



**PONTIAC CITY COUNCIL
STUDY SESSION**

March 16, 2017

6:00 p.m.

177th Session of the 9th Council

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

Call to order

Roll Call

Authorization for excused absences for councilmembers

Public Comment

AGENDA ITEMS FOR CITY COUNCIL CONSIDERATION

1. Request for approval of City of Pontiac Solidarity Statement
2. Request for approval of ATPA Grant Contract with Oakland County
3. Request for approval Tree Trimming Services and Tree & Stump Removal
4. Request to schedule public hearing for Denek Contracting (Agenda item ad-on)

Adjournment



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Mayor, Council President and City Council Members

FROM: Jane Bais-DiSessa, Deputy Mayor

DATE: March 14, 2017

Subject: Proposed Resolution – City of Pontiac Solidarity Statement

Background:

In protest of President Trump's immigration agenda, on February 16, 2017 hundreds of Pontiac residents participated in the "Day without Immigrants" march. For additional information, a copy of the Oakland Press news article entitled: "Hundreds march through Pontiac for a Day without Immigrants" is attached. This march ended at City Hall requesting that Mayor Waterman address their concerns regarding the City's immigration deportation policy.

In response to their request, Mayor Waterman invited several leaders of the Latino community to meet with the Sherriff Bouchard to directly address their concerns. At this meeting, Sherriff Bouchard stated that the Oakland County Sherriff's office was not responsible for enforcing of federal laws, and assured attendees that they were not working with the U.S. Immigration and Customs Enforcement (ICE) agency regarding these matters.

Recommendation:

To further assure Pontiac residents that the City of Pontiac is a welcoming, safe and secure place for families to live in, it is respectfully requested that the City Council consider approving the attached resolution in support of a solidarity statement. It is also respectfully requested that it be read in Spanish.

Attachments

Hundreds march through Pontiac for A Day Without Immigrants

By Natalie Broda, nbroda@digitalfirstmedia.com, [@NatalieBroda](#) on Twitter

Thursday, February 16, 2017



As the sun rose over downtown Pontiac on Thursday, Feb. 16, so did the voices of hundreds of members of the Hispanic and Latino communities as they marched from Edison St. to City Hall, hoisting signs into the early morning air with cries of “Latinos Unidos,” or, “Latinos United.”

The protest was a part of a strike taking place across the country on Thursday asking members of the Hispanic and Latino communities to boycott attending work or school to highlight the contributions immigrants make on a daily basis. The social-media trending rally “A Day Without Immigrants” is a response to the immigration agenda of the Trump administration.

In Pontiac however, it was also a response to recent fears circulating throughout the community due to sightings of Border Patrol officers in the city, with some residents claiming school children are being stopped by Border Patrol on their way home from school and others saying that the officers are waiting outside of local businesses to conduct sweeps.

RELATED: [See more photos from the protest at Media.TheOaklandPress.com.](#)

Just before dawn

Around 250 to 300 residents, with many bringing their children in tow, showed up from 7 to 8:30 a.m. in the parking lot next to Creative Employment Opportunities, 345 Edison St. in Pontiac before marching down Saginaw Street to City Hall. The march was organized organically via social media.

“It’s not fair,” Edgar Rivera, 25 of Pontiac said of the fear of deportation which is now prevalent in the community. “We’re all humans. Things can be fixed in a different way. It’s just ridiculous, I understand looking for criminals but they’re separating families.”

Several Oakland County Sheriff vehicles escorted the crowd down Edison and Saginaw Streets to City Hall while Elvis Garcia, 36 of Pontiac and Martha Contreras, 50 of Pontiac and a local business owner, rode in the back of a pickup truck ahead of the march leading chants such as: “We are not criminals, we are hard workers, we are not rapists.”

“We didn’t do 9/11, we are not terrorists,” Garcia said. “People here are insecure, they don’t want to go out from their homes and put food on the table.”

Business lost

Del Pueblo Tortillas & Grocery, a family business established in 1968 at 511 Perry St., serves up specialty foods and groceries to a community which Owner Contreras said is now afraid to visit her shop.

"It affects our business, people are afraid because (Border Patrol) won't park out in front of a Kroger, but they're hauling people from our parking lots asking for papers while people are shopping," Contreras said. "I've seen a drop in business everywhere but if you're not into the Hispanic community then you just don't know what's going on."

Contreras is a sixth-generation immigrant in Pontiac. Her 82-year-old father came out with her to the march.

"He's been here all his life as a factory worker, a shop worker...he's lived it all and he told me that in this year he's never seen so much going on. They're tearing families apart, not only going out to job sites, but stopping us randomly on the streets if you have a Hispanic name."

Students impacted

Maricruz Avitia, 57 of Pontiac and a school guidance counselor at Pontiac Academy for Excellence, said that more than half of the 300 Hispanic and Latino students at the school have stopped attending class in the past weeks.

"That's our main concern as educators. We need to protect our children. They're missing school. Why? I call their parents and they say they're afraid to send their students to school. My students who do still come to the high school are afraid they won't be able to get into university because of this," Avitia said.

Detroit chimes in

Erik Shelley, communications coordinator for Michigan United, said thousands of people marched in downtown Detroit on Thursday for the same purpose. That march, organized by Michigan United, started at Clark Park in southwest Detroit and traveled three miles with an energetic crowd.

"It was well into the thousands. I was...posting a live video of them walking by and it seemed to go on for blocks and blocks," Shelley said.

At City Hall

The march wound its way to Pontiac City Hall, stopping traffic crossing Woodward Avenue along the way. After several small speeches, the crowd began to chant for Pontiac Mayor Deirdre Waterman to come outside. Minutes later, Waterman greeted the crowd and offered her own thoughts on the day's events.

"We all should, in a free country, be leaders in terms of human rights and I fail to see how some of the tactics I've been hearing about, breaking up families, I fail to see how that's going to keep us safer," Waterman said. "I have and will be in contact with the sheriff's relations team...and call an emergency meeting to have your voices be heard."

Waterman ended her comments by stating that she is proud of Pontiac's diversity.

"Our diversity and cultural sensitivity make us stronger as a community," Waterman said.

URL: <http://www.theoaklandpress.com/general-news/20170216/hundreds-march-through-pontiac-for-a-day-without-immigrants>

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RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF PONTIAC, MICHIGAN, IN
SUPPORT OF A SOLIDARITY STATEMENT THAT REFLECTS
THE CITY OF PONTIAC'S COMMITMENT TO BEING AN
INCLUSIVE, WELCOMING, AND SAFE COMMUNITY**

WHEREAS, the diversity of backgrounds, perspectives, and experiences of the American people – native and immigrant – makes our nation and communities richer and stronger; and

WHEREAS, the City of Pontiac is proud of its long history of working to protect the civil rights and liberties of all of our residents, partner with our community leaders to speak against human injustices and abuses, and

WHEREAS, the City of Pontiac welcomes all persons and recognizes the rights of individuals to live their lives with dignity, free of discrimination and targeting because of their age, faith, race, national origin, immigration status, gender identity, ability, ethnicity, housing status, sexual orientation, economic status, or other social status; and

WHEREAS, the Mayor and Pontiac City Council is committed to ensuring that all members of our community are free from acts that are rooted in fear, ignorance, prejudice, and hate.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF
PONTIAC, MICHIGAN DOES HEREBY RESOLVE AND SUPPORTS THE
FOLLOWING SOLITARITY STATEMENT:**

We pledge solidarity and assurance that the City of Pontiac is, and will remain, a welcoming, safe, and secure place for families to live and thrive together. The City of Pontiac has zero tolerance of prejudice, racism, bigotry, hatred, bullying and violence. The Mayor, Councilmembers, and City staff members are committed to treating everyone with respect and will not allow hateful acts to exist in our community.

PASSED, APPROVED AND ADOPTED ON this ____ day of March, 2017.

Patrice Waterman
Council President, District 1

Dr. Deirdre Waterman
Mayor

Mary Pietila
Council President Pro Tem, District 3

Don Woodward
Councilmember, District 2

Randy Carter
Councilmember, District 4

Mark Holland, Sr.
Councilmember, District 5

Doris Taylor Burks
Councilmember, District 6

Kermit William
Councilmember, District 7

Jane Bais-DiSessa
Deputy Mayor

ATTEST:

APPROVED AS TO FORM:

Sherikia Hawkins, City Clerk

J. Travis Mihelick, City Attorney

I HEREBY CERTIFY the foregoing resolution was duly adopted by the City Council of the City of Pontiac, Michigan, at a regular meeting held on the ____ day of March, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Sherikia Hawkins, City Clerk
(seal)

RESOLUCIÓN NO. _____

**UNA RESOLUCIÓN DE LA CIUDAD DE PONTIAC, MICHIGAN, EN APOYO
DE UNA DECLARACIÓN DE SOLIDARIDAD QUE REFLEJA EL
COMPROMISO DE LA CIUDAD DE PONTIAC DE SER UNA COMUNIDAD
INCLUIDA, BIENVENIDA Y UNA COMUNIDAD SEGURA**

POR CUANTO, la diversidad de antecedentes, perspectivas y experiencias del pueblo estadounidense -nativo e inmigrante- hace que nuestra nación y nuestras comunidades sean más ricas y fuertes; y

CONSIDERANDO QUE la Ciudad de Pontiac se enorgullece de su larga historia de trabajo para proteger los derechos y libertades civiles de todos nuestros residentes, asociarnos con nuestros líderes comunitarios para hablar en contra de las injusticias y abusos humanos y

CONSIDERANDO que la Ciudad de Pontiac da la bienvenida a todas las personas y reconoce el derecho de las personas a vivir sus vidas con dignidad, libre de discriminación y orientación por su edad, fe, raza, origen nacional, estatus migratorio, identidad de género, Estatus, orientación sexual, estatus económico u otra condición social; y

POR CUANTO, el Alcalde y el Ayuntamiento de Pontiac están comprometidos a asegurar que todos los miembros de nuestra comunidad estén libres de actos que estén arraigados en el miedo, la ignorancia, el prejuicio y el odio.

**POR LO TANTO, EL CONSEJO MUNICIPAL DE LA CIUDAD DE PONTIAC,
MICHIGAN RESUELVE Y APOYA LA SIGUIENTE DECLARACIÓN DE
SOLIDARIDAD:**

Nos comprometemos con la solidaridad y la seguridad de que la Ciudad de Pontiac es, y seguirá siendo, un lugar acogedor, seguro y seguro para que las familias vivan y prosperen juntas. La ciudad de Pontiac tiene cero tolerancia de prejuicios, racismo, fanatismo, odio, intimidación y violencia. El Alcalde, los Concejales y el personal de la Ciudad están comprometidos a tratar a todos con respeto y no permitirán que existan actos de odio en nuestra comunidad.

ADOPTADO, APROBADO Y ADOPTADO EN ESTE ____ día de marzo de 2017.

Patrice Waterman
Presidente del Concejo, Distrito 1

Dr. Deirdre Waterman
Alcalde

Mary Pietila
Presidente del Concejo Presidente, Distrito 3

Don Woodward
Presidente del Concejo, Distrito 2

Randy Carter
Concejal, Distrito 4

Mark Holland, Sr.
Presidente del Concejo, Distrito 5

Doris Taylor Burks
Presidente del Concejo, Distrito 6

Kermit William
Presidente del Concejo, Distrito 7

Jane Bais-DiSessa
Teniente de alcalde

DAR FE:

APROBADO EN FORMA:

Sherikia Hawkins,
FUNCIONARIA DE LA CUIDAD

J. Travis Mihelick, Abogado de la ciudad

POR LA PRESENTE CERTIFICO que la resolución anterior fue debidamente aprobada por el Ayuntamiento de la Ciudad de Pontiac, Michigan, en una reunión ordinaria celebrada el día ____ de marzo de 2017, por la siguiente votación:

EL VOTO A

FAVOR:

EL VOTO

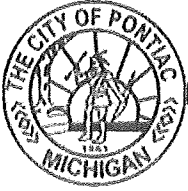
ENCONTRA:

AUSENTE:

SE

ABSTUVO:

Sherikia Hawkins, FUNCIONARIA DE LA CUIDAD



MEMORANDUM

City of Pontiac
Finance Director
Nevrus P. Nazarko, CPA
47450 Woodward Avenue
Pontiac, Michigan 48342
Phone: 248.758.3118
Fax: 248.758.3197

DATE: March 13, 2017

TO: Honorable Mayor and City Council

FROM: Nevrus P. Nazarko, CPA, Finance Director

Through: Jane Bais DiSessa-Deputy Mayor

SUBJECT: ATPA Grant Contract with Oakland County

City of Pontiac has been utilizing the Auto Theft Prevention Authority (ATPA) grant from the State of Michigan through the Oakland County's Sheriff's office since 2013. This grant reimburses the municipality half of the eligible expenditures of a Sheriff's deputy assigned full time to the ATPA related activities.

The ATPA Grant runs from October 1 to September 30th of any given year. For the last 4 years (2013-2017) Oakland County has been able to apply for the grant on our behalf and we have been reimbursed ½ of the costs for a Sheriff Deputy assigned full time to the auto theft prevention, in the amount of approximately \$65,000.

The State of Michigan is requiring that all the municipalities that receive the benefit of this grant through the OCSO, sign a sub-recipient agreement with Oakland County that delineates the rights and obligations of each party's responsibilities and obligations regarding the use of the grant.

City of Pontiac's responsibility is to provide funding for a Sherriff's Deputy to be assigned full time to the APA tasks.

Oakland County has entered into a contract with the State of Michigan for the grant and will reimburse the City of Pontiac ½ of the costs as described above.

We received the request to have the agreement signed by the Mayor on March 6, 2017 and on March 7 the Sheriff's office contacted me to have the City Council authorize the Mayor through a resolution to sign the sub-recipient agreement with Oakland County.

If City Council agrees with the sub-recipient agreement between the City and Oakland County (as shown in the attachment), then the following resolution would be in order:

Whereas, the City of Pontiac has been utilizing the Auto Theft Prevention Authority Grant through Oakland County since 2013; and,

Whereas, the current agreement with the Oakland County Sheriff's Office expires on September 30, 2017; and,

Whereas, the County and City may enter into an sub-recipient agreement by which the Oakland County Sheriff's Office would continue to assign a full time Sheriff Deputy to the ATPA activities; and,

Whereas, the Oakland County Sheriff's Office agrees to provide reimburse the City under the terms and conditions of the Agreement up to 50 percent of the eligible expenditures;

Now, Therefore, Be It Resolved that the City Council, upon the recommendation of the Mayor and Finance Director accepts the Oakland County 2017-2018 ATPA Sub-Recipient Agreement with the City of Pontiac and authorizes the Mayor to sign document as presented;

AYES:

NAYS:

**2017 AUTOMOBILE THEFT PREVENTION AUTHORITY GRANT
SUBRECIPIENT AGREEMENT BETWEEN
OAKLAND COUNTY
AND
CITY OF PONTIAC**

This Agreement is made between Oakland County, a Constitutional Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County") and City of Pontiac, 47450 Woodward Ave, Pontiac, Michigan 48342, a Michigan Municipal Corporation ("Municipality").

PURPOSE OF AGREEMENT. The Parties enter into this Agreement for the purpose of delineating their relationship and responsibilities regarding the County's use of Grant funds for expenses that it incurs related to the Oakland County Auto Theft Program (ATPA), a multijurisdictional auto theft prevention and recovery task force under the direction and supervision of the Oakland County Sheriff's Office ("O.C.S.O.").

Under the Parties' separate ATPA agreement and the O.C.S.O. 2017-2018 Law Enforcement Services Agreement with the City of Pontiac, the Municipality is responsible for providing funding to the County for a full-time O.C.S.O. employee for participation in ATPA and for all costs associated with that employment. The full-time employee devotes 100% of their time to the ATPA.

The County has entered into a Grant agreement (Exhibit A) with the State of Michigan ("State") where the County is eligible to receive reimbursement for qualifying ATPA-related costs.

The County intends to use a portion of the Grant funds to reimburse the municipality, as described below, subject to the terms and conditions of this agreement.

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

1. **DEFINITIONS.** The following terms, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.
 - 1.1. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, or the County's or Municipality's agents or employees, whether such claim is brought in law or equity, tort, contract, or otherwise.
 - 1.2. **Grant** means the 2017 Automobile Theft Prevention Authority Grant, (Exhibit A).
2. **EXHIBITS.** The Exhibits listed below are incorporated and are part of this Agreement.
 - 2.1. **Exhibit A** – 2017 Automobile Theft Prevention Authority Grant.

3. **COUNTY RESPONSIBILITIES.**

- 3.1. The County will reimburse the Municipality, up to 50% of the total, for qualifying ATPA-related officers' salaries, fringe benefits, overtime, vehicle usage, cell phone, MAATI and IAATI dues, as described in the Grant agreement (Exhibit A).
- 3.2. The Municipality will comply with all terms and conditions set forth in the Grant agreement (Exhibit A), including, but not limited to, the following certification:
 - a. The Municipality is not presently disbarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Has not within a three-year period preceding this application been convicted of or has a civil judgment rendered against them and are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Have not within a two-year period preceding this application been convicted of a felony criminal violation under any federal law; and
 - d. Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

4. **TERM.**

- 4.1. This Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party, and when the Agreement is filed according to MCL 124.510. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party. This Agreement and any amendments hereto shall end three (3) years from the date the Grant period is closed.

5. **ASSURANCES.**

- 5.1. Each Party shall be responsible for its own acts and the acts of its employees and agents, the costs associated with those acts, and the defense of those acts.
- 5.2. 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.
- 5.3. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, laws, and requirements applicable to its activities performed under this Agreement.

6. **TERMINATION OF AGREEMENT.** Either Party may terminate this Agreement upon thirty (30) day's notice to the other Party. The effective date of termination shall be clearly stated in the notice.

7. **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.

8. **DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.

9. **PERMITS AND LICENSES.** Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to carry out its obligations and duties pursuant to this Agreement.

10. **RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.

11. **DELEGATION/SUBCONTRACT/ASSIGNMENT.** Neither Party shall delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

12. **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.

13. **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.
14. **CAPTIONS.** The section and subsection numbers and captions in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers and captions shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
15. **NOTICES.** 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: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
- 15.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Board of Commissioners Chairperson, 1200 North Telegraph, Pontiac, Michigan 48341, with a copy to Oakland County Sheriff's Office, Business Manager, 1200 N. Telegraph, Bldg. 38E, Pontiac, Michigan 48341.
- 15.2. If Notice is sent to the Political Subdivision, it shall be addressed to: City of Pontiac, 47450 Woodward Ave, Pontiac, Michigan 48342.
- 15.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.
16. **GOVERNING LAW.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan.
17. **AGREEMENT MODIFICATIONS OR AMENDMENTS.** Any modifications, amendments, rescissions, waivers, or releases to this Agreement must be in writing and executed by both Parties.
18. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the Parties. 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, Michael Gingell, Chairperson, Oakland County Board of Commissioners, 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, and hereby accepts and binds the County to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
Michael Gingell, Chairperson
Oakland County Board of Commissioners

WITNESSED: _____ DATE: _____
Printed Name:
Title:

IN WITNESS WHEREOF, _____, acknowledges that he/she has been authorized by a resolution of the Municipality's governing body, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____
Printed Name:
Title:

WITNESSED: _____ DATE: _____
Printed Name:
Title:

AUTO THEFT PREVENTION AUTHORITY (ATPA) GRANT CONTRACT

AUTHORITY: MCL 600.6105; COMPLIANCE: Voluntary, however, failure to complete will result in cancellation of grant/loss of funds.

Scan and email one complete copy with original signatures to the ATPA by September 30, 2016 at MSPATPA@michigan.gov. Do not send a paper copy.

I. Award Information			
Name of Grantee/Fiduciary Oakland County Sheriff's Office		Project Title/Acronym OCAT	
Address 1200 North Telegraph Road	City Pontiac	State MI	ZIP Code 48341
Total Grant Award \$1,487,142	ATPA Award \$743,571	Match Requirement \$743,571	
Grant Period Start Date October 1, 2016	Grant Period End Date September 30, 2017	Project Number 08-17	
Authorized Official Capt. Joseph Quisenberry	Project Director Sgt. Nicole Quisenberry	Financial Contact Ms. Tammy Metrick	

II. Contract Conditions and Requirements

Grant Award

The ATPA grant award is to be utilized solely for the benefit of motor vehicle theft prevention programs and initiatives.

The ATPA will only reimburse expenditures incurred during the grant period of October 1, 2016, to September 30, 2017.

The project number (listed above in award information) must be included on all correspondence addressed to the ATPA regarding this grant.

A change in authorized official, project director, financial contact, participating agency, personnel assigned to the team, or budget line item change requires a Project Modification Request (EX-034), which can be downloaded from the ATPA website at www.michigan.gov/atpa.

The authorized official and financial officer will serve without compensation from the ATPA grant award.

Any amount of the grant award received or forfeiture funds generated as a result of motor vehicle theft prevention activities shall be used to enhance motor vehicle theft prevention programs or initiatives. Forfeiture funds include, but are not limited to, forfeiture of cash and receipts from sale of property.

Public communications materials or news releases that result from this grant must cite the "Auto Theft Prevention Authority" as the source of funding. Copies of the materials or news releases must be sent to the ATPA at least five days prior to publishing, and the ATPA reserves the right to make any necessary edits. The ATPA also has the royalty-free right to copy, publish, and distribute any data or material associated with this grant.

Law enforcement personnel funded by the ATPA grant award shall dedicate 100 percent of their regular work hours conducting ATPA grant-related duties. Prosecuting attorneys who designate a portion of their time for ATPA activities will dedicate 100 percent of their designated time to ATPA grant related duties. This will be reflected in daily logs which will be made available for on-site monitoring by ATPA personnel.

The grantee agrees to return all unexpended grant funds to the ATPA within 60 days after the project is completed. The check shall be made payable to the "State of Michigan."

Reporting

Failure to comply with any reporting responsibilities identified in this contract may result in withholding grant payment(s) or the cancellation of the grant award. The grantee's lack of compliance will also be taken into account when considering future grant applications and awards from the ATPA.

All grantees must comply with the requirements of the Uniform Crime Reporting (UCR) System Act, 1968 PA 319, as amended. This act requires county sheriff's departments, as well as city, village, and township police departments, to submit monthly UCR data.

The Progress Report (EX-037), Quarterly Financial Report (EX-035), and Expenditure Detail (EX-036), can be downloaded from the ATPA website at www.michigan.gov/atpa. The grantee agrees to submit reports in accordance with the schedule referenced in this contract.

All grant-funded employees, including employees of subgrantees, will complete and submit an Employee Time Certification (EX-038). Grantees will submit EX-038 to the ATPA semi-annually via email to MSPATPA@michigan.gov.

All projects must maintain adequate supporting documentation for financial and progress reports submitted to the ATPA. Failure to provide adequate supporting documentation may adversely affect current-year reimbursements and future ATPA grant requests.

ATPA Teams

The grantee will serve as the fiduciary for the ATPA grant. The fiduciary will be responsible for receiving grant funds, distributing funds to participating team members, and receiving and compiling reports from team members. The grantee will submit grant reports according to the schedule referenced in this contract, as well as those specially requested by the ATPA.

When an agency withdraws an employee from an ATPA team, the ATPA approved budget for that position will remain with the ATPA team. The project director must inform the ATPA when the withdrawal occurs by completing the Project Modification Request (EX-034). The vacant position must be replaced within 30 days or the position will be unfunded, unless an extension request has been approved in writing.

Participating agencies are expected to participate on the ATPA team that received the grant award for the entire grant period. Participating agencies that withdraw personnel from the ATPA team before the end of the grant period will be reimbursed based upon the percentage of the grant period in which they participated. The ATPA Board of Directors reserves the right to deny future grant awards based on agency participation.

All personnel who are funded by an ATPA team must have their activities approved by the team commander.

III. Program and Financial Review

On-Site Monitoring and Payments

ATPA staff will schedule appointments with grantees in order to conduct on-site monitoring, and grantees must accept these appointments.

Grantees must maintain separate accounting records to document grant revenues and expenditures.

This grant is reimbursement only (excluding non-profit organizations). Grantees must document that expenditures have been paid by local sources before requesting reimbursement from the ATPA.

Supporting documentation which must be submitted with the financial report is as follows:

- Time and Attendance: Payroll expenditures must be supported by employee's earning history, attendance sheet, time sheet, payroll register, and duty log. These records must be retained and made available to ATPA staff during on-site monitoring.
 - o Law Enforcement and Prosecutors Only - Attach the monthly duty logs to the Quarterly Financial Report (EX-035) when submitted.
- Fringe Benefits and Overtime: Retain a copy of cost allocations for fringe benefits charged to the ATPA program.
 - o Law Enforcement and Prosecutors Only - Each person's overtime hours must not exceed ten percent of the person's actual regular hours worked. For grantees only paying overtime, this limit does not apply.
- All payments for expenditures (e.g., utilities, office rent, copier use, vehicle lease/rent, cell phones) must be supported by an actual invoice or the method of determining cost.
- Equipment Procurement Procedures/Consultant/Contractual Service: Grantees must attach a copy of the actual invoice or the method of determining cost.

Payment Procedure: For non-profit organizations only, advance payment, with exception, will be based on prior experience and budget limitations. The ATPA agrees to provide the agency with an advance as needed, up to 90 percent of the total ATPA share. Non-profit organizations acknowledge that upon receipt of this advance, a liability due to the ATPA will be established. The liability will be reduced as expended and reported to the ATPA. Any unexpended funds shall be promptly returned to the ATPA.

- Advances are conditional upon receipt of financial and progress reports, completed in accordance with grant conditions. The final payment will be made on a reimbursement basis.

All grantees must sign up through the online vendor registration process to receive State of Michigan payments as Electronic Funds Transfers (EFT)/Direct Deposits, as mandated by the Management and Budget Act, 1984 PA 431, MCL 18.1283a. Vendor registration information is available on the Michigan Department of Technology, Management and Budget's (DTMB) website located at www.cpexpress.state.mi.us/.

Should the grantee discover an error in a previous reimbursement request, the grantee shall immediately notify the ATPA, and refund to the ATPA any funds not authorized for use under this contract and any payments or funds advanced to the grantees in excess of allowable reimbursable expenses.

Mileage Expense for Non-profit Organizations: Limited to the grantee's established mileage reimbursement allowance for non-federally funded activities, not to exceed the ATPA approved budget amount. Grantees must provide supporting documentation for these expenses.

Vehicle Usage/Rental Expenses for Law Enforcement and Prosecutors: Limited to the grantee's established reimbursement policy for non-federally funded activities, not to exceed the ATPA approved budget amount.

IV. Criminal or Administrative Investigations/Charges

If any employee of the grantee/subgrantee associated with this grant project becomes aware of a criminal or administrative investigation or charge that directly or indirectly involves grant funds referenced in this contract, the grantee shall immediately notify the ATPA's Executive Director in writing that such an investigation has been initiated or that a charge has been issued.

V. Debarment, Suspension, and Other Responsibility Matters (Direct Recipient)

Pursuant to Executive Order 12549 (Debarment and Suspension), and implemented at 2 C.F.R. Part 2867, for prospective participants in primary covered transactions, as defined at 28 C.F.R. Part 2867, Section 2867.20(a). The grantee certifies that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency;
- Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them and are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Have not within a two-year period preceding this application been convicted of a felony criminal violation under any federal law; and
- Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

VI. Suspension/Termination

The ATPA and/or the grantee may suspend and/or terminate this contract without further liability or penalty to the ATPA for any of the following reasons:

- Failure to comply with any of the terms of this contract. Suspension requires immediate action by the grantee to comply with the terms of this contract; otherwise, termination by the ATPA may occur.
- Failure of the grantee to make satisfactory progress toward the measurable objectives set forth in this contract.
- Filing false certification in this contract or other report or document.

This contract may be terminated by either party by giving 15 days written notice to the other party. Such written notice will provide valid, legal reasons for termination, along with the effective date.

This contract may be terminated immediately if the grantee, an official of the grantee, or an owner is convicted of any activity referenced in Section IV of this contract during the term of this contract or any extension thereof.

Should this contract be terminated by either party, within 30 days after the termination, the grantee shall provide the ATPA with all financial, performance, and other reports required as a condition of this contract. The ATPA will make payments to the grantee for allowable reimbursable costs not covered by previous payments. The grantee shall immediately refund to the ATPA any funds not authorized for use and any payments or funds advanced to the grantee in excess of allowable reimbursable expenditures.

VII. Liability

All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by the grantee in the performance of this contract shall be the responsibility of the grantee, and not the responsibility of the ATPA, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the grantee, any subgrantee, or anyone directly or indirectly employed by the grantee, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the grantee or its employees by statute or court decisions.

All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as the provision of policy and procedural direction, to be carried out by the ATPA in the performance of this contract shall be the responsibility of the ATPA, and not the responsibility of the grantee, if the liability, loss, or damage is caused by, or arises out of, the action or failure to act on the part of any ATPA employee or agent, provided that nothing herein shall be construed as a waiver of any governmental immunity by the state of Michigan, its agencies (the ATPA), or employees as provided by statute or court decisions.

In the event that liability to third parties, loss, or damage arises as a result of activities conducted jointly by the grantee and ATPA in fulfillment of their responsibilities under this contract, such liability, loss, or damage shall be borne by the grantee and the ATPA in relation to each party's responsibilities under these joint activities, provided that nothing herein shall be construed as a waiver of any governmental immunity by the grantee, the state of Michigan, its agencies (the ATPA), or their employees, respectively, as provided by statute or court decisions.

IV. Eligible Expenditures

- Regular salaries.
- Fringe benefits.
 - Overtime hours. Hours must not exceed ten percent of the actual regular hours worked. For grantees only paying overtime, this limit does not apply.
 - Travel and meals. Travel outside normal territory, not to exceed \$1,000 per employee/per year.
 - Vehicle operation cost. Not to exceed:
 - o Law enforcement agency - \$10,000 per employee/per year engaged in road patrols/investigations.
 - o Prosecutor's office - \$1,500 per assistant prosecuting attorney/per year for mileage and parking reimbursement.
 - o Non-profit organization - \$1,500 per employee/per year for mileage reimbursement.
 - Camera, not to exceed \$750 per camera and accessories.
 - Office space or utilities. Requires prior approval.
 - Office furniture:
 - o Desk. For new projects only, not to exceed \$325 per desk.
 - o File cabinet. Not to exceed \$250 per cabinet.
 - o Chair. For new projects only, not to exceed \$150 per chair.
- Copier usage. Not to exceed:
 - o Law enforcement agency - \$2,400 per year.
 - o Prosecutor's office - \$1,000 per year.
 - o Non-profit agency - \$250 per year.
- Phone installation. Prior approval is required.
- Phone usage. Not to exceed:
 - o Law enforcement agency and prosecutor's office - \$750 per person/per year.
 - o Non-profit agency - \$500 per year.
- Office supplies. Not to exceed \$150 per year/per person.
- Investigative supplies for law enforcement agency, not to exceed \$500 per year/per person.
- Computer purchase. Prior approval is required.
- Cell phone purchase/usage. Prior approval is required.
- Motor vehicle theft-related association dues, including dues to the International Association of Automobile Theft Investigators and Michigan Association of Vehicle Theft Investigators.
- Training or conference. Prior approval is required.

V. Ineligible Expenditures

- Inordinate fringes, including, but not limited to, lump sum payments (e.g., banked sick/vacation time, pensions, and health benefits).
- Indirect costs.
- Expenditure(s) incurred before or after the grant period.
- Any administrative costs not directly related to the administration of this grant.
- In-car terminals and system.
- Law Enforcement Information Network (LEIN) usage fees.
- Liability or professional insurance.
- Non-motor vehicle theft related membership and agency dues.
- Entertainment.
- Expenditures in excess of approved budget.
- Clothing/cleaning/gun allowance.
- Emergency response compensation.
- Show-up pay.
- Educational incentives.
- First-class travel.
- Costs in applying for this grant (e.g., consultants, grant writers).
- Personnel, including law enforcement officers, not connected to the project to which this grant refers.
- Fundraising and any salaries or expenses associated with it.
- Legal fees.
- Promotional items, unless prior approval is received in writing.
- Contributions and donations.
- Fines and penalties.
- Losses from uncollectible bad debts.
- Purchases of land.
- Military-type equipment such as armored vehicles, explosive devices, and other items typically associated with military arsenal.

- Construction costs and/or renovation, including remodeling.
- Expert witness fees.
- Weapons, including tasers.
- Conducting law enforcement operations with the intent of generating revenue for personal or agency gain through deceitful, fraudulent, unethical, or illegal methods.

VI. Law Enforcement Objectives

- Reduce the number of motor vehicle thefts in your grant area by investigating cases that have the highest potential for reducing the demand for stolen vehicles, arresting individuals who are involved, and reducing false motor vehicle theft reports.
- Reduce the economic gain associated with motor vehicle theft by recovering stolen vehicles/parts/equipment and by identifying fraudulent insurance activity.
- Recover more in stolen vehicles/parts/equipment value than the total approved grant award from the ATPA.
- Comply with ATPA guidelines/policies/conditions and UCR requirements for submission of data.
- Maintain clear and reliable documentation for the project's performance activity and financial expenditures.
- Following auction, report to the ATPA the dollar amount deposited into the forfeiture account on Progress Reports (EX-037).
- Attend regular meetings for area detectives and insurance investigators, including participation in the monthly Anti-Car Theft meetings and Help Eliminate Auto Theft programs.

VII. Law Enforcement Evaluation Criteria (See Section XIII. Arrest Ranking)

- Number of 14 point motor vehicle theft (MVT) related arrests.
- Number of 12 point MVT related arrests.
- Number of ten point MVT related arrests.
- Number of eight point MVT related arrests.
- Number of six point MVT related arrests.
- Number of four point MVT related arrests.
- Number of two point MVT related arrests.
- Number of insurance fraud related arrests.
- Number of passenger vehicles recovered.
- Dollar value of recovered passenger vehicles.
- Number of other vehicles recovered.
- Dollar value of other vehicles recovered.
- Number of parts recovery incidents.
- Dollar value of recovered parts/equipment.
- Dollar amount deposited into forfeiture account.

VIII. Prosecutor Objectives

- Provide full-time access to the judicial system for the ATPA task forces in grant area and provide opportunities to informally discuss cases and legal issues.
- Vertically prosecute all selected motor vehicle theft related cases.
- Maintain a policy of plea bargaining only when absolutely necessary.
- Achieve an overall conviction rate of 80 percent.
- Achieve a trial conviction rate of 70 percent.
- Strive for maximum sentence lengths for defendants.
- Maintain clear and reliable documentation of project's financial expenditures and performance activity.

IX. Prosecutor Evaluation Criteria

- Number of cases initiated.
- Number of preliminary exams held.
- Number of preliminary exams waived.
- Number of cases disposed pre-trial.
- Number of defendants who pled guilty to original charge.
- Number of defendants who pled guilty to lesser included offense.
- Number of plea bargain dismissals.
- Number of other dismissals.
- Number of cases disposed by trial (jury/judge).
- Number of defendants convicted on original charge.
- Number of defendants convicted on reduced charge.
- Number of defendants incarcerated.
- Number of defendants fined/placed on probation.
- Dollar amount of restitution ordered.
- Number of defendants convicted of insurance fraud.

X. Non-profit Organization Measurable Objectives

- Conduct motor vehicle theft awareness programs/seminars.
- Etch vehicles.
- Distribute fliers/brochures regarding motor vehicle theft prevention.
- Write and publish articles about motor vehicle theft prevention. The article(s) must cite the ATPA as a source of funding. Forward article copies to the ATPA.
- Maintain clear and reliable documentation of project's financial expenditures and performance activity.

XI. Non-profit Organization Evaluation – Reporting Criteria

- Number of programs/seminars conducted.
- Number of vehicles etched.
- Number of fliers/brochures distributed.
- Number of theft prevention articles written and published.

XII. Reporting Schedule

Organization Type	Quarterly Progress and Financial Reports		Due Date
Law Enforcement Agency Prosecuting Attorney's Office Non-Profit Organization	Progress Report (EX-37)	10-01-16 to 12-31-16	01-31-17
	Financial Report (EX-35)	10-01-16 to 12-31-16	01-31-17
	Progress Report (EX-37)	01-01-17 to 03-31-17	04-30-17
	Financial Report (EX-35)	01-01-17 to 03-31-17	04-30-17
	Progress Report (EX-37)	04-01-17 to 06-30-17	07-31-17
	Financial Report (EX-35)	04-01-17 to 06-30-17	07-31-17
	Financial Report (EX-35)	07-01-17 to 09-30-17	10-15-17
	Progress Report (EX-37)	07-01-17 to 09-30-17	10-31-17

XIII. Arrest Ranking

Felony Charges	MCL	Arrest Points
Altering Vehicle Identification Number with Intent to Mislead	750.415	10
Arson - Owner Involved	750.75	14
Car-jacking	750.529a	8
Chop Shop	750.535a	14
Continuing Criminal Enterprise	750.159l	14
Counterfeit Insurance Certificates	257.222	6
Embezzlement	750.174	6
Failure to Return Rental Vehicle	750.362	6
False Certification	257.903	12
False Police Report	750.411a	8
False Pretenses	750.218	12
False Statement in Application for Title	257.254	12
Forged License Documents/License Plates	257.257	6
Insurance Fraud - Owner Staged Arson/Larceny/Theft	500.4511.	14
Interstate Transportation of Stolen Motor Vehicle	750.535	14
Larceny by Conversion	750.362	6
Larceny from Motor Vehicle	750.356a	4
Obtain Personal Identification (ID) Without Permission	257.324	6
Odometer Fraud	257.233a	12
Operating License Forged, Altered, or False	257.324	6
Possess or Sell Rosette Rivets	750.415	4
Possess Stolen Vehicle with Intent to Pass Title	257.254	10
Repair - Salvage Facility Violation	257.217	4
Receiving and Concealing Stolen Property	750.535	8
Unlawfully Driving Away Automobile	750.413	6
Unlawful Use	750.414	4
Use Fraudulent ID to Lease or Purchase Vehicle	750.415	12
All Other Charges		2

Note to Arrest Rankings:

- Team takes credit for most serious charge against subject and ignores others.
- Team takes credit for original arrest charge, even if reduced later by prosecutor.
- If subject is arrested on three separate warrants, team may count three arrests.
- Attempted crimes or conspiracy to commit crime earns same points as listed.

XIV. Special Conditions

This contract is valid upon approval and execution by the ATPA.

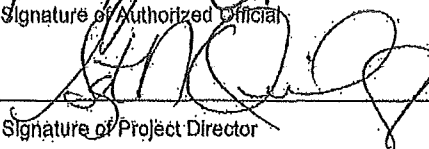
This contract is conditionally approved subject to and contingent upon the availability of funds.

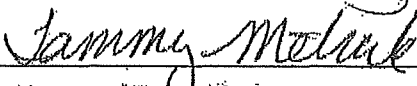
The grantees will not assume any responsibility or liability for costs incurred by the ATPA prior to the full execution of this contract.


XV. Contract Signatures

Grant funding will not be released until all requirements of the signed grant contract have been agreed upon. The undersigned has the authority to accept the terms of this grant contract.

Captain Joseph Quisenberry  9.9.16
Printed Name of Authorized Official Signature of Authorized Official Date

Sgt. Nicole Quisenberry  9.9.16
Printed Name of Project Director Signature of Project Director Date

Tammy Metrick  9/9/16
Printed Name of Financial Contact Signature of Financial Contact Date

Sp1/F/Lt. Scott Woodward  9/12/16
Printed Name of ATPA Executive Director Signature of ATPA Executive Director Date



CITY OF PONTIAC, MICHIGAN

OFFICIAL MEMORANDUM

EXECUTIVE BRANCH

To: Honorable Mayor, Council President and City Council Members

From: Jane Bais-DiSessa, Deputy Mayor

Through: Terrence King, DPW Director

Date: March 14, 2017

Re: Tree Trimming Services and Tree & Stump Removal

The City advertised for bids for Tree Trimming and Tree & Stump Removal. The proposals were accepted on January 24, 2017 at 2:00 pm in the office of the City Clerk and publically opened at that time.

There were eight respondents to the RFP. They were:

- Seasonal Property Maintenance Inc.
- Davey Tree Expert Co.
- Arbor Master Tree Service, LLC
- Arbor Man LLC
- Owen Tree Service, Inc.
- Addison Tree & Outdoor Services
- Pro-care Tree Service LLC dba CHOP
- CutMyTreeDown.com

The bids were tabulated and checked. Based on the review, the most responsible bidder whose bid was determined to be in the best interest of the City is Seasonal Property Maintenance Inc.

As such, it is the recommended of the panel that the City Council authorizes the Mayor or Deputy Mayor to enter into a contract with the above mentioned bidder, Seasonal Property Maintenance Inc.:

WHEREAS, the City of Pontiac advertised and received responses to a request for proposals for Tree Trimming and Tree & Stump Removal on January 2, 2017 and publically opened bids; and,

WHEREAS, a bid tabulation was prepared and reviewed by the purchasing agent of the city, and,

WHEREAS, the most experienced and responsible bidder is being recommended for the contract; and,

WHEREAS, the contract will be granted to Seasonal Property Maintenance Inc. The budget has funding for any and all work performed under this contract.

NOW, THEREFORE, BE IT RESOLVED that the Pontiac City Council authorize the Mayor or Deputy Mayor to enter into a contract with; Seasonal Property Maintenance Inc. for Tree Trimming and Tree & Stump Removal as budgeted.

CONTRACT FOR TREE TRIMMING SERVICES AND TREE & STUMP REMOVAL

- 1) Parties. The parties to this contract are the City of Pontiac, Michigan hereinafter referred to as the "City", and Seasonal Property Maintenance LLC hereinafter called the "Contractor".
- 2) Purpose. The purpose of this contract is for the City to engage the Contractor to provide Tree Trimming Services and Tree & Stump Removal to the City, as the City deems necessary. (See Scope of Services below).
- 3) Scope of Services. The Contractor will provide all labor, materials, supplies, equipment and supervision to perform Tree Trimming Services and Tree & Stump Removal in the City. The Contractor is to perform all work in accordance with generally accepted standards and practices.
- 4) General Terms and Conditions. This contract is hereby made subject to the terms and conditions included in the Scope of Services (see Exhibit "A" below) and Additional Terms and Conditions (see Exhibit "B" below).
- 5) Consideration. As consideration for the performance of the services referenced in the Scope of Services (see Exhibits "A" & "B" below), the City agrees to compensate the Contractor as follows:

TREE REMOVAL

Tree Diameter at Breast Height	1"-10"	11"-17"	18"-24"	25"-30"	31"-39"	40"+
	\$ 50.00	\$ 90.00	\$ 140.00	\$ 175.00	\$ 215.00	\$ 275.00
Stump Diameter	10"-20"	21"-27"	28"-34"	35"-40"	41"-49"	50"+
	\$ 25.00	\$ 50.00	\$ 65.00	\$ 80.00	\$ 100.00	\$ 160.00

TREE TRIMMING/BRUSH REMOVAL

1. Three-Person Crew

Cost Per Hour: \$ 185.00

Three-person crew shall include working foreman, climber, grounds person, aerial high-ranger, trimming equipment, chipper and chip truck.

2. Chipping Crew-Two Person Crew

Cost Per Hour: \$ 90.00

Shall include two-person crew, brush chipper and chip truck

3. Emergency Work-Three Person Crew

Cost Per Hour: \$ 300.00

Contractor will have a 3 hour response time for emergency work from time of notification unless otherwise indicated

6) Period of Performance. This contract expires December 31, 2017, with optional extension of the contract for years two and or three, upon the approval and signature of the parties hereto.

7) Method of Payment. Contractor will be paid 30 days after completion of work as outlined in the Scope of Services after submission of a valid invoice.

8) Applicable Law. This contract shall be governed by and construed in accordance with the laws of the City of Pontiac, State of Michigan and applicable federal laws.

9) Compliance with Laws. The Contractor understands that the City is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Michigan, and City of Pontiac laws and regulations, as now existing and as may be amended or modified.

The Contractor is responsible for instructing and training their employees in appropriate safety measures. Employees will be responsible for maintaining a safe work environment while completing their tasks.

- a) The Contractor shall comply with the Michigan Right to Know Law (Amendments to Act 154), which requires that all employers within the State comply with federal Hazard Communications Standards (C.F.R. 1910.1200) and certain additional guidelines as of February 25, 1987. These Standards specify that employers develop a written hazard communication program, which is to be made available for workers or their designated representatives.
- b) The Contractor will comply with all federal, state and local regulations, including but not limited to all applicable OSHA/MIOSHA requirements and the Americans with Disabilities Act
- c) The Contractor is responsible for all applicable state and federal social security benefits and unemployment taxes and agrees to indemnify and protect the City against such liability.

10) Requirements contract. During the period of the contract, the Contractor shall provide all the services described in the contract. The Contractor understands and agrees that this is a requirements contract and that the City shall have no obligation to the Contractor if no services are required.

EXHIBIT "A"

SCOPE OF SERVICES

The Contractor shall provide Tree Trimming Services and Tree & Stump Removal.

Except as otherwise provided herein, Contractor shall furnish all labor, supervision and services necessary to properly execute and complete the work.

TREE REMOVAL

The Removal of trees shall be made with the written authorization of the City of Pontiac. A list of trees and the location of each, bearing the signature of an authorized representative of the City of Pontiac, must be in the possession of the contractor's crew before removing any tree(s). The decision to remove trees must be made by the City. The Contractor may make suggestions. However, written authorization must be obtained before removing any trees. All trees to be removed have been identified in the field with a blue dot on the street side of the tree at approximately 4 feet.

All trees shall be removed in their entirety.

All tree trunks, limbs, leaves, twigs, sawdust and chips resulting from the removal operations will be totally removed and disposed of from the work site on a daily basis by the contractor. Street and sidewalk areas shall be swept and all other areas shall be raked clean of debris generated through removal operations.

The contractor will be required to post NO PARKING signs one (1) day prior to commencing work. Signs will be supplied by the Contractor at the contractor's expense and shall be posted on trees in the right of way. Signs will be posted 6.5' above ground level and angled so as to be easily read by oncoming traffic. The contractor shall mark the date on each sign with an indelible, thick point, black marker when the work is scheduled to occur. Dates shall consist of letters & numerals 2.5 inches tall and be easily readable. Signs are to be promptly removed by the contractor upon completion of each tree/stump removal.

The contractor is required on a weekly basis to FAX the City of Pontiac, Grounds Division at (248) 758-3750 the work schedule for the current upcoming week (preferably on 3 days prior to the start of work for each week). Additionally, the Contractor shall also prepare a weekly FAX report showing all work completed previous week (preferably within one week of completed work).

Work shall not start before 7:00 a.m. and shall end no later than 6:00 p.m. unless cleared by the City. Monday through Saturday. Work on Sundays shall be prohibited unless requested by the City.

Safety precautions shall be practiced by the Contractor to adequately safeguard all persons, employees and property from injury or damage. All federal, state (MIOSHA) and local ordinances shall apply. By reference, the American National Standard ANSI Z133.1-1994, Safety Requirements for Tree Care Operations is included in this specification as if it was reprinted here in its entirety.

Public Relations - The Contractor and his employees are expected to respond to the public in a respectable and courteous manner. If the Contractor or his employees cannot satisfy a citizen, he is to refer the citizen to the Department of Public Works, Grounds Division office at 248-758-3600.

STUMP REMOVAL

The Removal of trees shall be made with the written authorization of the City of Pontiac. A list of trees and the location of each, bearing the signature of an authorized representative of the City of Pontiac, must be in the possession of the contractor's crew before removing any tree(s). The decision to remove trees must be made by the City. The Contractor may make suggestions. However, written authorization must be obtained before removing any trees.

Stumps and all visible surface roots shall be mechanically ground out to a minimum depth of 8 inches below the surrounding grade. For locations where sidewalk and curb exist, the surrounding grade shall be established by means of an imaginary line extending from the top of the curb to the street side edge of the city sidewalk. All excess stump chips shall be physically removed from the sites. Sufficient stump chips shall be left on site to fill the resulting depression slightly above the surrounding grade (to allow for some settlement).

Stumps and all visible surface roots shall be mechanically ground out to a minimum of 8 inches below the surrounding grade. For locations where sidewalk and curb exist, the surrounding grade shall be established by means of an imaginary line extending from the top of the curb to the street side edge of the city sidewalk. All excess stump chips shall be physically removed and disposed of from each location at the contractor's expense. Sufficient stump chips shall be left on site to fill the resulting depression slightly above the surrounding grade (to allow for some settlement).

Street and sidewalk areas shall be broom swept and all other areas shall be raked clean of debris generated through removal operations.

The contractor is required on a weekly basis to FAX the City of Pontiac, Grounds Division at (248) 758-3750 the work schedule for the current upcoming week (preferably on 3 days prior to the start of work for each week). Additionally, the Contractor shall also prepare a weekly FAX report showing all work completed previous week (preferably within one week of completed work).

Work shall not start before 7:00 a.m. and shall end no later than 6:00 p.m. unless cleared by the City. Monday through Saturday. Work on Sundays shall be prohibited unless requested by the City.

Safety precautions shall be practiced by the Contractor to adequately safeguard all persons, employees and property from injury or damage. All federal, state (MIOSHA) and local ordinances shall apply. By reference, the American National Standard ANSI Z133.1-1994, Safety Requirements for Tree Care Operations is included in this specification as if it was reprinted here in its entirety.

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TREE TRIMMING

The Removal of trees shall be made with the written authorization of the City of Pontiac. A list of trees and the location of each, bearing the signature of an authorized representative of the City of Pontiac, must be in the possession of the contractor's crew before removing any tree(s). The decision to remove trees must be made by the City. The Contractor may make suggestions. However, written authorization must be obtained before removing any trees.

Trees shall be pruned by removing all dead, diseased, broken and crossing branches. Trimming shall be done by the "drop crotch" method. No stubs over one inch (1") shall be permitted when completed. Live branches shall be removed only to maintain the natural shape and appearance of the trees. A collar should be maintained on lateral branches. Flush cuts are to be avoided on larger branches.

Mutilation and loss of characteristic shape of the tree shall be prohibited. Selective removal of complete limb(s) shall be performed rather than excessive clipping with pruners (i.e. hedge trimming effect shall be avoided). Saw or pruner cuts shall be flush with the parent limbs or trunk of the tree. Limbs shall be pre-cut using a three-cut technique to prevent splintering or peeling of bark.

Ropes shall be used for lowering cut branches when necessary to prevent damage to trees, conductors, fences, cars and other property. No hangers shall be left in the trees after pruning is completed.

Saw cuts need not be treated with dressing or disinfectant unless abnormal conditions exist in reference to disease or insects. All old stubs shall be removed and all old scars shall be inspected. If old scars are not healing properly, they shall be retraced and treated. The lower branches of trees shall be raised if the tops are sufficient to maintain a balanced life to a height of 14 feet above major streets or state trunk lines and 12 feet above local and residential streets. Tools used to prune suspected or diseased trees shall be disinfected before being used on other trees.

Pruning Procedures: Any tree large enough to support a trimmer shall be climbed and trimmed. It is considered inefficient for the trimmer to remain on the ground and trim trees with a pruning pole unless agreed upon by the Director of Public Works.

Light Pruning: The removal of dead wood, suckers, cross branches and stubs up to one inch (1") in diameter.

Medium Pruning: Shall include all items listed under "light pruning" plus branches up to four inches (4") in diameter.

Heavy Pruning: Shall include all items listed under "light pruning" and "medium pruning", in addition to the removal of limbs over four inches (4") in diameter.

All types of pruning will include topping, tracing point, treatment for girdling roots, installment of supporting cables and/or bolting, and necessary repair work when specifically requested by the Director of Public Works.

Shaping: If during pruning, trees are rendered unsightly due to lack of symmetry, further pruning to restore the appearance and obtain desired shape shall be performed. The location, type of tree, and the nature of surroundings, etc. shall govern the extent of such shaping. Full shaping shall consist of the removal or shortening by natural methods of branches in the crown of the tree. Sufficient growth must be left on cutback branches to keep them alive, and when possible, the branches being shortened shall be cut back far enough to preserve the natural appearance of the trees. Side pruning shall not be so severe as to restrict the trees ability to produce the food necessary for healthy growth. Top growth shall not be reduced by an amount greater than that permissible for the species as listed below:

Fifty Percent (50%) - Silver Maple, Willow, Poplar, and other fast growing varieties.

Forth Percent (40%) - Basswood, Elm, Walnut, and Ash.

Fifteen Percent (15%) - Beech, Norway and Sugar Maples, & other slow growing species.

Hazardous Trees: Any person engaged in trimming or pruning that becomes aware of a tree of doubtful strength, which could be dangerous to persons and property, shall report such tree(s) to the City of Pontiac. Such trees shall include those that are over mature, diseased, or showing signs of decay. The City shall inspect any tree reported and a decision shall be made whether to remove the tree at that time.

TREE TRUNK, LIMBS, WOOD CHIP & STUMP CHIP DISPOSAL

The Contractor is responsible for the legal disposal of all tree and stump removal related debris.

The Contractor may contact the State of Michigan; Department of Natural Resources for possible Marshalling Yard locations for the disposal of Ash Tree related debris.

EXHIBIT "B"

ADDITIONAL TERMS AND CONDITIONS

- 1) Attorneys' fees and expenses. Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligation under this contract, the Contractor shall pay to the City all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the City in enforcing this contract or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the City be obligated to pay any attorneys' fees or costs of legal action to the Contractor.
- 2) Authority to contract. The Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this contract; (b) that it is qualified to do business and in good standing in the State of Michigan; (c) that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.
- 3) Confidential information. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the City shall result in the immediate termination of this contract.
- 4) Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that the City of Pontiac is a public City of the State of Michigan and is subject to the laws regarding confidentiality. If a public records request is made for any information provided to the City pursuant to the contract, the City shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the contract shall be liable to the other party for disclosures of information required by court order or required by law.
- 5) Contractor personnel. The City shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor shall provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor. Contractor personnel are subject to background checks by the Oakland County Sheriff Department and shall comply with all requirements as outlined in the Request for Quote.

- 6) Insurance. The contractor, or any of their subcontractors, shall not commence work under this contract until they have obtained the insurance required under this paragraph, and shall keep such insurance in force during the entire life of this contract. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the City of Pontiac. The requirements below should not be interpreted to limit the liability of the Contractor. All deductibles and SIR's are the responsibility of the Contractor.
- a) Workers' Compensation Insurance. The Contractor shall procure and maintain during the life of this contract, Workers' Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan with a minimum limit of \$100,000 each accident for any employee.
- b) Commercial General Liability Insurance. The Contractor shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$2,000,000 per occurrence and aggregate for Personal Injury, Bodily Injury and Property Damage, coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable; (F) Per project aggregate.
- c) Motor Vehicle Liability. The Contractor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$2,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- d) Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additionally Insured: The City of Pontiac, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers. It is understood and agreed by naming The City of Pontiac as additional insured, coverage afforded is considered to be primary and any other insurance The City of Pontiac may have in effect shall be considered secondary and/or excess.
- e) Cancellation Notice: All policies, as described above, shall include an endorsement stating that is it understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: City Administrator for the City of Pontiac.

- f) Proof of Insurance Coverage: The Contractor shall provide The City of Pontiac at the time that the contracts are returned by him/her for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable. Copies or certified copies of all policies mentioned above shall be furnished, if so requested.
 - g) Expiration of Policies: If any of the above coverage expires during term of this contract, the Contractor shall deliver renewal certificates and/or policies to the City of Pontiac at least ten (10) days prior to the expiration date.
 - h) Indemnification: To the extent permitted by law, the Contractor shall indemnify and hold the City harmless of and from all claims, losses, liability, demands, costs, loss of service, expense, and compensation on account of or in any way growing out of any damage, including, but not limited to, bodily injury or property damage which may result from the Contractor's services, In addition, the Contractor shall cover all costs incurred by the City in defense of any litigation covered under this letter of contract, including attorney fees and court costs.
 - i) Insurance companies, named insureds and policy forms shall be subject to the approval of the Pontiac Department of Public Works. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions, which reduce coverage provided to the City of Pontiac. Contractor shall be responsible to the City of Pontiac or insurance companies insuring the City of Pontiac for all costs resulting from both financially unsound insurance companies selected by Contractor and their inadequate insurance coverage. Contractor shall furnish the Pontiac Finance Department with satisfactory certificates of insurance or a certified copy of the policy, if requested by the Finance Department.
 - j) No payments will be made to the Contractor until the current certificates of insurance have been received and approved by the Finance Department. If the insurance as evidenced by the certificates furnished by the Contractor expires or is canceled during the term of the contract, services and related payments will be suspended. Contractor shall furnish the Finance Department with certification of insurance evidencing such coverage and endorsements at least ten (10) working days prior to commencement of services under this contract. Certificates shall be addressed to the Pontiac Finance Department, and shall provide for 30 day written notice to the Certificate holder of cancellation of coverage.
- 7) Ineligibility and suspension. The Contractor certifies to the best of its knowledge and belief, that it: (a) is not presently ineligible, suspended, proposed for ineligibility, declared ineligible, or voluntarily excluded from covered transaction by any federal department or the City or any political subdivision of the City or the State of Michigan; (b) has not, within a three year period preceding this proposal, been convicted of or had

civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; (c) has not, within a three year period preceding this proposal, been convicted of or had civil judgment rendered against it for a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (d) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs (b) and (c) of this certification; and, (e) has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

- 8) Disclosure of confidential information. In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this contract.
- 9) Exceptions to confidential information. The Contractor and the City shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which: (a) is rightfully known to the recipient prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer; (c) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on confidential information; (e) is or later becomes part of the public domain or may be lawfully obtained by the City or the Contractor from any nonparty; or, (f) is disclosed with the disclosing party's prior written consent.
- 10) Default. If the Contractor:
 - a) Fails to supply complete labor and supervision in sufficient time and quantity to meet the City's progress schedule, as it may be modified;
 - b) Causes stoppage or delay of, or interference with, the project;
 - c) Fails to promptly pay its employees for work on the project;
 - d) Fails to pay worker's compensation or other employee benefits, withholding or any other taxes;

- e) Fails to comply with the safety provisions of the Contract or with any safety order, regulation or requirement of any governing authority having jurisdiction over this project;
- f) Makes unauthorized changes in supervisory personnel;
- g) Fails in performance or observance of any of the provisions of the contract;
- h) Files a voluntary petition in bankruptcy or is adjudicated insolvent;
- i) Obtains an order for relief under Section 301 of the Bankruptcy Code;
- j) Files any petition or fails to contest any petition filed seeking any reorganization or similar relief under any laws relating to bankruptcy, insolvency or other relief of debtors;
- k) Or seeks or consents to or is acquiescent in the appointment of a trustee, receiver or liquidator of any of its assets or property;
- l) Makes an assignment for the benefit of creditors; or
- m) Makes an admission, in writing, of its inability to pay its debts as they became due;

Then City, after giving Contractor written or oral (subsequently confirmed in writing) notice of such default and forty-eight (48) hours within which to cure such default, shall have the right to exercise any one or more of the following remedies:

- a) Require that Contractor utilize, at its own expense, additional labor, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Contractor's default.
- b) Remedy the default by whatever means City may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing or otherwise completing the work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Contractor) and deducting the cost thereof from any monies due or to become due to Contractor hereunder;
 - i) After giving Contractor an additional forty-eight (48) hours written (or oral, subsequently confirmed in writing) notice, terminate this Contract, without thereby waiving or releasing any rights or remedies against Contractor or its sureties, and, by itself or through others, take possession of the work, and all materials, equipment facilities, tools, scaffolds and appliances of Contractor relating to the work, for the

purposes of costs and other damages under the contract and for the breach thereof; and

- ii) Recover all reasonable attorneys' fees suffered or incurred by City by reason of, or as a result of, Contractor's default.

11) Failure to enforce. Failure by the City at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the City to enforce any provision at any time in accordance with its terms.

12) Final payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, the Contractor shall execute and deliver to the City a release of all claims against the City arising under, or by virtue of, the contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the City's claims against the Contractor under this contract.

13) Force majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, and acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "force majeure events"). When such a cause arises, the Contractor shall notify the City immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the City determines it to be in its best interest to terminate the contract.

14) Indemnification. To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the City, its commissioners, board members, officers, employees, agents, representatives, and the State of Michigan from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this contract. In the City's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the

event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the City. The Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the City shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc., without the City's concurrence, which the City shall not unreasonably withhold.

15) Independent contractor status. The Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the City. Nothing contained herein shall be deemed or construed by the City, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the City and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the City or the Contractor hereunder creates, or shall be deemed to create, a relationship other than the independent relationship of the City and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the City or the State of Michigan. Neither the Contractor nor its employees shall, under any circumstances be considered servants, agents, or employees of the City and the City shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The City shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City shall not provide to the Contractor any insurance coverage or other benefits, including worker's compensation, normally provided by the City for its employees.

16) No limitation of liability. Nothing in this contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

17) Notices. All notices required or permitted to be given under this contract shall be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the Pontiac City Clerk's Office to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: Seasonal Property Maintenance LLC
3420 Belford Rd.
Holly, MI 48442

For the City: City of Pontiac
47450 Woodward Ave.
Pontiac, MI 48342

- 18) Oral statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract shall be made in writing by the City and agreed to by the Contractor.
- 19) Ownership of documents and work papers. The City shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the City upon termination or completion of the contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the City and subject to any copyright protections.
- 20) Priority. The contract consists of this contract with exhibits. Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this contract with exhibits and, if still unresolved, by reference to the bid. Omission of any term or obligation from this contract shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
- 21) Quality control. The Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of the Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the City.
- 22) Record retention and access to records. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the City or any duly authorized representatives shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three years after final payment is made under this contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three year period, the records shall be retained for one year after all issues arising out of the action are finally resolved or until the end of the three year period, whichever is later.

- 23) Recovery of money. Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the City, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the City. The rights of the City are in addition and without prejudice to any other right the City may have to claim the amount of any loss or damage suffered by the City on account of the acts or omissions of the Contractor.
- 24) Right to audit. The Contractor shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The Contractor shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Michigan Office of the State Auditor, its designees, or other authorized bodies.
- 25) Right to inspect facility. The City may, at reasonable times, inspect the place of business of the Contractor or any subcontractor, which is related to the performance of any contract awarded by the City.
- 26) Severability. If any part of this contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
- 27) City property. The Contractor will be responsible for the proper custody and care of any City-owned property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse the City for any loss or damage, normal wear and tear excepted.
- 28) Termination for convenience clause.
- a) The City reserves the absolute right to terminate the contract in whole or in part, for the convenience of the City at its sole discretion on thirty (30) days written notice to the Contractor. The City has the right, upon its sole discretion only, to terminate the contract with cause by giving notice to the Contractor of such termination, specifying the effective date thereof, at least fourteen (14) days before the effective date of such termination, and the Contract shall terminate in all respects as if such date were the date originally given for the expiration of the Contract.
 - b) The Contractor shall be liable to the City for damages sustained by the City by virtue of any breach of the Contract by the Contractor, and any costs the City might incur

enforcing or attempting to enforce the Contract, and the City may pursue legal remedies in the collection of fees to compensate for the damages sustained by the City.

- c) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The City may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State of Michigan. The Contractor shall still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

29) Termination for default clause.

- a) Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the City may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the City, the City may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the City may procure similar supplies or services in a manner and upon terms deemed appropriate by the City. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the City, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the City has an interest.
- c) Compensation. Payment for completed services delivered and accepted by the City shall be at the contract price. The City may withhold from amounts due the Contractor such sums as the City deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.
- d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any

failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the City within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State of Michigan and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, the City shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled "Termination for Convenience." (As used in this paragraph, the term "subcontractor" means subcontractor at any tier).

- e) **Erroneous Termination for Default.** If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience by the City, be the same as if the notice of termination had been issued pursuant to such clause.
- f) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

30) **Termination upon bankruptcy.** This contract may be terminated in whole or in part by the City upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

31) **Third party action notification.** The Contractor shall give the City prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this contract.

32) Unsatisfactory work. If, at any time during the contract term, the service performed or work done by the Contractor is considered by the City to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the City of Pontiac, the Contractor shall, on being notified by the City, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the City shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

33) Waiver. No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults.

34) Taxes and Contributions. The Contractor hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless the City from and against the payment of:

- a) Contractor agrees to contact the City of Pontiac Income Tax Division, Audit and Compliance Section, 47450 Woodward, Pontiac, Michigan 48342, to establish reporting and withholding obligations under the City of Pontiac Income Tax Ordinance. Contractors will require the same of all subcontractors employed to perform any work in the City of Pontiac.

Web page URL: http://www.pontiac.mi.us/departments/income_tax/index.php

Tax forms URL: http://www.pontiac.mi.us/departments/income_tax/tax_forms.php

- b) All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, the Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed or engaged in the work to be performed and furnished under this contract.
- c) All sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or other law to be paid or collected by the Contractor or any of its vendors or any other person or persons

acting for, through or under it or any of them, by reason of the performance of this work or the acquisition, furnishing, or use of any materials, equipment, supplies, labor, services or other items for or in connection with the work.

- d) All pension, welfare, vacation, annuity and other union benefit contributions payable, under or in connection with respect, to all persons; by whomsoever employed or engaged in the work to be performed and furnished under this Contract.

35) Bonds. The Contractor is required to execute bonds, with sureties acceptable to the City, as identified in the specifications, all of which are incorporated into this agreement.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

Seasonal Property Maintenance LLC

DATE

Sign: _____

Print: _____

Title: _____

City of Pontiac

DATE

Sign: _____

Print: _____

Title: _____