

PONTIAC CITY COUNCIL

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



Patrice Waterman, District 1
Don Woodward, District 2
Mary Pietila, District 3
Gloria Miller, District 5
Dr. Doris Taylor Burks, District 6

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

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

FORMAL MEETING

August 20, 2019

6:00 P.M.

111th Session of the 10th Council

Call to order

Invocation

Pledge of Allegiance

Roll Call

Authorization to Excuse Councilmembers

Amendment to and Approval of the Agenda

Approval of the Minutes

1. August 13, 2019

Subcommittee Reports

2. Finance – August 13, 2019

Recognition of Elected Officials

Agenda Address

Special Presentations (Presentations are limited to 10 minutes.)

3. Enhanced Code Enforcement and Nuisance Abatement Report –
Presentation Presenter: Patrick Brzozowski, Code Enforcement Manager
4. City of Pontiac Retired Employees Association (CPREA) Settlement Update
Presentation Presenter: Mayor Waterman
5. Pontiac Youth Recreation and Enrichment Center (PYREC) Update and Youth Summit Report
Presentation Presenters: Robert Burch, Interim PYREC Manager and Jeremiah Wilson, Pontiac Student
6. Pontiac Urban Institute League
Presentation Presenter: Bill Maxey

Communication

7. Memorandum on Community Benefits Ordinances

Ordinances

8. Adoption of an Ordinance to amend Chapter 42, "Community Development," to add Article VII entitled "Community Benefit Agreements."
9. Adoption of an Ordinance to amend Chapter 42, "Community Development", to add Article VII entitled "Community Benefits Agreements". (Amended Language)
10. Adoption of an Ordinance to amend Chapter 42, "Community Development", to add Article VII entitled "Provisioning Center Community Benefits Agreements".

Resolutions**City Council**

11. Resolution to designate Hidden River Park as an entertainment space and not as a park.

Department of Public Works/City Engineering

12. Resolution to authorize Mayor to sign easement for the property located at 31 N. Saginaw.
13. Resolution to adopt the Michigan Local Pavement Warranty Program and accompanying documents in accordance with the requirements of MCL 247.633
14. Resolution to implement the Local Agency Payment Warranty Program and annually report in accordance with the law.
15. Resolution to authorize the Mayor to sign contract with PK Contracting for Road Striping.

Public Comment**Mayor, Clerk and Council Closing Comments****Adjournment**

#1

MINUTES

August 13, 2019 Study

**Official Proceedings
Pontiac City Council
110th Session of the Tenth Council**

A Study Session of the City Council of Pontiac, Michigan was called to order in City Hall, Tuesday, August 13, 2019 at 6:00 p.m. by Council President Kermit Williams.

Call to Order

Roll Call

Members Present: Carter, Miller, Taylor-Burks, Waterman and Williams.

Members Absent: Pietila and Woodward.

Mayor Waterman was present.

Clerk announced a quorum.

19-403 **Excuse Councilperson Mary Pietila and Don Woodward for personal reasons.**
Moved by Councilperson Taylor-Burks and second by Councilperson Waterman.

Ayes: Miller, Taylor-Burks, Waterman, Williams and Carter

No: None

Motion Carried.

19-404 **Amendment to add the Provisional Center Community Benefits Agreement to the agenda.** Moved by Councilperson Taylor-Burks and second by Councilperson Miller.

Ayes: Taylor-Burks, Waterman, Williams, Carter and Miller

No: None

Motion Carried.

19-405 **Motion to move item #3 (resolution to go into closed session) before item #2 (resolution to authorize Mayor to conduct preliminary due diligence for potential purchase of 235 Wesson Street).** Move by Councilperson Waterman and second by Councilperson Taylor-Burks.

Ayes: Taylor-Burks, Waterman, Williams, Carter and Miller

No: None

Motion Carried.

19-406 **Approval of agenda as amended.** Moved by Councilperson Taylor-Burks and second by Councilperson Waterman.

Ayes: Waterman, Williams, Carter, Miller and Taylor-Burks

No: None

Motion Carried.

August 13, 2019 Study

19-407 **Approve meeting minutes for August 6, 2019.** Moved by Councilperson Taylor-Burks and second by Councilperson Carter.

Ayes: Williams, Carter, Miller, Tylor-Burks and Waterman

No: None

Motion Carried.

19-408 **Resolution to go into Closed Session to discuss an attorney-client privileged memorandum regarding the following items: consider the purchase of real property located at 235 Wesson Street, and to discuss memorandum regarding Phoenix Center Settlement, information exempt from disclosure by statute, specifically an attorney-client privileged memorandum exempt from disclosure pursuant to MCL 15.243 (l)(g).** Moved by Councilperson Taylor-Burks and second by Councilperson Miller.

Whereas, Michigan Open Meetings Act Section 8(h), MCL 15.268(h), allows a public body to go into closed session to consider material exempt from discussion or disclosure by state or federal statute; and

Whereas, Michigan Freedom of information Act Section 13(g) exempts from disclosure records subject to the attorney-client privilege;

Now, Therefore, Be It Resolved by the Pontiac City Council that it recess into closed session to discuss an attorney-client privileged memorandum regarding the following items:

1. To consider the purchase of real property located at 235 Wesson Street.
2. To discuss the memorandum regarding Phoenix Center Settlement, information exempt from disclosure by statute, specifically an attorney-client privileged memorandum exempt from disclosure pursuant to MCL 15.243(1)(g).

Ayes: Carter, Miller, Taylor-Burks, Waterman and Williams

No: None

Motion Carried.

19-409 **Motion to come out of Closed Session.** Moved by Councilperson Taylor-Burks and second by Councilperson Waterman.

Ayes: Carter, Miller, Taylor-Burks, Waterman, and Williams

No: None

Motion Carried.

19-410 **Suspend the rules.** Moved by Councilperson Taylor-Burks and second by Councilperson Waterman.

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Ayes: Taylor-Burks, Waterman, Williams and Carter

No: Miller

Motion Carried.

19-411 **Resolution to authorize the Mayor to conduct preliminary due diligence regarding the potential purchase of 235 Wesson Street and to negotiate terms and conditions of sale.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

Whereas, the City of Pontiac has been presented with a Real Estate Purchase and Sale Agreement for the property located at 235 Wesson Street, and

Whereas, The City Council Real Estate Subcommittee referred the matter to the Executive Office for further review.

Now, Therefore Be It Resolved, that the Mayor is hereby authorized to conduct preliminary due diligence regarding the potential purchase of 235 Wesson Street, and negotiate terms and condition of sale and obtain the following due diligence items:

Title Work (No charge),

Phase I Environmental site assessment,

Phase II Environmental site assessment,

Baseline Environmental site assessment,

Survey,

Appraisal,

And related legal fees, all for a cost not to exceed \$45,000 and to be completed within 60 days from the date of this resolution.

Ayes: Taylor-Burks, Waterman and Williams

No: Carter and Miller

Resolution Failed.

Thirteen (13) individuals addressed the body during public comment.

Discussion- Designation of Hidden River Park as a City Park and Possible Measurements Discrepancies between Ordinance 2357(B) and Ordinance 2363

The Council asked the City Attorney to prepare a resolution to designate Hidden River Park as an entertainment space and not as a park.

As it relates to the measurement discrepancies between the ordinances, City Attorney Chubb stated that the Zoning Enabling Act allows any zoning ordinance adopted under the enabling act to preempt any other ordinance that may be inconsistent with the zoning ordinance.

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Ordinances

First reading- Adoption of an Ordinance to amend Chapter 42, "Community Development". To add Article VII entitled "Community Benefit Agreements" Ordinance attached as exhibit A.

Revised Community Benefits Ordinances

Memorandum from Matthew Neale, Esq.- Medical Marihuana Application Professional Expert to the City Clerk. Attorney Neale explains that he has drafted a revised Community Benefits Ordinance titled "Pontiac Provisioning Center Community Benefits Ordinance", is meant to assist the City Clerk in scoring and ranking provisioning center applications pursuant to City Ordinance 2357(B); by allowing developers to make pledges as part of their provisioning center application that identify community benefits to the City to help rectify negative aspects of their development. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

As compared to the prior proposed community benefits ordinance, the Pontiac Provisioning Center Community Benefits Ordinance is intended to be specifically used for the scoring and ranking of provisioning center applications under City Ordinance 2357(B). Any references to medical marijuana, Tier 1 or City Ordinance 2357(B) were thus removed from the prior proposed community benefits ordinance. **Memorandum and ordinances attached as exhibit B.**

First reading- Adoption of an Ordinance to amend Chapter 42, "Community Development", to add Article VII entitled "Provisioning Center Community Benefits Agreements" Ordinance attached as exhibit C.

Communication from the City Clerk

Communication from the Office of the City Clerk Office informing the City Council that the office has begun receiving Medical Marihuana applications for growers, processors, secure transporters and safety compliance.

The Clerk informed the Mayor and City Council that in order to ensure that we review applications in a timely manner, the Clerk is requesting that the tasks below be completed within the next 30 days.

- The Mayor appoints the Medical Marihuana Commission and the Commission meets to establish its rules.
- The City Council approves the Rules of the Medical Marihuana Commission.
- The City issue a RFP for a Professional Expert- Financial Advisor to the City Clerk to assist the Clerk with the financial review of the applications.
- The City issue a RFP for a Hearing Officer.
- All staff involved in the review of applications complete and sign the conflict of interest/disclosure statement. **The form is attached as exhibit D.**

The Council requested that the task items be brought back in two (2) weeks for status update.

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19-412 **Suspend the rules to vote on items #7, 8 and 9.** Moved by Councilperson Taylor-Burks and second by Councilperson Carter.

Ayes: Tylor-Burks, Waterman, Williams, Carter and Miller

No: None

Motion Carried.

19-413 **Resolution for Roosevelt Frank (Bones) Russell.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

WHEREAS, The Pontiac City Council celebrates the gift of life and those who have lived life abundantly and whose lives exemplify the highest ideals of humanity; and,

WHEREAS, Roosevelt Frank Russell has been married to Mary Page Russell for over 50 years and this union produced five children, nineteen grandchildren, and five great-grandchildren; and,

WHEREAS, Roosevelt Frank Russell's rich career in public service spans over seven decades, from 1968, when he started working as a Parks and Recreation Assistant with the City of Pontiac to 2019, and in addition, Roosevelt Frank Russell remarkably embarked on his thirty-three year tenure with the Oakland County Human Resources Department in June of 1985, as the Community Specialist Recruitment & EEO; and,

WHEREAS, Roosevelt Frank Russell was an integral link to the citizens of Pontiac, Oakland County and throughout the State of Michigan in his position of Recruitment Specialist, Human Resources Analyst and especially as Chairperson of the Oakland County Employment Diversity Council; and

WHEREAS, Roosevelt Frank Russell while working for Oakland County, was instrumental in the recruitment and employment of many qualified individuals whom have served the county in an exemplary fashion within the various departments in Oakland County government,

WHEREAS, Roosevelt Frank Russell is truly a trail-blazer, as he was responsible for increasing the number of qualified minorities that were placed on The Oakland County Human Resources Departments various Employment Eligibility Lists and served as an invaluable resource to all of the Oakland County Commissioners that represented the City of Pontiac since 1985; and,

WHEREAS, Roosevelt Frank Russell is distinguished by his numerous accomplishments, some include, receiving many unsolicited letters of appreciation from citizens throughout Oakland County and the State of Michigan, accepting the Employee of the Month Award from the late Oakland County Executive L. Brooks Patterson in 2005, recipient of the Regional Diversity Champion Award in 2011, developing and implementing the Oakland County Employment Diversity Council (OCEDC), founder of the Oakland County All-Star Basketball Clinic in 1969-1980, Campy Russell-Terry Furlow Fundamental Basketball Camp 1977-1979, Youth Advisor Pontiac Police Department 1974-1978, Founder and President of the Youth Development Institute, Inc. 1983-2019, the Pontiac News, Inc. Publisher and Editor 2007-present and the Oakland and Regional News 2014-present; and,

WHEREAS, Roosevelt Frank Russell's innate qualities of insight, knowledge and wisdom, propelled him to serve as a mentor, advisor and counselor too many young men and women, many of whom have advanced in their careers and are making valuable contributions to their communities.

NOW, THEREFORE BE IT RESOLVED, that we the members of the Pontiac City Council and on behalf of the citizens of Pontiac, recognize with great pride and dignity, Roosevelt Frank (Bones) Russell, as he is recognized on August 17, 2019 for the blessing that he has been to his family and friends for 70

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years of life and for seven decades of outstanding contributions of leadership, selflessness and commitment to the community. "Happy Birthday Mr. Roosevelt Frank (Bones) Russell and Congratulations on your retirement."

Ayes: Waterman, Williams, Carter, Miller and Taylor-Burks

No: None

Resolution Passed.

19-414 **Resolution in support of Inspirational Spectrum Heroes.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

WHEREAS, it is the desire of the members of the Pontiac City Council to endorse, recognize and support organizations that exemplify a sincere dedication of leadership, selflessness and commitment to uplifting and empowering our community; and,

WHEREAS, the Inspirational Spectrum Heroes is a 501 (c) 3, a non-profit organization established in 2018, and the mission of the organization is to promote awareness of autism; and,

WHEREAS, the Inspirational Spectrum Heroes is hosting its first Annual Autism Walk on Saturday, September 14, 2019 at Wisner Stadium.

NOW, THEREFORE BE IT RESOLVED, that the members of the Pontiac City Council, on behalf of the citizens of Pontiac, recognize and graciously endorse the Inspirational Spectrum Heroes for enriching the lives of families and individuals in our community.

Ayes: Williams, Carter, Miller, Taylor-Burks and Waterman

No: None

Resolution Passed.

19-415 **Resolution for Harrison Lorenza "Pal" Gilmore.** Moved by Councilperson Taylor-Burks and second by Councilperson Waterman.

WHEREAS, it is the sense of this legislative body to pay proper tribute to individuals of remarkable character and whose lives have been dedicated to uplifting and inspiring the community; and;

WHEREAS, it is feelings of the deepest regret that the Pontiac City Council mourns the passing of Harrison Lorenza Gilmore, a giving and devoted member of this community; and,

WHEREAS, Harrison Lorenza Gilmore was born on June 7, 1947, was the son of the late Flossie Mae and James Andrew Gilmore, loving husband to Sheila R. Gilmore and the father of Stephanie Grandberry; and,

WHEREAS, Harrison Lorenza Gilmore had a passion for billiards; and,

WHEREAS, Harrison Lorenza Gilmore a talented sports enthusiast and a distinguished billiards player, consistently displayed his talents; and,

WHEREAS, in 2012, Harrison Lorenza Gilmore, along with other members of his softball team, received championship rings from the World Senior Games in Utah; and,

WHEREAS, Harrison Lorenza Gilmore also participated in the Huntsman World Senior Games in St. George, Utah, a qualifying competition for the Senior Olympics, 50 years and older; and,

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WHEREAS, Harrison Lorenza Gilmore was the first place winner in Billiards during the Winter Michigan Senior Olympics (age 65-69) three years in a row, 2015, 2016 and 2017; and,

WHEREAS, Harrison Lorenza Gilmore despite having an illness, never let his love for baseball waiver, as he pursued and engaged in another sport, pickle ball and in 2018, entered the Michigan Senior Olympics for Pickle Ball and Billiards (age 70-74) and won second place in Billiards; and,

WHEREAS, Harrison Lorenza Gilmore truly a legend in Billiards, in 2019, won third place (age 70-74) in Billiards.

NOW, THEREFORE BE IT RESOLVED, that the Pontiac City Council and members of this great community will greatly miss Harrison Lorenza "Pal" Gilmore, as his kindhearted soul will long endure the passage of time and will remain as a comforting memory to all those whose lives he touched; we give our sincerest condolences to the family and friends of Harrison Lorenza "Pal" Gilmore.

Ayes: Carter, Miller, Taylor-Burks, Waterman and Williams

No: None

Resolution Passed.

Mayoral Reports

Special Report: Road Kill Wrap-up and Dream Cruise Update
Presented by James Johnson, Community Relations Specialist

Monthly Check Register

(The weekly check register for June 28, 2019; July 5, 12, 19 and 26, 2019 have not been posted on the website.)

Monthly Staff Changes Report

(The June and July reports were not submitted.)

City Credit Card Statement

(The June and July reports were not submitted.)

Council President Kermit Williams Adjourned meeting at 8:55 p.m.

GARLAND S. DOYLE
INTERIM CITY CLERK

ORDINANCE NO. _____

THE CITY OF PONTIAC ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "COMMUNITY BENEFIT AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Community Benefit Ordinance".
- (b) This Ordinance shall require developers of certain types of developments, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefit Agreements", that identify potential negative aspects of developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects as a condition for development subsidies and other considerations by the City of Pontiac.

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) **Community Benefit Agreement:** An Agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) **Developer:** The person, firm, partnership, company, corporation, cooperative, or any other entity that is the recipient of a Development Subsidy.
- (c) **Development Subsidies:** Any economic incentives of value granted on a discretionary basis by the City of Pontiac to attract or retain a Qualified Development or jobs associated therewith; may include federal, state, or local economic incentives; and include but are not limited to economic incentives associated with, as amended: the Brownfield Redevelopment Financing Act, Commercial Development Act, Commercial Rehabilitation Act, Corridor Improvement Authority Act, Historical neighborhood Tax Increment Financing Act, Local Development Financing Act, Plant Rehabilitation and Industrial Development Districts Act, Principal Shopping Districts and Business Improvement Districts Act. Additionally, the lease or transfer of a city-owned building or property shall constitute a Development Subsidy.
- (d) **Qualified Development:** Shall be classified as either a Tier 1 or Tier 2. Tier 1 Qualified Developments shall be those developments granted license to operate under City Ordinance 2357(B). Tier 2 Qualified Developments shall be those developments being

granted Development Subsidies by the City of Pontiac with a total economic incentive, as determined in the sole discretion of the City of Pontiac, of greater than \$50,000.00.

Section 3. Community Benefits

A Community Benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although Community Benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as Community Benefits, by Tier of Qualified Development:

Tier 1: Infrastructure, Police and Fire Services, Job Training, Health Initiative Education, Parks

Tier 2: Designated Projects, Infrastructure, Police and Fire Services, Parks

Section 4. Community Benefits Agreement

The Community Benefits Agreement shall be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement shall set forth the Community Benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such Community Benefit.

Community Benefit Agreements shall be timely recorded on the deed, and shall run with the land, on Qualified Developments for the duration of the Community Benefit Agreement.

The term of a Community Benefit Agreement for a Tier 1 Qualified Development shall be not less than the term of its License to operate under City Ordinance 2357(B), including any extension or renewal thereof. The term of a Community Benefit Agreement for a Tier 2 Qualified Development shall be not less than the length of the Development Subsidy, including any extension or renewal thereof.

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Required for Every Qualified Development

All Qualified Developments are subject to a Community Benefit Agreement. All Qualified Developments must be approved by the Mayor and City Council, and such approval may only be subject to the execution of a valid Community Benefits Agreement with the Developer of that Qualified Development.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk. An Exemption requires approval of the Mayor and City Council.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefit Agreement for the prior year (or partial year) by January 1 of each year. The report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Department of Economic Development finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement, it shall send a written Notice of Breach of Community Benefits Agreement to the Qualified Development and its Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the Mayor may terminate the Agreement.

If the Qualified Development and/or Developer believe that the termination was made in error, it (they) may Appeal in writing to the City Council within thirty (30) days after the date the Notice of Breach of Community Benefits Agreement was sent. The City Council, by Resolution, shall only overturn a decision of the Mayor if it finds the decision was arbitrary or capricious. The determination of the City Council may only be reviewed by the Court of competent jurisdiction within the state of Michigan.

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying 2357(B) facility license for Tier 1 Qualified Developments; and the suspension of any economic incentives granted to a Tier 2 Qualified Development; pending the any such administrative, legislative, or judicial appeal of that termination. Upon the exhaustion of further appeals creating a final determination that the termination was proper, the 2357(B) facility license or economic incentive granted to a Tier 2 Qualified Development shall be permanently revoked, subject to any further statutory appeal process for those licenses or economic incentives.

Section 9. Severability.

This ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

MILLER CANFIELD

MEMORANDUM

TO: Garland S. Doyle, Interim Pontiac City Clerk
FROM: Matthew Neale, Esq.
RE: Revised Community Benefits Ordinance
DATE: August 12, 2019

As requested, the revised Community Benefits Ordinance, titled "Pontiac Provisioning Center Community Benefits Ordinance", is meant to assist the City Clerk in scoring and ranking provisioning center applications pursuant to City Ordinance 2357(B); by allowing developers to make pledges as part of their provisioning center application that identify community benefits to the City to help rectify negative aspects of their development. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

Pursuant to Section 9(f) of City Ordinance 2357(B), "[i]n its application assessment, evaluation, scoring, ranking, and deliberations related to permits to operate a provisioning center . . .", the City Clerk "shall assess, evaluate, score, and rank each application based upon a scoring and ranking procedure developed by the clerk consistent with the requirements, conditions, and provisions. . . ." of City Ordinance 2357(B) in certain specified categories.

Of those categories specified in such Section 9(f), certain of the categories relate to community benefits. If an applicant, as part of its application for a provisioning center permit, makes pledges of community benefits to the City of Pontiac, then, based on the City Clerk's assessment and evaluation of such benefits, such applicant will get points for such pledges. Such points will be used in the provisioning center scoring. However, before an applicant will receive a permit, the applicant must enter into a Community Benefits Agreement with the City incorporating such pledged benefits. The amount of points for different pledges will be based on the commitment, quality, duration, community support and amount of the pledged community benefits.

If an applicant breaches a Community Benefits Agreement with the City, pursuant to Section 15 of City Ordinance 2357(B) and other applicable Sections and laws, the City Clerk may revoke or suspend a provisioning center permit or not renew a provisioning center permit (subject to any notice and/or hearing rights of an applicant).

As compared to the prior proposed community benefits ordinance, the Pontiac Provisioning Center Community Benefits Ordinance is intended to be specifically used for the scoring and ranking of provisioning center applications under City Ordinance 2357(B). Any references to medical marijuana, Tier 1 or City Ordinance 2357(B) were thus removed from the prior proposed community benefits ordinance.

ORDINANCE NO. _____

THE CITY OF PONTIAC ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "PROVISIONING CENTER COMMUNITY BENEFITS AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Provisioning Center Community Benefits Ordinance".
- (b) This Ordinance shall allow developers of provisioning centers, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefits Agreements", that identify potential negative aspects of such developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects. The pledges of community benefits that would be incorporated into Community Benefits Agreements will be used in part to assist the City Clerk with the scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B).

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) Community Benefits Agreement: An agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) Developer: Any person, firm, partnership, company, corporation, cooperative, or any other entity (other than the City of Pontiac) that is a party to a Community Benefits Agreement.
- (c) Qualified Development: Persons or entities submitting an application for a provisioning center permit during the 21-day period for provisioning center applications pursuant to City Ordinance 2357(B).

Section 3. Community Benefits; Pledged Community Benefits

A community benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although community benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as community benefits:

- (a) Roads; Infrastructure; Road Repair; Potholes; Road Matching

- (b) Parks; Park Safety (cameras); Law Enforcement
- (c) High School Pool; Hawthorne Park (Water Park); Neighborhood Revitalization Plan
- (d) Job Training and Employment; Transitional Programs (previously incarcerated)
- (e) Library and Literacy; Health Initiative Education
- (f) Business Development Fund (to assist City of Pontiac residents with funding for businesses and with starting and growing businesses)

As part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk may consider those community benefits pledged to the City of Pontiac as part of such application. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

It is preferred, and the City Clerk may require, that applicants show that there is a reasonable amount of support in the community for an applicant's pledged community benefits. It is the applicant's responsibility to show community support for its pledged community benefits.

In using pledged community benefits as part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk will evaluate the commitment, quality, duration, community support and amount of the pledged community benefits. If an applicant does not pledge community benefits, such applicant will receive a zero (0) score in certain key segments of the provisioning center application scoring.

If an applicant has pledged community benefits as part of its provisioning center application, before receiving a provisioning center permit, such applicant must enter into a Community Benefits Agreement with the City incorporating such pledged community benefits. The negotiation and completion of such Community Benefits Agreements may occur after the 21-day submission period for provisioning center applications pursuant to City Ordinance 2357(B). The Mayor may negotiate such Community Benefits Agreements (incorporating the pledged community benefits therein) on behalf of the City of Pontiac. All final Community Benefits Agreements must be approved by the City Council to be effective.

Section 4. Community Benefits Agreement

The Community Benefits Agreement would be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement would set forth the community benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such community benefit.

Community Benefits Agreements shall be timely recorded on the deed for the real property applicable to the Qualified Development, and shall run with the land, on Qualified Developments for the duration of the Community Benefits Agreement.

The term of a Community Benefits Agreement shall be not less than the term of the permit to operate under City Ordinance 2357(B), including any extension or renewal thereof.

If a Developer is in breach or violation of a Community Benefits Agreement, such breach or violation shall constitute a breach of applicable law for purposes of City Ordinance 2357(B). If such breach or violation occurs, the City may exercise all rights and remedies against such Developer available under applicable law (subject to any notice and/or hearing rights of such Developer), including any rights and remedies pursuant to City Ordinance 2357(B) (including in relation to the suspension, revocation or renewal of a provisioning center permit), including Section 15 of City Ordinance 2357(B).

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Approval

All Community Benefits Agreements must be approved by the City Council to be effective.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk ("Exemption"). An Exemption requires approval of the City Council and may be approved or denied by the City Council in its sole discretion.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement for the prior year (or partial year) by January 1 of each year. Further, prior to any extension or renewal of a permit to operate under City Ordinance 2357(B), a Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement. Each report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Clerk finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement (including if discovered as part of the City Clerk's review of the Qualified Development and/or Developer for purposes of a permit renewal), it may send a written Notice of Breach of Community Benefits Agreement to the Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the City Clerk, after a hearing (as necessary), may suspend or terminate the Community Development Agreement.

If the Developer believes that the suspension or termination was made in error, the Developer may appeal such decision in accordance with its appeals rights under City Ordinance 2357(B).

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying City Ordinance 2357(B) provisioning center permit; subject to any permitted administrative, legislative or judicial appeal of that termination. Upon the exhaustion of any appeals through the City of Pontiac creating a final determination that the termination of the Community Benefits Agreement was proper, the City Ordinance 2357(B) provisioning center permit shall be permanently revoked, subject to any further statutory appeal process for such permit outside of the City of Pontiac.

Section 9. Severability.

This Ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this Ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this Ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed, as permitted by law.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

ORDINANCE NO. _____

THE CITY OF PONTIAC ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "COMMUNITY BENEFIT AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Community Benefit Ordinance".
- (b) This Ordinance shall require developers of certain types of developments, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefit Agreements", that identify potential negative aspects of developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects as a condition for development subsidies and other considerations by the City of Pontiac.

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) Community Benefit Agreement: An Agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) Developer: The person, firm, partnership, company, corporation, cooperative, or any other entity that is the recipient of a Development Subsidy.
- (c) Development Subsidies: Any economic incentives of value granted on a discretionary basis by the City of Pontiac to attract or retain a Qualified Development or jobs associated therewith; may include federal, state, or local economic incentives; and include but are not limited to economic incentives associated with, as amended: the Brownfield Redevelopment Financing Act, Commercial Development Act, Commercial Rehabilitation Act, Corridor Improvement Authority Act, Historical neighborhood Tax Increment Financing Act, Local Development Financing Act, Plant Rehabilitation and Industrial Development Districts Act, Principal Shopping Districts and Business Improvement Districts Act. Additionally, the lease or transfer of a city-owned building or property shall constitute a Development Subsidy.
- (d) Qualified Development: ~~Shall be classified as either a Tier 1 or Tier 2. Tier 1 Qualified Developments shall be those developments granted license to operate under City Ordinance 2357(B). Tier 2 Qualified Developments shall be those developments being~~

Proposed Community Benefits Ordinance

granted Development Subsidies by the City of Pontiac with a total economic incentive, as determined in the sole discretion of the City of Pontiac, of greater than \$50,000.00.

Section 3. Community Benefits

A Community Benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although Community Benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as Community Benefits, ~~by Tier of Qualified Development:~~

~~Tier 1: Infrastructure, Police and Fire Services, Job Training, Health Initiative Education, Parks~~

~~Tier 2: Designated Projects, Infrastructure, Police and Fire Services, Parks~~

Section 4. Community Benefits Agreement

The Community Benefits Agreement shall be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement shall set forth the Community Benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such Community Benefit.

Community Benefit Agreements shall be timely recorded on the deed, and shall run with the land, on Qualified Developments for the duration of the Community Benefit Agreement.

The term of a Community Benefit Agreement for a ~~Tier 1 Qualified Development~~ shall be not less than the term of its License to operate under City Ordinance 2357(B), including any extension or renewal thereof. ~~The term of a Community Benefit Agreement for a Tier 2 Qualified Development~~ shall be not less than the length of the Development Subsidy, including any extension or renewal thereof.

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Required for Every Qualified Development

All Qualified Developments are subject to a Community Benefit Agreement. All Qualified Developments must be approved by the Mayor and City Council, and such approval may only be subject to the execution of a valid Community Benefits Agreement with the Developer of that Qualified Development.

Section 6. Exemptions Application

Proposed Community Benefits Ordinance

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk. An Exemption requires approval of the Mayor and City Council.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefit Agreement for the prior year (or partial year) by January 1 of each year. The report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Department of Economic Development finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement, it shall send a written Notice of Breach of Community Benefits Agreement to the Qualified Development and its Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the Mayor may terminate the Agreement.

If the Qualified Development and/or Developer believe that the termination was made in error, it (they) may Appeal in writing to the City Council within thirty (30) days after the date the Notice of Breach of Community Benefits Agreement was sent. The City Council, by Resolution, shall only overturn a decision of the Mayor if it finds the decision was arbitrary or capricious. The determination of the City Council may only be reviewed by the Court of competent jurisdiction within the state of Michigan.

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying 2357(B) facility license for Tier 1 Qualified Developments; and the suspension of any economic incentives granted to a Tier 2 Qualified Development; pending the any such administrative, legislative, or judicial appeal of that termination. Upon the exhaustion of further appeals creating a final determination that the termination was proper, the 2357(B) facility license or economic incentive granted to a Tier 2 Qualified Development shall be permanently revoked, subject to any further statutory appeal process for those licenses or economic incentives.

Section 9. Severability.

This ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed.

Proposed Community Benefits Ordinance

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

ORDINANCE NO. _____**THE CITY OF PONTIAC ORDAINS:****AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "PROVISIONING CENTER COMMUNITY BENEFITS AGREEMENTS".****Section 1. Short Title; Purpose.**

- (a) This Ordinance shall be known and may be cited as the "Pontiac Provisioning Center Community Benefits Ordinance".
- (b) This Ordinance shall allow developers of provisioning centers, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefits Agreements", that identify potential negative aspects of such developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects. The pledges of community benefits that would be incorporated into Community Benefits Agreements will be used in part to assist the City Clerk with the scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B).

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) Community Benefits Agreement: An agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) Developer: Any person, firm, partnership, company, corporation, cooperative, or any other entity (other than the City of Pontiac) that is a party to a Community Benefits Agreement.
- (c) Qualified Development: Persons or entities submitting an application for a provisioning center permit during the 21-day period for provisioning center applications pursuant to City Ordinance 2357(B).

Section 3. Community Benefits; Pledged Community Benefits

A community benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although community benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as community benefits:

- (a) Roads; Infrastructure; Road Repair; Potholes; Road Matching

- (b) Parks; Park Safety (cameras); Law Enforcement
- (c) High School Pool; Hawthorne Park (Water Park); Neighborhood Revitalization Plan
- (d) Job Training and Employment; Transitional Programs (previously incarcerated)
- (e) Library and Literacy; Health Initiative Education
- (f) Business Development Fund (to assist City of Pontiac residents with funding for businesses and with starting and growing businesses)

As part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk may consider those community benefits pledged to the City of Pontiac as part of such application. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

It is preferred, and the City Clerk may require, that applicants show that there is a reasonable amount of support in the community for an applicant's pledged community benefits. It is the applicant's responsibility to show community support for its pledged community benefits.

In using pledged community benefits as part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk will evaluate the commitment, quality, duration, community support and amount of the pledged community benefits. If an applicant does not pledge community benefits, such applicant will receive a zero (0) score in certain key segments of the provisioning center application scoring.

If an applicant has pledged community benefits as part of its provisioning center application, before receiving a provisioning center permit, such applicant must enter into a Community Benefits Agreement with the City incorporating such pledged community benefits. The negotiation and completion of such Community Benefits Agreements may occur after the 21-day submission period for provisioning center applications pursuant to City Ordinance 2357(B). The Mayor may negotiate such Community Benefits Agreements (incorporating the pledged community benefits therein) on behalf of the City of Pontiac. All final Community Benefits Agreements must be approved by the City Council to be effective.

Section 4. Community Benefits Agreement

The Community Benefits Agreement would be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement would set forth the community benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such community benefit.

Community Benefits Agreements shall be timely recorded on the deed for the real property applicable to the Qualified Development, and shall run with the land, on Qualified Developments for the duration of the Community Benefits Agreement.

The term of a Community Benefits Agreement shall be not less than the term of the permit to operate under City Ordinance 2357(B), including any extension or renewal thereof.

If a Developer is in breach or violation of a Community Benefits Agreement, such breach or violation shall constitute a breach of applicable law for purposes of City Ordinance 2357(B). If such breach or violation occurs, the City may exercise all rights and remedies against such Developer available under applicable law (subject to any notice and/or hearing rights of such Developer), including any rights and remedies pursuant to City Ordinance 2357(B) (including in relation to the suspension, revocation or renewal of a provisioning center permit), including Section 15 of City Ordinance 2357(B).

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Approval

All Community Benefits Agreements must be approved by the City Council to be effective.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk ("Exemption"). An Exemption requires approval of the City Council and may be approved or denied by the City Council in its sole discretion.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement for the prior year (or partial year) by January 1 of each year. Further, prior to any extension or renewal of a permit to operate under City Ordinance 2357(B), a Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement. Each report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Clerk finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement (including if discovered as part of the City Clerk's review of the Qualified Development and/or Developer for purposes of a permit renewal), it may send a written Notice of Breach of Community Benefits Agreement to the Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the City Clerk, after a hearing (as necessary), may suspend or terminate the Community Development Agreement.

If the Developer believes that the suspension or termination was made in error, the Developer may appeal such decision in accordance with its appeals rights under City Ordinance 2357(B).

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying City Ordinance 2357(B) provisioning center permit; subject to any permitted

administrative, legislative or judicial appeal of that termination. Upon the exhaustion of any appeals through the City of Pontiac creating a final determination that the termination of the Community Benefits Agreement was proper, the City Ordinance 2357(B) provisioning center permit shall be permanently revoked, subject to any further statutory appeal process for such permit outside of the City of Pontiac.

Section 9. Severability.

This Ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this Ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this Ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed, as permitted by law.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

Pontiac City Council Resolution



19-64 **Resolution Adopting a Conflict of Interest Policy for the Review of Medical Marihuana Permit Applications.** Moved by Councilperson Taylor-Burks and second by Councilperson Pietila.

WHEREAS, the City of Pontiac has adopted Ordinance 2357B ("City of Pontiac Medical Marihuana Facilities Ordinance") ("Ordinance") to allow medical marihuana facilities to operate in the City of Pontiac;

WHEREAS, the City of Pontiac City Clerk is responsible for administering the medical marihuana facility permit application process pursuant to the Ordinance;

WHEREAS, upon receipt of a completed medical marihuana facility permit application ("Medical Marihuana Application") the City Clerk is responsible for forwarding the Medical Marihuana Application to the Fire, Building and Safety, and Planning Departments/Divisions, and the City Clerk may forward the Medical Marihuana Application or certain parts thereof to any other relevant department/division of the City (including contractors of the City) to review the Medical Marihuana Application for compliance with certain requirements of the Ordinance;

WHEREAS, any employees, agents or contractors in such departments or divisions asked to review a Medical Marihuana Application or any part thereof will be required to disclose any conflict of interest to the City Clerk in accordance with the conflict of interest policy in the form of Exhibit A attached hereto ("Conflict of Interest Policy");

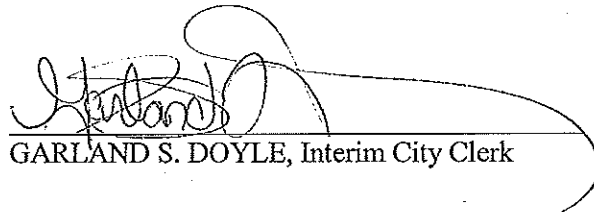
NOW BE IT THEREFORE RESOLVED, that the City of Pontiac adopts the Conflict of Interest Policy in relation to the review of Medical Marihuana Applications.

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

No: None

Resolution Passed.

I, Garland S. Doyle, Interim City Clerk of the City of Pontiac, hereby certify that the above Resolution is a true and accurate copy of the Resolution passed by the City Council of the City of Pontiac on February 26, 2019.


GARLAND S. DOYLE, Interim City Clerk

Dated: August 9, 2019

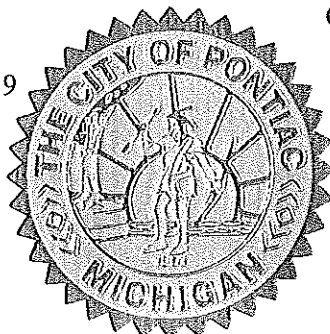


EXHIBIT A



CITY OF PONTIAC

MEDICAL MARIHUANA PERMIT REVIEWER CONFLICT OF INTEREST POLICY

Purpose

The City of Pontiac (the "City") has approved an ordinance to allow medical marihuana facilities to operate in the City. After receipt of a completed application, the Pontiac City Clerk is responsible for forwarding the application to the Fire, Building and Safety, and Planning Departments/Divisions, and the Pontiac City Clerk may forward the application or certain parts thereof to any other relevant department/division of the City (including contractors of the City) to confirm compliance with certain requirements of the City of Pontiac Medical Marihuana Facilities Ordinance ("Ordinance").

The City provides this Conflict of Interest Policy to ensure that there is full disclosure in connection with approval/review of any medical marihuana facility permit application ("Medical Marihuana Application") or inspection of any proposed medical marihuana facility that may provide an economic or other personal benefit to an employee, agent or contractor, or to any person or entity with whom they are related or have a financial interest. This will help to ensure that decisions are based entirely on merit. This policy is intended to supplement but not replace any applicable City, state or federal laws relating to conflicts of interest.

Definitions

1. Interested Person. An "Interested Person" is an individual who is in a position to review, inspect and/or approve components of an applicant's Medical Marihuana Application or proposed medical marihuana facility on behalf of the Fire, Building and Safety, or Planning Departments/Divisions or any other relevant department/division of the City (including contractors of the City) tasked with reviewing, inspecting and/or approving any components of Medical Marihuana Applications or proposed medical marihuana facilities.
2. Family Member. A "Family Member" includes: the spouse of, or a brother, sister, in-law, ancestor (including parents and grandparents), child, grandchild or great grandchild of an Interested Person, or the spouse of any child, grandchild, or great grandchild of an Interested Person.
3. Financial Interest. An Interested Person has a "Financial Interest" if:
 - (a) such Interested Person, or any Family Member or Related Entity of such Interested Person, is directly or indirectly involved in any transaction or exchange with an entity or individual that has submitted or plans to submit a Medical Marihuana Application to operate a medical marihuana facility in the City (other than retail purchases of medical marihuana at a provisioning center in compliance with applicable laws); or
 - (b) such Interested Person, or any Family Member or Related Entity of such Interested Person, has a compensation arrangement or a potential compensation arrangement of any form, direct or indirect, with any entity or individual that has submitted or plans to submit a Medical Marihuana Application to operate a medical marihuana facility in the City.

4. Related Entity. A "Related Entity" means: any corporation, partnership, limited liability company, estate, trust or other entity or organization in which any Interested Person or any Family Member of such Interested Person, directly or indirectly, owns or controls or is negotiating to own or control (including through other entities or organizations) 1% or more of the voting power, 1% or more of the profits or economic interest or 1% or more of the ownership interest of such entity or organization.

Acceptance of Benefit

Employees, agents and contractors reviewing, inspecting and/or approving components of an applicant's Medical Marihuana Application or proposed medical marihuana facility (and their Family Members and Related Entities) shall not solicit, accept or retain any direct or indirect gift, gratuity, compensation, payment or other benefit (collectively, "Benefit") from any individual or entity operating or seeking to operate a medical marihuana facility in the City.

Procedures for Conflicts of Interest

1. Duty to Disclose. Each year, promptly after the release of the Medical Marihuana Application by the City Clerk and on each anniversary thereafter (and in any case prior to any review by such Interested Person of any Medical Marihuana Application), each Interested Person shall complete and submit to the City Clerk the Conflict of Interest Disclosure Statement/Affidavit For Medical Marihuana Facility Permit Applications attached hereto ("Conflict of Interest Disclosure Statement"). Even if an Interested Person has completed a Conflict of Interest Disclosure Statement, if the Interested Person receives a Medical Marihuana Application in which such Interested Person has a Financial Interest or other actual or potential conflict of interest, before such Interested Person may review the Medical Marihuana Application, such Interested Person shall disclose to the City Clerk the existence of such Financial Interest or conflict together with a statement of facts that describe and explain such Financial Interest or conflict.

2. Reappointment. Upon receipt of the Interested Persons' disclosure of Financial Interest or other actual or potential conflict (or any other discovery of the same), the City Clerk shall report such Financial Interest or conflict to the respective head of the department or division and another employee, agent or contractor shall be assigned to the particular Medical Marihuana Application.

3. Violations.

(a) If the City Clerk or head of the respective department or division has reasonable cause to believe that an Interested Person has failed to disclose any actual or potential conflict of interest (including without limitation any Financial Interest) or has directly or indirectly solicited, accepted or retained a Benefit from any individual or entity operating or seeking to operate a medical marihuana facility in the City, the City Clerk or such department/division head shall inform the Interested Person of the basis for such belief and afford him/her an opportunity to explain the alleged failure to disclose or explain the improper Benefit.

(b) If, after hearing the response of the Interested Person and making such further investigation as may be warranted under the circumstances, the City Clerk or respective department/division head determines that the Interested Person has in fact failed to disclose an actual or potential conflict of interest or directly or indirectly solicited, accepted or retained a Benefit, the City Clerk or respective department/division head shall take appropriate disciplinary and corrective action, and may forward the matter to the appropriate law enforcement agency to investigate.

Approved by City of Pontiac:

Date

CITY OF PONTIAC ("CITY")
CONFLICT OF INTEREST DISCLOSURE STATEMENT/AFFIDAVIT
FOR MEDICAL MARIHUANA FACILITY PERMIT APPLICATIONS

Name: _____ (Interested Person)

1. As an Interested Person, please list any Related Entity (as defined in the City's Conflict of Interest Policy) that has or plans to submit an application to the City to operate a medical marihuana facility.

Entity	Percentage Interest	<u>Date</u> From	<u>(Yrs)</u> To	Person Involved (relationship)

2. As an Interested Person, please list any organization or entity (profit or nonprofit) that you or a Family Member (as defined in the City's Conflict of Interest Policy) or Related Entity currently (or plan to) serve as an employee, contractor, agent, manager, director, officer or similar position or receive or are entitled to any form of compensation, that has or plans to submit an application to the City to operate a medical marihuana facility.

Organization/Business	Position/Involvement	Person Involved (Relationship)

3. As an Interested Person, please list any other organization, entity, involvement, relationship, conditions or circumstances that place or may place you in a conflict or potential conflict regarding the review, inspection or approval of any medical marihuana facility permit application for the City, including without limitation any Financial Interest (as defined in the City's Conflict of Interest Policy).

Organization or Circumstance	Conflict or Potential Conflict

4. Neither myself nor any of my Family Members or Related Entities have solicited, accepted or retained any direct or indirect gift, gratuity, compensation, payment or other benefit from any individual or entity operating or seeking to operate a medical marihuana facility in the City.

Under penalties of perjury, I declare that: (i) I have completed this Disclosure Statement/Affidavit and that to the best of my knowledge and belief it is true, correct and complete; and (ii) I will update this Disclosure Statement/Affidavit within one (1) business day after any relevant circumstances change by notifying the City Clerk of such change.

Signature: _____

Date: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 201____, by _____.

_____, Notary Public
County, Michigan
My commission expires:

#2

**SUB
COMMITTEE
REPORT**

FINANCE SUBCOMMITTEE NOTES

August 13, 2019

In attendance:

Council members: Chairperson Patrice Waterman, Council President Kermit Williams and Gloria Miller

Mayor: Deirdre Waterman

Hughey Newsome

Community Relations Specialist: James Johnson

Start time: 4:00 p.m.

AGENDA

I. New Business

Cash Summary by fund as of 6/30/2019

Items of interest:

- The total cash and investments in all funds for the City as of 6/30/2019 was \$47,632,014. The General fund portion of the total amount of cash is \$16,443,521. The net increase in the balance compared to the previous month is as the result of increased income tax collection.
- Income tax collections for the current fiscal year vs prior fiscal year. Revenue is over \$1million greater at 6/30/2019 compared to 6/30/2018.
- Property tax collections as of 8/13/2019 show a total amount of City millages collected as \$11,079,397.09 vs \$12,559,699.81 billed, which is approximately 88%
- As of 6/30/2019, total appropriations in the Cemetery Fund (Fund 209) have exceeded its budget for FY 18/19. Currently, the fund is over budget by approximately \$60,000. This was due to necessary repairs and maintenance that were not budgeted. For financial statement purposes, we are planning on folding this fund into the General Government function within the General Fund.
- The Building Inspection Fund (Fund 249) is also over budget for FY18/19, however no action is needed since this fund is a non major fund and also has plenty of fund balance to cover the amount over budget (currently about \$18,000). As of 6/30/2019, revenue is exceeding expenditures by approximately \$486,000.

General Fund Balance review:

Fund balance as of 7-1-18	\$17,359,202.00
Phoenix Center Settlement Payment	(\$3,550,000.00)
Non-Spendable Fund Balance	(\$15,278.00)
Committed for Youth Center purchase	(\$3,200,000.00)
Net revenue over expenditures	(\$822,741.62)

- The Insurance Fund is currently negative as the police and fire VEBA hasn't been paid back yet.
- The Phoenix Center is a prepaid expense \$15,278.00

II. Requests from the Chair

- What or where are we on implementing the DPU unit for extra Sheriff's on the street? What would be the cost to move forward?

The Administration has not reached a conclusion on whether or not to fund the DPU. The proposal provided by the Sherriff's Office reflects:

Year 2019:

1 Patrol Sergeant at a contracted rate of \$150,805

4 Deputy II (no-fill) at a rate of \$132,996 for a total of \$531,984

Total: \$682,789

Year 2020:

6 Deputy II (no-fill) at a contracted rate of \$136,878

Total: \$821,268

- How will the funds from the medical marijuana application fees be placed in the budget? Will it be a separate line item that will apply to community benefits only?

In the budget adopted by Council in June, the revenue from Medical Marihuana fees is shown as 100k for this fiscal year. This money flows into the General Fund as a whole, account 101-000-478.001.

- As it relates to Fed Ex, is anything being done about the 1 million dollars for the residents for improvements passed by Council?

The Administration has limited visibility, but will discuss with DPW and other entities.

- What is the amount of donations received from Roadkill to the City this year?

The administration is able to present the Road Kill and Dream Cruise (Pontiac Power Week) events by raising money from sponsorships.

- A closed session will be requested regarding an update on the IRS retirement insurance.
- What can be done about the condition of the roads in the condo's off Golf Drive as the streets are in deplorable condition?

This was out of the scope of Finance and will be referred to DPW

- The request to make a full-time employee part-time at the Sheriff's department needs to be addressed.
- A request was made for a report as to the status of the Bloomfield Park Project, more specifically, \$2million dollars was to be allocated for each phase.

A report cannot be given as the Administration is short staffed.

*235 Wesson Street to be discussed in closed session. The issue of feasibility, the use of millage funds, capital improvements, a cost analysis of buying and selling the senior centers will have to be investigated.

Adjourned: 4:30 pm

#7

COMMUNICATION

MILLER CANFIELD

MEMORANDUM

TO: Garland S. Doyle, Interim Pontiac City Clerk
FROM: Matthew Neale, Esq.
RE: Revised Community Benefits Ordinance
DATE: August 12, 2019

As requested, the revised Community Benefits Ordinance, titled "Pontiac Provisioning Center Community Benefits Ordinance", is meant to assist the City Clerk in scoring and ranking provisioning center applications pursuant to City Ordinance 2357(B); by allowing developers to make pledges as part of their provisioning center application that identify community benefits to the City to help rectify negative aspects of their development. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

Pursuant to Section 9(f) of City Ordinance 2357(B), "[i]n its application assessment, evaluation, scoring, ranking, and deliberations related to permits to operate a provisioning center . . .", the City Clerk "shall assess, evaluate, score, and rank each application based upon a scoring and ranking procedure developed by the clerk consistent with the requirements, conditions, and provisions. . . ." of City Ordinance 2357(B) in certain specified categories.

Of those categories specified in such Section 9(f), certain of the categories relate to community benefits. If an applicant, as part of its application for a provisioning center permit, makes pledges of community benefits to the City of Pontiac, then, based on the City Clerk's assessment and evaluation of such benefits, such applicant will get points for such pledges. Such points will be used in the provisioning center scoring. However, before an applicant will receive a permit, the applicant must enter into a Community Benefits Agreement with the City incorporating such pledged benefits. The amount of points for different pledges will be based on the commitment, quality, duration, community support and amount of the pledged community benefits.

If an applicant breaches a Community Benefits Agreement with the City, pursuant to Section 15 of City Ordinance 2357(B) and other applicable Sections and laws, the City Clerk may revoke or suspend a provisioning center permit or not renew a provisioning center permit (subject to any notice and/or hearing rights of an applicant).

As compared to the prior proposed community benefits ordinance, the Pontiac Provisioning Center Community Benefits Ordinance is intended to be specifically used for the scoring and ranking of provisioning center applications under City Ordinance 2357(B). Any references to medical marijuana, Tier 1 or City Ordinance 2357(B) were thus removed from the prior proposed community benefits ordinance.

ORDINANCE NO. _____

THE CITY OF PONTIAC ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "PROVISIONING CENTER COMMUNITY BENEFITS AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Provisioning Center Community Benefits Ordinance".
- (b) This Ordinance shall allow developers of provisioning centers, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefits Agreements", that identify potential negative aspects of such developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects. The pledges of community benefits that would be incorporated into Community Benefits Agreements will be used in part to assist the City Clerk with the scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B).

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) Community Benefits Agreement: An agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) Developer: Any person, firm, partnership, company, corporation, cooperative, or any other entity (other than the City of Pontiac) that is a party to a Community Benefits Agreement.
- (c) Qualified Development: Persons or entities submitting an application for a provisioning center permit during the 21-day period for provisioning center applications pursuant to City Ordinance 2357(B).

Section 3. Community Benefits; Pledged Community Benefits

A community benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although community benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as community benefits:

- (a) Roads; Infrastructure; Road Repair; Potholes; Road Matching

- (b) Parks; Park Safety (cameras); Law Enforcement
- (c) High School Pool; Hawthorne Park (Water Park); Neighborhood Revitalization Plan
- (d) Job Training and Employment; Transitional Programs (previously incarcerated)
- (e) Library and Literacy; Health Initiative Education
- (f) Business Development Fund (to assist City of Pontiac residents with funding for businesses and with starting and growing businesses)

As part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk may consider those community benefits pledged to the City of Pontiac as part of such application. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

It is preferred; and the City Clerk may require, that applicants show that there is a reasonable amount of support in the community for an applicant's pledged community benefits. It is the applicant's responsibility to show community support for its pledged community benefits.

In using pledged community benefits as part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk will evaluate the commitment, quality, duration, community support and amount of the pledged community benefits. If an applicant does not pledge community benefits, such applicant will receive a zero (0) score in certain key segments of the provisioning center application scoring.

If an applicant has pledged community benefits as part of its provisioning center application, before receiving a provisioning center permit, such applicant must enter into a Community Benefits Agreement with the City incorporating such pledged community benefits. The negotiation and completion of such Community Benefits Agreements may occur after the 21-day submission period for provisioning center applications pursuant to City Ordinance 2357(B). The Mayor may negotiate such Community Benefits Agreements (incorporating the pledged community benefits therein) on behalf of the City of Pontiac. All final Community Benefits Agreements must be approved by the City Council to be effective.

Section 4: Community Benefits Agreement

The Community Benefits Agreement would be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement would set forth the community benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such community benefit.

Community Benefits Agreements shall be timely recorded on the deed for the real property applicable to the Qualified Development, and shall run with the land, on Qualified Developments for the duration of the Community Benefits Agreement.

The term of a Community Benefits Agreement shall be not less than the term of the permit to operate under City Ordinance 2357(B), including any extension or renewal thereof.

If a Developer is in breach or violation of a Community Benefits Agreement, such breach or violation shall constitute a breach of applicable law for purposes of City Ordinance 2357(B). If such breach or violation occurs, the City may exercise all rights and remedies against such Developer available under applicable law (subject to any notice and/or hearing rights of such Developer), including any rights and remedies pursuant to City Ordinance 2357(B) (including in relation to the suspension, revocation or renewal of a provisioning center permit), including Section 15 of City Ordinance 2357(B).

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Approval

All Community Benefits Agreements must be approved by the City Council to be effective.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk ("Exemption"). An Exemption requires approval of the City Council and may be approved or denied by the City Council in its sole discretion.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement for the prior year (or partial year) by January 1 of each year. Further, prior to any extension or renewal of a permit to operate under City Ordinance 2357(B), a Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement. Each report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Clerk finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement (including if discovered as part of the City Clerk's review of the Qualified Development and/or Developer for purposes of a permit renewal), it may send a written Notice of Breach of Community Benefits Agreement to the Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the City Clerk, after a hearing (as necessary), may suspend or terminate the Community Development Agreement.

If the Developer believes that the suspension or termination was made in error, the Developer may appeal such decision in accordance with its appeals rights under City Ordinance 2357(B).

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying City Ordinance 2357(B) provisioning center permit; subject to any permitted administrative, legislative or judicial appeal of that termination. Upon the exhaustion of any appeals through the City of Pontiac creating a final determination that the termination of the Community Benefits Agreement was proper, the City Ordinance 2357(B) provisioning center permit shall be permanently revoked, subject to any further statutory appeal process for such permit outside of the City of Pontiac.

Section 9. Severability.

This Ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this Ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this Ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed, as permitted by law.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

ORDINANCE NO. _____

THE CITY OF PONTIAC ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "COMMUNITY BENEFIT AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Community Benefit Ordinance".
- (b) This Ordinance shall require developers of certain types of developments, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefit Agreements", that identify potential negative aspects of developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects as a condition for development subsidies and other considerations by the City of Pontiac.

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) Community Benefit Agreement: An Agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) Developer: The person, firm, partnership, company, corporation, cooperative, or any other entity that is the recipient of a Development Subsidy.
- (c) Development Subsidies: Any economic incentives of value granted on a discretionary basis by the City of Pontiac to attract or retain a Qualified Development or jobs associated therewith; may include federal, state, or local economic incentives; and include but are not limited to economic incentives associated with, as amended: the Brownfield Redevelopment Financing Act, Commercial Development Act, Commercial Rehabilitation Act, Corridor Improvement Authority Act, Historical neighborhood Tax Increment Financing Act, Local Development Financing Act, Plant Rehabilitation and Industrial Development Districts Act, Principal Shopping Districts and Business Improvement Districts Act. Additionally, the lease or transfer of a city-owned building or property shall constitute a Development Subsidy.
- (d) Qualified Development: ~~Shall be classified as either a Tier 1 or Tier 2. Tier 1 Qualified Developments shall be those developments granted license to operate under City Ordinance 2357(B). Tier 2 Qualified Developments shall be those developments being~~

granted Development Subsidies by the City of Pontiac with a total economic incentive, as determined in the sole discretion of the City of Pontiac, of greater than \$50,000.00.

Section 3. Community Benefits

A Community Benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although Community Benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as Community Benefits, ~~by Tier of Qualified Development:~~

~~Tier 1: Infrastructure, Police and Fire Services, Job Training, Health Initiative Education, Parks~~

~~Tier 2: Designated Projects, Infrastructure, Police and Fire Services, Parks~~

Section 4. Community Benefits Agreement

The Community Benefits Agreement shall be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement shall set forth the Community Benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such Community Benefit.

Community Benefit Agreements shall be timely recorded on the deed, and shall run with the land, on Qualified Developments for the duration of the Community Benefit Agreement.

The term of a Community Benefit Agreement for a ~~Tier 1 Qualified Development~~ shall be not less than the term of its License to operate under City Ordinance 2357(B), including any extension or renewal thereof. ~~The term of a Community Benefit Agreement for a Tier 2 Qualified Development~~ shall be not less than the length of the Development Subsidy, including any extension or renewal thereof.

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Required for Every Qualified Development

All Qualified Developments are subject to a Community Benefit Agreement. All Qualified Developments must be approved by the Mayor and City Council, and such approval may only be subject to the execution of a valid Community Benefits Agreement with the Developer of that Qualified Development.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk. An Exemption requires approval of the Mayor and City Council.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefit Agreement for the prior year (or partial year) by January 1 of each year. The report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Department of Economic Development finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement, it shall send a written Notice of Breach of Community Benefits Agreement to the Qualified Development and its Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the Mayor may terminate the Agreement.

If the Qualified Development and/or Developer believe that the termination was made in error, it (they) may Appeal in writing to the City Council within thirty (30) days after the date the Notice of Breach of Community Benefits Agreement was sent. The City Council, by Resolution, shall only overturn a decision of the Mayor if it finds the decision was arbitrary or capricious. The determination of the City Council may only be reviewed by the Court of competent jurisdiction within the state of Michigan.

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying 2357(B) facility license for Tier 1 Qualified Developments; and the suspension of any economic incentives granted to a Tier 2 Qualified Development; pending the any such administrative, legislative, or judicial appeal of that termination. Upon the exhaustion of further appeals creating a final determination that the termination was proper, the 2357(B) facility license or economic incentive granted to a Tier 2 Qualified Development shall be permanently revoked, subject to any further statutory appeal process for those licenses or economic incentives.

Section 9. Severability.

This ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

#8

ORDINANCE

ORDINANCE NO. _____

THE CITY OF PONTIAC ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "COMMUNITY BENEFIT AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Community Benefit Ordinance".
- (b) This Ordinance shall require developers of certain types of developments, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefit Agreements", that identify potential negative aspects of developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects as a condition for development subsidies and other considerations by the City of Pontiac.

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) **Community Benefit Agreement:** An Agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) **Developer:** The person, firm, partnership, company, corporation, cooperative, or any other entity that is the recipient of a Development Subsidy.
- (c) **Development Subsidies:** Any economic incentives of value granted on a discretionary basis by the City of Pontiac to attract or retain a Qualified Development or jobs associated therewith; may include federal, state, or local economic incentives; and include but are not limited to economic incentives associated with, as amended: the Brownfield Redevelopment Financing Act, Commercial Development Act, Commercial Rehabilitation Act, Corridor Improvement Authority Act, Historical neighborhood Tax Increment Financing Act, Local Development Financing Act, Plant Rehabilitation and Industrial Development Districts Act, Principal Shopping Districts and Business Improvement Districts Act. Additionally, the lease or transfer of a city-owned building or property shall constitute a Development Subsidy.
- (d) **Qualified Development:** Shall be classified as either a Tier 1 or Tier 2. Tier 1 Qualified Developments shall be those developments granted license to operate under City Ordinance 2357(B). Tier 2 Qualified Developments shall be those developments being

granted Development Subsidies by the City of Pontiac with a total economic incentive, as determined in the sole discretion of the City of Pontiac, of greater than \$50,000.00.

Section 3. Community Benefits

A Community Benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although Community Benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as Community Benefits, by Tier of Qualified Development:

Tier 1: Infrastructure, Police and Fire Services, Job Training, Health Initiative Education, Parks

Tier 2: Designated Projects, Infrastructure, Police and Fire Services, Parks

Section 4. Community Benefits Agreement

The Community Benefits Agreement shall be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement shall set forth the Community Benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such Community Benefit.

Community Benefit Agreements shall be timely recorded on the deed, and shall run with the land, on Qualified Developments for the duration of the Community Benefit Agreement.

The term of a Community Benefit Agreement for a Tier 1 Qualified Development shall be not less than the term of its License to operate under City Ordinance 2357(B), including any extension or renewal thereof. The term of a Community Benefit Agreement for a Tier 2 Qualified Development shall be not less than the length of the Development Subsidy, including any extension or renewal thereof.

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Required for Every Qualified Development

All Qualified Developments are subject to a Community Benefit Agreement. All Qualified Developments must be approved by the Mayor and City Council, and such approval may only be subject to the execution of a valid Community Benefits Agreement with the Developer of that Qualified Development.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk. An Exemption requires approval of the Mayor and City Council.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefit Agreement for the prior year (or partial year) by January 1 of each year. The report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Department of Economic Development finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement, it shall send a written Notice of Breach of Community Benefits Agreement to the Qualified Development and its Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the Mayor may terminate the Agreement.

If the Qualified Development and/or Developer believe that the termination was made in error, it (they) may Appeal in writing to the City Council within thirty (30) days after the date the Notice of Breach of Community Benefits Agreement was sent. The City Council, by Resolution, shall only overturn a decision of the Mayor if it finds the decision was arbitrary or capricious. The determination of the City Council may only be reviewed by the Court of competent jurisdiction within the state of Michigan.

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying 2357(B) facility license for Tier 1 Qualified Developments; and the suspension of any economic incentives granted to a Tier 2 Qualified Development; pending the any such administrative, legislative, or judicial appeal of that termination. Upon the exhaustion of further appeals creating a final determination that the termination was proper, the 2357(B) facility license or economic incentive granted to a Tier 2 Qualified Development shall be permanently revoked, subject to any further statutory appeal process for those licenses or economic incentives.

Section 9. Severability.

This ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

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Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

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Garland Doyle, Interim City Clerk

#9

ORDINANCE

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- (b) This Ordinance shall require developers of certain types of developments, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefit Agreements", that identify potential negative aspects of developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects as a condition for development subsidies and other considerations by the City of Pontiac.

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- (a) Community Benefit Agreement: An Agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
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- (c) Development Subsidies: Any economic incentives of value granted on a discretionary basis by the City of Pontiac to attract or retain a Qualified Development or jobs associated therewith; may include federal, state, or local economic incentives; and include but are not limited to economic incentives associated with, as amended: the Brownfield Redevelopment Financing Act, Commercial Development Act, Commercial Rehabilitation Act, Corridor Improvement Authority Act, Historical neighborhood Tax Increment Financing Act, Local Development Financing Act, Plant Rehabilitation and Industrial Development Districts Act, Principal Shopping Districts and Business Improvement Districts Act. Additionally, the lease or transfer of a city-owned building or property shall constitute a Development Subsidy.
- (d) Qualified Development: those developments being granted Development Subsidies by the City of Pontiac with a total economic incentive, as determined in the sole discretion of the City of Pontiac, of greater than \$50,000.00.

Section 3. Community Benefits

A Community Benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although Community Benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as Community Benefits:

Designated Projects, Infrastructure, Police and Fire Services, Parks

Section 4. Community Benefits Agreement

The Community Benefits Agreement shall be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement shall set forth the Community Benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such Community Benefit.

Community Benefit Agreements shall be timely recorded on the deed, and shall run with the land, on Qualified Developments for the duration of the Community Benefit Agreement.

The term of a Community Benefit Agreement for a Qualified Development shall be not less than the length of the Development Subsidy, including any extension or renewal thereof.

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

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If the Qualified Development and/or Developer believe that the termination was made in error, it (they) may Appeal in writing to the City Council within thirty (30) days after the date the Notice of Breach of Community Benefits Agreement was sent. The City Council, by Resolution, shall only overturn a decision of the Mayor if it finds the decision was arbitrary or capricious. The determination of the City Council may only be reviewed by the Court of competent jurisdiction within the state of Michigan.

Termination of the Community Benefits Agreement through this process shall result in the suspension of any economic incentives granted to a Qualified Development; pending any administrative, legislative, or judicial appeal of that termination. Upon the exhaustion of further appeals creating a final determination that the termination was proper, the economic incentive granted to a Qualified Development shall be permanently revoked, subject to any further statutory appeal process for those licenses or economic incentives.

Section 9. Severability.

This ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

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Garland Doyle, Interim City Clerk

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Garland Doyle, Interim City Clerk

#10

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AN ORDINANCE TO AMEND CHAPTER 42, "COMMUNITY DEVELOPMENT", TO ADD ARTICLE VII, ENTITLED "PROVISIONING CENTER COMMUNITY BENEFITS AGREEMENTS".

Section 1. Short Title; Purpose.

- (a) This Ordinance shall be known and may be cited as the "Pontiac Provisioning Center Community Benefits Ordinance".
- (b) This Ordinance shall allow developers of provisioning centers, herein referred to as "Qualified Developments", to enter into agreements, herein referred to as "Community Benefits Agreements", that identify potential negative aspects of such developments and identify proportional community benefits to the City of Pontiac to rectify those negative aspects. The pledges of community benefits that would be incorporated into Community Benefits Agreements will be used in part to assist the City Clerk with the scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B).

Section 2. Definitions

As used in the Chapter 42, Article VII, the following words and phrases shall mean the following:

- (a) Community Benefits Agreement: An agreement between the City of Pontiac and Developer providing mutual consideration intended to rectify mutually acknowledged potential negative aspects associated with the proposed Qualified Development.
- (b) Developer: Any person, firm, partnership, company, corporation, cooperative, or any other entity (other than the City of Pontiac) that is a party to a Community Benefits Agreement.
- (c) Qualified Development: Persons or entities submitting an application for a provisioning center permit during the 21-day period for provisioning center applications pursuant to City Ordinance 2357(B).

Section 3. Community Benefits; Pledged Community Benefits

A community benefit agreed upon by the Developer of the Qualified Development and the City of Pontiac is a benefit conferred upon the community of the City of Pontiac intended to ameliorate the potential negative aspects imposed upon the City of Pontiac by the Qualified Development. Although community benefits may differ based upon the Qualified Development, and this is not intended to be an exhaustive list, the City of Pontiac recognizes amenities, benefits, or commitments for the following purposes as community benefits:

- (a) Roads; Infrastructure; Road Repair; Potholes; Road Matching

- (b) Parks; Park Safety (cameras); Law Enforcement
- (c) High School Pool; Hawthorne Park (Water Park); Neighborhood Revitalization Plan
- (d) Job Training and Employment; Transitional Programs (previously incarcerated)
- (e) Library and Literacy; Health Initiative Education
- (f) Business Development Fund (to assist City of Pontiac residents with funding for businesses and with starting and growing businesses)

As part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk may consider those community benefits pledged to the City of Pontiac as part of such application. Any such pledges would be incorporated into a binding Community Benefits Agreement with the City of Pontiac.

It is preferred, and the City Clerk may require, that applicants show that there is a reasonable amount of support in the community for an applicant's pledged community benefits. It is the applicant's responsibility to show community support for its pledged community benefits.

In using pledged community benefits as part of its scoring and ranking of provisioning center applications pursuant to City Ordinance 2357(B), the City Clerk will evaluate the commitment, quality, duration, community support and amount of the pledged community benefits. If an applicant does not pledge community benefits, such applicant will receive a zero (0) score in certain key segments of the provisioning center application scoring.

If an applicant has pledged community benefits as part of its provisioning center application, before receiving a provisioning center permit, such applicant must enter into a Community Benefits Agreement with the City incorporating such pledged community benefits. The negotiation and completion of such Community Benefits Agreements may occur after the 21-day submission period for provisioning center applications pursuant to City Ordinance 2357(B). The Mayor may negotiate such Community Benefits Agreements (incorporating the pledged community benefits therein) on behalf of the City of Pontiac. All final Community Benefits Agreements must be approved by the City Council to be effective.

Section 4. Community Benefits Agreement

The Community Benefits Agreement would be entered into between the City of Pontiac and the Developer of the Qualified Development.

The Community Benefits Agreement would set forth the community benefit proposed by the Developer of the Qualified Development and, if applicable, the interval of such community benefit.

Community Benefits Agreements shall be timely recorded on the deed for the real property applicable to the Qualified Development, and shall run with the land, on Qualified Developments for the duration of the Community Benefits Agreement.

The term of a Community Benefits Agreement shall be not less than the term of the permit to operate under City Ordinance 2357(B), including any extension or renewal thereof.

If a Developer is in breach or violation of a Community Benefits Agreement, such breach or violation shall constitute a breach of applicable law for purposes of City Ordinance 2357(B). If such breach or violation occurs, the City may exercise all rights and remedies against such Developer available under applicable law (subject to any notice and/or hearing rights of such Developer), including any rights and remedies pursuant to City Ordinance 2357(B) (including in relation to the suspension, revocation or renewal of a provisioning center permit), including Section 15 of City Ordinance 2357(B).

Community Benefits Agreements are not transferrable by the Developer without approval through a City Council Resolution.

Section 5. Community Benefits Agreement Approval

All Community Benefits Agreements must be approved by the City Council to be effective.

Section 6. Exemptions Application

If a Qualified Development and/or Developer believe they should be exempt from a Community Development Agreement, they may file an exemption application with the City Clerk ("Exemption"). An Exemption requires approval of the City Council and may be approved or denied by the City Council in its sole discretion.

Section 7. Annual Reporting and Compliance

A Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement for the prior year (or partial year) by January 1 of each year. Further, prior to any extension or renewal of a permit to operate under City Ordinance 2357(B), a Developer shall provide a comprehensive, audited report detailing compliance with obligations under its Community Benefits Agreement. Each report shall include backup documentation for all donations made or funds expended related to the Community Development Agreement.

Section 8. Breach of Community Benefits Agreement; Termination; Appeal

If the City Clerk finds a Qualified Development and/or its Developer to be in breach of its (their) Community Development Agreement (including if discovered as part of the City Clerk's review of the Qualified Development and/or Developer for purposes of a permit renewal), it may send a written Notice of Breach of Community Benefits Agreement to the Developer by certified mail. If the Breach of Community Benefits Agreement is not cured within fourteen (14) days after the date the Notice of Breach of Community Benefits Agreement was sent, the City Clerk, after a hearing (as necessary), may suspend or terminate the Community Development Agreement.

If the Developer believes that the suspension or termination was made in error, the Developer may appeal such decision in accordance with its appeals rights under City Ordinance 2357(B).

Termination of the Community Benefits Agreement through this process shall result in the suspension of the underlying City Ordinance 2357(B) provisioning center permit; subject to any permitted

administrative, legislative or judicial appeal of that termination. Upon the exhaustion of any appeals through the City of Pontiac creating a final determination that the termination of the Community Benefits Agreement was proper, the City Ordinance 2357(B) provisioning center permit shall be permanently revoked, subject to any further statutory appeal process for such permit outside of the City of Pontiac.

Section 9. Severability.

This Ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this Ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not effect, impair, or invalidate the remainder of this Ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

Section 10. Repealer.

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed, as permitted by law.

Section 11. Publication.

The Clerk shall publish this Ordinance in a newspaper of general circulation prior to its effective date.

Section 12. Effective Date.

This Ordinance shall be effective ten days after date of adoption.

I hereby certify this ordinance was brought for a first reading at a meeting of the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the _____ day of _____, 2019.

Garland Doyle, Interim City Clerk

#11

RESOLUTION

Pontiac City Council Resolution



WHEREAS, on July 2, 2019, the Pontiac City Council passed a resolution to authorize the Mayor to submit and execute the "KaBoom! Play Everywhere Challenge" grant agreement in the amount of \$56,500.00 for the Good Fun & Sound Abounds Downtown Project; and,

WHEREAS, Hidden River Park consists of parcel numbers 64-14-29-476018, 64-04-29-476-019, 64-14-29-476-031; and,

WHEREAS, Hidden River Park has not been designated as a "park," is not included in the City of Pontiac's Master Plan, Recreation Facilities, City Owned Parks and is not listed on the City of Pontiac's website; and,

WHEREAS, Michigan's Definition of "Public Playground Equipment" as defined in the "Playground Equipment Safety Act of 1997": Apparatus, including, but not limited to slides, climbers, seesaws, and swings; and,

WHEREAS, the objective of the donation grant from KaBOOM! is to introduce elements of play in unconventional spaces and acquire play and outdoor musical equipment for Hidden River Park; and,

WHEREAS, eligibility of the grant donation does not require the operation of a public playground or park.

NOW, THEREFORE BE IT RESOLVED that the Pontiac City Council hereby designates Hidden River Park as an entertainment space and not as a "park."

#12

RESOLUTION



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Mayor, Council President and City Council Members

FROM: Jane Bais-DiSessa, Deputy Mayor, at the request of
John V. Balint, City Engineer

DATE: August 8, 2019

RE: Easement 31 N. Saginaw

Piassa Property, LLC, has requested that the City grant easements for the building located at 31 N. Saginaw. The actual easement location (see attached exhibit) is on Lawrence Street and consists of an area adjacent to the building with dimensions approximately 5-feet by 11-feet. The request comes as Piassa Properties is requesting additional egress that existed in the past. There is an existing doorway that is partially below current grade requiring a stairwell to access. The easement is for the removal of the existing pavement at the face of the building and the replacement of the stairwell to the door.

The Engineering Division has reviewed and approved the attached documents prepared by Kem-Tec Surveyors and Engineers and does not see any concern with the granting of this easement. In addition, these easement documents have been reviewed and approved by the City's consulting engineer and by the City's attorney.

It is the recommendation of the Department of Public Works, Engineering Division that the attached easement be signed by the City.

WHEREAS, The City of Pontiac has reviewed the documents provided by the Piassa Properties, LLC, and;

WHEREAS, The Department of Public Works, Engineering Division finds that there are no concerns with the City granting the requested easement, and;

NOW, THEREFORE,
BE IT RESOLVED, The Pontiac City Council authorized the Mayor or Deputy Mayor to sign the subject easement.

JVB

attachments

EASEMENT

This Easement (the "Easement") is made this ____ day of _____, 2019, by PAISSA PROPERTY, LLC, a Michigan limited liability company, with an address of 31 N. Saginaw Street, Pontiac, Michigan 48342 ("Grantor") and the City of Pontiac, a Michigan municipal corporation, whose address is 47450 Woodward Avenue, Pontiac, Michigan 48342 ("Grantee").

Recitals:

- A. Grantor is the owner of a certain parcel of improved real property located in the City of Pontiac, Oakland County, State of Michigan, more particularly described on the attached Exhibit "A" (the "Grantor Property").
- B. Grantee has requested, in connection with Grantor's contemplated improvement of the Grantor Property, which includes the construction of a new sidewalk entrance along Lawrence Street (the southern side of the Grantor Property) to grant the Grantee a sidewalk and ingress/egress easement along that portion of the Grantor Property located adjacent to the new sidewalk entrance along Lawrence Street, which is more particularly depicted on the attached Exhibit "B", attached hereto and made a part hereof (the "Sidewalk Easement").

NOW, THEREFORE, in consideration of the premises and the covenants and promises described in this Easement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, Grantor grants as follows:

- 1. **Grant of Easement.** Grantor grants, creates and declares a perpetual, non-exclusive easement for the benefit of the Grantee in, on, over and across those areas of the Grantor Property depicted on Exhibit "B" for the purpose of pedestrian access to, from and between the Grantor Property, and the existing public sidewalk located immediately adjacent to the Grantor Property. The Easement granted shall be for the benefit of the general public for public pedestrian use.
- 2. **Manner of Work.** All construction and maintenance work performed by or on behalf of Grantor in or upon the Sidewalk Easement shall be performed in a good and workmanlike manner. Grantor, and its successors and assigns in interest, will be responsible for general repair and maintenance of the Sidewalk Easement. The sidewalk and entrance shall be constructed of concrete or other similar approved materials or other appropriate all-weather surface.
- 3. **Mortgage Subordination.** Any mortgage affecting any portion of any easement areas created by this Easement shall at all times be subject and subordinate to the terms of this Sidewalk Easement and any party foreclosing any such mortgage or acquiring title by deed in lieu of foreclosure shall acquire title subject to all of the terms and provisions of this Easement.
- 4. **Covenants Running with the Land.** The easements, covenants, conditions and promises described in this Easement shall be covenants running with the land and shall be binding upon and shall inure to the benefit of the successors and assigns of Grantor and any and all subsequent owners of the Grantor Property.
- 5. **Insurance.** The Grantor, and its successors and assigns in interest: (i) shall maintain such hazard insurance coverage as may be necessary to restore any damage to meet its obligations under this Easement; (ii) shall obtain commercial general liability insurance, including personal liability insurance coverage and contractual liability insurance with a combined single limit of liability of not less than \$1,000,000 for both bodily and personal injury or death and for property

damage arising out of any one occurrence; and (iii) covenants and agrees to defend and protect, indemnify and hold harmless the Grantee from and against all claims, including any action or proceedings brought on those claims and all costs, losses, expenses, and liability (including reasonable attorneys' fees and costs of litigation) arising from or as a result of the injury to or death of any person or damage to the property of any person or party which shall occur on the Sidewalk Easement.

6. **Eminent Domain.** No taking under the power of eminent domain and no deed or grant in connection with or in contemplation of the widening of any public roadway or right-of-way shall be deemed or construed to be a violation of any of the provisions of this instrument or any of the rights herein granted or conferred, or termination hereof, provided that in the event of a deed in lieu of condemnation which shall convey any portion of the easements declared hereunder, the party benefiting from such easements shall have first consented in writing thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Each party benefiting from such easements shall have the right to join in and defend any condemnation action which shall encompass any portion of the easements granted hereunder benefiting said party. This Easement shall remain in full force and effect with respect to those portions of the easement declared hereunder, which remain unaffected by such eminent domain proceeding or voluntary grant, unless the actual effect of such taking or grant is to nullify, undermine or unreasonably impede the express purposes of this Easement.

7. **Miscellaneous.**

A. This Easement embodies the entire agreement and understanding of the parties relating to its subject matter and supersedes all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

B. This Easement may not be amended or modified in any way except by an instrument in writing executed by Grantor, Grantee or their respective successors and assigns in interest.

C. Failure by any party to insist upon or enforce any of its respective rights shall not constitute a waiver of those rights. Either party may waive the benefit of any provision or condition for its benefit contained in this Easement. No oral modification hereof shall be binding upon the parties, and any modifications shall be in writing and signed by the parties.

D. Every obligation of this Easement shall run with the land and shall be binding upon the party making or assuming such obligation and such parties, successors and assigns and shall inure to the benefit of all other parties and their successors and assigns. Upon any sale or transfer, including any transfer by operation of law, the seller or transferor shall be relieved from all subsequent obligations and liabilities arising under this Easement, any transferee of any party shall automatically be deemed, by acceptance of the title to such parcel, or portion thereof, to have assumed all obligations under this Easement arising on or after the date of transfer, and to have agreed to execute any and all instruments and do anything and all things reasonably required to carry out the intention of its provisions; but nothing contained in this Easement shall be deemed to relieve the transferor of such parcel from its obligations which arose prior to such transfer.

E. Except as may be expressly provided to the contrary, each paragraph, part, term or provisions of this Easement shall be considered severable, and if for any reason any paragraph, part, term or provision herein is determined to be invalid or contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other paragraphs, parts, terms, or provisions of this Easement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid paragraphs, parts, terms or provisions shall not be deemed to be a part of this Easement.

F. This Easement shall be governed by and constructed under the laws of the State of Michigan. Any action brought to enforce or interpret this Easement shall be brought in a court of appropriate jurisdiction in Oakland County, Michigan. Should any provision of this Easement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a

party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Easement and that legal counsel was consulted by each party before the execution of this Easement.

G. Captions, titles to sections, and paragraph headings used are for convenience of reference and shall not be deemed to limit or alter any provision.

Grantor has executed this Easement as of the day and year first above written.

GRANTOR:

PAISSA PROPERTY, LLC,
a Michigan limited liability company

By: _____
Name: Matthew Russell
Its: Manager

STATE OF MICHIGAN
OAKLAND COUNTY

Signed and sworn to before me by Matthew Russell, Manager, of PAISSA PROPERTY, LLC, a Michigan limited liability company on behalf of said company in _____ County, Michigan, on _____, 2019.

Notary public, State of Michigan, County of _____.
My commission expires _____.
Acting in the County of _____.

Prepared by and when recorded return to:
C. Michael Snyder (P65341)
Michael Snyder, P.C.
6689 Orchard Lake Road #166
West Bloomfield, MI 48322
248.268.4300

EXHIBIT "A"

Property Description

Property situated in the City of Pontiac, County of Oakland, State of Michigan, described as follows:

The South 22 feet of Lot 90 of ORIGINAL PLAT OF THE CITY OF PONTIAC, according to the plat thereof recorded in Liber 1 of Plats, Page 1 of Oakland County Records.

Commonly known as: 31 N. Saginaw Street, Pontiac, MI 48342

TAX ID # 64-14-29-433-015

EXHIBIT "B"

(NEW CONTENTS OF EXHIBIT REQUIRED HERE SHOWING DETAIL OF PROPOSED
NEW ENTRANCE ON LAWRENCE STREET)

EXHIBIT

PROPERTY DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE CITY OF PONTIAC, COUNTY OF OAKLAND, STATE OF MICHIGAN, BEING DESCRIBED AS:

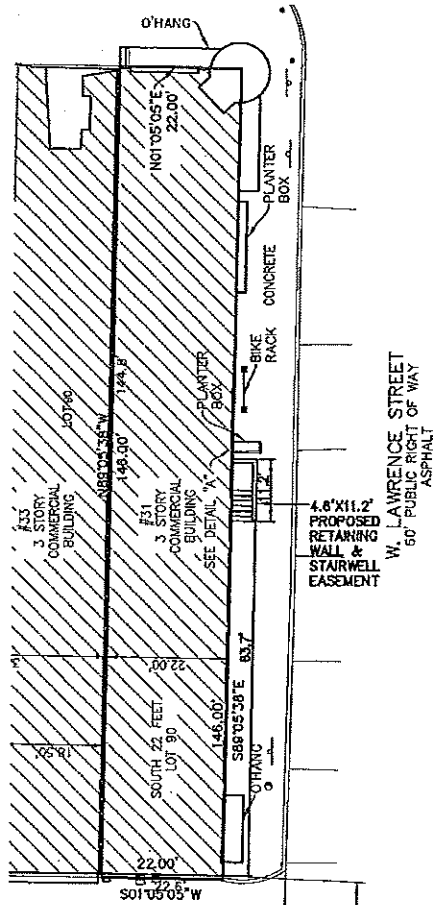
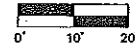
THE SOUTH 22 FEET OF LOT 90 OF ORIGINAL PLAT OF THE CITY OF PONTIAC, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 1 OF PLATS, PAGE 1 OF OAKLAND COUNTY RECORDS.

EASEMENT DESCRIPTION:

TBD



SCALE: 1"=20'



KEM-TEC

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www.kemtecagroupofcompanies.com

CERTIFIED TO: PAISSA PROPERTY/CYNERGE	
FIELD SURVEY: KB CK	DATE: MAY 08, 2019
DRAWN BY: JDM	SHEET: 1 OF 1
SCALE: 1" = 20'	JOB NO.: 17-00474

#13 and #14
RESOLUTIONS



CITY OF PONTIAC OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Mayor, Council President and City Council Members

FROM: Jane Bais-DiSessa, Deputy Mayor, at the request of
John V. Balint, DPW Director/City Engineer

DATE: August 8, 2019

RE: MDOT Local Pavement Warranty Program

In 2015 the State Legislature created a requirement that each local road agency in Michigan adopt a Local Pavement Warranty Program. This Statewide program was developed over the past 30 months by the Local Agency Pavement Warranty Task Force which was made up of representatives of the Michigan Municipal League, County Road Association, MDOT, Federal Highway Administration –Michigan, Michigan Local Technical Assistance Program (LTAP), municipal road agencies, legal counsels and industry representatives. The resulting Road Warranty Policy is required to be adopted by all local road agencies before September 18, 2019. This policy must be adopted as two separate resolutions:

1. **Resolution to adopt a Local Pavement Warranty Program** – This is to adopt the warranty program and its accompanying documents.
2. **Resolution to Implement a local Pavement Warranty Program** – This defines the agency's intent to apply the warranty program consistent with the local agency pavement warranty guidelines and report annually on each project that includes \$2 million or more in paving-related components and includes and state or federal funds.

After review by the Department of Public Works, we find these resolution acceptable and plan to move forward with requiring a warranty for all future projects as required by the program.

RESOLUTION TO ADOPT A LOCAL PAVEMENT WARRANTY PROGRAM

WHEREAS, the Michigan Legislature (MCL 247.663) requires each city or village to adopt a Local Agency Pavement Warranty Program that was approved by the Michigan Department of Transportation in 2018;

WHEREAS, the Michigan Local Agency Pavement Warranty Program was developed by the Local Agency Pavement Warranty Task Force for use by all 533 cities and villages in the format approved by the Michigan Department of Transportation in 2018;

WHEREAS, the Michigan Department of Transportation has reviewed and approved the Michigan Local Agency Pavement Warranty Program consisting of Special Provisions (Boilerplate, Concrete, HMA, Location, Pass-Through Warranty Bond); a Warranty Bond Form and Contract Form; and Guidelines for Local Agency Pavement Warranty Programs; NOW THEREFORE BE IT RESOLVED, the City of Pontiac hereby adopts the Michigan Local Agency Pavement Warranty Program and accompanying documents in accordance to the requirements of MCL 247.663;

BE IT FURTHER RESOLVED, this resolution is made a part of the minutes of Pontiac City Council meeting on (date) .

Approved on (date) by:

(Signatures and names of city/village officials)

RESOLUTION TO IMPLEMENT A LOCAL PAVEMENT WARRANTY PROGRAM

WHEREAS, The Michigan Legislature created a requirement (MCL 247.663) as part of the Transportation Funding Package of 2015 that requires each city and village to adopt a Local Agency Pavement Warranty Program that was approved by the Michigan Department of Transportation in 2018;

WHEREAS, the City of Pontiac adopted the Michigan Local Agency Pavement Warranty Program on __ (date) __;

WHEREAS, the City of Pontiac agrees to consider a local pavement warranty on each project that includes \$2 million or more in paving-related items *and* includes any state or federal funds;

WHEREAS, the Local Agency Pavement Warranty Program law requires each city and village to report annually on each project that includes \$2 million or more in paving-related items *and* includes any state or federal funds, whether or not a warranty was utilized in the project;

WHEREAS, the City of Pontiac agrees to implement the Michigan Local Agency Pavement Warranty Program consistent with the Guidelines for Local Agency Pavement Warranty Program document that was approved by the Michigan Department of Transportation in 2018; and which City of Pontiac adopted Implementation Policy defines the City of Pontiac's intent of its pavement warranty program;

NOW THEREFORE BE IT RESOLVED, the City of Pontiac hereby agrees to implement the Local Agency Pavement Warranty Program and annually report in accordance with the law.

GUIDELINES FOR LOCAL AGENCY PAVEMENT WARRANTY PROGRAM

By
CRA Engineering Committee
Local Agency Pavement Warranty Task Force

Revised 8-13-2018

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PREFACE- Intent of the Local Agency Warranty Program

The Legislature (P.A. 175 of 2015) requires each local road agency to adopt a Local Pavement Warranty Program acceptable to the Michigan Department of Transportation. Warranties have the potential to improve the quality of road projects, benefitting the drivers, taxpayers and road agencies of Michigan

The intent of the Local Agency Pavement Warranty Program is to provide a warranty program that all local agencies can use for all hot mix asphalt and plain jointed concrete paving projects on public roads and streets. This pavement warranty program was created by the Local Agency Pavement Warranty Task Force, to establish a common pavement warranty program for all local agencies in Michigan. The goals of this Local Agency Pavement Warranty program is to standardize the review, to provide oversight of pavement warranty projects, and to make this program more transparent and uniform for private sector contractors.

This Local Agency Pavement Warranty Program is available for all local road agencies if they choose to use it. Local road agencies vary dramatically in size and sophistication; therefore the Local Road Warranty Task Force developed a warranty program to address the capabilities of the rural, the mid-sized urban and the large urban agencies. This approach provides a warranty program that meets the intent of Public Act 175 of 2015 (MCL 247.662 and 247.663), and provides all local road agencies with a pavement warranty program that provides value to the public.

The Local Road Warranty Task Force recognizes there may be substantial benefits and public confidence resulting from a comprehensive pavement warranty program. However, the existing pavement structure, drainage and planned improvements for each project will need to be evaluated on an individual basis to critically assess a justification or basis for a pavement warranty. Road agencies should anticipate increased project costs related to higher bid prices and costs for the warranty administration such as: pavement monitoring, defect documentation, official notifications, joint field inspections; defect remediation and dispute resolution.

The intent of this GUIDELINES FOR LOCAL AGENCY PAVEMENT WARRANTY PROGRAM, is to provide an overview and guidance on implementing a pavement warranty project. This guideline is intended for local agency use and it not intended to be a contract document.

GUIDELINES FOR LOCAL AGENCY PAVEMENT WARRANTY PROGRAM

Pavement Warranty Reporting and General Warranty Project Selection

According to PA 175 of 2015, all local road agencies must submit an annual report to the state for all projects where the pavement-related bid items exceeded \$ 2 million, regardless of whether or not the agency included a pavement warranty on the project. Each local road agency must submit and maintain its records to comply with the reporting requirements included in Appendix E.

The Task Force determined that the Legislature's intent for local pavement warranties is to provide assurances to elected officials and taxpayers in the use of the new funds arriving for road and bridge infrastructure. Assurances which include that local road projects would be held to a higher standard in the future.

At the same time, there are logical explanations why a local road agency may choose to not require a warranty such as unjustifiably higher costs for a warranted project that may or may not be affordable to the community and may or may not be justified by the scope of the project; recognition of a limit to the contractor's ability to bond for every project; some projects are simple preservation or resurfacing over an existing imperfect road base wherein the contractor cannot control such pre-existing conditions; and many other engineering factors that indicate a pavement warranty would not serve the taxpayer's best interests. Whether or not a warranty is selected on a project with \$2 million in pavement related items, this must be reported to the Legislature on an annual, state fiscal year basis.

The Legislature had the wisdom to specify that warranties would be left to the discretion and justification of the local road agency and its road engineering expertise. Agencies can waive a pavement warranty with a written justification. The agency's written justification identifies reasons such as project appropriateness, scope and type of project improvements, why this is in the best interest of the local agency, project cost justification, and effectiveness of the warranty provisions. It is highly recommended for all local road agencies with paving projects where the engineer's opinion of cost exceeds \$ 1.8 million in pavement related items that serious consideration should be given to include the pavement warranty special provisions in the project proposal prior to advertisement.

The Task Force does not believe the Legislature intended every local new construction, reconstruction, rehabilitation, and overlay road project to be warranted, and thus included the \$2 million threshold. Because pavement is the road component most likely to fail – and the area most aggravating to the motoring public – the Task Force believed the Local Pavement Warranty Program was intended to focus on pavement-related items. The Task Force has relied on customary and basic engineering principles in defining pavement-related items that are recommended for consideration of a warranty. As a result of the Local Agency Warranty Task Force believes the Michigan Legislature intended a local road agency to use its best judgment in requiring a warranty, consistent with the scope of the intended project and the ability to enforce it.

This Local Agency Pavement Warranty Program considers the vast array of project types and sizes. Local road agency projects often involve short stretches of pavement resurfacing to address a surface condition or safety concern. These types of projects are accomplished with very limited budgets, often with funding from non-MTF sources. In addition, often these types of projects do not address the subgrade, existing aggregate base or drainage systems; which all are major factors in determining the longevity of a pavement surface. If the road segment may

be subjected to a significant amount of overloads (higher than average daily truck counts and/or heavier than normal axle loading) during the anticipated warranty term, the road may not be a good candidate for pavement warranties. Therefore, the Local Agency Pavement Warranty Program is recommended for road segments designated as "all-season road" which are designed for year-round normal loading.

While the law indicates where possible a pavement warranty shall be secure when the paving project exceeds \$2 million, the Task Force recognizes project bids are often 10 percent over the engineer's opinion of cost, and that a warranty requirement cannot be retroactively applied to a road project after the bids are opened. Thus, the Task Force has recommended the more conservative \$1.8 million engineer's opinion of cost for pavement related items, as the point when the local agency decides if the warranty special provisions are included in the bid documents, rather than the \$2 million stated in the law.

The Task Force believes the Michigan Legislature was speaking in the context of new Michigan Transportation Funds for roads, which are exclusively state revenue sources, when it included the Local Agency Pavement Warranty Program alongside the new funding legislation in the 2015 Transportation Package. It also seems clear the Legislature was speaking not just to the new transportation funds, but also to the other road funds under its control, which includes the federal funds flowing through MDOT to the local road agencies.

The Local Agency Pavement Warranty Program also recognizes that if the only source of revenue for a local road agency paving or reconstruction projects is entirely locally derived revenue (non- Act 51 or Federal Funds) such as local general fund, millage revenue, special assessment districts or other locally raised revenue; then these projects will not be subject to the Local Agency Pavement Warranty Program reporting requirements.

It's important to note that this Local Agency Pavement Warranty Program may also be used by that local road agency on any paving project regardless if the \$2 million dollar threshold for pavement related items has been reached or not. This approach ensures that Local Pavement Warranties can be used on any project with any funding source, including Michigan Transportation Funds, and can utilize the same requirements to provide greater understanding and transparency to contractors, stakeholders and the public.

Warranty Contract Process

For those construction projects advertised and let through the MDOT Local Agency Programs, the construction contract is between the prime contractor and MDOT. The prime contractors' surety company names MDOT as the obligee in the performance bond in the original contract. For Local Agency Pavement Warranty projects, an additional warranty contract and pavement warranty bond will be required prior to award, see Appendix D. The bid proposal shall include a contract consistent with the model contract and bond form shown in Appendix D. These documents will serve as the contract and warranty bond between the local road agency and the paving contractor for the warranty work. The warranty bond will be provided by the paving contractor in the name of the local road agency.

The MDOT Local Agency Agreement will reference the local road agency's responsibility to administer the warranty portion of the contract. Upon the acceptance of the construction work, the prime contractor's contract and performance bond with MDOT will be released and no longer in effect. At this point the warranty contract and warranty bond are triggered to begin the new contract for the warranted work during the warranty term.

The local road agency will be solely responsible for administering the warranty contract, inspection of warranted work during the warranty period, approving remediation work and seeking resolution through the warranty bond if the contractor is unresponsive in performing corrective work and declaring acceptance of all warranted / corrective work at the end of the warranty period.

General Guidelines of Local Road Agency Warranties

These General Guidelines are recommended for all local road agencies administering pavement warranties for public road and street construction contracts. The responsibility and authority for administering pavement warranties rest with the road owner and/or the local road agency that conducted the construction administration phase of the project.

To determine the pavement-related cost for a hot mixed asphalt pavement warranty project, the Local Agency is required to prepare an opinion of cost for all of the pavement-related items which include: the pavement, curb, shoulders, aggregate base, subbase and underdrain pay items. To determine the pavement-related cost for concrete pavements, the local road agency engineer is required to prepare an opinion of cost for all of the pavement-related items which include: pavement, curb, shoulders, joint sealing, dowel bars, load transfer devices, aggregate base, subbase and underdrain. If the total estimated cost of these pavement-related items exceeds \$1.8 million in the opinion of the Engineer, the local road agency should review the existing pavement variables, stated in the "Pavement Warranty Reporting and General Warranty Project Selection" section of this document, to determine if the pavement warranty special provisions should be included in the bid documents.

The contractor is responsible for correcting defects attributable to elements within the contractor's control. Each warranty specification includes condition parameters and distress thresholds to provide a basis for evaluating the warranted work. Each distress parameter includes threshold limits that, if exceeded during the warranty period, would trigger notifying the contractor to participate in a joint field investigation. Depending on the outcome of the investigation the contractor may be required to prepare a remediation plan to correct distresses that are attributable to its materials and/or workmanship or there may be a call for further investigation. If the agency and the contractor cannot agree, either side can call for a Conflict Resolution Team to resolve the dispute as described in the Local Road Agency Special Provision for Hot Mix Asphalt and Concrete Pavement Warranty.

Once a remediation plan is agreed-to by the local road agency and the contractor, the corrective action shall be performed. The corrective actions and/or repairs shall be performed to correct deficiencies in the warranted work in order to achieve acceptance at the end of the warranty period. If the contractor fails to perform the remediation work within specified timeframes, the local road agency shall notify the surety company to perform the work. Further, if a defect is declared as an imminent safety problem by the agency, the local agency may complete the work and seek reimbursement from the contractor or submit a claim against the warranty bond.

All required corrective action must be performed by the contractor at no cost to the owner. The condition parameter thresholds and warranty requirements may vary depending on the date the specification was developed; type of warranty; and the application to the construction work. It is important, therefore, to refer to the specific warranty special provision in the contract when administering warranties.

The warranty administration phase should follow the documentation procedures outlined in Appendix A, B, C, D and E of these guidelines. The warranty administration can be performed by qualified local agency staff members or under a consultant service contract.

Warranty Documents

The Local Agency Pavement Warranty consists of the warranty contract and warranty bond as well as the appropriate special provisions:

- Local Road Agency Special Provision for Hot Mix Asphalt and Concrete Pavement Warranty
- Local Road Agency Special Provision for Warranty Work Requirements for Hot Mix Asphalt Pavement
- Local Road Agency Special Provision for Warranty Work Requirements for Jointed Plain Concrete Pavement
- Local Road Agency Special Provision for Pavement Warranty Information

The Local Road Agency Special Provision for Hot Mix Asphalt and Concrete Pavement Warranty establishes the common terms and definitions applied to pavement projects requiring a warranty. The Local Road Agency Special Provision for Warranty Work Requirements for Hot Mix Asphalt Pavements warrants the Local Road Agency against specific defects in HMA pavements. The Local Road Agency Special Provision for Warranty Work Requirements for Jointed Plain Concrete Pavement warrants the Local Road Agency against specific defects in concrete pavements. Local Road Agency Special Provision for Pavement Warranty Information provides the beginning and ending locations for warranted work and the applicable warranty work requirements special provision.

Under the Local Agency Pavement Warranty special provisions the Prime Contractor is responsible for correcting defects in the pavement caused by elements within the contractor's control (i.e., the materials supplied, the workmanship, etc.), during the warranty period. The Pavement Warranty Contract Provisions and Warranty Bond may pass through to subcontractors, and with this the responsibility to correct warranty defects, at the direction of the Prime Contractor and upon written notice to the agency prior to the start of the work.

The contractor assumes no responsibility for defects that are design related unless the paving contract is design-build. When a defect is attributable to the materials and/or workmanship and/or the design, the responsibility for correcting the defect (or defects) will be shared by the agency and the contractor. The contractor is responsible for the percentage of fault attributable to the workmanship and/or materials, and the agency is responsible for the percentage of fault attributable to the design. Note: The agency may elect to require the contractor to provide the pavement design(s) in the contract documents and specifications. In this case, the Contractor shall also be responsible for the percentage of fault attributable to the pavement design.

Warranty Process

The process flow charts as shown in Appendix A describe the steps involved in the warranty administration process. The warranty term begins with the acceptance of the warranted work during construction of the project. Warranty Administration involves periodic condition inspections of the mainline pavement areas throughout the warranty term; joint field inspections; documentation of findings, official notifications; joint determination of defects; initiation of corrective action, inspection & documentation of the corrective action taken, filing those inspection reports as necessary, and if necessary a conflict resolution process. If at any time, a safety issue or significant defect is observed or reported, prior to a scheduled inspection, an interim inspection will be initiated by the agency. If emergency repairs are determined to be necessary the agency can perform these repairs without altering the contractor's responsibilities under the warranty contract.

A joint field review between the local road agency and the warranty contractor may be held to verify and confirm of findings documented during the various inspections. MDOT should be included in any official communication dealing with the warranty if the construction project had MDOT oversight. The findings of the final inspection at the end of the warranty term are distributed to the owner, (and MDOT if construction had MDOT oversight), the warranty contractor and the Surety Company.

The appeal process, when needed, involves assembling a conflict resolution team (CRT) to conduct investigations as needed to determine distress cause & effect and establish concurrence between the local agency and the warranty contractor regarding warranty compliance issues. More on the CRT can be found in the section j, Correction of Defects of the Local Road Agency Special Provision for Hot Mix Asphalt and Concrete Pavement Warranty.

The final step of the process, after the project or warranty work has been deemed acceptable is closing out the warranty project through notification of the contractor, the bonding company and Local agency's Finance and /or Administration Division.

Rights and Responsibilities of the Local Agency

The agency administering the project should inform the appropriate local road agency maintenance staff about sections of roadway incorporated in a warranty contract. The local road agency has the right to perform, or have performed, routine and emergency reactive maintenance during the warranty period. Major planned maintenance projects conducted during a warranty period need to be evaluated in terms of possible impact to the ongoing warranty coverage.

If corrective work is required to bring the project back into compliance with the requirements found in the warranty special provisions; the local agency in charge of the construction project must approve the schedule, materials and methods of construction repair. If the contractor is unable to comply with this provision, or fails to comply with it to the local agency's satisfaction, the local agency reserves the right to arrange for the work to be completed at the contractor's expense. If this action by the local agency is required, it will in no way relieve the contractor from meeting the warranty requirements stated in the project documents.

The rights and responsibilities are further detailed in Section e, Rights and Responsibilities of the Agency in the Local Agency Special Provision for Hot Mix Asphalt and Concrete Pavement Warranty.

Rights and Responsibilities of the Contractor

The contractor must provide a written work plan for any necessary corrective warranty work. A request for a work permit must be submitted through the local road agency's permit process and work should be coordinated with the construction inspection agency if different from the local agency issuing the permit. All corrective warranty work should be completed within the warranty term. If scheduling conflicts necessitate corrective work being completed outside of the warranty term, the local road agency shall be notified as soon as the contractor is aware of the conflict.

The rights and responsibilities of the contractor are further detailed in Section f. Rights and Responsibilities of the Contractor in the Local Agency Special Provision for Hot Mix asphalt and Concrete Pavement Warranty.

Supplemental Lien Bonds and Liability Insurance

In addition to the warranty bond that is in place, if corrective work is necessary the contractor must furnish supplemental lien bond to the local agency covering the corrective work. The Engineer is responsible for estimating the amount of the supplemental lien bond required. The amount should be approximately equal to the dollar amount of the corrective work. The contractor must also have liability insurance in place prior to performing corrective work during the warranty period. The contractor should not be allowed on-site to perform corrective work during the warranty period until the supplemental lien bond is in place and the proper insurances verified. Depending on the nature and scope of the corrective work, the local agency may waive this supplemental lien bond, but not the liability insurance.

Warranty Inspections

Warranty inspections are limited to only mainline pavement areas. There are two types of inspections conducted during the warranty period. The cursory inspection is a simplified inspection to quickly identify segments in the project that may have distresses that exceed threshold values. This cursory inspection normally does not require a lane closure and is conducted from the roadway shoulder estimating distress lengths and widths. The detailed inspection requires direct measuring and reporting of all observed distress in each segment. Traffic control may be required to complete the detailed inspection.

The minimum inspection frequency for the various warranty provisions are specified in the applicable warranty inspection guidelines, see Appendix B. The minimum number of inspections is dependent upon the warranty duration. The local road agency may elect to perform additional inspections over & above the recommended minimum interim inspections. The suggested time frames in the inspection guidelines allow local road agencies to notify the contractor regarding warranty compliance. Interim inspections may be delayed if weather makes it difficult to inspect the road or creates an unsafe condition. Final inspections shall be completed in a timely manner to ensure that there is enough time to document any thresholds that exceed the condition thresholds and notify the contractor prior to the expiration of the warranty.

The designation of lanes during the warranty inspection shall be detailed adequately so that it is clear to all involved in the warranty process which lane is being referenced. If necessary, a sketch should be included. ~~It is important to use the same lane numbering designation for all~~ inspections conducted throughout the warranty period.

If defects are found in any inspection, they should be carefully and accurately documented, even if the severity or number does not meet the threshold to require corrective work. These notes shall be kept in the inspection files and reviewed prior to all future inspections of the work. The inspectors of the work should pay specific attention to areas previously noted, record those defects, and list any changes in those defects differing from the last inspection.

Correction of Defects

If inspections during the warranty term show a defect has exceeded the allowable threshold as defined in either the Hot Mixed Asphalt or Concrete Warranty specification, the contractor shall be notified of the finding. The agency should call for a joint field investigation to determine the cause of the defect, and to discuss the best possible remediation of the problem. If additional forensic investigation is desired, the scope of the investigation, party or consultant to conduct

the investigation, and the cost split shall be agreed to by the engineer and contractor prior to scheduling the investigation.

If the contractor and engineer are in agreement, the Engineer shall send notice to contractor in writing the defect(s), location(s), recommended remediation and a request for a schedule to complete the work. The contractor will reply back to the Engineer, copying the local agency (and MDOT if MDOT had original construction oversight) with a schedule to complete the work. The local agency will issue a permit to the contractor to complete the warranty work according to the Local Agency's Right-of-way permit policy. The contractor will complete the work under the inspection of the Engineer.

If the contractor and engineer disagree, then a Conflict Resolution Team (CRT) may be convened. The CRT will be made of:

- One (1) member selected, and compensated by the agency.
- One (1) member selected and compensated by the contractor.
- One (1) member mutually selected by the Agency and the contractor.
Compensation for the third party member will be equally shared by the agency and the contractor.

At least two members of the CRT must vote in favor of a motion to make a decision. If the CRT decides to conduct a forensic investigation, the CRT will determine the scope of work and select the party to conduct the investigation. All costs related to the forensic investigation will be shared proportionately between the contractor and the agency based on the determined cause of the warranty defect condition.

Emergency Repairs

When the agency determines that emergency repairs of the warranted work are necessary for public safety, the agency or its agent may take immediate and sufficient repair action to address the imminent danger and to safeguard the traveling public. Prior to emergency repairs of warranted work, the agency will document the basis for the emergency action. In addition, the agency will preserve all documentation of the defective condition, including failed materials samples if applicable.

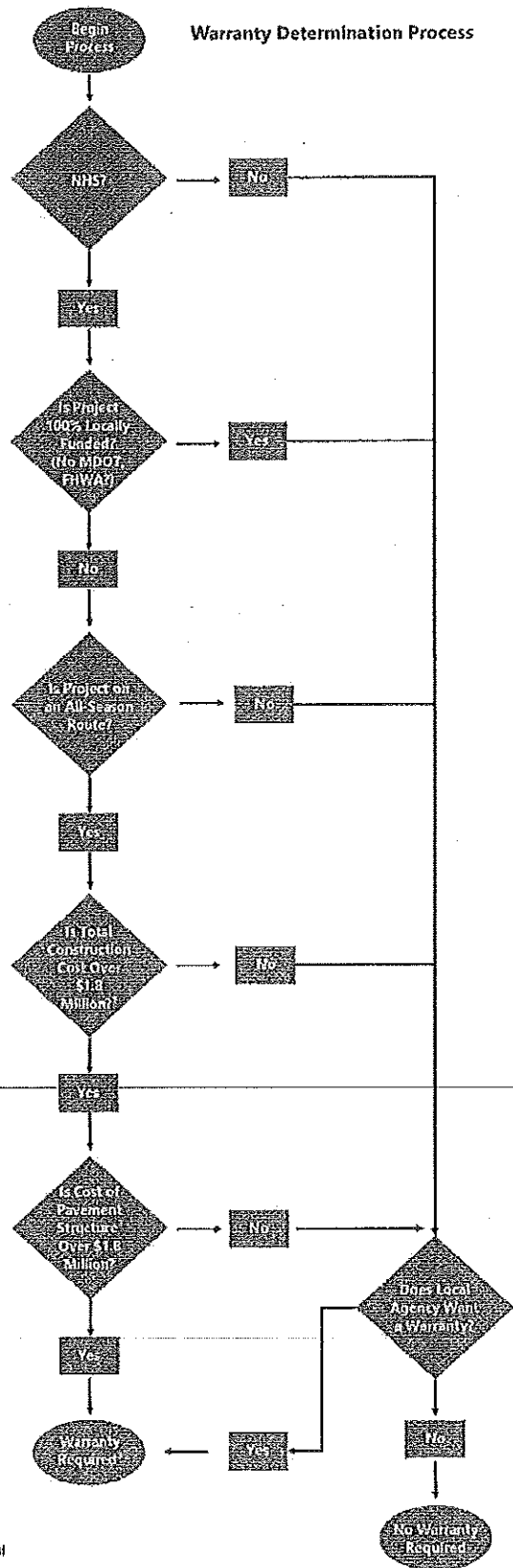
Once the imminent danger to the public has been addressed, the local road agency shall notify the contractor to explain the situation, identify the work temporarily done by the agency, and to what further actions need to happen to return the warranted work and pavement to threshold compliance. A joint inspection may be called to investigate the situation.

The emergency repairs of warranted work by the contractor must be authorized by the agency's engineer.

Should the contractor be unable to perform the emergency repair to the agency's satisfaction and/or within the time frame required by the agency, the agency will perform, or have performed any emergency repairs deemed necessary. Any such emergency repairs undertaken will not relieve the contractor from meeting the warranty requirements. Any costs associated with the emergency repairs will be paid by the contractor when due to a cause from defective materials and/or workmanship.

APPENDIX A

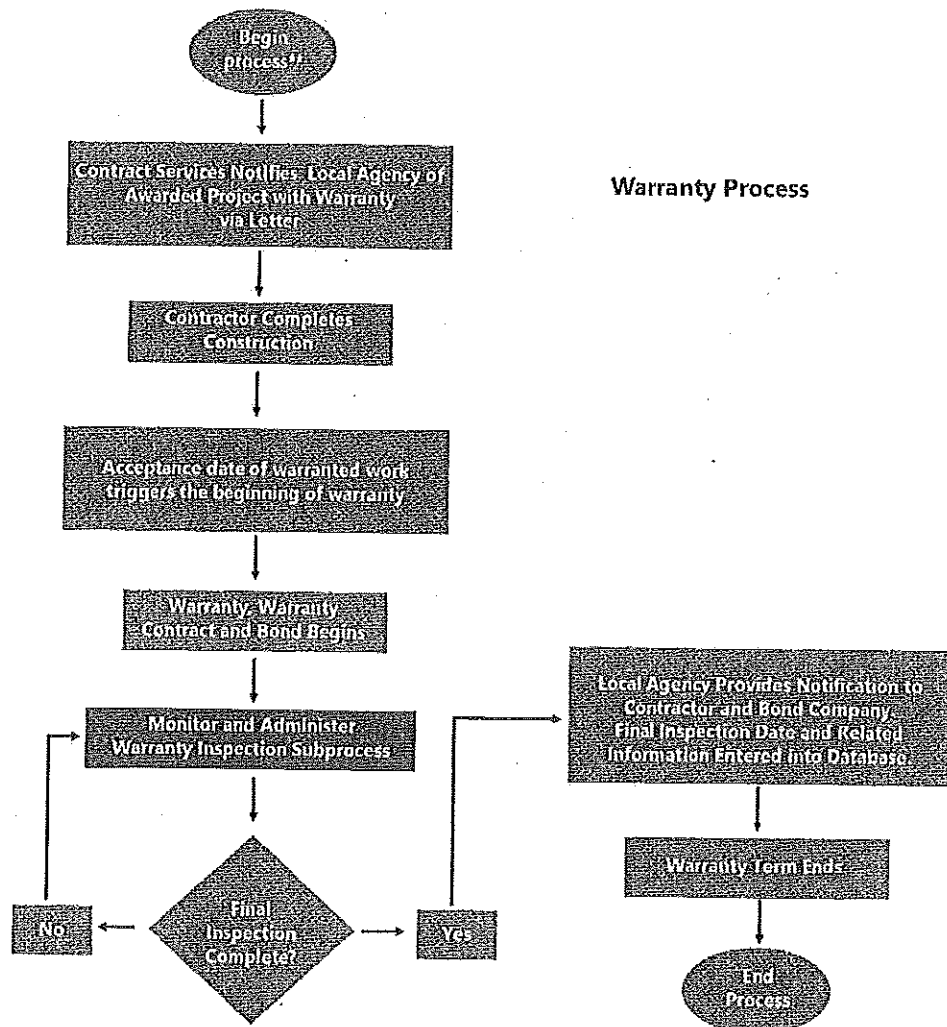
Flow Charts



¹Use \$1.8 million as cost to account for bid variability.

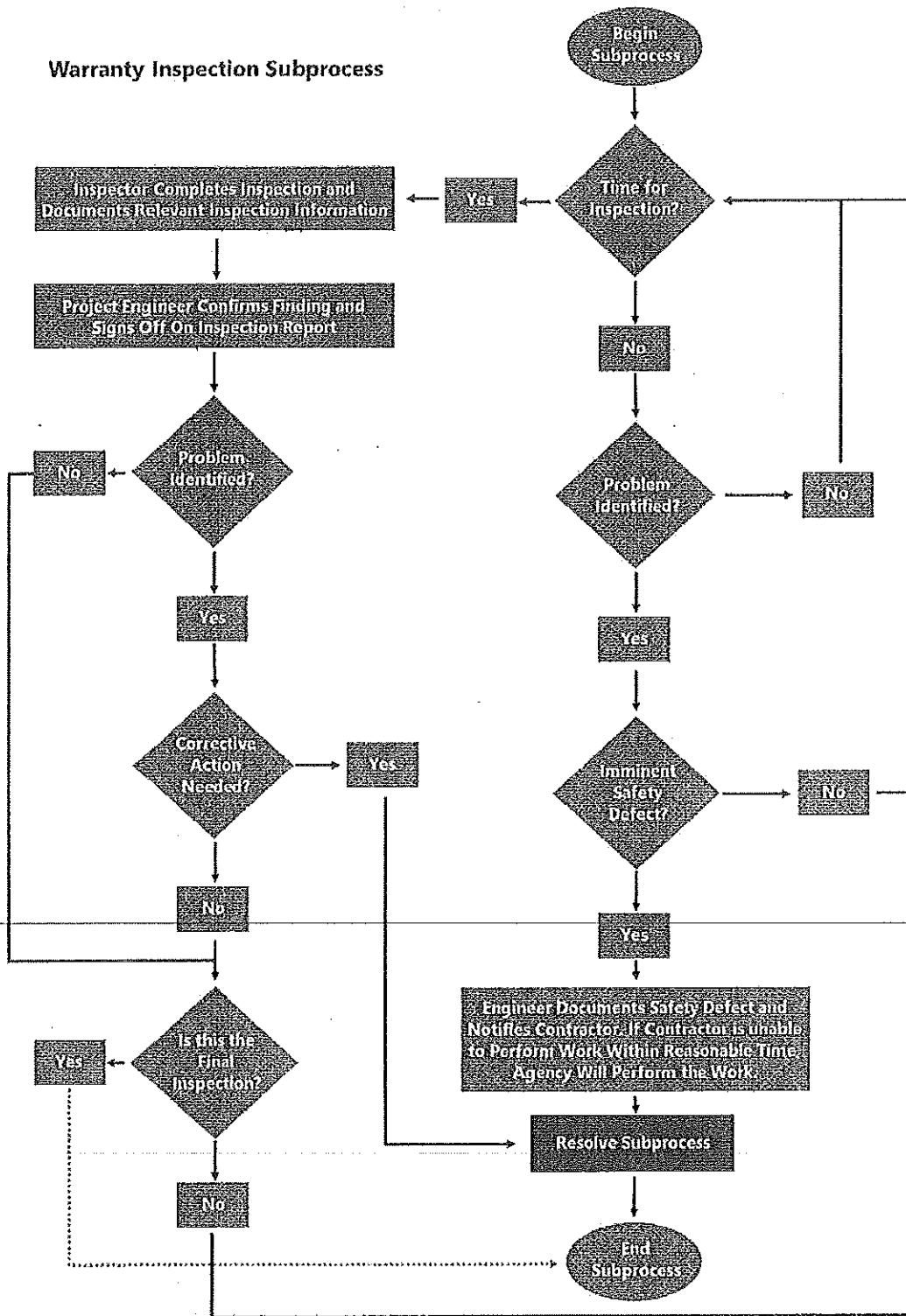
²Pavement structure as defined by MDOT Standard Specifications includes: HMA or concrete pavement, curbs, shoulders, aggregate or granular base, subbase and underdrain.

³If a local agency waives a warranty, an explanation will need to be reported.

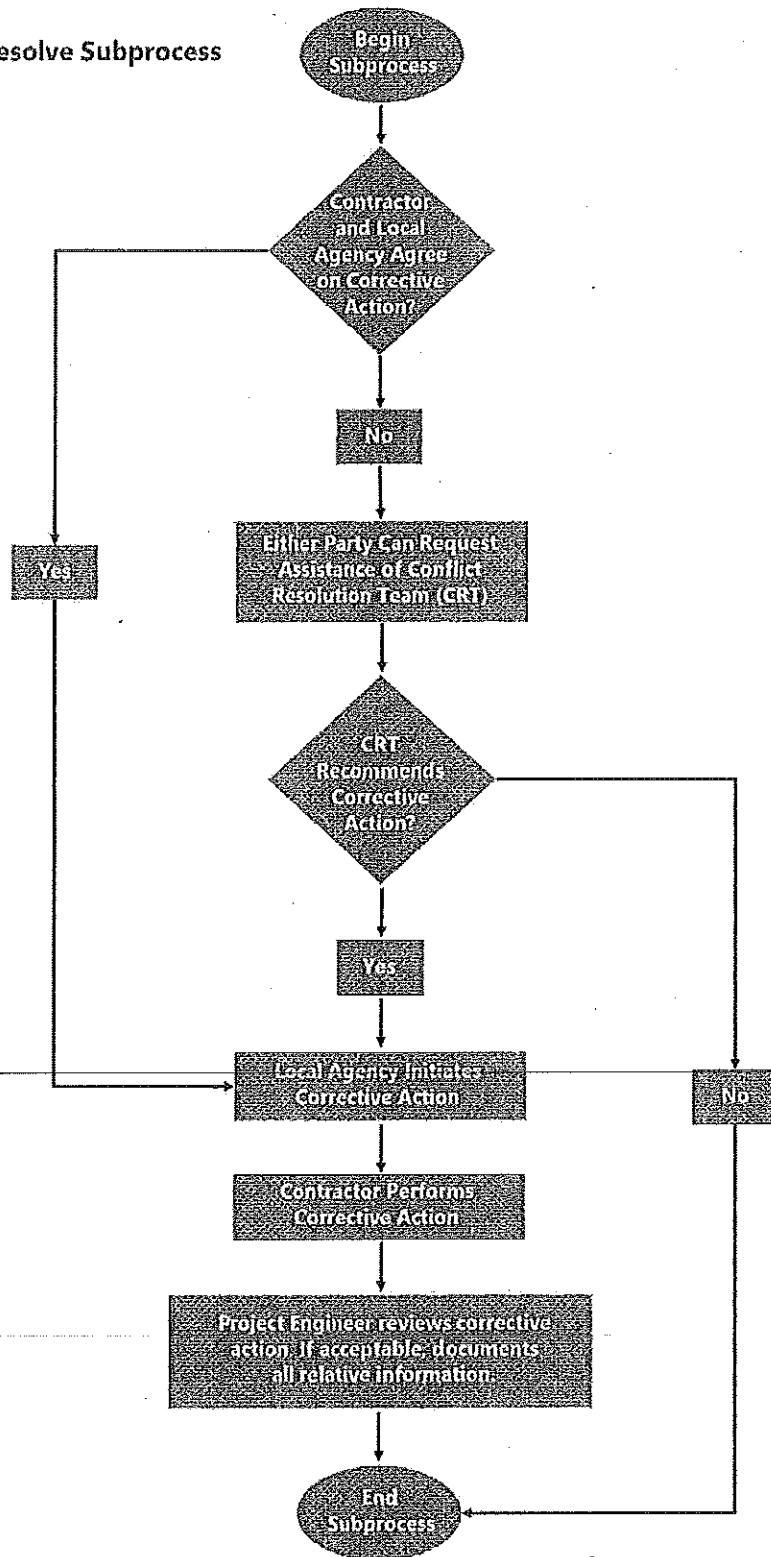


****This is the process if MDOT has oversight and/or MDOT let bid.**
 If project is locally let, with no MDOT oversight, the local agency shall determine the process.

Warranty Inspection Subprocess



Resolve Subprocess



APPENDIX B

Inspection Guidelines

LOCAL AGENCY
WARRANTY INSPECTION GUIDELINES
HMA NEW CONSTRUCTION / RECONSTRUCTION

Warranty period: 5 Year

Inspection Period Begins: Interim - 6 months after Initial Acceptance
Final - 56 months after initial Acceptance
(Local Agency may do additional inspections)

Notes:

1. Segments defined as 528 foot (1/10 mile).
2. Each lane will be evaluated separately.
3. The threshold level for each distress type is determined separately.

Procedure: For both INTERIM & FINAL inspections

1. **Perform overview inspection.** Based on results of overview inspection, recommend the project for either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Detailed inspection – more detailed inspection and / or measurements are needed
2. **Perform detailed inspection if required.** Based on the results of detailed inspection, either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Warranty work is needed – Provide contactor written notice of the distresses and locations needing corrective work.

Condition Parameter Measurement:

Performance parameters will be measured as described for each of the following distress types in mainline pavement areas:

1. **Transverse Cracking** - Total number of transverse cracks in a segment. Each individual crack must exceed 5 feet in length to be included in the total.
2. **Longitudinal Cracking** - Total linear feet of longitudinal cracks in a segment. Each individual crack must exceed 5 feet in length to be included in the total.
3. **De-bonding** - Total longitudinal length, in feet, of de-bonding in a segment. Potholes are to be classified as de-bonding. Measure individual de-bonding locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
4. **Raveling** - Total longitudinal length, in feet, of raveling in a segment. Measure individual raveling locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
5. **Flushing** - Total longitudinal length, in feet, of flushing in a segment. Measure individual flushing locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
6. **Rutting** - The average rut depth, in inches, in a segment. Each wheel path shall be evaluated separately. If rutting is found, the pavement surface will be measured beginning at the POB and every 132 feet thereafter to determine average rut depth to quantify rutting for a

particular segment. Rut measurements will be done using a straight rigid device that is a minimum of 7 feet long and of sufficient stiffness that it will not deflect from its own weight, or a wire under sufficient tension to prevent sag when extended 7 feet. Measurements will be taken by placing this "straightedge" across the pavement surface perpendicular to the direction of travel. The straightedge shall contact the surface on at least two bearing points with one located on either side of the rut. The straightedge is properly located when sliding the straightedge along its axis does not change the location of the contact points. Rut depth is then measured at the point of greatest perpendicular distance from the bottom of the straightedge to the pavement surface.

7. **Alligator Cracking** – Total area, in square feet, of alligator cracking in a segment. Measure individual alligator cracked areas and sum the areas for the segment.

Overview Inspection Procedure:

1. Review any notes from previous inspections.
2. Perform a "windshield" survey of the entire location length. Based solely on visual examination and estimated measurements; approximate the individual distress quantities for the questionable segment(s) of each distress type and record on the inspection form. Details which should be noted for the inspection include, but are not limited the following:
 - a. The lane or ramp where the distress was noted and the associated direction.
 - b. Approximate distress location (i.e. 1/4 mile north of the POB, or at the intersection of 1st St in SW quadrant, or near drive for house #123..)
 - c. The distress quantity, in general terms (i.e. minor amounts of longitudinal cracking; mid lane flushing).
 - d. Areas where temporary maintenance makes it difficult to determine the type of distress, (i.e. presence of cold patching material).
3. Estimate if any of the following distress threshold conditions are exceeded
 - a. Transverse Cracking exceeds 3 total in the segment length (3 cracks within 528 feet) for any single segments.
 - b. Longitudinal Cracking exceeds 10 percent of the segment length (53 feet within 528 feet) for any single segments.
 - c. Debonding exceeds 5 percent (5%) of the segment length (26 feet within 528 longitudinal feet) for any 1 segment.
 - d. Raveling exceeds 8 percent (8%) of the segment length (42 feet within 528 longitudinal feet) for any 1 segment.
 - e. Flushing exceeds 5 percent (5%) of the segment length (26 feet within 528 longitudinal feet) for any 1 segment.
 - f. Average rut depth exceeds 0.375 (3/8) inches for any 1 segment.
 - g. Any amount of alligator cracking.
4. If any condition above is estimated to be true:
 - a. Perform Detailed Inspection; and

- b. Provide a description of the magnitude and location(s) of the distress condition(s) observed which justify the Detailed Inspection.
- 5. If all conditions above are false:
 - a. Recommend work is acceptable.
 - b. If this is an interim or other non-final inspection, put notes in file.
 - c. If this is final inspection recommend final acceptance.

Detailed Inspection Procedure:

- 1. Determine the questionable segments suspected of exceeding threshold limits for each individual distress type based on the overview inspection notes.
- 2. Document the lane, direction and distance from POB, of each questionable segment identified in Step 1.
- 3. For each questionable segment, measure and record the amount of each individual distress type and record on the inspection form.
 - a. Transverse Cracking
 - b. Longitudinal Cracking
 - c. De-bonding
 - d. Raveling
 - e. Flushing
 - f. Rutting
 - g. Alligator Cracking
- 4. Determine if any of the threshold limits for transverse cracking, longitudinal cracking, de-bonding, raveling, flushing, or alligator cracking, listed under Overview Inspection, are exceeded.
- 5. Evaluate segments where the average rut depth appears to exceed 0.25 inches as follows.
 - a. Measure the average rutting at all questionable segments to verify that the threshold was exceeded.
- 6. Warranty work is required at those segments for which any of the threshold limits for transverse cracking, longitudinal cracking, de-bonding, raveling, flushing, rutting, or alligator cracking are exceeded. Provide the contractor with results of the inspection indicating segments where warranty work is required.

LOCAL AGENCY
WARRANTY INSPECTION GUIDELINES
HMA CONSTRUCTION OVER AGGREGATE BASE
WITHOUT BASE OR DRAINAGE IMPROVEMENT

Warranty period: 3 Year

Inspection Period Begins: Interim - 6 months after Initial Acceptance
Final - 32 months after initial Acceptance
(Local Agency may do additional inspections)

Notes:

1. Segments defined as 528 foot (1/10 mile).
2. Each lane will be evaluated separately
3. The threshold level for each distress type is determined separately.

Procedure: For both INTERIM & FINAL inspections

1. **Perform overview inspection.** Based on results of cursory inspection, recommend the project for either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Detailed inspection – more detailed inspection and / or measurements are needed
2. **Perform detailed inspection if required.** Based on the results of detailed inspection, either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Warranty work is needed – Provide contactor written notice of the distresses and locations needing corrective work.

Condition Parameter Measurement:

Performance parameters will be measured as described for each of the following distress types in mainline pavement areas:

1. **Transverse Cracking** - Total number of transverse cracks in a segment. Each individual crack must exceed 5 feet in length to be included in the total.
2. **Longitudinal Cracking** - Total linear feet of longitudinal cracks in a segment. Each individual crack must exceed 5 feet in length to be included in the total.
3. **De-bonding** - Total longitudinal length, in feet, of de-bonding in a segment. Potholes are to be classified as de-bonding. Measure individual de-bonding locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
4. **Raveling** - Total longitudinal length, in feet, of raveling in a segment. Measure individual raveling locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
5. **Flushing** - Total longitudinal length, in feet, of flushing in a segment. Measure individual flushing locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
6. **Rutting** - The average rut depth, in inches, in a segment. Each wheel path shall be evaluated separately. If rutting is found, the pavement surface will be measured beginning at the POB and every 132 feet

thereafter to determine average rut depth to quantify rutting for a particular segment. Rut measurements will be done using a straight rigid device that is a minimum of 7 feet long and of sufficient stiffness that it will not deflect from its own weight, or a wire under sufficient tension to prevent sag when extended 7 feet. Measurements will be taken by placing this "straightedge" across the pavement surface perpendicular to the direction of travel. The straightedge shall contact the surface on at least two bearing points with one located on either side of the rut. The straightedge is properly located when sliding the straightedge along its axis does not change the location of the contact points. Rut depth is then measured at the point of greatest perpendicular distance from the bottom of the straightedge to the pavement surface.

7. **Alligator Cracking** – Total area, in square feet, of alligator cracking in a segment. Measure individual alligator cracked areas and sum the areas for the segment.

Overview Inspection Procedure:

1. Review any notes from previous inspections.
2. Perform a "windshield" survey of the entire location length. Based solely on visual examination and estimated measurements, approximate the individual distress quantities for questionable segment(s) of each distress type and record on the inspection form. Details which should be noted for the inspection include, but are not limited the following:
 - a. The lane or ramp where the distress was noted and the associated direction.
 - b. Approximate distress location (i.e. 1/4 mile north of the POB, or at the intersection of 1st St in SW quadrant, or near drive for house #123..)
 - c. The distress quantity, in general terms (i.e. minor amounts of longitudinal cracking; mid lane flushing).
 - d. Areas where temporary maintenance makes it difficult to determine the type of distress, (i.e. presence of cold patching material).
3. Estimate if any of the following distress threshold conditions are exceeded
 - a. Transverse Cracking exceeds 3 total in the segment length (3 cracks within 528 feet) for any 2 segments. All reflective cracking shall be ignored as these will not count against the allowable amount.
 - b. Longitudinal Cracking exceeds 25 percent of the segment length (132 feet within 528 feet) for any 2 segments. All reflective cracking shall be ignored as these will not count against the allowable amount.
 - c. Debonding exceeds 5 percent (5%) of the segment length (26 feet within 528 longitudinal feet) for any 1 segment..
 - d. Raveling exceeds 8 percent (8%) of the segment length (42 feet within 528 longitudinal feet) for any 1 segment.
 - e. Flushing exceeds 5 percent (5%) of the segment length (26 feet within 528 longitudinal feet) for any 1 segment.
 - f. Average rut depth exceeds 0.375 (3/8) inches for any 1 segment.

- g. Any amount of alligator cracking.
- 4. If any condition above is estimated to be true:
 - a. Perform Detailed Inspection; and
 - b. Provide a description of the magnitude and location(s) of the distress condition(s) observed which justify the Detailed Inspection.
- 5. If all conditions above are false,
 - a. Recommend work is acceptable.
 - b. If this is an interim or other non-final inspection, put notes in file.
 - c. If this is final inspection recommend final acceptance.

Detailed Inspection Procedure:

1. Determine the questionable segments suspected of exceeding threshold limits for each individual distress type based on the overview inspection notes.
2. Document the lane, direction and distance from POB, of each questionable segment identified in Step 1.
3. For each questionable segment, measure and record the amount of each individual distress type and record on the inspection form.
 - a. Transverse Cracking
 - b. Longitudinal Cracking
 - c. De-bonding
 - d. Raveling
 - e. Flushing
 - f. Rutting
 - g. Alligator Cracking
4. Determine if any of the threshold limits for transverse cracking, longitudinal cracking, de-bonding, raveling, flushing, or alligator cracking, listed under Overview Inspection, are exceeded.
5. Evaluate segments where the average rut depth appears to exceed 0.25 inches as follows.
 - a. Measure the average rutting at all questionable segments to verify that the threshold was exceeded.
6. Warranty work is required at those segments for which any of the threshold limits for transverse cracking, longitudinal cracking, de-bonding, raveling, flushing, rutting, or alligator cracking are exceeded. Provide the contractor with results of the inspection indicating segments where warranty work is required.

LOCAL AGENCY
WARRANTY INSPECTION GUIDELINES
HMA OVERLAY

Warranty period: 1 Year

Inspection Period Begins: Final - 10 months after Initial Acceptance
(Local Agency may do additional inspections such as at 6 months after initial acceptance, after spring break up, etc.)

Notes:

1. Segments defined as 528 foot (1/10 mile).
2. Each lane will be evaluated separately.
3. The threshold level for each distress type is determined separately.

Procedure:

1. Perform **overview inspection**. Based on results of cursory inspection, recommend the project for either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Detailed inspection – more detailed inspection and / or measurements are needed
2. Perform **detailed inspection if required**. Based on the results of detailed inspection, either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Warranty work is needed – Provide contactor written notice of the distresses and locations needing corrective work.

Condition Parameter Measurement:

Performance parameters will be measured as described for each of the following distress types in mainline pavement areas:

1. **Transverse Cracking** - Total number of transverse cracks in a segment. Only count cracks that are not "reflective" from a prior crack or joint. Count all transverse cracks that cannot be positively identified as "reflective" or are questionable. Each individual crack must exceed 5 feet in length to be included in the total. Ignore transverse cracking for all single course overlays, or if the total thickness of multiple course overlays is 2" or less.
2. **Longitudinal Cracking** - Total linear feet of longitudinal cracks in a segment. Only count cracks that are *not* "reflective" from a prior crack or joint. Count all longitudinal cracks that cannot be positively identified as "reflective" or are questionable. Each individual crack must exceed 5 feet in length to be included in the total. Ignore transverse cracking for all single course overlays, or if the total thickness of multiple course overlays is 2" or less.
3. **De-bonding** - Total longitudinal length, in feet, of de-bonding in a segment. Potholes are to be classified as de-bonding. Measure individual de-bonding locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
4. **Raveling** - Total longitudinal length, in feet, of raveling in a segment. Measure individual raveling locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.

5. **Flushing** - Total longitudinal length, in feet, of flushing in a segment. Measure individual flushing locations in the longitudinal direction, regardless of width of the distress location and sum these lengths for the segment.
6. **Rutting** - The average rut depth, in inches, in a segment. Each wheel path shall be evaluated separately. If rutting is found, the pavement surface will be measured beginning at the POB and every 132 feet thereafter to determine average rut depth to quantify rutting for a particular segment. Rut measurements will be done using a straight rigid device that is a minimum of 7 feet long and of sufficient stiffness that it will not deflect from its own weight, or a wire under sufficient tension to prevent sag when extended 7 feet. Measurements will be taken by placing this "straightedge" across the pavement surface perpendicular to the direction of travel. The straightedge shall contact the surface on at least two bearing points with one located on either side of the rut. The straightedge is properly located when sliding the straightedge along its axis does not change the location of the contact points. Rut depth is then measured at the point of greatest perpendicular distance from the bottom of the straightedge to the pavement surface.
7. **Alligator Cracking** - Total area, in square feet, of alligator cracking in a segment. Measure individual alligator cracked areas and sum the areas for the segment.

Overview Inspection Procedure:

1. Review any notes from previous inspections.
2. Perform a "windshield" survey of the entire location length. Based solely on visual examination and estimated measurements, approximate the individual distress quantities for the questionable segment(s) of each distress type and record on the inspection form. Details which should be noted for the inspection include, but are not limited to the following:
 - a. The lane or ramp where the distress was noted and the associated direction.
 - b. Approximate distress location (i.e. 1/4 mile north of the POB, or at the intersection of 1st St in SW quadrant, or near drive for house #123..)
 - c. The distress quantity, in general terms (i.e. minor amounts of longitudinal cracking; mid lane flushing).
 - d. Areas where temporary maintenance makes it difficult to determine the type of distress, (i.e. presence of cold patching material).
3. Estimate if any of the following distress threshold conditions are exceeded
 - a. Transverse Cracking exceeds 3 total in the segment length (3 cracks within 528 feet) for any 3 segments. All reflective cracking shall be ignored as these will not count against the allowable amount.
 - b. Longitudinal Cracking exceeds 25 percent of the segment length (132 feet within 528 feet) for any 3 segments. Ignore all reflective cracking. All reflective cracking shall be ignored as these will not count against the allowable amount.

- c. Debonding exceeds 5 percent (5%) of the segment length (26 feet within 528 longitudinal feet) for any 1 segment.
 - d. Raveling exceeds 8 percent (8%) of the segment length (42 feet within 528 longitudinal feet) for any 1 segment.
 - e. Flushing exceeds 5 percent (5%) of the segment length (26 feet within 528 longitudinal feet) for any 1 segment.
 - f. Average rut depth exceeds 0.375 (3/8) inches for any 1 segment.
 - g. Any amount of alligator cracking.
- 4. If any condition above (in item 2) is estimated to be true:
 - a. Perform Detailed Inspection; and
 - b. Provide a description of the magnitude and location(s) of the distress condition(s) observed which justify the Detailed Inspection.
 - 5. If all conditions above are false,
 - a. Recommend work is acceptable.
 - b. If this is an interim or other non-final inspection, put notes in file
 - c. If this is final inspection recommend final acceptance.

Detailed Inspection Procedure:

- 1. Determine the questionable segments suspected of exceeding threshold limits for each individual distress type based on the overview inspection notes.
- 2. Document the lane, direction and distance from POB, of each questionable segment identified in Step 1.
- 3. For each questionable segment, measure and record the amount of each individual distress type and record on the inspection form.
 - a. Transverse Cracking
 - b. Longitudinal Cracking
 - c. De-bonding
 - d. Raveling
 - e. Flushing
 - f. Rutting
 - g. Alligator Cracking
- 4. Determine if any of the threshold limits for transverse cracking, longitudinal cracking, de-bonding, raveling, flushing, or alligator cracking, listed under Overview Inspection, are exceeded.
- 5. Evaluate segments where the average rut depth appears to exceed 0.25 inches as follows.
 - a. Measure the average rutting at all questionable segments to verify that the threshold was exceeded.
- 6. Warranty work is required at those segments for which any of the threshold limits for transverse cracking, longitudinal cracking, de-bonding, raveling, flushing, rutting, or alligator cracking are exceeded. Provide the contractor with results of the inspection indicating segments where warranty work is required.

LOCAL AGENCY
WARRANTY INSPECTION GUIDELINES
NEW/RECONSTRUCTED JOINTED PLAIN CONCRETE PAVEMENT

Warranty period: 5 Years

Inspection Period Begins: Interim -30 months after Initial Acceptance
Final - 56 months after initial Acceptance
(Local Agency may do additional inspections)

Notes:

1. **Segment** - 528 feet in a specific driving lane. For inspection a segment begins at the point where the joint sealant failure or pavement distress begins to appear and extends for 528 feet from that point.
2. **Slab** - The pavement outlined between consecutive transverse joints and longitudinal joints or a longitudinal joint and the outer pavement edge. Segments consist of one or more slabs.
3. **Driving Lanes** - Each of the following is considered a Driving Lane.
 - a. Each individual mainline lane.
 - b. The sum of all ramp lanes and associated acceleration/deceleration lanes.
 - c. The sum of all auxiliary lanes, such as passing lanes and turn lanes.
4. **Condition Parameters** - Each condition parameter has a threshold level applied to each segment and a maximum number of defective segments before corrective action is required. A segment is defective if the threshold level is exceeded.
5. **Longitudinal Joint Designation** - All inspections relate to the driving lane as defined in the warranty special provision. For tallying joint sealant failure and pavement distress (spalling), consider the entire perimeter of the slab in all cases. The condition parameter of the full joint associated with the slab being evaluated is considered even though two adjacent slabs may share the same interior longitudinal joint.
6. The contractor will not be required to take corrective measures as a result of the interim inspection unless the Engineer determines emergency repairs are needed for public safety. Any faults or distresses noted will be logged and verified with the final inspection.

Procedure:

For both INTERIM & FINAL inspections

1. **Perform overview inspection.** Based on results of overview inspection, recommend the project for either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Detailed inspection – more detailed inspection and / or measurements are needed
2. **Perform detailed inspection if required.** Based on the results of detailed inspection, either:
 - a. Acceptable – no corrective work needed. If this is the final inspection recommend acceptance of the work, or
 - b. Warranty work is needed – Provide contractor written notice of the distresses and locations needing corrective work.

Overview Inspection Procedure:

1. Review any notes from previous inspections of the work.
2. Perform a "windshield" survey of the entire project length. Inspect all driving lanes. Based solely on visual examination and estimated measurements, approximate the individual distress quantities for the questionable segment(s) of each distress type and record on the inspection form. Details which should be noted for the inspection include, but are not limited the following:
 - a. The lane or ramp where the distress was noted and the associated direction.
 - b. Approximate distress location (i.e. 1/4 mile north of the POB, or at the intersection of 1st St in SW quadrant, or near drive for house #123..)
 - c. Estimate the distress quantity. Also include a description of distress in general terms (i.e. minor amounts of longitudinal cracking; every joint has loss of sealant).
 - d. Areas where temporary maintenance makes it difficult to determine the type of distress, (i.e. presence of cold patching material).
3. If this is an **Interim** or other non-final inspection, Put notes in file and **STOP HERE**.
4. If this is the final inspection, estimate if any of the following distress threshold conditions are exceeded
 - a. Transverse Cracking exceeds 2 total for any 1 segment. (2 cracks within 528 feet).
 - b. Longitudinal Cracking exceeds 5 percent (5%) of the segment length (26 feet within 528 feet) for any 1 segment.
 - c. Map Cracking exceeds 10 percent (10%) of the segment area (632 square feet within 528 longitudinal feet assuming 12 foot lane width) for any 1 segment.
 - d. Spalling exceeds 10 percent (10%) of each slab. Can be non-contiguous. Include all 4 sides of the slab.
 - e. Scaling exceeds 15 percent (15%) of the slab area.
 - f. Corner cracking exceeds 1 for any 1 segment.
 - g. Joint Sealant failure exceeds 10 percent (10%) total joint length in a segment. Include both longitudinal & transverse joints
 - h. Any shattered slabs.
5. If any condition above is true:
 - a. Perform Detailed Inspection; and
 - b. Provide a description of the magnitude and location(s) of the distress condition(s) observed which justify the Detailed Inspection.
6. If all conditions above are false and this is the final inspection, recommend **Final Acceptance**.

Detailed Inspection Procedure: This will be done at **FINAL** inspection when distresses are estimated to be at threshold levels, and at **INTERIM** inspections as directed by the engineer.

1. Determine the questionable segments suspected of exceeding threshold limits for each individual distress type based on the overview inspection notes.

2. Document the lane, direction and distance from POB, of each questionable segment identified in Step 1.
3. For each questionable segment, measure and record the amount of each individual distress type and record on the inspection form.
 - a. Transverse Cracking
 - b. Longitudinal Cracking
 - c. Map Cracking
 - d. Spalling
 - e. Flushing
 - f. Scaling
 - g. Joint sealant failure
 - h. Shattered slabs
4. Determine if any of the threshold limits for the various distresses are exceeded.
5. Warranty work is required at those segments for which any of the threshold limits are exceeded. Provide the contractor with results of the inspection indicating segments where warranty work is required.

APPENDIX C

Inspection Forms

Under Development

The inspections forms have not been developed to-date; the Task Force Education Committee is working with LTAP to create inspection forms compatible with the RoadSoft program to enable tracking the warranty inspection forms to the actual location along a road segment

INSPECTION FORM FOR HMA WARRANTY WORK

Inspected By: _____

Date: _____

Type of inspection: ☐ Interim ☐ Final ☐ Special

Type of Construction: ☐ New HMA Construction / Reconstruction
☐ HMA over Ag. Base without other improvements
☐ HMA Overlay

Condition Parameter	NEW CONSTRUCTION / RECONSTRUCTION		OVER AGGREGATE BASE WITHOUT BASE OR DRAINAGE IMPROVEMENTS		SINGLE COURSE & MULTIPLE COURSE OVERLAY (a)	
	Threshold Limits Per Segment (Segment Length = 528 feet = 1/10 mile)	Max. Defective Segments Per Driving Lane-Mile	Threshold Limits Per Segment (Segment Length = 528 feet = 1/10 mile)	Max. Defective Segments Per Driving Lane-Mile	Threshold Limits Per Segment (Segment Length = 528 feet = 1/10 mile)	Max. Defective Segments Per Driving Lane-Mile
Warranty period	5 years		3 years		1 year	
Transverse Cracking	3	1	3	2 (b)	3	3 (b)
Open Joints & Long cracking	10% of Segment length	1	25% of Segment length	2 (b)	25% of Segment length	3 (b)
De-bonding	5% of Segment length	1	5% of Segment length	1	5% of Segment length	1
Raveling	8% of Segment length	1	8% of Segment length	1	8% of Segment length	1
Flushing	5% of Segment length	1	5% of Segment length	1	5% of Segment length	1
Rutting (c, d, e)	Ave. rut depth = 3/8 inch	1 (c)	Ave. rut depth = 3/8 inch	1 (c)	Ave. rut depth = 3/8 inch	1 (c,d)
Alligator cracking (f)	Any amount	0 (none allowed)	Any amount	0 (none allowed)	Any amount	0 (none allowed)

Distresses Found? ☐ Yes (Describe below, attach additional sheets if needed) ☐ No

Distresses Found: (Describe type, severity & location)

Corrective action needed? ☐ Yes ☐ No ☐ Needs further evaluation

Signed (INSPECTOR): _____

Checked by (ENGINEER): _____

INSPECTION FORM FOR CONCRETE WARRANTY WORK

Inspected By: _____ Date: _____

Type of Inspection: ☐ Interim ☐ Final ☐ Special

Type of Construction: ☐ Plain Concrete
☐ Reinforced Concrete

Condition Parameter or Defect	Threshold Limits Per Segment (Length = 528 feet)	Max. Defective Segments Per Driving Lane-Mile (a)
Transverse Crack	2	1
Longitudinal Crack	5% of segment length	1
Map Cracking	10% of segment area	1
Edge Spalling	10% each slab (b) < 2 slabs	1
Surface Scaling	15% of the slab area < 1 slab	1
Corner Cracking	1	1
Joint Sealant Failure	10% joint length (c) < 2 slabs	1
Shattered Slab	0 (d)	0

Distresses Found? ☐ Yes (Describe below, attach additional sheets if needed) ☐ No

Distresses Found: (Describe type, severity & location)

Corrective action needed? ☐ Yes ☐ No ☐ Needs further evaluation

Signed (INSPECTOR): _____

Checked by (ENGINEER): _____

APPENDIX D

Model Pavement Warranty Contract and Bond Forms

MICHIGAN
LOCAL AGENCY
SPECIAL PROVISION
FOR
PASS-THROUGH WARRANTY BONDS

LM

1 of 1

9/5/2017

a. Description. This special provision establishes the conditions under which and method for a contractor to assign responsibility for the warranty obligations and the providing of a warranty bond to a warranty contractor(s). Second tier subcontractor assignments are prohibited.

b. Requirements. Ensure the Warranty Contract(s) and warranty bond(s) are on forms provided by the Local Agency. Ensure the bonds meet the requirements of Michigan law and of the Local Agency and include other items such as the powers of Attorney and Endorsement as specified by the Local Agency.

c. Method. The assignment must be made to the warranty contractor(s) that will perform the work covered by the warranty. If for any reason after signing the Warranty Contract and providing the Warranty Bond, the warranty contractor does not perform the work, the warranty contractor will remain obligated for the warranty obligations and the warranty bond obligations will remain in effect unless the Local Agency consents in writing to substituting a different contractor to assume those warranty obligations and accepts a substitute warranty bond.

The assignment of warranty work must be designated with and at the time of electronic bid submittal. To become a warranty contractor responsible for the warranty obligations of the contract, and providing a warranty bond, the warranty contractor must complete and submit to the Local Agency a Warranty Contract and a Warranty Bond for each warranty it will be responsible for. Ensure the Warranty Contract is signed by an authorized signer of the warranty contractor, as identified in its prequalification application.

Submit the Warranty Contract and Warranty Bond to the Local Agency prior to award of the construction contract to the prime contractor for the work to which the warranty applies. Ensure the warranty contractor is prequalified in the work classification for the type of work to be warranted. The Warranty Bond must guarantee performance of all warranty obligations for the covered work, in accordance with the Warranty Contract. All provisions of the prime contract will be applicable to the warranty contractor in regard to the warranty work, except as otherwise expressly provided in the Warranty Contract.

Under no circumstances does the assignment of the warranty work and the execution of a Warranty Contract create any obligations to the Local Agency beyond the obligations undertaken in the prime contract. The purpose of the Local Agency accepting the assignment of warranty obligations is to allow a warranty contractor to stand in place of the prime contractor for purposes of the warranty work without increasing any obligation or liability that the Local Agency would have had if the prime contractor had not assigned the warranty work.

d. Measurement and Payment. This work will not be paid for separately, but will be included in costs for other pay items.

**<local agency name>
LOCAL AGENCY
PASS-THROUGH WARRANTY BOND**

Bond Number: _____

KNOWN ALL MEN BY THESE PRESENTS

That we, _____ (hereinafter called the "Principal" and
_____ (hereinafter called "Surety") a corporation duly
organized under the laws of the State of _____ and duly licensed to transact business in the
State of Michigan, are held and firmly bound unto the <local agency name>
(hereinafter called the "Obligee"), in the sum of \$ _____
dollars for the payment of which sum well and truly to be made, we, the said Principal and the
said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly
and severally, firmly by these presents.

WHEREAS, the said Principal has heretofore entered into a contract with the Obligee,
under Contract ID _____ and;

WHEREAS, the said Principal is required to guarantee the:

installed under said contract, against defects in materials or workmanship which may develop
during the period of ____ years beginning the date of the Acceptance Date of Warranted Work by the
Obligee.

In no event shall losses paid under this bond aggregate more than the amount of the bond,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal
shall faithfully carry out and perform the said guarantee, and shall, on due notice, repair and make
good at its own expense any and all defects in materials or workmanship in the said work which may
develop during the period specified above or shall pay over, make good and reimburse to the said
Obligee all loss and damage which said Obligee may sustain by reason of failure or default of said
Principal so to do, then this obligation shall be null and void; otherwise shall remain in full force and
effect.

PROVIDED HOWEVER, that in the event of any default on the part of said Principal, a written
statement of the particular facts showing such default and the date thereof shall be delivered to
the Surety by registered mail, promptly in any event within ten (10) days after the Obligee or his
representative shall learn of such default and that no claim, suit or action by reason of any default
of the Principal shall be brought hereunder after the expiration of thirty (30) days from the end of
the warranty period as herein set forth.

Signed by: _____ day of _____ 20____.

Contractor _____

By _____

Surety _____

By _____

PASS THROUGH WARRANTY CONTRACT

This contract ID number _____ is executed on the date signed below by the _____ of the <local agency name> between the Warranty Contractor, Prime Contractor and the Local Agency in conjunction with the execution of this contract ID number, _____ between the Local Agency and the Prime Contractor.

(Warranty Contractor)

(Prime Contractor)

The work included within this Warranty Contract is, described here:

The Warranty Contractor represents that it has entered into a subcontract with the Prime Contractor to perform Warranted Work for the project, but that any failure to have properly done so, or any breach or failure in the performance of that subcontract, shall not diminish or otherwise affect the obligations of the Warranty Contractor to the Local Agency under this warranty contract. Nor shall the obligations of the Warranty Contractor to the Local Agency under this warranty contract be diminished or affected if the Prime Contractor or some other person performs some or all of the Warranted Work or warranty obligations for the project, unless the Local Agency consents to, and executes, a written amendment to this warranty contract.

Insofar as they pertain to the warranty rights and obligations, the terms of the contract are hereby incorporated by reference into this warranty contract and, for purposes of this warranty contract, references in the contract to the contractor shall be deemed to refer to the Warranty Contractor.

The Warranty Contractor hereby agrees to fulfill and perform, without qualification or exception, all of the warranty obligations under the terms of the contract, as if they were the Prime Contractor. Until acceptance of the Warranted Work, the Prime Contractor will be responsible to the Department for ensuring completion of the Warranted Work and to the Local Agency for fulfilling the terms of the warranty for that work. Upon acceptance of the Warranted Work, the Warranty Contractor shall have full responsibility for the warranty obligations and the Prime Contractor will be relieved of further obligation for performing those warranty obligations.

The Warranty Contractor agrees that its obligations to the Local Agency under this warranty contract are the same as if the Warranty Contractor was the Prime Contractor; the Warranty Contractor can assert no rights, defenses or qualifications to the warranty obligations under the contract that would have been unavailable to the Prime Contractor, if the Prime Contractor had retained contractual responsibility for the warranty. The Warranty Contractor may assert the same rights under the terms of the warranty as could have been asserted by the Prime Contractor, if the Prime Contractor had retained contractual responsibility for the warranty.

This warranty contract may be executed prior to execution of the contract with the Prime Contractor, provided that if the Local Agency fails to execute the contract with the Prime Contractor this warranty contract shall be null and void.

By: _____

By: _____

Title: _____

Title: _____

By: _____

Typed name: _____

Local Agency: _____

Date: _____

APPENDIX E

Reporting Forms

Under Development

Local Road Agencies Warranty Program Reporting

We have partnered with the Transportation Asset Management Council to modify the Investment Reporting Tool to provide an open and transparent reporting method for each local transportation agency. The reporting fields will be enabled as soon as the Local Agency Pavement Warranty Program is approved by MDOT

We have also partnered with the Michigan Technological University - CTT to modify the Roadsoft Program to provide a common data entry method for each local road agency. The Roadsoft warranty data fields will be imported into the TAMC ITR module to provide a statewide presentation of the warranty projects that exceed the \$ 2,000,000 threshold.

APPENDIX F

Education and Training

Under Development

Education of Local Road Agencies on Local Pavement Warranty Program

Since the passage of the 2015 Transportation Package, the CRA has been informing its members of the coming warranty requirement; the *Engineering Updates* provided by the CRA-MML Engineering Specialist have also described the imminent Local Pavement Warranty Program. The CRA provided updates about the Local Pavement Warrant Program at its nine regional Council meetings during fall-winter 2017-2018; at its County Engineers Workshop in February 2018; at its Highway Conference in March 2018, and at its Road Commissioners Conference in April 2018. The CRA is also developing this Guidance Document on Local Pavement Warranties to serve as the training manual for. The CRA has scheduled and dedicated a large portion of its annual 2017 Law Symposium to a session on Implementing the New Local Pavement Warranties on December 5, 2017; speakers include the legal counsel from the Road Commission for Oakland County and CRA-MML Engineering Specialist Steve Puuri. The CRA-MML Engineering Specialist Steve Puuri and two bond counsel representatives provided an update at the Michigan Concrete Association.

In addition, the Local Pavement Warranty Task Force has created an Education Committee that has been developing model agency adoption resolutions and training materials. The Task Force has partnered with the Local Technical Assistance Program to develop and conduct training program for decision makers and project staff. The Education Committee is poised to distribute adoption and training materials upon approval of the Local Agency Pavement Warranty Program by MDOT. Finally, the Task Force has developed this Guidance Document to assist local agency decision makers and project staff with implementing their Local Agency Pavement Warranty program.

LOCAL AGENCY PAVEMENT WARRANTY PROGRAM

City of Pontiac Department of Public Works

Local Agency Pavement Warranty Program

As part of the Transportation Funding Package of 2015, the Michigan legislature created a requirement (MCL 247.662, 247.663) that each local road agency in Michigan adopt a Local Pavement Warranty program acceptable to the Michigan Department of Transportation (MDOT).

The resulting Michigan Local Agency Pavement Warranty Program is the statewide accepted format that local agencies can use for hot mix asphalt (HMA) and plain jointed concrete paving projects on public roads and streets, if they opt to utilize a warranty on a project.

This Warranty Program must be adopted by every community no later than September 18, 2019, and every community must consider a warranty on each project utilizing any state or federal funding that also includes \$2 million or more in paving-related components. Communities must annually report on projects with \$2 million or more in paving-related items, regardless of whether they implemented a warranty or not.

The overall goal of the Michigan Local Pavement Warranty Program is to have one standardized method for applying pavement warranties on local agency projects, which provides a consistent, quantifiable and transparent program that pavement contractors can recognize and implement.



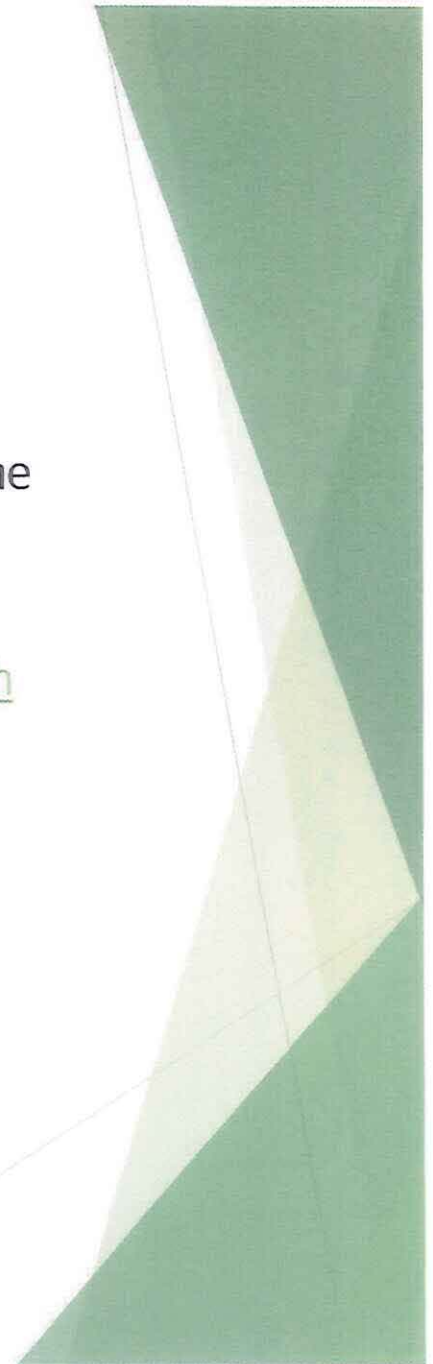
Program Content

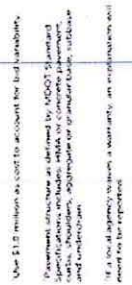
The Local Pavement Warranty Program, as approved by MDOT, consists of the following documents:

Special Provisions (Boilerplate, Concrete, HMA, Location and a Pass-Through Warranty Bond)

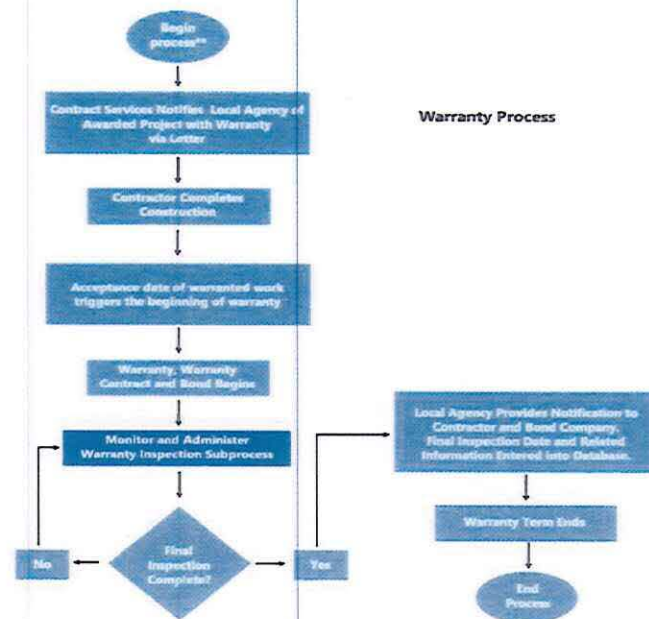
Warranty Bond Form and Contract Form

Guidelines for Local Agency Pavement Warranty Program





Warranty Process

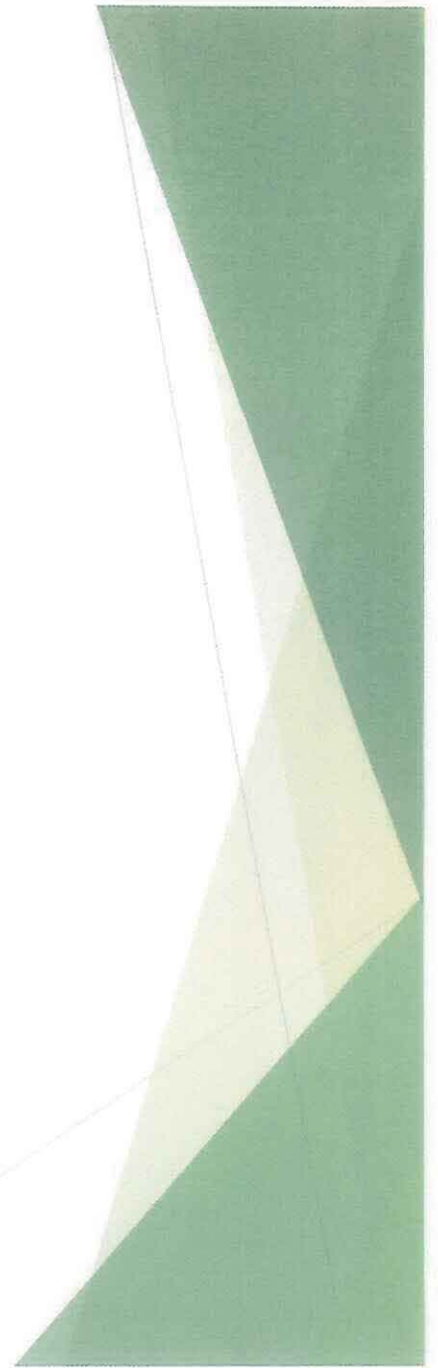


**This is the process if MDOT has oversight and/or MDOT let bid.
If project is locally let, with no MDOT oversight, the local agency shall determine the process.



Program Content

The Program was developed over the last 30 months by the Local Agency Pavement Warranty Task Force including representatives of the Michigan Municipal League, County Road Association, MDOT, Federal Highway Administration-Michigan, Michigan's Local Technical Assistance Program (LTAP), municipal road agencies, legal counsels and industry representatives.



Timeline for Warranty Policy Adoption

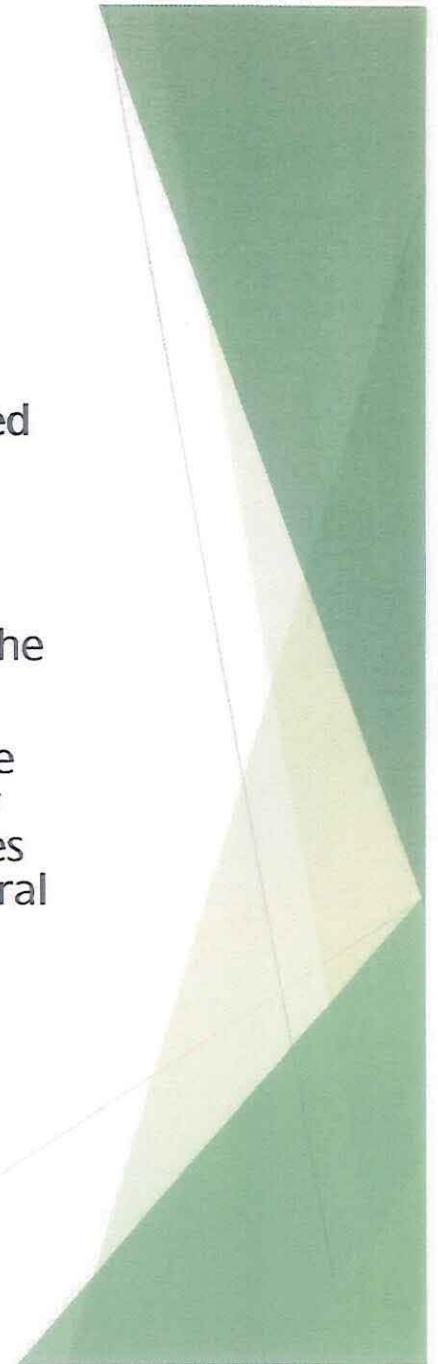
Local Pavement Warranty Program developed by the Task Force must be adopted by your community on or before September 18, 2019.

To adopt the Pavement Warranty Program, each community should adopt two separate Resolutions.

Resolution to Adopt a Local Pavement Warranty Program is needed to adopt the Local Agency Pavement Warranty Program and its accompanying documents.

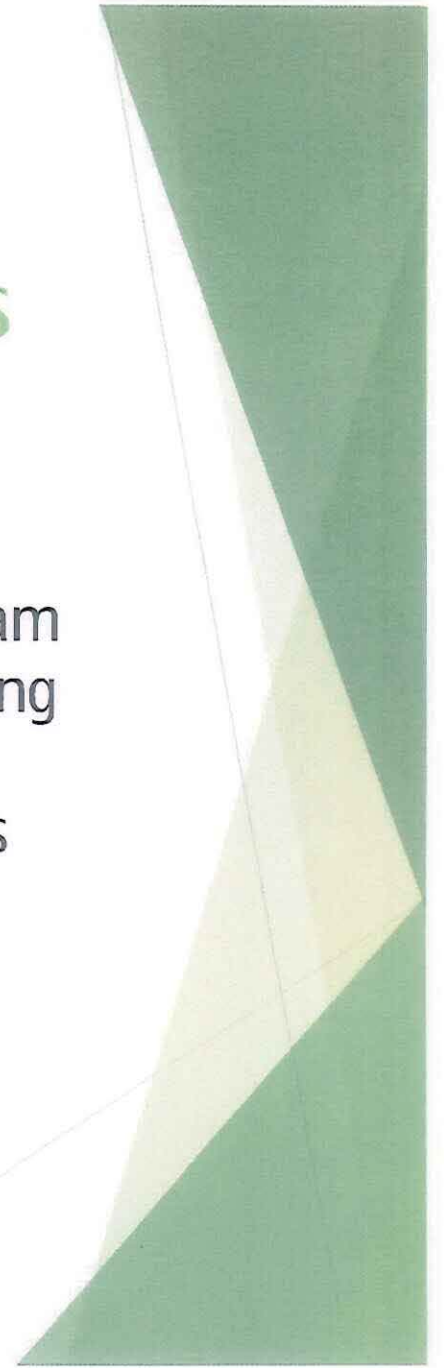
Resolution to Implement a Local Pavement Warranty Program that defines the agency's intent to apply the warranty program consistent with the Local Agency Pavement Warranty Guidelines and report annually on each project that includes 2 million or more in paving-related components *and* includes any state or federal funds.

The goals of the Local Agency Pavement Warranty Program are to meet the legislative mandate to implement it, as well as to standardize review and oversight of pavement warranty projects, and to have a program that is transparent and uniform for private-sector contractors.

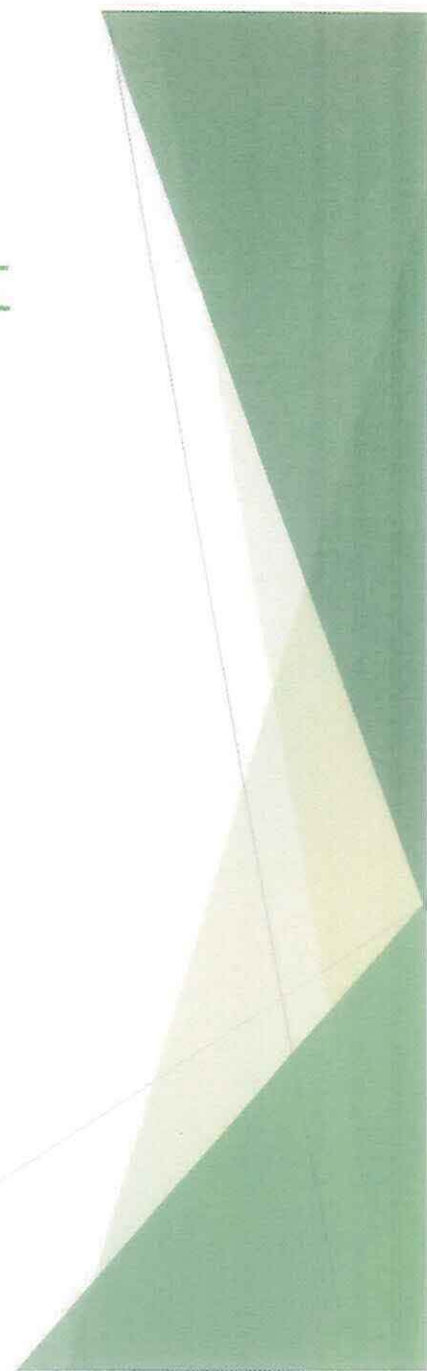


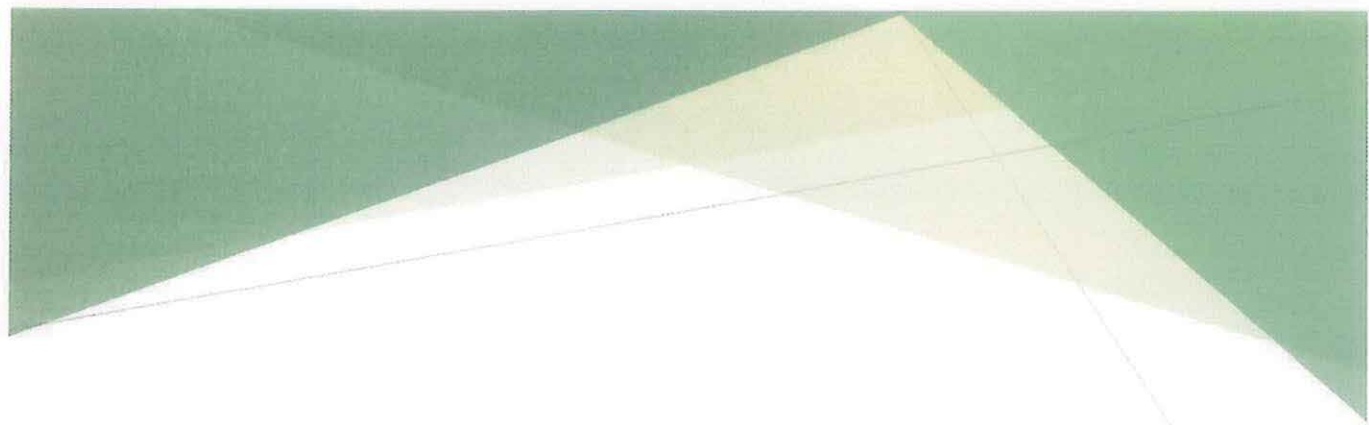
Future Warranty Education Programs

The Warranty Task Force has obtained a FHWA grant of \$74,000, which its Education Subcommittee will use to work with the Michigan Local Technical Assistance Program (LTAP) to conduct education and training sessions. Training will be designed for elected/appointed officials, administrators, as well as managers/directors, engineers and engineering technicians in both onsite sessions and online webinars during 2019. The League will work with LTAP to publicize these sessions.



you have any questions about the Local
vement Warranty Program, please contact
hn LaMacchia at (517) 908-0303 or
macchia@mml.org.





THANK YOU!



#15

RESOLUTION



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Mayor, Council President and City Council Members

FROM: Jane Bais-DiSessa, Deputy Mayor, at the request of
John V. Balint, City Engineer

DATE: August 8, 2019

RE: PK Contracting Contract for Long Line Striping

The Oakland County Road Commission bid road striping in the spring of 2019. Due to the Road Commission being another government agency, the City has the ability to assume the contract pricing for our uses. The Department of Public Works is requesting to enter into a contract with PK Contracting. The pricing for long line striping as-bid through the Road Commission are as follows:

1. Sprayable Thermoplastic, 4 inch, White - \$0.103
2. Sprayable Thermoplastic, 4 inch, Yellow - \$0.103
3. Layout (As-Required) - \$1,500.00

The Engineering Division has reviewed and approved the attached documents supplied by the Road Commission for Oakland County as well as a City-prepared contract for the work.

It is the recommendation of the Department of Public Works, Engineering Division that the City enter into the attached contract with PK Contracting.

WHEREAS, The City of Pontiac has reviewed the documents provided by the Oakland County Road Commission, and;

WHEREAS, The Department of Public Works finds that the pricing supplied by PK Contracting in the publically advertised and bid held by the Road Commission in the spring of 2019 are acceptable, and;

NOW, THEREFORE,
BE IT RESOLVED, The Pontiac City Council authorized the Mayor or Deputy Mayor to sign the attached contract with PK Contracting for Road Striping.

JVB

attachments



MAIN OFFICE
1965 Barrett Drive
Troy, MI 48064-5372
PHONE 248-362-2130
FAX 248-362-4969

West MI Office
8139 Douglas Ave
Kalamazoo, MI 49009
PHONE 269-385-3222
FAX 269-385-3264

North MI Office
6344 Blue Road (M-55)
Lake City, MI 49651
PHONE 231-839-4430
FAX 231-839-4737

Central MI Office
3900 S. US-27
St. Johns, MI 48879
PHONE 989-292-4400
FAX 989-292-4401

To Whom It May Concern,

P.K. Contracting, Inc. will honor its pricing set up with Oakland County for the longitudinal Spray Thermoplastic markings for the City of Pontiac. Please see below current pricing under contract with Oakland County. Due to markings being heavily faded within the city, we request that a sum of \$1,500.00 be paid for each day that will require layout.

1. Sprayable Thermoplastic, 4 inch, White - \$.103 / LFT
2. Sprayable Thermoplastic, 4 inch, Yellow - \$.103 / LFT
3. Sprayable Thermoplastic, 6 inch, White - \$.15 / LFT
4. Sprayable Thermoplastic, 6 inch, Yellow - \$.15 / LFT

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicholas C. Shea'.

Nicholas C. Shea
Chief Estimator

Quality Life through Good Roads "We Care"



Inter-Departmental Memorandum

**ENGINEERING DEPARTMENT
Right of Way Division**

DATE: May 21, 2019

To: Thomas G. Blust, P.E. ✓
Director of Engineering

FROM: Michael Smith ✓
Right of Way and Contracts Manager

SUBJECT: CONTRACTS AND BONDS

This contractor has complied with our requirements for the following listed project in regard to the Bonds and Insurance Certificates. The Contract is now ready for the effective date and Managing Director's signature.

Project Number: 94119

Project Name: 2019 County-Wide Pavement Striping Program

Awarded to: PK Contracting, Inc.

Contract Price: \$1,826,050.00

Construction Start Date: June 3, 2019

Date Bid Received: April 16, 2019

Date Board Accepted Bid: May 9, 2019

Attachment
MS/nc

Quality Life through Good Roads "We Care"



Inter-Departmental Memorandum

**ENGINEERING DEPARTMENT
Right of Way Division**

DATE: May 21, 2019

TO: Shannon Miller ✓
Clerks Office

FROM: Michael Smith *MS*
Right of Way and Contracts Manager

SUBJECT: RELEASE OF BID CHECK

Project Number: 94119

Project Name: 2019 County-Wide Pavement Striping Program

Return bid check to: PK Contracting, Inc.
1965 Barrett, Troy, MI 48084

Amount of Bid Check: \$50,000.00

The signed contract and bonds for the project listed above have been submitted.

MS/nc



May 21, 2019

P.K. Contracting, Inc.
1965 Barrett
Troy, MI 48084

Board of Road Commissioners

Ronald J. Fowkes
Commissioner

Gregory C. Jamian
Commissioner

Andrea LaLonde
Commissioner

Dennis G. Kolar, P.E.
Managing Director

Gary Plotrowicz, P.E., P.T.O.E.
Deputy Managing Director
County Highway Engineer

Re: Return of Contract Documents: # 94119, 2019 County-Wide Pavement
Striping Program

P.K. Contracting, Inc.:

The Road Commission for Oakland County executed the contract for the above
subject project on May 21, 2019.

One copy each of the executed contract, bond and a copy of the insurance
documents are returned herewith for your records and file. [REDACTED]

You may proceed with the proposed work in accordance with the Progress
Schedule as noted in the proposal for this project. Please contact our
Construction Division at (248) 858-4855 when you are ready to begin work.

Sincerely,

Thomas G. Blust, P.E.
Director of Engineering

TGB/jlk
Enclosure

Engineering Department
31001 Lahser Road
Beverly Hills, MI 48025

248-645-2000

FAX
248-645-0618

www.rcocweb.org

c: Clerks
Sharolyn Arnold/Cheryl Cox
Risk Management
Jeff O'Brien
Finance

**BOARD OF COUNTY ROAD COMMISSIONERS
of the
COUNTY OF OAKLAND
MICHIGAN**

**CONTRACT
FOR**

2019 County-Wide Pavement Striping Program

Road Commission for Oakland County Project:

Project # 94119, 2019 County-Wide Pavement Striping Program

P.K. Contacting, Inc.
1965 Barrett
Troy, MI 48084

THIS AGREEMENT, Made this 21st day of May, AD 2019,
by and between the Board of County Road Commissioners of the County of Oakland, State of
Michigan, a Public Body Corporate, herein after referred to as the Board, and P.K. Contracting,
Inc a Michigan corporation, of 1965 Barrett, Troy, MI 48084, hereinafter referred to as
Contractor.

1. WORK DEFINED: the Contractor, for and in consideration of the payment or payments
hereinafter specified, hereby agrees to furnish all necessary machinery, tools, apparatus and other
means of construction, do all the work, furnish all the materials except as herein otherwise
specified, and to complete, in strict accordance with the plans, specifications and the Proposal
therefor, and to the satisfaction of the Board of County Road Commissioners of the County of
Oakland, the work described herein, it being understood and agreed that said plans, specifications
and proposal are to be considered a part hereof.

2019 County-Wide Pavement Striping Program

2. HOLD HARMLESS PROVISION

The Contractor shall hold harmless, represent, defend with counsel acceptable to, and indemnify the Board of County Road Commissioners of the County of Oakland (the "Board"), the County of Oakland; the Office of the Oakland County Water Resources Commissioner, any and all drainage district(s) and local unit(s) of government affected by the Project, the Michigan Department of Transportation, the Michigan Transportation Commission, and their respective officers, agents and employees; against any and all claims, charges, complaints, damages or causes of action for (a) damages to public or private property, (b) injuries to person or persons, or (c) any and all other claims charges, complaints, damages or causes of action arising out of the performance or non-performance of the contracted work and its related activities, both known and unknown, whether during the progress or after the completion thereof.

3. NON-DISCRIMINATION CLAUSE FOR ROAD COMMISSION FOR OAKLAND COUNTY CONTRACTS

- A. In accordance with Act No. 453, Public Acts of 1976, as amended the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended, the Contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
- B. The Contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinbefore set forth in this Section 3.
- C. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- D. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.
- E. The Contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission, which may be in effect prior to the taking of bids for any individual state project.
- F. The Contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (A) through (E) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

4. IN CONSIDERATION WHEREOF, Said Board agrees to pay said Contractor for all work done, the following unit prices:

Road Commission for Oakland County Bid Tabulation

Contract ID:	94119
Location:	2019 County Wide Striping Program
Description:	A project for the installation of Sprayable Thermoplastic Pavement Striping on Various Roads in Oakland County

Project Number:	94119	Project Engineer:	Greg West
Estimate Number:	1	Date Created:	3/18/2019
Project Type:	Miscellaneous	Fed/State #:	
Location:	Oakland County	Fed Item:	
		Control Section:	

Description: 2019 County Wide Striping Program

Bidder: P.K. Contracting, Inc.

Line	Pay Item	Description	Quantity	Units	Bid Price	Total
0001	8110011	Call Back, Mobilization	10	Ea	\$500.000	\$5,000.00
0002	8110154	Pavt Mrkg, Sprayable Thermopl, 4 inch, Yellow	7,700,000	Ft	\$1.103	\$793,100.00
0003	8110155	Pavt Mrkg, Sprayable Thermopl, 6 inch, White	6,500,000	Ft	\$1.150	\$975,000.00
0004	8110157	Pavt Mrkg, Sprayable Thermopl, 8 inch, White	5,000	Ft	\$2.220	\$1,100.00
0005	8110232	Pavt Mrkg, Waterborne, 4 inch, Yellow	150,000	Ft	\$0.070	\$10,500.00
0006	8110233	Pavt Mrkg, Waterborne, 6 inch, White	80,000	Ft	\$0.070	\$5,600.00
0007	8110450	Recessing Pavt Mrkg, Longit	5,000	Ft	\$6.500	\$3,250.00
0008	8117001	Pavt Mrkg, Waterborne, Curb, 8 inch, Yellow	5,000	Ft	\$5.000	\$2,500.00
0009	8117050	_ Witness, Log, \$1,000	10	Ea	\$1,000.000	\$10,000.00
0010	8120210	Pavt Mrkg, Longit, 6 inch or Less Width, Rem	50,000	Ft	\$4.000	\$20,000.00
Bid Total: \$1,826,050.00						

If no unit prices are set forth herein, in reference to any extra work ordered by the Board or its authorized representative, the Board agrees to pay for such work on the basis agreed upon before such extra work is begun.

5. **PROGRESS SCHEDULE:** it is further understood and agreed that time is of the essence of this contract, and that the work shall be so conducted and supervised by the contractor as to insure its completion in accordance with the following conditions: Attached Progress Schedule or Progress Clause:

ROAD COMMISSION FOR OAKLAND COUNTY

PROGRESS CLAUSE

RCOC/DESIGN: XX

Page 1 of 3

RCOC12PC ORG: 3/07/2019

REV: 3/21/2019

a. General

Submit a complete, detailed and signed MDOT Form 1130, Progress Schedule, to the Engineer within seven (7) calendar days after Award and prior to starting work per current MDOT 12SP-101 contained in this proposal. The Engineer for this project is as follows:

Gregory West
Road Commission for Oakland County
2420 Pontiac Lake Road
Waterford, MI 48328
248-858-4812
gwest@rcoc.org

The Progress Schedule shall include, as a minimum, the controlling work items for the completion of the project and the planned dates that these work items will be controlling operations. When specified in the bidding proposal, the date the project is to be opened to traffic as well as the final project completion date shall also be included in the project schedule. If the Bidding Proposal specifies other controlling dates, these shall also be included in the Progress Schedule.

After award and prior to the start of work, the Contractor must attend a preconstruction meeting with the Engineer. The schedule for this meeting will be determined by the Engineer **after submittal of MDOT Form 1130**. The Engineer will arrange the day, time and place for the preconstruction meeting. The named subcontractor(s) for designated and/or Specialty Items, as shown in the proposal, are recommended to be at the preconstruction meeting if such items materially affect the work schedule.

Start work within 10 days of Award. In no case, shall any work be commenced prior to receipt of formal Notice of Award by the Department.

The Contractor shall be expected to mobilize sufficient labor and equipment to complete the project within the specified time frames.

The Contractor may be required to meet with Department representatives for a post-construction review meeting, as directed by the Engineer. The Engineer will schedule the meeting.

Failure on the part of the Contractor to carry out the provisions of this Progress Clause may be considered sufficient cause to prevent bidding on future projects.

b. Expedited Schedule

This project is on an **expedited schedule**. This project is on an expedited schedule based on a 6 day or 7 day work week. The Contractor is expected to mobilize sufficient labor resources and equipment and to work the required overtime to maintain the expedited schedule. The contractor

shall include any costs associated with maintaining the expedited schedule in the Bid Items for work, as it will not be paid separately.

Unless specific pay items are provided in the contract, any extra costs incurred by the Contractor due to cold-weather protection, winter grading, sufficient manpower and equipment necessary to maintain the expedited schedule, and/or meet the final completion date, and any overtime will not be paid for separately, but will be included in payment of other contract items.

c. Milestones

1. County wide striping

shall be completed on or before **July 31, 2019**.

2. Call back striping.

shall be completed within **10 days** of notification.

3. Entire Project Including Delayed Acceptance Items.

The entire project shall be completed on or before **April 15, 2020**

d. Liquidated damages for failure to meet milestones

Failure on the part of the Contractor to meet each of the above Milestones by the date specified shall result in the assessment of Liquidated Damages against the Contractor as provided in Section 108.10, Liquidated Damages, of the MDOT 2012 Standard Specifications for Construction.

Liquidated damages will be assessed separately, simultaneously and concurrently for failure to meet Milestone dates as specified above. Liquidated Damages will continue to be assessed for each calendar day or portion of a day that this work remains incomplete even if these days extend beyond the normal Seasonal Suspension period of **October 15, 2019**

Assessment of Liquidated Damages and/or contract adjustments applies to hourly/daily restrictions included in the Maintaining Traffic Special Provision.

e. Work day, hour, and other work restrictions imposed by local communities

The work hours described may be modified or changed by the Engineer due to Holidays, Special Events, or Traffic Volumes.

A. Contractors operations shall be limited by local municipality work time, noise, and dust ordinance unless approved by the local municipality and the Engineer in writing.

B. No work or lane closures, unless approved by the Engineer, shall be performed during:

2019: Memorial Day (from 3:00 pm Friday, May 24th – 6:00 am Tuesday, May 28th), 4th of July (from 3:00 pm Wednesday, July 3rd – 6:00 am Friday, July 5th) or Labor Day (from 3:00 pm Friday, August 30th – 6:00 am Tuesday, September 3rd).

2020: Memorial Day (from 3:00 pm Friday, May 22nd – 6:00 am Tuesday, May 26th), 4th of July (from 3:00 pm Thursday, July 2nd – 6:00 am Monday, July 6th) or Labor Day (from 3:00 pm Friday, September 4th – 6:00 am Tuesday, September 8th).

2021: Memorial Day (from 3:00 pm Friday, May 28th – 6:00 am Tuesday, June 1st), 4th of July (from 3:00 pm Friday, July 2nd – 6:00 am Tuesday, July 6th) or Labor Day (from 3:00 pm Friday, September 3rd – 6:00 am Tuesday, September 7th).

C. Additional lane or ramp closures other than those already in place will not be allowed during the following events unless otherwise approved by the Engineer:

- (1) Woodward Dream Cruise (<http://www.woodwarddreamcruise.com/>), Third Weekend in August, on Woodward Ave throughout Oakland County.
- (1) (2) Arts Beats and Eats (<http://artsbeatseats.com/>) August 31 through September 3, 2018, City of Royal Oak.
- (2) (3) Arts and Apples Festival (<https://www.pccart.org/festival/>), September 7, 8, and 9, 2018, City of Rochester.
- (3) (4) Oakland County Fair, (<https://www.oakfair.org/>), Week after July 4th of every year. July 6 through 15, 2018, Springfield Oaks Park, Springfield Twp.
- (4) (5) Brookside Way, (<https://www.thebrooksieway.com/>), September 22, 2018, City of Rochester Hills.
- (5) (6) Founders Festival, (<http://foundersfestival.com/>), July 19, 20, and 22, 2018, City of Farmington.
- (6) (7) Milford Memories, (<https://www.milfordmemories.com/>), August 10, 11, and 12, 2018, City of Milford.
- (7) (8) Berkley Days, (<http://www.berkleydays.com/>), May 17, 18, 19, and 20, 2018, City of Berkley.
- (8) (9) Holly Dickens Festival 2018 (<https://hollydickensfestival.org/index.html>), Spans three weekends between Thanksgiving and Christmas.
- (9) (10) Michigan Renaissance Festival
- (10) Holly Township/Groveland Township
- (11) Weekends and Labor Day – August 18th through September 30th 2018 (Dates vary year to year)
- (12) Festival Contact: Cathy Parker (248) 240-6248
- (13) (11) Other events name, dates and times. (go here for more... <https://oaklandcountyblog.com/things-to-do/outdoor-art-fairs-in-oakland-county>)

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

BOARD OF COUNTY ROAD
COMMISSIONERS OF THE COUNTY OF
OAKLAND, MICHIGAN

Witness

Shannon Miller

Dennis G. Kolar
Dennis G. Kolar, P.E., Managing Director

P.K. CONTRACTING, INC.

Karen Bissonette

By:

Sandra J. Bitner L.S.

Sandra J. Bitner, Agent

(Print or Type Name and Title)

Bond No. 107059106

RCOC PROJECT # 94119
2019 County-Wide Pavement Striping Program

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we, P.K. Contracting, Inc., 1965 Barrett, Troy, MI 48084, as principal, and Travelers Casualty and Surety Company of America, duly authorized to transact business in the State of Michigan, as surety, are held and firmly bound unto the Board of County Road Commissioners of the County of Oakland, State of Michigan, in the penal sum of one million eight hundred twenty-six thousand fifty dollars and 00/100 (\$1,826,050.00), lawful money of the United States, to be paid to the said Board of County Road Commissioners or to its certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16th day of May,
A.D. 20 19.

The condition of this obligation is such that if the above named principal shall and will, well and faithfully, and fully, do, execute and perform the contract to which this bond is attached, according to the terms and conditions thereof, including extensions of time, (notice of which is hereby waived by the surety), then this obligation is to be void, otherwise to remain in full force and effect.

P.K. CONTRACTING, INC., Principal

By Sandra J. Bitner

Its Sandra J. Bitner, Agent

Travelers Casualty and Surety Company of America Surety

By [Signature]

Its Susan L. Small, Attorney-In-Fact

Note: If the Principal is a co-partnership, each member must sign these bonds. If the principal is a corporation, evidence of the authority of officer signing must be attached or be on file with the Board of County Road Commissioners. When someone other than an officer or owner is signing, a notarized CERTIFICATE OF SECRETARY must be attached. The Surety Company shall attach, or have on file with the Board of County Road Commissioners, a valid power of attorney of person or persons executing bond for the Company.

RCOC PROJECT # 94119
2019 County-Wide Pavement Striping Program

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we, P.K. Contracting, Inc., 1965 Barrett, Troy, MI 48084, as principal, and Travelers Casualty and Surety Company of America, duly authorized to transact business in the State of Michigan, as surety, are held and firmly bound unto the Board of County Road Commissioners of the County of Oakland, State of Michigan, in the sum of one million eight hundred twenty-six thousand fifty dollars and 00/100 (\$1,826,050.00), lawful money of the United States to be paid to the said Board of County Road Commissioners, or to its assigns, or to any person, firm or corporation who may furnish labor, material, supplies for equipment, for construction, and equipment on a rental basis, on account of and actually used in the performance of the contract hereinafter mentioned, to which payment will and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns and each and every one of them firmly by these presents.

Sealed with our seals and dated this 16th day of May, A.D. 20 19

The condition of this obligation is such that if there shall be paid, as the same may become due and payable, all indebtedness which may arise from said principal to a sub-contractor or to any person, firm or corporation on account of any labor, material, supplies for equipment, for construction, and rental of equipment, furnished and actually used in the performance of the contract to which this bond is attached, including extensions of time, (notice of which is hereby waived by the surety), then this obligation is to be void, otherwise to remain in full force and effect.

Name, Address & Telephone Number
of Local Agent

VTC Insurance Group

1175 West Long Lake Road, Suite 200

Troy, MI 48098

248-828-3377

P.K. CONTRACTING, INC.

By Sandra J. Bltner

Its Sandra J. Bltner, Agent

Travelers Casualty and Surety Company of America Surety

By [Signature]

Its Susan L. Small, Attorney-In-Fact

TRAVELERS

**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Susan L. Small of TROY Michigan, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

By: Robert L. Raney
Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021



Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 16th day of May, 2019



Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/15/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER VTC Insurance Group 1175 West Long Lake Road Suite 200 Troy, MI 48098 INSURED P.K. Contracting, Inc. 1965 Barrett Troy, MI 48064-5372	1-248-828-3377 CONTACT NAME: Gayle Botner PHONE (AC No, Ext): 248-828-3377 FAX (AC No): 248-828-3741 E-MAIL ADDRESS: gbotner@vtcins.com INSURER(S) AFFORDING COVERAGE INSURER A: PHOENIX INS CO 25623 INSURER B: TRAVELERS PROP CAS CO OF AMER 25674 INSURER C: TRAVELERS IND CO OF CT 25682 INSURER D: CHARTER OAK FIRE INS CO 25615 INSURER E: GREAT AMER INS CO 16691 INSURER F:
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COVERAGES

CERTIFICATE NUMBER: 56194384

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> X, C, U Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	C0324P3222	12/31/18	12/31/19	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	810324P3222	12/31/18	12/31/19	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$		C0P324P3222	12/31/18	12/31/19	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> <input type="checkbox"/> Y/N N/A	0X8J540671	12/31/18	12/31/19	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
D	Leased/Rented Equipment		6601813X9133	12/31/18	12/31/19	Limit 150,000
E	Prof/Poll Liability		PCB1849482	07/12/18	07/12/19	Limit 1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Where required by written contract, the following is add'l insured for General Liability (GL) as respects ongoing & completed operations on a primary & non-contributory basis and add'l ins with respects to Automobile liability. GL, Auto & Workers Comp policies include waiver of subrogation on behalf of the following as required by written contract and where allowed by law. Umbrella/Excess liability coverage follows form over GL, Auto & Employers Liability RE: Project #94119, 2019 County Wide Pavement Striping Program
Additional Insured: Road Commission for Oakland County

CERTIFICATE HOLDER

Road Commission of Oakland County

31001 Lahser Road

Beverly Hills, MI 48025

USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Alan P. Chandler

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56194384

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INSURANCE BINDER

DATE (MM/DD/YYYY)
5/20/2019

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.

AGENCY VTC Insurance Group Troy Office 1175 W. Long Lake Ste. 200 Troy MI 48098-4960 PHONE (AC, No. Ext): (248) 828-3377 FAX (AC, No): (248) 828-3741 CODE: SUB CODE: AGENCY CUSTOMER ID: 00001470 INSURED AND MAILING ADDRESS Road Commission for Oakland County 2420 Pontiac Lake Road Waterford, MI 48328		COMPANY Travelers BINDER # B1952069567 EFFECTIVE DATE: 5/20/2019 TIME: 12:01 PM EXPIRATION DATE: 5/20/2020 TIME: 12:01 AM THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY # OCP BINDER DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (including Location) Project #94119 - 2019 County Wide Striping program Job Cost: \$1,826,050 Contractor: P. K. Contracting, Inc. 1965 Barrett Troy, MI 48084	
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COVERAGES

LIMITS

TYPE OF INSURANCE	COVERAGE / FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Owners & Contractors <input type="checkbox"/> Protective Liability	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE DAMAGE TO RENTED PREMISES MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COM/POP AGG		\$ 1,000,000 \$ \$ \$ \$ 2,000,000 \$
VEHICLE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE MEDICAL PAYMENTS PERSONAL INJURY PROT UNINSURED MOTORIST		\$ \$ \$ \$ \$ \$ \$
VEHICLE PHYSICAL DAMAGE DED <input type="checkbox"/> COLLISION <input type="checkbox"/> OTHER THAN COL:	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES	ACTUAL CASH VALUE STATED AMOUNT		\$ \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EACH ACCIDENT AGGREGATE		\$ \$ \$ \$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE AGGREGATE SELF-INSURED RETENTION PER STATUTE		\$ \$ \$ \$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT		\$ \$ \$
SPECIAL CONDITIONS / OTHER COVERAGES		FEES TAXES ESTIMATED TOTAL PREMIUM		\$ \$ \$

NAME & ADDRESS

	<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
	<input type="checkbox"/> LOSS PAYEE	
	LOAN #:	
	AUTHORIZED REPRESENTATIVE Alan Chandler/V45 <i>Alan P. Chandler</i>	

CONDITIONS

This Company binds the kind(s) of insurance stipulated on page 1 of this form. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

Applicable in Arizona

Binders are effective for no more than ninety (90) days.

Applicable in California

When this form is used to provide Insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

Applicable in Delaware

The mortgagee or Obligor of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

Applicable in Florida

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

Applicable in Maryland

The insurer has 45 business days, commencing from the effective date of coverage to confirm eligibility for coverage under the insurance policy.

Applicable in Michigan

The policy may be cancelled at any time at the request of the insured.

Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

Applicable in Oklahoma

All policies shall expire at 12:01 a.m. standard time on the expiration date stated in the policy.

Applicable in Oregon

Binders are effective for no more than ninety (90) days. A binder extension or renewal beyond such 90 days would require the written approval by the Director of the Department of Consumer and Business Services.

Applicable in the Virgin Islands

This binder is effective for only ninety (90) days. Within thirty (30) days of receipt of this binder, you should request an insurance policy or certificate (if applicable) from your agent and/or insurance company.

CONTRACT FOR LONG LINE ROAD STRIPING

- 1) Parties. The parties to this contract are the City of Pontiac, Michigan hereinafter referred to as the "City", and PK Contracting, Inc. hereinafter called the "Contractor".

- 2) Purpose. The purpose of this contract is for the City to engage the Contractor to provide Long Line Road Striping 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 Long Line Road Striping 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:

ITEM CODE #	ITEM OF WORK	UNIT	UNIT PRICE
8110153	Pavt Mrkg, Sprayable Thermopl, 4" White	Ft	\$ 0.103
8110154	Pavt Mrkg, Sprayable Thermopl, 4" Yellow	Ft	\$ 0.103
8110231	Pavt Mrkg, Waterborne, 4" White	Ft	\$
8110232	Pavt Mrkg, Waterborne, 4" Yellow	Ft	\$
8117050	Pavt Mrkg, Waterborne, Curb, 8" Yellow	Ft	\$
8110011	Call Back Mobilization	Ea	\$ 500.00
8120210	Pavt Mrkg, Longit, 6 or less width, Rem	Ft	\$ 0.45
N/A	Layout of Markings	Per/Day	\$ 1,500.00

6) Period of Performance. This contract expires December 31, 2016, with optional 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 Long Line Road Striping.

The Contractor will provide all labor, materials, supplies, equipment and supervision to perform Long Line Road Striping in the City.

The Scope of Work shall be limited to: Long Line Road Striping

The work consists of furnishing and applying permanent pavement markings according to the Michigan Manual of Uniform Traffic Control Devices, MDOT specifications and this supplemental specification.

The contractor shall properly dispose of unused material and containers in compliance with the Federal resource Conservation Recovery Act (RCRA) of 1976 as amended, and Part III (Hazardous Waste Management) of Public Act 451 of 1994 (Natural Resources and Environmental Protection Act).

The pavement marking equipment must meet industry standards for the type of material being applied. It shall be capable of applying material to the required length and width and assure uniform application of materials.

The marking shall be free of uneven edges, overspray, or other readily visible defects which detract from the appearance or function of the pavement markings. The Contractor is responsible for taking appropriate care to prevent motorists from being sprayed.

Traffic control and the Pavement Marking Convoy requirements shall be in accordance with the Michigan Manual of Uniform Traffic Control Devices and the drying time required for the type of material being used as specified by the material supplier.

All employees will be required to wear safety articles as required by law at the sole cost of the contractor.

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 \$1,000,000 per occurrence and/or aggregate combined single limit. 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 \$1,000,000 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 it is 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: PK Contracting, Inc.
1965 Barrett
Troy, MI 48084

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.

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.

P.K. Contracting, Inc.

DATE

By: _____

(Title)

City of Pontiac

DATE

By: _____

(Title)