

**NOTICE OF PONTIAC CITY COUNCIL MEETING**  
**June 16, 2020**  
**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 June 16, 2020 at 6:00 p.m. This meeting will be held electronically pursuant to the Open Meetings Act and Governor Whitmer's Executive Order 2020-75. The agenda of the Study Session is attached. Pursuant to Executive Order 2020-75, the Pontiac City Council gives notice of the following:

1. **Reason for Electronic Meeting.** The Pontiac City Council is meeting electronically because Executive Order 2020-75 requires that City Hall be closed to the public on the date of the meeting. Therefore, the public cannot be physically present and provide comment in City Hall.
2. **Procedures.** The public may view the meeting electronically through the following method.  
<http://pontiac.mi.us/council/pontiaactv/index.php>
3. **Public Comment.** For individuals who desire to make a public comment, please submit your name and comment in writing to [publiccomments@pontiac.mi.us](mailto:publiccomments@pontiac.mi.us) no later than 5:30 p.m. on June 16, 2020. Public comments are limited to three (3) minutes. The City Clerk will read your comments during the public comment section of the meeting.
4. **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](mailto:clerk@pontiac.mi.us) at least 24 hours in advance of the meeting.

Dated 6-12-2020, 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

**Kermit Williams, District 7**  
**President**  
**Randy Carter, District 4**  
**President Pro Tem**



**Patrice Waterman, District 1**  
**Megan Shramski, District 2**  
**Mary Pietila, District 3**  
**Gloria Miller, District 5**  
**Dr. Doris Taylor Burks, District 6**

*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://pontiac.mi.us/council/meeting\\_agendas\\_and\\_minutes/index.php](http://pontiac.mi.us/council/meeting_agendas_and_minutes/index.php)

## **STUDY SESSION**

**June 16, 2020**

**6:00 P.M.**

**170<sup>th</sup> Session of the 10<sup>th</sup> Council**

**Call to order**

**Roll Call**

**Authorization to Excuse Councilmembers**

**Amendments to and Approval of the Agenda**

**Approval of the Minutes**

1. June 9, 2020 Special Meeting Public Hearing
2. June 9, 2020 Formal Meeting
3. June 10, 2020 Special Meeting on the Budget

**Public Comment**

**Agenda Items**

**Resolutions**

### **City Clerk**

4. Resolution to authorize the Interim City Clerk to publish a notice in a newspaper of general circulation at least one week before consideration of the proposed budget amendment to transfer \$3960.00 from Dept 215 City Clerk Account 101-215-957.002 Training Expense to Account 101-215-902.005 Public Notices
5. Resolution to approve the City Clerk's website

### **City Clerk/Elections Division**

6. Resolution to authorize the Interim City Clerk to publish a notice in a newspaper of general circulation at least one week before consideration of the proposed budget amendment to transfer funds from the following Dept 191 Elections Accounts: Account 101-191-702.020 Salaries and Wages (Non-FICA) \$12,084.00; Account

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

Office of the City Clerk 47450 Woodward Pontiac, Michigan 48342 Phone (248) 758-3200

Website: <http://pontiaccityclerk.com>

101-191-716.000 Medical Insurance \$18,223.83; Account 101-191-717.000 Life Insurance \$715.12; Account 101-191-719.001 Dental Insurance \$411.55; Account 101-191-721.010 Health Care Waiver \$7293.00 to Account 101-191-809.000 Services-Elections. The total amount of the transfer is \$38,727.50

7. Resolution to approve the agreement for absent voter ballot counting services between Oakland County and City of Pontiac. The County will perform the service at no charge to the City.

#### **Community and Economic Development**

8. Resolution to schedule a public hearing on the City possibly transferring ownership of the Carriage Circle Apartments located at 255 Carriage Circle in the City of Pontiac for June 23, 2020 at 6:00 p.m.

#### **Department of Public Works (DPW)**

9. Resolution to authorize the Mayor to sign the MDOT funding agreement for the Baldwin Avenue and Martin Luther King CMAQ and Safety Projects. The total estimated cost for this project is \$1,406,000.00; the City's portion of this project is \$430,480. This project is budgeted for fiscal year 2020/2021.

#### **Finance**

10. Resolution, to authorize the following FY 2020-2021 Millage rates to be levied and collected on the general property tax of all real and personal property within the City and in accordance with the General Appropriations Act: 11.1699 operating; 1.4862 youth center; 1.3961 capital improvement; 2.7923 sanitation; 0.4954 senior services. The City Treasurer is hereby authorized to impose a one percent (1%) property tax administration fee for all property taxes due, And a late penalty charge when applicable, in conformance with Section 44 of Public Act 206 of 1893. Additionally, the City Council approves the Master Fee Schedule as attached

#### **Upcoming Special Presentation**

**June 23, 2020**

Medical Marihuana Application Review Process Update

#### **Adjournment**

**#1**

**MINUTES**

**6-9-20**

**Public Hearing**

June 9, 2020 Special

**Official Proceedings  
Pontiac City Council  
165<sup>th</sup> Session of the Tenth Council**

**Call to order**

A Special Meeting of the City Council of Pontiac, Michigan was called to order electronically on Tuesday, June 9, 2020 at 5:00 p.m. by Council President Kermit Williams.

**Roll Call**

Members Present: Pietila, Shramski, Waterman and Williams.

Members Absent: Carter, Miller and Taylor-Burks.

Mayor Waterman was present.

Clerk announced a quorum.

**Excuse Councilmembers**

20-246            **Excuse Councilperson Randy Carter, Gloria Miller and Doris Taylor-Burks for personal reasons.** Moved by Councilperson Pietila and second by Councilperson Waterman.

Ayes: Pietila, Shramski, Waterman and Williams

No: None

**Motion Carried.**

**Public Hearing**

President Kermit Williams opened up public hearing for the City Proposed Annual Budget for 2020-2021 and City Tax Rate at 5:02 p.m.

**No Public Comment**

President Kermit Williams closed public hearing at 5:03 p.m.

**Adjournment**

Council President Kermit Williams adjourned the meeting at 5:03 p.m.

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GARLAND S DOYLE  
INTERIM CITY CLERK

**#2**

**MINUTES**

**6-9-20**

**Formal**

**Meeting**

June 9, 2020 Formal

**Official Proceedings  
Pontiac City Council  
166<sup>th</sup> 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, June 9, 2020 at 6:00 p.m. by Council President Kermit Williams.

**Roll Call**

Members Present: Pietila, Shramski, Taylor-Burks, Waterman and Williams.

Members Absent: Carter and Miller.

Mayor Waterman was present.

Clerk announced a quorum.

**Excuse Councilmembers**

20-247        **Excuse Councilperson Randy Carter and Gloria Miller for personal reasons.** Moved by Councilperson Waterman and second by Councilperson Pietila.

Ayes: Pietila, Shramski, Taylor-Burks, Waterman and Williams

No: None

**Motion Carried.**

President Pro-Tem Randy Carter joined the meeting at 6:03 p.m.

**Amendments to the Agenda**

20-248        **Motion to add resolution for City of Pontiac Racism is a Public Health Crisis to the agenda.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

Ayes: Pietila, Shramski, Taylor-Burks, Waterman, Williams and Carter

No: None

**Motion Carried.**

**Approval of the Agenda**

20-249        **Approval of the agenda as amended.** Moved by Councilperson Waterman and second by Councilperson Pietila.

Ayes: Shramski, Taylor-Burks, Waterman, Williams, Carter and Pietila

No: None

**Motion Carried.**

**Approval of the Minutes**

20-250        **Approve special meeting minutes on the Budget for May 28, 2020.** Moved by Councilperson Waterman and second by Councilperson Pietila.

June 9, 2020 Formal

Ayes: Taylor-Burks, Waterman, Williams, Carter, Pietila and Shramski  
No: None  
**Motion Carried.**

20-251        **Approve special meeting minutes for Closed Session on May 29, 2020.** Moved by Councilperson Pietila and second by Councilperson Waterman.

Ayes: Waterman, Williams, Carter, Pietila, Shramski and Taylor-Burks  
No: None  
**Motion Carried.**

20-252        **Approve study session meeting minutes for June 2, 2020.** Moved by Councilperson Pietila and second by Councilperson Shramski.

Ayes: Williams, Carter, Pietila, Shramski, Taylor-Burks and Waterman  
No: None  
**Motion Carried.**

20-253        **Approve special meeting minutes on the Budget for June 3, 2020.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

Ayes: Carter, Pietila, Shramski, Taylor-Burks, Waterman and Williams  
No: None  
**Motion Carried.**

20-254        **Approve special meeting minutes on the Budget for June 4, 2020.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Ayes: Pietila, Taylor-Burks, Waterman, Williams and Carter  
No: None  
Abstain: Shramski  
**Motion Carried.**

**Resolution**

**City Council**

20-255        **Resolution for the City of Pontiac Racism is a Public Health Crisis. (Agenda Add-on)** Moved by Councilperson Pietila and second by Councilperson Shramski.

WHEREAS, race is a social construct with no biological basis; and,  
WHEREAS, racism is a social system with multiple dimensions: individual racism is internalized or interpersonal; and systemic racism is institutional or structural, and is a system of structuring opportunity and assigning value based on the social interpretation of how one looks, that unfairly disadvantages some individuals and communities, unfairly advantages other individuals and communities, and saps the strength of the whole society through the waste of human resources; and,



WHEREAS, racism causes persistent racial discrimination in housing, education, employment and criminal justice; and emerging body of research demonstrates that racism is a social determinant of health; and,

WHEREAS, more than 100 research studies have linked racism to worse health outcomes; and, WHEREAS, the United Nations declared a decade (2015-2024) focused on the people of African descent for recognition, justice and development to ensure human rights and fight against structural racism; and, WHEREAS, the Michigan Health Equity Roadmap states that, “Racial and ethnic minority populations experience poorer health outcomes than the general population for almost every health and social condition;” and,

WHEREAS, in Michigan, the highest excess death rates exist for African Americans for infant mortality, maternal mortality, and pediatric asthma; and,

WHEREAS, the Michigan Coronavirus Task Force on Racial Disparities formed by Executive Order No. 2020-55 to address the “disproportionately impacted communities of color” as African Americans represent 13.6% of Michigan’s population, but 40% of deaths from COVID-19; and,

WHEREAS, public health’s responsibilities to address racism include reshaping our discourse and agenda so that we all actively engage in racial justice work; and,

WHEREAS, while there is no epidemiologic definition of “crisis,” the health impact of racism clearly rises to the definition proposed by Galea: “The problem must affect large numbers of people, it must threaten health over the long-term, and it must require the adoption of large-scale solutions;” and,

NOW, THEREFORE, BE IT RESOLVED that the Pontiac City Council and members of this great community hereby:

- Assert that racism is a public health crisis affecting our entire society; and,
- Conduct an assessment of internal policy and procedures to ensure racial equity is a core element of the organization, led by a Board in collaboration with other relevant parties, communicates results of assessment, and determines appropriate interval for reassessment, and,
  - Work to create an equity and justice oriented organization, with the Board and Committees identifying specific activities to increase diversity and to incorporate anti-racism principles across membership, leadership, staffing and contracting; and,
  - Incorporate into the organizational workplan educational efforts to address and dismantle racism, expand members’ understanding of racism, and how racism affects individual and population health and provide tools to assist members to engage actively and authentically with communities of color; and,
  - Advocate for relevant policies that improve health in communities of color, and supports local, state, and federal initiatives that advance social justice, while also encouraging individual member advocacy to dismantle systemic racism; and,
  - Work to build alliances and partnerships with other organizations that are confronting racism and encourages other local, state and national entities to recognize racism as a public health crisis.

Ayes: Waterman, Williams, Carter, Pietila, Shramski and Taylor-Burks

No: None

**Resolution Passed.**

June 9, 2020 Formal

**Discussion**

Housing Commission Pilot and Title Transfer for Carriage Circle

Presenters: Ahmad Taylor, Executive Director, Pontiac Housings Commission and Oakland County Commissioner Emeritus Mattie Hatchett.

**Special Presentations (Presentation are limited to 10 minutes.)**

City Clerk Elections 2020 Advisory Committee

Presentation Presenter: Garland Doyle, Interim City Clerk

Black Lives Matter: Update on Review/Relations with Sheriff Department and the Justice Movement.

Presentation Presenter: Mayor Waterman

Partial Release of Work for Phoenix Center

Presentation Presenters: Matt Gibb, Economic Development and Vince DeLeonardis, CEO/President AUCH. Councilwoman Shramski requested a list of all repairs made to the Phoenix Center.

Recognition of Elected Officials – Mattie Hatchett, Pontiac Library Board

**Resolutions Continued**

**City Clerk**

20-256      **Resolution to approve title change for the position of Assistant City Clerk to Assistant City Clerk/Elections Administrator.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

Whereas, the Home Rule Charter of the City of Pontiac Section 3.120 gives the City Council Control of the City Payroll.

Now, Therefore, Be It Resolved, that the City Council for the City of Pontiac approves the title change for the position of Assistant City Clerk to Assistant City Clerk/Elections Administrator. The salary will remain up to \$65,000.

Ayes: Pietila, Shramski, Taylor-Burks, Waterman, Williams and Carter

No: None

**Resolution Passed.**

**Economic/Community Development**

20-257      **Resolution proposed by the Administration for the City Council to pledge to citizens that they will decide on Funding Mechanism for the Phoenix Center Settlement Agreement that will not cause the City to default on this obligation.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

Whereas City Council signed the Settlement agreement for resolution of Phoenix Center Litigation

Whereas City Council understands its obligations to act financially prudently;

June 9, 2020 Formal

Whereas the city has suffered through a period of economic downturn resulting in 3 emergency managers and wants to protect its citizens from another such fiscal crisis;  
Where the city lost valuable assets due to failure to act in a timely manner.  
The loss of the Silverdome to a private owner is one such asset loss to the city

Where the City Council has obligations to the city to find a solution for their responsibility to fiscally enable the terms of Settlement agreement.  
Now therefore, the Pontiac City Council Pledges to Citizens that they will decide on Funding Mechanism for the Phoenix Center Settlement Agreement that will not Cause the city to Default on this Obligation.

Ayes: Pietila  
No: Shramski, Taylor-Burks, Waterman, Williams and Carter  
**Resolution Failed.**

**Mayor's Office**

20-258 **Resolution to authorize the Mayor to enter into an agreement with the School District for 2020 Police School Liaison Program.** Moved by Councilperson Waterman and second by Councilperson Pietila.

Whereas, the School District of the City of Pontiac desires to have an law enforcement presence within the District and as approved an agreement with the City of Pontiac; and  
Whereas, the City of Pontiac sees a benefit in having an official law enforcement presence in the District; and  
Whereas, the Oakland County Sheriff's Office finds the school liaison officer program as a benefits to all parties involved; and  
Whereas, the City Attorney has reviewed and approved agreement as to form.  
Now therefore, be it resolved that the Pontiac City Council approves the Police School Liaison Officer Program Agreement between the Pontiac School District and the City of Pontiac and authorizes the Mayor to sign agreement as presented.

Ayes: Taylor-Burks, Waterman, Williams, Carter, Pietila and Shramski  
No: None  
**Resolution Passed.**

**Planning**

20-259 **Resolution to approve the Redevelopment "Bistro" Liquor License, for Marimar, LLC 31 N. Saginaw doing business as the Alley Cat and recommend that the Michigan Liquor Control Commission grant a Class C license issued under MCL 436.1521a (1) (b) and outdoor service area on the city sidewalk. (The City Council approved a resolution for the Alley Cat on March 24, 2020 but another resolution needs to be approved with their correct legal name.)** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

June 9, 2020 Formal

WHEREAS, Marimar, LLC, Parcel 64-14-29-433-015, 31 N. Saginaw St., has made petition for a Class C license issued under MCL 436.1521 a (1)(b) and outdoor service area on city sidewalk. The petitioner meets the eligibility requirements for licensure issuance under the MCL 436.1521a(1)(b), and;

WHEREAS, The City of Pontiac Planning Commission unanimously approved a Special Exception Permit at the March 4, 2020 meeting, that the Bistro Liquor License for The Alley Cat Cafe, at 31 N. Saginaw, be approved for license issuance, and;

WHEREAS, Marimar, LLC, 31 N Saginaw St, shall comply with the City of Pontiac Ordinance 2366 to Allow for Redevelopment Liquor Licenses and Conditions for Issuance and Operations of the petitioned Class C 'Bistro' License and Specially Designated Merchant (SDM) and the MCL 436.1521a (1) (b)and;

THEREFORE, BE IT RESOLVED, the Pontiac City Council approves the recommendation for Marimar, LLC request for a Class C license issued under MCL 436.1521 a (1)(b) and outdoor service area on city sidewalk and Specially Designated Merchant (SDM) 'Bistro' License for Parcel No. 64-14-29-433-015 and further recommends their application be considered for approval by the Michigan Liquor Control Commission.

THEREFORE, BE IT FURTHER RESOLVED, that the petitioner, Marimar, LLC d/b/a The Alley Cat Café, located at 31 N Saginaw, Pontiac is located in the City of Pontiac Redevelopment District.

Ayes: Williams, Pietila, Shramski, Taylor-Burks and Waterman

No: Carter

**Resolution Passed.**

**Public Comment**

Four (4) individuals submitted a public comment read by the City Clerk.

**Mayor, Clerk and Council Closing Comments**

Mayor Waterman, Clerk Garland Doyle, Councilwoman Shramski, Councilwoman Taylor-Burks, Councilwoman Pietila, Councilwoman Waterman, Council President Pro-Tem Randy Carter and Council President Kermit Williams made closing comments.

**Adjournment**

Council President Kermit Williams adjourned the meeting at 8:01 p.m.

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GARLAND S DOYLE  
INTERIM CITY CLERK

**#3**

**MINUTES**

**6-10-20**

June 10, 2020 Special

**Official Proceedings  
Pontiac City Council  
167<sup>th</sup> Session of the Tenth Council**

**Call to order**

A Special Meeting on the Budget of the City Council of Pontiac, Michigan was called to order electronically on Wednesday, June 10, 2020 at 10:00 a.m. by Council President Kermit Williams.

**Roll Call**

Members Present: Carter, Miller, Pietila, Shramski, Taylor-Burks, Waterman and Williams.  
Mayor Waterman was present.  
Clerk announced a quorum.

**Department Hearing**  
City Council

**Discussion**

There have been discrepancies in the budget documents presented by the Administration during several department budget hearings.

Councilwoman Patrice Waterman called for a Forensic Audit

**No Public Comment**

**Adjournment**

20-260      **Motion to adjourn the meeting.** Moved by Councilperson Waterman and second by Councilperson Carter.

Ayes: Miller, Shramski, Taylor-Burks, Waterman, Williams and Carter  
No: None

**Motion Carried.**

Councilwoman Pietila was absent during the vote.

Council President Kermit Williams adjourned the meeting at 10:47 a.m.

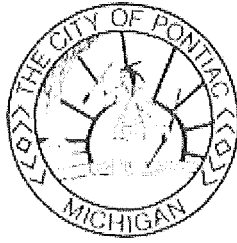
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GARLAND S DOYLE  
INTERIM CITY CLERK

**#4**

**RESOLUTION**

## Resolution of the Pontiac City Council



**Whereas**, the City of Pontiac timely approved the FY 2019-2020 budget on June 25, 2019; and

**Whereas**, the adopted FY 2019-2020 General Fund (101) included a City Clerk Dept (215) budget; and

**Whereas**, the City Clerk is requesting to transfer \$3960.00 from Dept 215 City Clerk Account 101-215-957.002 Training Expense to Account 101-215-902.005 Public Notices

**Whereas**, these transfers are necessary to pay invoices and ensure that the City is in compliance with the Charter by publishing public notices; and

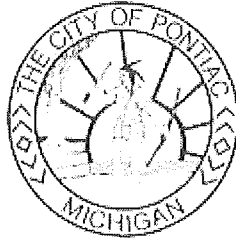
**Whereas**, section 5.106 of the Charter states “after adoption of the appropriations ordinance, and upon at least one week’s notice in a newspaper of general circulation in the City, the Council by a resolution of five members, may amend such ordinance to authorize the transfer of an unused balance appropriated for one purpose to another purpose, or to appropriate available revenues not previously appropriated.”; and

**Now Therefore, Be It Resolved**, that the City Council hereby authorizes the Interim City Clerk to publish a notice in a newspaper of general circulation at least one week before consideration of the proposed budget amendment.



**#5**

# **RESOLUTION**



**RESOLUTION TO APPROVE THE CITY CLERK WEBSITE PONTIACCITYCLERK.COM**

**WHEREAS**, the City Clerk established <http://www.pontiaccityclerk.com> as the website for the Office of the City Clerk to increase citizen accessibility to the Office of the City Clerk; and

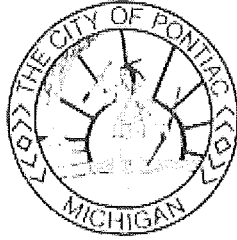
**WHEREAS**, the City Clerk has established other social media tools for the Office of the City Clerk as an outreach effort to encourage Pontiac residents to vote in the 2020 elections and engage the greater community.

**NOW, THEREFORE IT BE RESOLVED**, that the City Council for the City of Pontiac approves PontiacCityClerk.com as a website for the Office of the City Clerk.

**#6**

# **RESOLUTION**

## Resolution of the Pontiac City Council



**Whereas**, the City of Pontiac timely approved the FY 2019-2020 budget on June 25, 2019; and

**Whereas**, the adopted FY 2019-2020 General Fund (101) included an Elections Dept (191) budget; and

**Whereas**, the City Clerk is requesting to transfer funds from the following Dept 191 Elections Accounts: Account 101-191-702.020 Salaries and Wages (Non-FICA) \$12,084.00; Account 101-191-716.000 Medical Insurance \$18,223.83; Account 101-191-717.000 Life Insurance \$715.12; Account 101-191-719.001 Dental Insurance \$411.55; Account 101-191-721.010 Health Care Waiver \$7293.00 to Account 101-191-809.000 Services-Elections. The total amount of the transfer is \$38,727.50; and

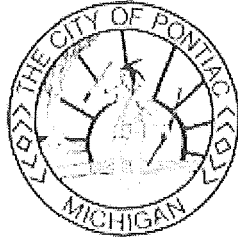
**Whereas**, these transfers are necessary for the preparation of the upcoming August 4, 2020 Primary Election; and

**Whereas**, section 5.106 of the Charter states "after adoption of the appropriations ordinance, and upon at least one week's notice in a newspaper of general circulation in the City, the Council by a resolution of five members, may amend such ordinance to authorize the transfer of an unused balance appropriated for one purpose to another purpose, or to appropriate available revenues not previously appropriated."; and

**Now Therefore, Be It Resolved**, that the City Council hereby authorizes the Interim City Clerk to publish a notice in a newspaper of general circulation at least one week before consideration of the proposed budget amendment.

**#7**

# **RESOLUTION**



**RESOLUTION TO APPROVE THE AGREEMENT FOR ELECTION SERVICES BETWEEN OAKLAND COUNTY AND CITY OF PONTIAC**

**WHEREAS**, recent legislation has been approved to allow counties to perform the absent voter ballot counting services for municipalities; and

**WHEREAS**, the City of Pontiac is entering into an agreement with Oakland County for election services; and

**WHEREAS**, the County will perform the service at no charge to the City of Pontiac.

**NOW, THEREFORE IT BE RESOLVED**, that the City Council for the City of Pontiac authorizes the Mayor to sign the agreement for election services between Oakland County and the City of Pontiac.

**AGREEMENT FOR ELECTION SERVICES BETWEEN  
OAKLAND COUNTY AND  
[Insert Public Body]**

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This Agreement for Election Services Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the [Insert Public Body] ("Public Body") [Insert Public Body Address]. In this Agreement, the County shall be represented by the Oakland County Clerk, in her official capacity as a Michigan Constitutional Officer. County and Public Body may be referred to individually as a "Party" and jointly as "Parties".

**PURPOSE OF AGREEMENT.** County and Public Body enter into this Agreement pursuant to the Michigan Election Law, 1954 Public Act 116, MCL 168.764 *et seq.*, for the purpose of County providing Ballot Counting Services for Public Body.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows:
  - 1.1. **Act** means the Michigan Election Law, 1954 Public Act 116, MCL 168.764 *et seq.*
  - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment to this Agreement.
  - 1.2. **Claims** mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
  - 1.3. **Confidential Information** means all information and data that County is required or permitted by law to keep confidential, including records of County's security measures, security plans, security codes and combinations, passwords, keys, and security procedures, to the extent that the records relate to ongoing security of County as well as records or information to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs relating to ongoing security measures, capabilities and plans for responding to violations of the Michigan Anti-terrorism Act, emergency response plans, risk planning documents, threat assessments and domestic preparedness strategies.
  - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners,

elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.

- 1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
- 1.6. **Election Services** means the following individual Election Services provided by County's Clerk's Elections Division, if applicable:
  - 1.6.1. **Absentee Ballot Counting** means processing, including, but not limited to, opening, tabulating and reporting absentee ballots and related results.
- 1.7. **Exhibits** mean the following descriptions of Election Services which are governed by this Agreement only if they are attached to this Agreement and incorporated in this Agreement under Section 2 or added at a later date by a formal amendment to this Agreement:
  - Exhibit I: Absentee Ballot Counting Services
- 1.8. **Local Clerk** means the local elected or appointed Clerk for Public Body or their designee.
- 1.8. **Public Body** means the [Insert Public Body] which is an entity created by state or local authority or which is primarily funded by or through state or local authority, including, but not limited to, its council, Board, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors. For purposes of this Agreement, Public Body includes any Michigan court, when acting in concert with its funding unit, to obtain Election Services.
- 1.9. **Public Body Employee** means any employees, officers, directors, members, managers, trustees, volunteers, attorneys, representatives of Public Body, licensees, concessionaires, contractors, subcontractors, independent contractors, agents, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal, representative or official capacities), and/or any persons acting by, through, under, or in concert with any of the above who use or have access to the Election Services provided under this Agreement. "Public Body Employee" shall also include any person who was a Public Body Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 1.10. **Points of Contact** mean the individuals designated by Public Body and identified to County to act as primary and secondary contacts for communication and other purposes as described herein.

## 2. **COUNTY RESPONSIBILITIES.**

- 2.1. County, through its County Clerk Elections Division, will provide the Election Services described in Exhibit I which is attached and incorporated into this Agreement. County is not obligated or required to provide any additional services that are not specified in this Agreement.
- 2.2. County, through its Board of Election Commissioners and authorized representatives, shall take the necessary and appropriate actions to comply with Section 764d(8) of the Act in the appointment of election inspectors to a County absent voter counting board and all other provisions under the Act governing such board.



- 2.3. County may access, use, and disclose transaction information and any content to comply with the law such as a subpoena, court order or Freedom of Information Act request. County shall first refer all such requests for information to Public Body's Points of Contact for their response within the required time frame. County shall provide assistance for the response if requested by Public Body's Points of Contact, and if able to access the requested information. County shall not distribute Public Body's data to other entities for reasons other than when it is required by law.

### **3. PUBLIC BODY RESPONSIBILITIES.**

- 3.1. Public Body shall comply with all terms and conditions in this Agreement, including Exhibit I to this Agreement, and the Act.
- 3.2. Public Body shall deliver the Agreement executed by its authorized representative(s) to County within the time-frame set forth in Section 764d(5) of the Act and, upon County's execution of the Agreement, the Agreement shall be deemed to be filed by Public Body with County in compliance with Section 764d(5) of the Act.
- 3.3. For each Election Service covered by an Exhibit to this Agreement, Public Body shall designate two representatives to act as a primary and secondary Points of Contact with County. The Points of Contact responsibilities shall include:
  - 3.3.1. Direct coordination and interaction with County staff.
  - 3.3.2. Communication with the general public when appropriate.
- 3.4. Public Body shall respond to and be responsible for Freedom of Information Act requests relating to Public Body's records, data, or other information.
- 3.5. Third-party product or service providers may require County to pass through to Public Body certain terms and conditions contained in license agreements, service agreements, acceptable use policies and similar terms of service or usage, in order to provide Election Services to Public Body. Public Body agrees to comply with these terms and conditions. Public Body must follow the termination provisions of this Agreement if it determines that it cannot comply with any of the terms and conditions.

### **4. DURATION OF INTERLOCAL AGREEMENT.**

- 4.1. This Agreement and any amendments shall be effective when executed by both Parties with resolutions passed by the governing bodies of each Party or other written notice evidencing such Party's governing body's approval, except as otherwise specified below. The approval and terms of this Agreement and any amendments, except as specified below, shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State. If Public Body is a court, a signature from the Chief Judge of the court shall evidence approval by Public Body, providing a resolution and minutes do not apply. If Public Body is the State of Michigan, approval and signature shall be as provided by law.
- 4.2. Notwithstanding Section 4.1, the Chairperson of the Oakland County Board of Commissioners is authorized to sign amendments to the Agreement to add Exhibits that were previously approved by the Board of Commissioners. An amendment signed by the Board Chairperson under this Section must be sent to the Elections Division in the County Clerk's Office to be filed with the Agreement once it is signed by both Parties.
- 4.3. Unless extended by an amendment, this Agreement shall remain in effect until cancelled or terminated by any of the Parties pursuant to the terms of the Agreement.

5. **PAYMENTS.**

- 5.1. Election Services shall be provided to Public Body at the rates and for the charges specified in the Exhibits, if applicable.
- 5.2. If County is legally obligated for any reason, e.g. subpoena, court order, or Freedom of Information Request, to search for, identify, produce or testify regarding Public Body's records, data, or information that is stored by County relating to Election Services that Public Body receives under this Agreement, then Public Body shall reimburse County for all reasonable costs County incurs in searching for, identifying, producing or testifying regarding such records, data, or information. County may waive this requirement in its sole discretion.
- 5.3. County shall provide Public Body with an invoice/explanation of County's costs for Election Services provided herein and/or a statement describing any amounts owed to County. Public Body shall pay the full amount shown on any such invoice within sixty (60) calendar days after the date shown on any such invoice. Payment shall be sent along with a copy of the invoice to: Oakland County Treasurer – Cash Acctg, Bldg 12 E, 1200 N. Telegraph Road, Pontiac, MI 48341.
- 5.4. If Public Body, for any reason, fails to pay County any monies when and as due under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was actually due and owing under this Agreement.
- 5.5. If County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay County any amounts due and owing County under this Agreement, County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid.
- 5.6. Nothing in this Section shall operate to limit County's right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.
- 5.7. Either Party's decision to terminate and/or cancel this Agreement, or any one or more of the individual Election Services identified herein, shall not relieve Public Body of any payment obligation for any Election Services rendered prior to the effective date of any termination or cancellation of this Agreement. The provisions of this Section shall survive the termination, cancellation, and/or expiration of this Agreement.

## 6. ASSURANCES.

- 6.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.
- 6.2. **Responsibility for Attorney Fees and Costs.** Except as provided for in Section 5.6, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.
- 6.3. **No Indemnification.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.
- 6.4. **Costs, Fines, and Fees for Noncompliance.** Public Body shall be solely responsible for all costs, fines and fees associated with any misuse of the Election Services and/or for noncompliance with this Agreement by Public Body Employees.
- 6.5. **Reservation of Rights.** This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.
- 6.6. **Authorization and Completion of Agreement.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 6.7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

## 7. USE OF CONFIDENTIAL INFORMATION

- 7.1. The Parties shall not reproduce, provide, disclose, or give access to Confidential Information to County or to a Public Body Employee not having a legitimate need to know the Confidential Information, or to any third-party. County and Public Body Employees shall only use the Confidential Information for performance of this Agreement. Notwithstanding the foregoing, the Parties may disclose the Confidential Information if required by law, statute, or other legal process provided that the Party required to disclose the information: (i) provides prompt written notice of the impending disclosure to the other Party, (ii) provides reasonable assistance in opposing or limiting the disclosure, and (iii) makes only such disclosure as is compelled or required. This Agreement imposes no obligation upon the Parties with respect to any Confidential Information when it can be established by legally sufficient evidence that the Confidential Information: (i) was in possession of or was known by prior to its receipt from the other Party, without any obligation to maintain its confidentiality; or (ii) was obtained from a third party having the right to disclose it, without an obligation to keep such information confidential.
- 7.2. Within five (5) business days after receiving a written request from the other Party, or upon termination of this Agreement, the receiving Party shall return or destroy all of the disclosing Party's Confidential Information.

## 8. DISCLAIMER OF WARRANTIES.

- 8.1. THE ELECTION SERVICES, INCLUDING ANY GOODS, PARTS, SUPPLIES, EQUIPMENT, OR OTHER ITEMS THAT ARE PROVIDED TO PUBLIC BODY AS PART OF THE ELECTION SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS "WITH ALL FAULTS."
- 8.2. COUNTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT.
- 8.3. COUNTY MAKES NO WARRANTY THAT: (I) THE ELECTION SERVICES WILL MEET PUBLIC BODY'S REQUIREMENTS; OR (II) THE ELECTION SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

9. **LIMITATION OF LIABILITY.**

- 9.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, AND/OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, REGARDLESS OF WHETHER THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF COUNTY UNDER THIS AGREEMENT (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY PUBLIC BODY TO COUNTY WITH RESPECT TO THE PARTICULAR ELECTION SERVICE GIVING RISE TO SUCH LIABILITY.

10. **DISPUTE RESOLUTION.** All disputes relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to County's Director of Elections and Public Body's Agreement Administrator for possible resolution. County's Clerk and Public Body's Agreement Administrator may promptly meet and confer in an effort to resolve such dispute. If they cannot resolve the dispute in five (5) business days, the dispute may be submitted to the signatories of this Agreement or their successors in office. The signatories of this Agreement may meet promptly and confer in an effort to resolve such dispute.

11. **TERMINATION OR CANCELLATION OF AGREEMENT.**

- 11.1. Either Party may terminate or cancel this entire Agreement or any one of the Election Services described in the attached Exhibit(s), upon eighty-four (84) days written notice, or such other notice period as otherwise required by the Act, to the clerk of the other Party if either Party decided, in its sole discretion, to terminate this Agreement or one of the Exhibit(s), for any reason including convenience. Each Party shall also comply with the requirements under the Act for filing the notice of termination, in which case, Public Body's timely delivery of a notice of termination to County shall be deemed to comply with its filing requirement.
- 11.2. Early termination fees may apply to Public Body if provided for in the Exhibit(s).
- 11.3. The effective date of termination and/or cancellation shall be clearly stated in the written notice. Either the County Executive or the Board of Commissioners is authorized to terminate this Agreement for County under this provision. A termination of one or more of the Exhibits which does not constitute a termination of the entire Agreement may be accepted on behalf of County by its County Clerk.

12. **SUSPENSION OF SERVICES.** County, through its County Clerk, may immediately suspend Election Services for any of the following reasons: (i) requests by law enforcement or other governmental agencies; (ii) engagement by Public Body in fraudulent or illegal activities relating to the Election Services provided herein; (iii) breach of the terms and conditions of this Agreement; or (iv) unexpected technical or security issues. The right to suspend Election Services is in addition to the right to terminate or cancel this Agreement according to the provisions in Section 11. County shall not incur any penalty, expense or liability if Election Services are suspended under this Section.
13. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
14. **NO EMPLOYEE-EMPLOYER RELATIONSHIP.** Nothing in this Agreement shall be construed as creating an employee-employer relationship between County and Public Body. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants during the term of this Agreement. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Agreement.
15. **NO THIRD-PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.
16. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.
17. **SEVERABILITY.** If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
18. **PRECEDENCE OF DOCUMENTS.** In the event of a conflict between the terms and conditions of any of the documents that comprise this Agreement, the terms in the Agreement shall prevail and take precedence over any allegedly conflicting terms and conditions in the Exhibits or other documents that comprise this Agreement.
19. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
20. **FORCE MAJEURE.** Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work

stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.

21. **NOTICES**. Except as otherwise provided in the Exhibits, notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.
  - 21.1. If Notice is sent to County, it shall be addressed and sent to: Oakland County Clerk, Election's Division, 1200 N. Telegraph Road, Bldg. 16 East, Pontiac, MI 48341, and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.
  - 21.2. If Notice is sent to Public Body, it shall be addressed to: [insert Public Body Address].
  - 21.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.
22. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE**. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
23. **SURVIVAL OF TERMS**. The following terms and conditions shall survive and continue in full force beyond the termination, cancellation, or expiration of this Agreement (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 6); Payments (Section 5); Use of Confidential Information (Section 7); Disclaimer of Warranties (Section 8); Limitation of Liability (Section 9); Dispute Resolution (Section 10); No Employee-Employer Relationship (Section 14); No Third-Party Beneficiaries (Section 15); No Implied Waiver (Section 16); Severability (Section 17); Precedence of Documents (Section 18); Force Majeure (Section 20); Governing Law/Consent to Jurisdiction and Venue (Section 22); Survival of Terms (Section 23); Entire Agreement (Section 24).
24. **ENTIRE AGREEMENT**.
  - 24.1. This Agreement represents the entire agreement and understanding between the Parties regarding the specific Election Services described in the attached Exhibit(s). With regard to those Election Services, this Agreement supersedes all other oral or written agreements between the Parties.
  - 24.2. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, [insert name and title of public body official] hereby acknowledges that he/she has been authorized by a resolution of the [insert public body], a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
[insert name of official, title, and name of public body]

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
[insert name, title]

AGREEMENT  
ADMINISTRATOR: \_\_\_\_\_ DATE: \_\_\_\_\_  
(IF APPLICABLE)

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
David T. Woodward, Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
[insert name, title]

IN WITNESS WHEREOF, Lisa Brown, in her official capacity as the Oakland County Clerk, a Michigan Constitutional Office, hereby concurs and accepts the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Lisa Brown, Clerk/Register of Deeds,  
County of Oakland

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_

## EXHIBIT I

### ABSENT VOTER BALLOT COUNTING SERVICES

#### 1. COUNTY RESPONSIBILITIES.

- 1.1. County, through its Board of Election Commissioners, shall, subject to Public Body's performance of its duties and obligations under this Agreement and the Act, render absent voter ballot counting services in compliance with the Act for absent voter ballots received by the clerk for Public Body prior to 4:00 p.m. on the day before an election. For clarification, County is not providing Election Services for absent voter ballots received by the clerk for Public Body after 4:00 p.m. on the day before an election; pursuant to Section 764d(10) of the Act, Public Body must deliver such ballots to the voting precinct of the elector on election day to be processed and counted.
- 1.2. Unless otherwise agreed upon in writing by the Parties, County shall cause absent voter ballots, including, the ballot return envelopes, secrecy sleeves, and ballots (collectively the "Ballots"), received by the clerk for Public Body prior to 4:00 p.m. on the day before an election to be picked up from the clerk by 6:00 p.m. that day by an authorized representative of County.
- 1.3. Upon completing the process for counting the ballots, County shall place the ballots in ballot containers either provided by Public Body that comply with the requirements described below or provided by County, as determined in County's sole discretion, and seal the ballot containers in compliance with all applicable laws. County shall notify Public Body of its decision to require Public Body to provide ballot containers or to provide ballot containers at least sixty (60) days prior to each election for which County is providing Election Services to Public Body under this Agreement.
- 1.4. County shall retain the sealed ballot containers containing the Ballots for thirty (30) days after the day of the election for which the Ballots were submitted. County shall make arrangements with Public Body for an authorized representative(s) of Public Body to, after the expiration of the thirty (30) day period, pick-up from County the Ballots, mail trails, ballot envelopes, ballot boxes provided by Public Body, qualified voter list, and any other items related to the Ballots transferred by Public Body to County.

#### 2. PUBLIC BODY RESPONSIBILITIES.

- 2.1. Public Body shall perform its duties and obligations under this Agreement and the Act and take any other action necessary or appropriate to assist, and cooperate with, County in rendering the absent voter ballot counting services under this Agreement.
- 2.2. Public Body shall, by 4:30 on the day before an election, have available for transfer to County immediately upon arrival of County's representative, the Ballots received by the clerk for Public Body prior to 4:00 p.m. on that day properly organized in mailing trays, ballot containers, unless provided by County pursuant to this Agreement, in good condition and compliant with the required and appropriate sealing procedures, and a reconciled voter list from the qualified voter file that matches the number of Ballots being transferred to County.
- 2.3. Public Body shall, during any period County is actively rendering Election Services, provide to County access to Public Body's electronic qualified voter file for the sole purpose of County reconciling such list with the number of Ballot envelopes received by County and to make any necessary corrections to the list to reflect the number of Ballot envelopes received.



2.4. Public Body shall make arrangements with County to, no later than three (3) business days after the expiration of the thirty (30) day period described in Section 1.4, cause authorized representative(s) in number necessary to pick-up from County premises the Ballots, mail trays, ballot envelopes, ballot boxes provided by Public Body, qualified voter lists, and any other items related to the Ballots transferred by Public Body to County. At such time and on County premises, if County provided ballot boxes to seal the Ballots in providing the Election Services, Public Body shall bring ballot boxes for its authorized representatives to transfer into the Ballots from the County provided ballot boxes. If Public Body does not pick-up such items as required in this Section, at County's election exercised in its sole discretion, Public Body shall, within thirty (30) days of receiving an invoice from County, pay to County \$100 \_\_\_\_\_ for each day beyond the three (3) period set forth above that County remains in possession of such items and/or County may have its authorized representatives deliver such items to Public Body on such date and at such time during Public Body's clerk's regularly scheduled office hours County determines, in which case Public Body shall be deemed to have accepted possession of all such items.

2.5. Upon the earlier to occur of the expiration of the three (3) period set forth in Section 2.4 and the transfer of items to Public Body under Sections 1.4 and 2.5, above, Public Body shall be deemed to be responsible for all such items.

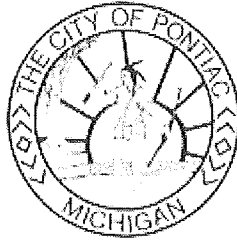
3. **PAYMENT; EXPENSES AND FEES.**

3.1. Except as otherwise provided in Section 5 of this Agreement, until such time as County notifies Public Body otherwise, County shall provide the Election Services to Public Body for each election at no cost to Public Body.

3.2. At such time County determines it will require the payment of a fee and/or reimbursement for costs and expenses by Public Body for County's Election Services for an upcoming election(s), County shall provide written notice to Public Body in advance of such election(s) with sufficient time for Public Body to terminate this Agreement in accordance with its terms setting forth in detail such fees, costs, and expenses and Public Body shall pay such amounts in accordance with the terms of this Agreement for Election Services rendered by County.

**#8**

# **RESOLUTION**



**RESOLUTION TO APPROVE THE SCHEDULING OF A PUBLIC HEARING ON THE TRANSFER OF OWNERSHIP**

Whereas, the City may transfer ownership of the Carriage Circle Apartments located at 255 Carriage Circle in the City of Pontiac; and

Whereas, the City Charter at Section 3.113 requires a public hearing prior to the sale, transfer, or exchange of City property;

**NOW, THEREFORE IT BE RESOLVED** the City Council approves the setting of a public hearing on June 23, 2020 at 6pm for the possible transfer of ownership of the Carriage Circle Apartments located at 255 Carriage Circle in the City of Pontiac.

**#9**

# **RESOLUTION**



# CITY OF PONTIAC

## OFFICIAL MEMORANDUM

*Executive Branch*

---

**TO:** Honorable Council President and City Council Members

**FROM:** Jane Bais-DiSessa, Deputy Mayor, at the request of  
Dan Ringo, Interim Director of Public Works

**DATE:** June 11, 2020

**RE: MDOT Baldwin, Martin Luther King Traffic Signals Funding Agreement**

The Michigan Department of Transportation has prepared and delivered the attached funding agreement for the Baldwin Avenue and Martin Luther King Jr. Boulevard CMAQ and Safety project. This project is partially funded through MDOT Congestion Mitigation Air Quality (CMAQ) and Safety funds totaling \$975,520. The total estimated cost of the project is \$1,406,000, with the City's portion of the project \$430,480. This project is budgeted in fiscal year 2020/21.

The CMAQ and Safety funding from the Michigan Department of Transportation is provided based on competitive application and is specifically for providing safer road intersections as well as more efficient roadway corridors. These projects go through an MDOT Bid letting and be awarded, and funded by MDOT. The City will be responsible for our match on the project as stated above.

This contract was sent to the City Clerk's Office on March 27<sup>th</sup>. To date, the original copy has not been delivered to the Department of Public Works. We directly contacted MDOT inquiring about the contract, and were informed that the contract was sent to the City Clerks office on March 27, 2020. MDOT then reissued the contract electronically, which is what we are presenting for your consideration.

It is the recommendation of the Department of Public Works, Engineering Division that the City sign the attached MDOT funding agreement for the Baldwin Avenue and Martin Luther King CMAQ and Safety Projects:

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 2020/21 Major Street budget,

NOW, THEREFORE,  
BE IT RESOLVED, The Pontiac City Council authorized the Mayor or Deputy Mayor to sign the MDOT funding agreement for the Baldwin Avenue and Martin Luther King CMAQ and Safety Projects.

JVB

attachments



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
LANSING

PAUL C. AJEGBA  
DIRECTOR

March 27, 2020

Mr. Garland S. Doyle M.P.A., CNP  
Interim City Clerk  
City of Pontiac  
47450 Woodland Avenue  
Pontiac, Michigan 48342

Dear Mr. Doyle:

RE: Contract Number: 20-5157  
Control Section: HSIP 63000  
Job Number: 207437CON; 207438CPN  
Location: Baldwin Avenue from Cesar Chavez to Walton Boulevard, city of  
Pontiac; MLK Junior Blvd at Featerstone St and at University Dr, city of  
Pontiac

Enclosed is one (1) original and one (1) copy of the above referenced contract between your organization and the Michigan Department of Transportation (MDOT).

**If you have questions on the content of this contract, or revisions are required, please contact Monica Uribe, Local Government Contract Engineer at [uribem1@michigan.gov](mailto:uribem1@michigan.gov) or (517) 335-2266.**

1. Attach two (2) original certified resolutions. The resolution should include:
  - The name of officials authorized to sign the contract.
  - MDOT Contract Number 20-5157.

If you need an example of a resolution, please contact Kathy Fulton at [fultonk@michigan.gov](mailto:fultonk@michigan.gov) or (517) 335-4404.

2. Please return signed contracts and resolutions for MDOT Execution within 35 days from the date of this letter to:

Kathy J. Fulton, Contract Technician  
MDOT – Development Services Division, 2<sup>nd</sup> Floor  
425 West Ottawa Street, P.O. Box 30050  
Lansing, MI 48909

MDOT will return a copy of the executed contract to your organization.

Enclosure

HSIP

DA

Control Section	HSIP 63000
Job Number	207437CON; 207438CON
Project	20A0(564)(571)
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	20-5157

### 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 March 18, 2020, attached hereto and made a part hereof:

#### PART A - HSIP 63000; JOB #207437CON; 20A0(564)

Traffic signal modernization work for four (4) intersections along Baldwin Avenue from Montcalm Street northerly to Walton Boulevard; including steel strain pole, controller, cabinet, hemispherical video detection, backplates, lighting, concrete base course, pavement, concrete curb, gutter, sidewalk and ramp, and aggregate base work; and all together with necessary related work; at the following intersections:

1. Baldwin Avenue at Montcalm Street
2. Baldwin Avenue at Kennett Road
3. Baldwin Avenue at Columbia Avenue
4. Baldwin Avenue at Walton Boulevard

#### PART B - HSIP 63000; JOB #207438CON; 20A0(571)

Traffic signal modernization work along Martin Luther King Junior Boulevard at Featherstone Street and Martin Luther King Junior Boulevard at University Drive; including steel strain pole, controller, cabinet, hemispherical video detection, backplates, lighting, concrete base course, pavement, concrete curb, gutter, sidewalk and ramp, and aggregate base work; 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:

#### HIGHWAY SAFETY IMPROVEMENT PROGRAM

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 Highway Safety Improvement Program Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) \$600,000 or (2) an amount such that 90 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. 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

Federal Highway Safety Improvement Program Funds shall be applied to the eligible items of the PART B portion of the PROJECT COST up to the lesser of: (1) \$375,520 or (2) an amount such that 80 percent, the normal Federal participation ratio for such funds, for the PART B portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART B

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.

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

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 Department of Environmental Quality, 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 Department of Environmental Quality, 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 Department of Environmental Quality 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

MICHIGAN DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Department Director MDOT

By \_\_\_\_\_  
Title:



March 18, 2020

EXHIBIT I

CONTROL SECTION      HSIP 63000  
JOB NUMBER            207437CON; 207438CON  
PROJECT                20A0(564)(571)

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$874,000	\$532,000	\$1,406,000

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$874,000	\$532,000	\$1,406,000
Less Federal Funds*	<u>\$600,000</u>	<u>\$375,520</u>	<u>\$ 975,520</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$274,000	\$156,480	\$ 430,480

\*Federal Funds for the PART A and PART B portions of the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

DOT

TYPE B  
BUREAU OF HIGHWAYS  
03-15-93

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.

Revised June 2011



**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.

**#10**

**RESOLUTION**



# CITY OF PONTIAC

## OFFICIAL MEMORANDUM

*Executive Branch*

---

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

**FROM:** Irwin Williams, CPA, Acting Finance Director

**CC:** Honorable Mayor Deirdre Waterman, Jane Bais-DiSessa, Sekar Bawa

**DATE:** June 4, 2020

**RE:** **Resolution to Approve Annual FY 2020/2021 Tax Millages for the City of Pontiac and Potential Impact Caused by Delay to Consider.**

In prior Council meetings, both the City Treasurer and I have stressed that in order to ensure that property tax bills are received by July 1, 2020, the City millages would have to be approved by Council no later than June 9, 2020.

The tax-bill bill timeline, from approval of tax millage rates to the final tax bill printing is as follows:

- The Treasurer inputs the tax millage rates in the tax system (1 to 2 days)
- The County Treasurer checks the tax millage rate (3 to 5 days)
- Print the tax bills ( 5 to 8 days)

Due to the Council's failure to include the approval of the millage rates on the June 9, 2020 agenda, the tax millages will now have to be approved on the June 16, 2020 agenda. **As a result, taxpayers may not receive their tax bill on July 1, 2020.**

Based on the timeline described above, City Treasurer Sekar Bawa, stated that he could not guarantee that the taxpayers would receive their tax bill on July 1<sup>st</sup>, and that taxpayers may receive their tax bill(s) later than July 4<sup>th</sup>. Traditionally, former City Councils have addressed this matter on a timely basis.

Many of our taxpayers will be upset due to this delayed matter. For the past few weeks, on a daily basis, the Treasurer's Office has received 5-6 phone inquiries from concerned taxpayers requesting their 2020 summer tax bills.

In accordance with Article VI, 2-535 Budget Adoption of the Municipal Code presented for your consideration is the Mayor's updated millage Rate for the fiscal year 2020-2021. In addition, for your information the following items are attached:

- Section 3 of the Budget Ordinance including updated millage rates for fiscal year 2020-21.

Pending no changes to the proposed millage rates the following resolution is recommended:

***Whereas**, in accordance with Article V1, Section 2-535 of the City Ordinance entitled Budget Adoption, a public hearing was held on June 9, 2020 regarding the proposed tax rate and*

***Whereas**, the City Council shall not approve proposed tax rate until after the public hearing; and*

***Whereas**, by not less than six days after the notice of public hearing shall adopt an appropriations ordinance, tax rate.*

***NOW THEREFORE**, in accordance with the General Appropriations Act, the City Council of the City of Pontiac authorizes the following FY 2020-2021 Millage Rates to be levied and collected on the general property tax of all real and personal property within the City: 11.1699 operating; 1.4862 youth center; 1.3961 capital improvement; 2.7923 sanitation; 0.4954 senior services. The City Treasurer is hereby authorized to impose a one percent (1%) property tax administration fee for all property taxes due, And a late penalty charge when applicable, in conformance with Section 44 of Public Act 206 of 1893. Additionally, the City Council approves the Master Fee Schedule as attached.*

IW:SB

TO: Sekar Bawa, Treasurer, City of Pontiac  
 FROM: Shannon Moore, Required Reports, Standards  
 DATE: 4/23/2020  
 RE: 2020 Tax Rate Request

**2020 Headlee Maximum Allowable Millage**

Charter	Operating	11.1699
Charter	Cap Imp	1.3961
State Law	Sanitation	2.7923
Voted	Senior Services	0.4954
Voted	Youth Center	1.4862
Voted	Library	0.9908
<b>Total maximum allowable levy</b>		<b>18.3307</b>

Truth in Taxation Formula:

BTRF x 2019 Levy = Maximum levy possible without hearing.

2020 Base Tax Rate Fraction (BTRF) 0.9816

		2019		2020		MAXIMUM LEVY WITHOUT HEARING
		<u>TAX LEVY</u>		<u>BTRF</u>	=	
Charter	Operating	11.1699	X	0.9816	=	10.9643
Charter	Cap Imp	1.3961	X	0.9816	=	1.3704
State Law	Sanitation	2.7923	X	0.9816	=	2.7409
Voted	Senior Services	0.4954	X	0.9816	=	0.4862
Voted	Youth Center	1.4862	X	0.9816	=	1.4588
Voted	Library	0.9908	X	0.9816	=	0.9725
<b>Total Levy Possible w/out hearing</b>						<b>17.9931</b>

**NOTE: YOU WILL NOT HAVE TO HAVE A HEARING IF YOUR BASE TAX RATE IS HIGHER THAN YOUR HEADLEE MAXIMUM BUT YOU CANNOT EXCEED THE HEADLEE MAXIMUM.**

**2020 Possibilities:**

Levy at 2020 recalculated Truth in Taxation Rate	17.9931	no hearing required
Levy at 2020 maximum allowable	18.3307	hearing required *

Any levy between these rates would require a hearing.

Also, you will find enclosed, two partially completed copies of the L-4029.

**You will need to complete column 10 or 11 with your millage to be levied.**

Return the L-4029 before September 30, 2020 **or before you levy any taxes.** If you are levying any additional specials, please send the appropriate resolutions certifying the levy with the signed L-4029 form.

Hopefully, I have addressed all of your concerns. If I can be of any further assistance, please contact me at (248) 858-0752 or mooresh@oakgov.com.

\* Under Section 16 of the Uniform Budgeting & Accounting Act (MCL 141.436), this may be incorporated with the budget hearing.

***Section 3. Millage Levy, Administration Fee, and Penalties.***

*The City Council for the City of Pontiac shall authorize the following millages to be levied and collected on the general property tax of all real and personal property within the City upon the current tax roll an allocated millage of 11.1699 operating; 1.4862 youth center; 1.3961 capital improvement; 2.7923 sanitation; 0.4954 senior services. The City Treasurer is hereby authorized to impose a one percent (1%) property tax administration fee for all property taxes due, And a late penalty charge when applicable, in conformance with Section 44 of Public Act 206 of 1893.*