for properties located in a C-1, C-3, and C-4, M1 and M2 zoned properties located outside the Medical Marihuana Overlay Districts:

i. 250 feet from a residential-zoned property. Notwithstanding anything contained within Section 3.1107. B to the contrary, such distance between a residentially-zoned property and the contemplated location shall be measured at right angles.

B. Such distance between the school, childcare center, public park, or religious institution, and the contemplated location shall be measured along the centerline of the street or streets of address between two fixed points on the centerline determined by projecting straight lines at right angles to the centerline from the primary point of ingress to

the school, childcare center, or religious institution, residential dwelling unit or from the playground equipment in a public park, and from the primary point of ingress to the medical marihuana facility along the centerline to the primary street address building entrance.

1. Vacant residential-zoned lots shall be measured to the side yard setback as defined in Article 2, Chapter 3, and Section 2.301 Summary of Dimension Standards of the Pontiac Zoning Ordinance.

Section 3.11011 - Co-Location

A. Consistent with the MMFLA and rules promulgated by the department, any combination of Growers, Provisioning Centers, and Processors may operate as separate medical marihuana facilities at the same physical location;

B. Consistent with the MMFLA and rules promulgated by the department, applicants for Class C Growers permits shall be allowed to receive multiple such permits and operate under each permit in a single facility.

C. Medical Marihuana Provisioning Center, consistent with the MMFLA, any combination of Grower, Processor, and Provisioning Centers may operate as separate medical marihuana facilities in the physical location. Provided that the Provisioning Center is incidental to the principal use and that the total amount of internal floor areas of the structure locate to the Provisioning Center does not exceed 20% of the floor area of the total establishment;

Section 3.1112 - Building Design, Area, Height, Bulk, and Placement

A. Building and design improvements must comply with the underlying zoning requirements of Article 2, Chapter 4 Private Frontage Design Standards and the Specific Uses Development Standards outlined in Article 2, Chapter 5 of this Zoning Ordinance.

B. If the provisions of the MMOD are silent on building and design requirements, the requirements of the underlying district shall apply.

C. If the building and design requirements of the MMOD conflict with the requirements of the underlying district, then the building and design requirements of the MMOD shall supersede the underlying district regulations.

D. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for the production, processing, testing, selling, research and warehousing. Negative air pressure shall be maintained within the rooms.

E An alternative odor control system may be approved by the Pontiac Building official based on a report by a registered Mechanical Engineer licensed by the State of Michigan, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

F. Generators must be installed to operate the air filter system in case of power outage or failure.

G. Any lighting device with intermittent fading, flashing, blinking, rotating or strobe light illumination is prohibited on any Medical Marihuana building, structure or property located inside the Medical Marihuana overlay Districts or a Medical Marihuana building, structure or property located outside the Medical Marihuana Overlay Districts.

H. Luminous tube lighting (e.g. neon, rope lighting) shall not be used to outline or frame doors and/or windows.

I. Luminous tube and exposed bulb fluorescent lighting is prohibited as an architectural detail on all building/structures (e.g. along the roof line, eaves) and on all building facades.

J. Exterior site lighting must be installed in site parking areas, egress, and ingress areas. Lighting must be compliant with Article4, Chapter 5 of the Zoning Ordinance.

K. It shall be prohibited to display any signs that are inconsistent with state or local law, and Article 5, of the Zoning Ordinance.

L. It shall be prohibited to use the symbol or image of a marihuana leaf or the medical "green" cross symbol in any exterior building signage.

M. The following sign language is not permitted on any Medical Marihuana facility use; Marihuana, Marijuana, cannabis, Ganja, Dope, Roach, Hash, Reefer or any other word/phrase with similar likeness.

N. Window signs that occupy not more than 10 percent of the inside surface of the windows area of each floor level of a business or building are permitted.

Section 3.1113- Review Authority and Establishment

A. The Planning Commission shall be the Special Exception and Site Plan Review Authority for the permitted medical marihuana uses outside the Medical Marihuana Overlay Districts and Site Plan Review Authority for Medical Marihuana uses in the Medical Marihuana Overlay Districts.

B. Medical Marihuana uses must be in accordance with the Special Exception Permit review standards contained in Article 6, Chapter 3 of the Zoning Ordinance.

C. A Special Exception Permit for medical marihuana uses require Public Notice of 500 feet from the proposed medical marihuana facility;

D. All permitted medical marihuana uses must be in accordance with the Uses Development Standards outlined in Chapter 2 of the Zoning Ordinance;

E. Within the MMOD all requirements of the underlying districts remain in effect, except where these regulations provide an alternative to such requirements.

Article 7 - Definitions is amended to add Chapter 2, and Chapter 3 as follows: Article 7 - Definitions I Chapter 2

Section 7.202 Commercial, Office, and Service Uses

A. Provisioning Center means a commercial entity that purchases medical marihuana from a Grower or Processor, and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning Centers includes any commercial property where marihuana is sold at retail to registered, qualifying patients or registered primary caregivers.

1. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the MMMA is not a provisioning center for purposes of this ordinance.

B. Safety Compliance Facility means a commercial entity that receives marihuana from a medical Marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the medical marihuana facility.

C. Secure Transporter means a commercial entity located in this state that stores marihuana and transports medical marihuana between medical marihuana facilities for a fee.

Section 7.203 - Industrial Uses

A. Walton Blvd Medical Marihuana Overlay District (see Map 1.)

B. Cesar Chavez Medical Marihuana Overlay District (see Map 2)

C. C-2 Downtown Medical Marihuana Overlay District (see Map 3)

D. Grower means a commercial entity that cultivates, dries, trims, or cures, and packages marihuana for sale to a Processor or Provisioning Center. As used in this ordinance, Grower shall include Class A Growers, Class B Growers, and Class C Growers.

a. Class A Grower means a Grower license to grow not more than 500 marihuana plants.

b. Class B Grower means a Grower license to grow not more than 1,000 marihuana plants.

c. Class C Grower means a Grower license to grow not more than 1,500 marihuana plants.

E. Processor means commercial entity that purchases marihuana from a Grower and that extracts resin from the marihuana or creates a Marihuana-infused product for sale and transfer in package form to a Provisioning Center.

F. Provisioning Center means a commercial entity that purchases marihuana from a Grower or Processor, and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning Centers includes any commercial property where marihuana is sold at retail to registered, qualifying patients or registered primary caregivers.

a. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the MMMA is not a provisioning center for purposes of this ordinance.

G. Safety Compliance Facility means a commercial entity that receives marihuana from a medical Marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the medical marihuana facility.

H. Secure Transporter means a commercial entity located in this state that stores marihuana and transports marihuana between medical marihuana facilities for a fee.

Article 7 - Definitions I Chapter 3

Section 7.301-General Definitions

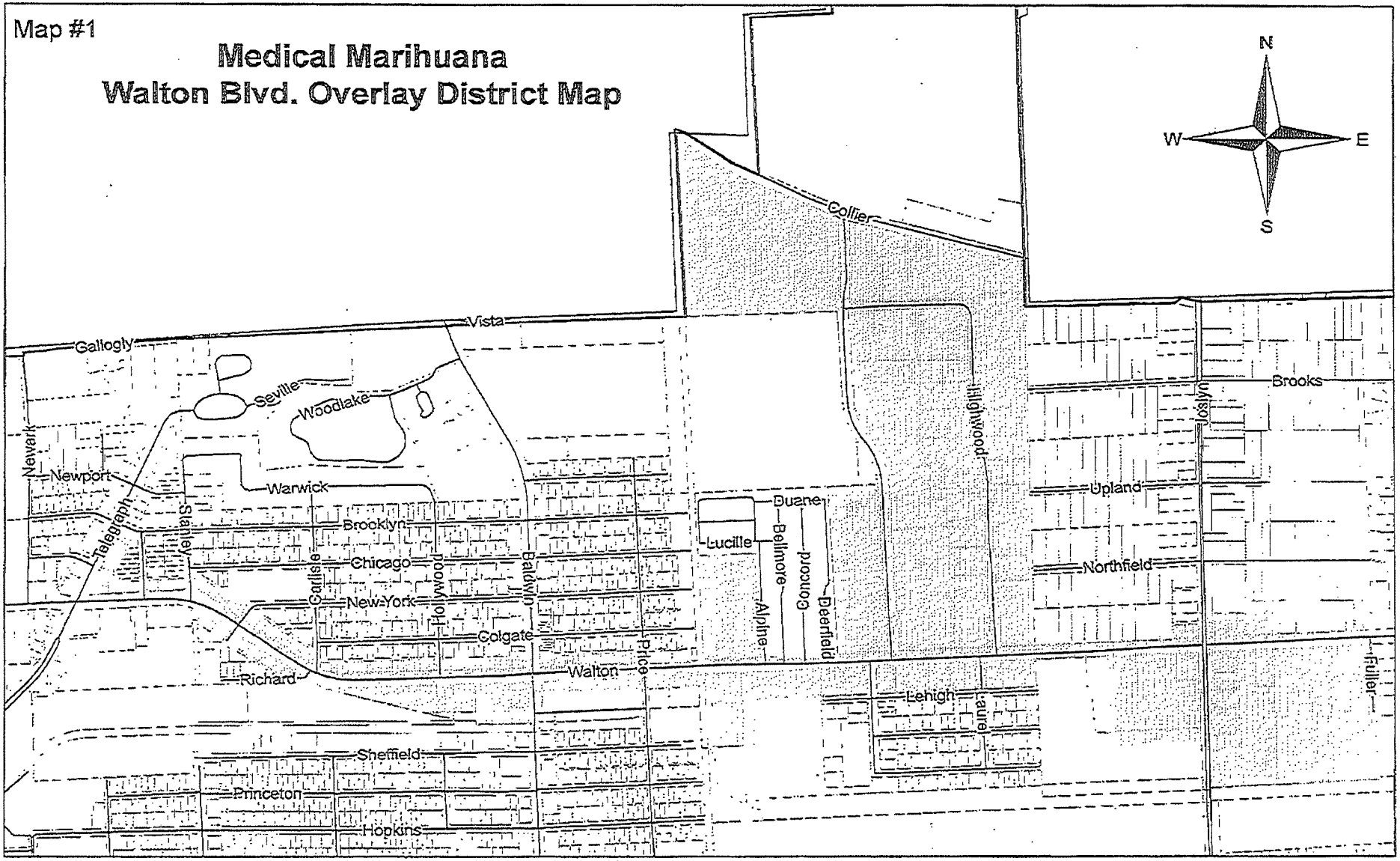
A. Medical Marihuana Facility means a location at which a Grower, Processor, Provisioning Center, Secure Transporter, or Safety Compliance Facility is licensed to operate under the MMFLA.

B. MMLFA means the Medical Marihuana Facilities Licensing Act, Act No. 281 of the Public Acts of 2016, being Sections 333.27101 to 333.27801 of the Michigan Compiled Laws.

C. MMMA means the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, being Sections 333.26421 to 333.26430 of the Michigan Compiled Laws.

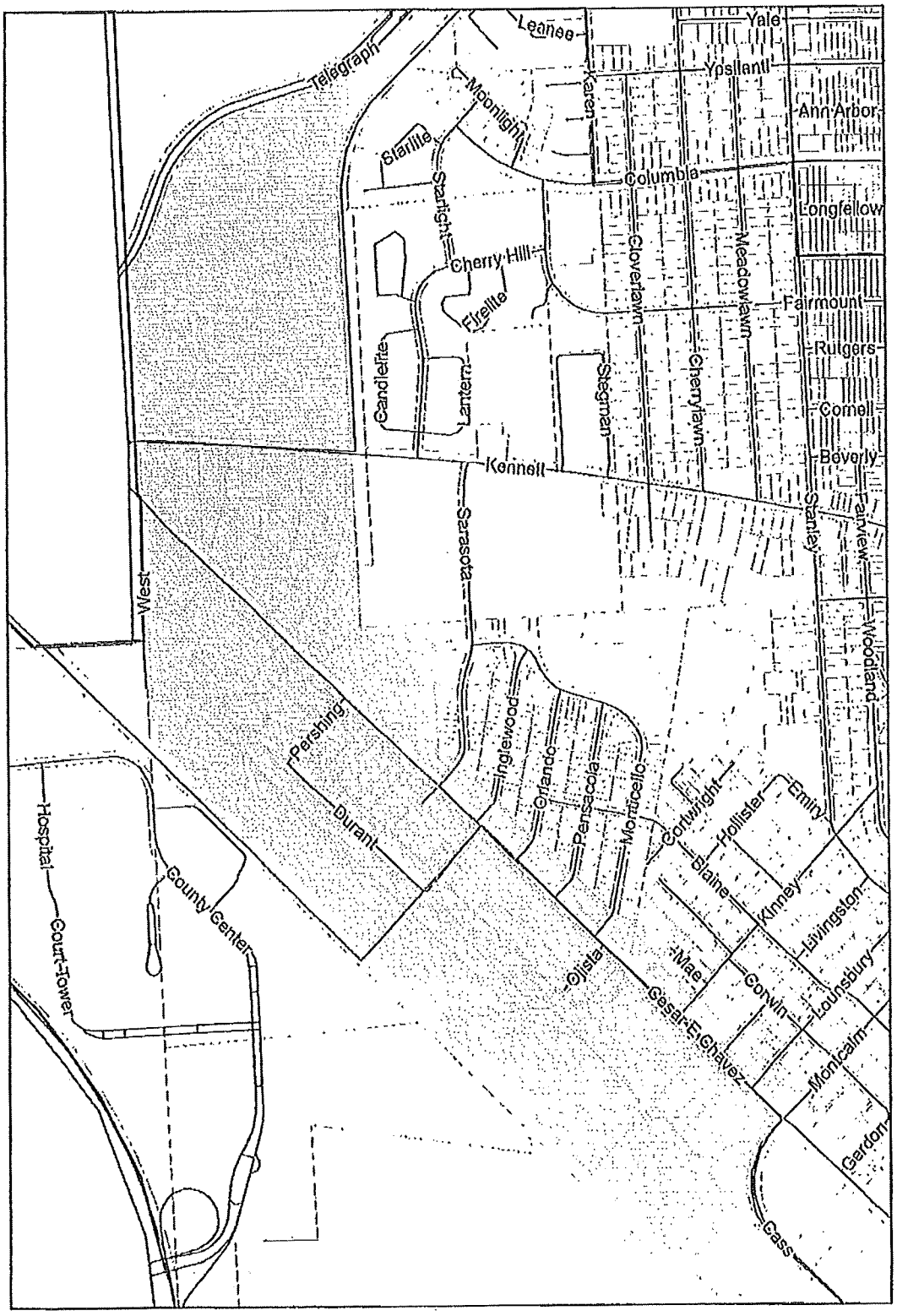
Map #1

Medical Marihuana
Walton Blvd. Overlay District Map



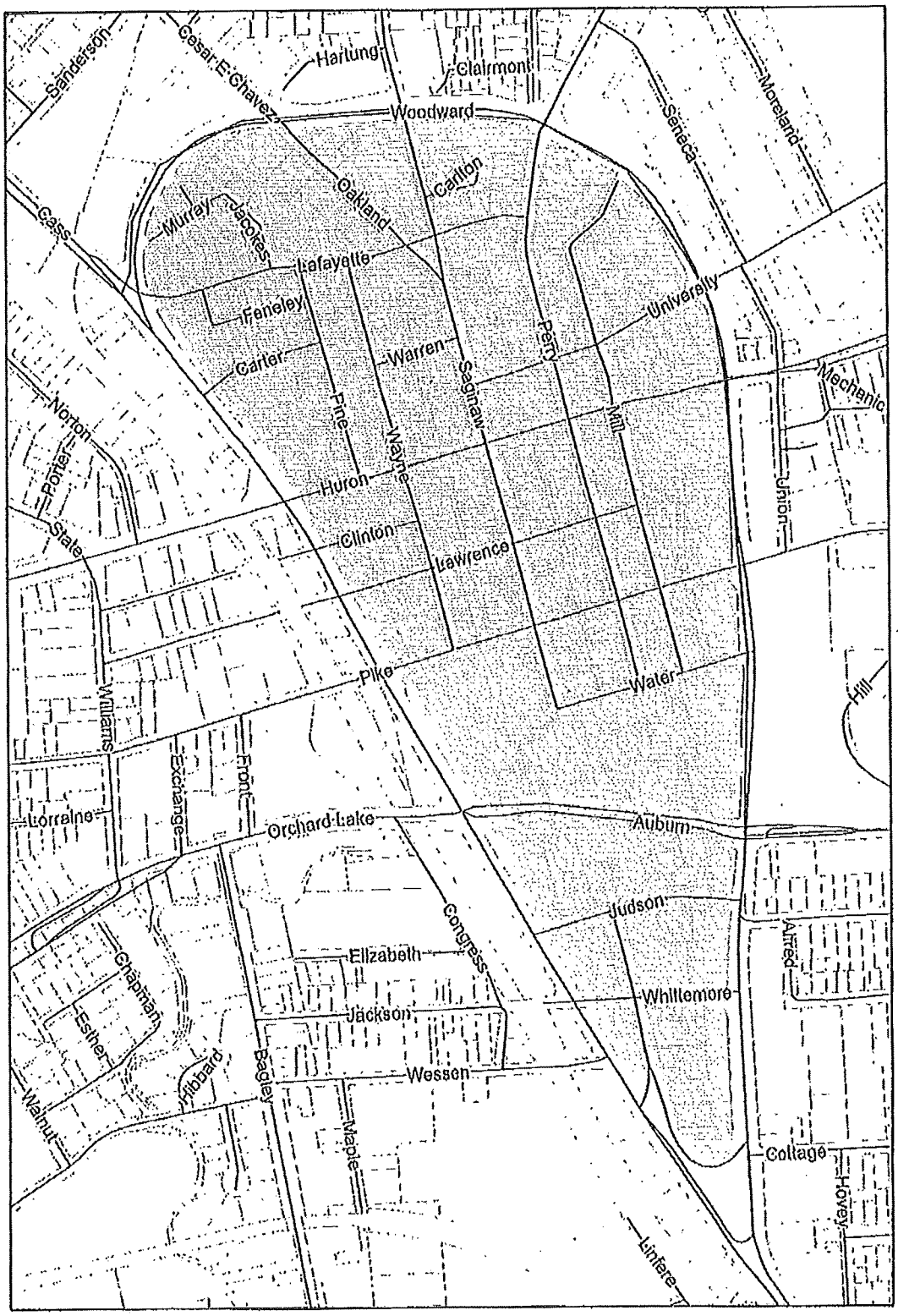
Map #2

Medical Marihuana
Cesar Chavez Overlay District Map



Map #3

Medical Marihuana
Downtown Overlay District Map



Pursuant to Pontiac City Charter Provision 3.112(e), this is an EMERGENCY ORDINANCE to regulate the proliferation of medical marihuana facilities within the City of Pontiac and thereby ensure the health and safety of its residents, and shall be given immediate effect.

ADOPTED, APPROVED AND PASSED by the City Council of the City of Pontiac this 9th day of April, 2019.

The City Clerk shall publish this Emergency Ordinance in a newspaper of general circulation. The Emergency Ordinance is effective after publication. Garland S. Doyle, Interim City Clerk

I hereby certify that the foregoing is a true copy of the Emergency Ordinance as passed by the City Council of the City of Pontic at a regular Council Meeting held in the City Council Chambers in said City on the 9th day of April, 2019.

_____

Garland S. Doyle, Interim City Clerk

#10b

Memorandum

C|L|F
THE CURCIO LAW FIRM

Attorney Memorandum[1]

To: Garland Doyle, Pontiac City Clerk

From: Nick Curcio, Attorney

Re: Planning Commission's Failure to Act on City Council Referral

Date: March 9, 2021

In January 2020, the Pontiac City Council voted to refer a proposed zoning ordinance amendment regarding medical marijuana regulations to the Planning Commission.[2] To date, the Planning Commission has not given a recommendation on the referred ordinance, and some have suggested that it is unnecessary for it to do so. You asked for my opinion as to whether the Planning Commission has a duty to review the proposed ordinance and make an up-or-down recommendation to the City Council. For the reasons described below, I believe that it does.

Pursuant to the Michigan Zoning Enabling Act, the legislative body (here, the City Council) "may refer any proposed amendments to the [planning] commission for consideration and comment within a time specified by the legislative body."[3] Although the statute does not expressly state that a legislative body's referral obligates the planning commission to make a recommendation on the proposal, that obligation is necessarily implied from the text and structure of the statute. For one, if a planning commission could simply ignore referrals, the language in the statute that authorizes the legislative body to make referrals and set deadlines for the planning commission's consideration would be effectively meaningless. That would be contrary to a principal rule of statutory interpretation that requires all words in a statute to be given operative meaning to the

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[1] This memo is one of several that you asked me to prepare as your privately retained legal counsel. During our initial consultation, you explained to me that you felt pressured to take actions in your role as City Clerk that you believed to be contrary to applicable law. Accordingly, you asked for my opinion on various legal issues to help you decide how to respond to those pressures. Please note that I do not represent or have any relationship with the City of Pontiac. Pursuant to Section 4.202(a) of the Pontiac City Charter, the City Attorney is responsible for "supervising the conduct of all the legal business of the City and its departments."

[2] The statements of fact in this opinion are based primarily on your representations to me during our initial consultation. For the most part, I have not independently verified those representations. I did verify, however, that on January 21, 2020, the City Council approved a motion "to refer item #18 (emergency ordinance to amend Ordinance 2363) to the Planning Commission." Corrected Minutes of the Pontiac City Council, January 21, 2020.

[3] MCL 125.3401(3).

extent possible.[4] Further, other provisions in the statute require that a planning commission hold at least one public hearing on a proposed zoning ordinance and make a recommendation to the legislative body before the legislative body can consider its adoption.[5] In light of these requirements, if a planning commission could simply refuse to take action on a referral, it would effectively have the power to veto proposals put forward by the municipality's elected officials. Given that planning commissions are appointed advisory bodies rather than elected lawmaking bodies, the statute could not possibly contemplate such extraordinary power.

One notable aspect of the scenario that you described is that the City Council's referral did not state a deadline by which the Planning Commission must act on the proposed amendment. The general rule is that when no express deadline is provided, a public official or public body must act within a "reasonable period of time."[6] While there is no precise formula for determining what amount of delay is reasonable, it would seem that a delay of over a year would likely be deemed unreasonable. Nevertheless, if the City Council wishes to prompt the Planning Commission to make a recommendation on the proposal, it could consider making a new motion directing the Planning Commission to act within a specified deadline, as authorized by the Zoning Enabling Act. If the Planning Commission then refuses or fails to comply with that deadline, the City Council or other interested parties could likely bring a mandamus lawsuit seeking to compel it to do so.[7] Further, individual Planning Commissioners who refuse to comply with the deadline would potentially be subject to removal from the Planning Commission based on "nonfeasance" in office.[8]

I hope this memo sufficiently answers your question. Please let me know if there is anything further I can do to assist with this issue.

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[4] *In re Turpening Estate*, 258 Mich App 464, 465; 671 NW2d 567 2003) ("In construing a statute, this Court should give every word meaning, and should seek to avoid any construction that renders any part of a statute surplus or ineffectual.").

[5] See MCL 125.3202(1), MCL 125.3306(1), MCL 125.3401(1).

[6] 1970 OAG 5613 (1979).

[7] See, e.g., Citizens Protecting Michigan's Constitution v Sec'y of State, 280 Mich App 273, 283; 761 NW2d 210 (2008) ("Mandamus is the appropriate remedy for a party seeking to compel action by [public] officials.").

[8] MCL 125.3815(9) ("The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office . . . ."). "Nonfeasance" is generally defined as "failing to perform any act that the duties of the office require of the officer." *People v Perkins*, 468 Mich 448, 456; 662 NW2d 727 (2003).

#10c

Memorandum

C|L|F
THE CURCIO LAW FIRM

Attorney Memorandum[1]

To: Garland Doyle, Pontiac City Clerk
From: Nick Curcio, Attorney
Re: Planning Commission Holdovers
Date: March 9, 2021

Approximately two and a half years ago, the Mayor of Pontiac nominated four incumbent Planning Commissioners to be reappointed for additional terms after their terms expired.[2] The City Council voted in September 2018 to reject all four reappointments. The Mayor has not nominated any additional candidates to replace the incumbent Planning Commissioners,[3] and all four have continued to serve on the Planning Commission. You asked for my opinion as to whether they are legally permitted to continue serving and, if so, whether there is any limitation on their ability to do so.

With respect to your first question, the Michigan Planning Enabling Act states that a Planning Commissioner "shall hold office until his or her successor is appointed."[4] In light of this provision, the Planning Commissioner's seat is not automatically vacated at the expiration of the appointed term. Rather, the incumbent Planning Commissioner becomes a "holdover" or "de facto" officer until a successor is appointed, and any actions that he or she takes during the holdover term have the same force and effect as the actions of other Planning Commissioners.[5] In other words, the decision of a Planning Commission cannot be challenged on the grounds that a member of the Planning Commission was holding over in office after the expiration of his or her appointed term.

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[1] This memo is one of several that you asked me to prepare as your privately retained legal counsel. During our initial consultation, you explained to me that you felt pressured to take actions in your role as City Clerk that you believed to be contrary to applicable law. Accordingly, you asked for my opinion on various legal issues to help you decide how to respond to those pressures. Please note that I do not represent or have any relationship with the City of Pontiac. Pursuant to Section 4.202(a) of the Pontiac City Charter, the City Attorney is responsible for "supervising the conduct of all the legal business of the City and its departments."

[2] The statements of fact in this opinion are based primarily on your representations to me during our initial consultation. For the most part, I have not independently verified those representations.

[3] It appears that the Mayor made an additional attempt to nominate two of the four incumbent Planning Commissioners for reappointment in late 2019, and the City Council again rejected their reappointment in January 2020.

[4] MCL 125.3815(3).

[5] See, e.g., 1979 Mich OAG 5606; 3 McQuillin, Municipal Corporations § 12.160 (3rd ed.).

One notable aspect of the scenario that you described is that the Mayor nominated the four incumbent Planning Commissioners for reappointment approximately two and a half years ago, and the City Council rejected their reappointment. In my opinion, the City Council's rejection does not preclude the incumbent Planning Commissioners from continuing to serve as holdover officers. Based on the plain language of the statute, it appears that the term "appointment" is best understood as a two-step process in which the chief elected official (the Mayor) first nominates a candidate, and the legislative body (the City Council) then confirms or rejects the nominee.[6] Under this understanding of the term, the time at which a Planning Commissioner's "successor is appointed" occurs once the City Council confirms a successor, not when the Mayor unsuccessfully nominates a candidate for appointment or reappointment. This construction follows not only from the common understanding of the appointment power,[7] but also from the underlying rationale of the common-law holdover rule, which was that "the public interest requires that public offices should be filled at all times without interruption."[8]

With respect to your second question, the incumbent Planning Commissioner's ability to holdover in office is subject to a practical limitation: the Mayor's duty to nominate new candidates for the position. As noted above, the Planning Enabling Act provides for the appointment of Planning Commissioners by the Mayor with the consent of the City Council.[9] The Michigan Attorney General has opined that when a statute vests the power of appointment in a particular officer, "the duty to provide for an election or to make an appointment within a reasonable amount of time is necessarily implied."[10] While there is no precise formula for determining what amount of delay is "reasonable," a delay of seven months in making an appointment has previously been deemed "unreasonable."[11] Accordingly, it appears that the Mayor is likely in breach of her duty to nominate new candidates for the Planning Commission within a reasonable time. A party harmed by that breach of duty – such as the City Council or an applicant

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[6] See MCL 125.3815(1) ("In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving.").
[7] See *In re Hennen*, 38 U.S. (13 Pet.) 230, 259 (1839) (explaining that when an appointment requires the consent of the legislative body, the legislative body shares the appointing power.").
[8] 3 McQuillin, Municipal Corporations § 12.160 (3rd ed.).
[9] MCL 125.3815(1).
[10] 1970 OAG 5613 (1979).
[11] *Id.*

for a seat on the Planning Commission – could potentially bring a lawsuit for mandamus seeking to compel the Mayor to nominate new candidates.[12] The Mayor may also be subject to censure or other sanctions, particularly if there is evidence to suggest that she is refusing to nominate new candidates as an end-run around the City Council's advice-and-consent power.

I hope this memo sufficiently answers your question. Please let me know if there is anything further I can do to assist with this issue.

[12] *Id.* ("In the event that a county board of commissioners neglects to make the appointments to fill vacancies on the county road commission after expiration of a reasonable period of time, an action of mandamus may be instituted to compel the board to make the appointments."); see also *State ex Rel. Hartman v Thompson*, 627 So 2d 966 (Ala Civ App 1993) (addressing a mandamus petition to compel the Governor of Alabama to make appointments within a reasonable time).