

PONTIAC CITY COUNCIL

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



Patrice Waterman, District 1
George Williams, 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

STUDY SESSION

November 19, 2019

6:00 P.M.

124th Session of the 10th Council

Call to order

Roll Call

Authorization to Excuse Councilmembers

Amendments to and Approval of the Agenda

Approval of the Minutes

1. November 12, 2019

Closed Session

2. Resolution to go into closed session pursuant to MCL 15.267(h) to review material exempt from disclosure as attorney-client privileged pursuant to MCL 15.243(1)(g) to discuss City of Pontiac Retired Employees Association (CPREA) Settlement Agreement.

Public Comment

Discussion

3. Status Update on Professional Experts to the City Clerk
 - a. Announcement of Selection of Professional Expert-Financial Advisor to the City Clerk
 - b. Announcement of Selection of Professional Expert-Legal Advisor to the City Clerk

Mayoral Veto Statement

4. Veto Statement Regarding Resolution 19-531 Motion to Extend Medical Marihuana Moratorium until January 6, 2020

Communication from the City Clerk

5. Clerk's Response to Mayor's Veto of Resolution 19-531 Medical Marihuana Moratorium

Communications from the Mayor

6. CPREA Lawsuit Chronology Report
7. City Council to select City's VEBA Trustee

Resolutions

Mayor's Office

8. Resolution to approve VEBA documents; and authorize Mayor and Irwin Williams, Acting Finance Director to execute the City of Pontiac VEBA Declaratory Trust Agreement; and pursuant to the terms of the Settlement Agreement to appoint an individual to serve as a trustee under the City of Pontiac VEBA Declaratory Trust Agreement; and to authorize the Mayor to execute the City of Pontiac Retiree Group Health Insurance Plan and direct Miller Canfield to submit all IRS documents; and authorize a trustee of the City of Pontiac's VEBA Trust to authorize Miller Canfield to submit the City of Pontiac VEBA Trust Application for Recognition of Exemption Under Section 501(a) (Form 1024); and authorize payment of all necessary IRS filing fees with the above referenced submissions.
9. Resolution to approve the salary pay range for the Finance Director position between \$100,000.00 and \$120,000.

Department of Public Works (DPW)

10. Resolution to authorize Mayor to sign a one year contract with Clean Net of Greater Michigan, Inc., for custodial services in an amount not to exceed \$228,126.74.

Communication from the Mayor

11. DPW Performance Evaluation –Advance Disposal Contract

Resolutions

Finance

12. Resolution to approve a budget amendment for fiscal year 2019/2020 to allocate a total of \$51,456.09 (includes fringe benefits), from the Youth Recreation Fund's (208) fund balance to Youth Recreation Fund - Recreation Facility Department (756) Personnel Accounts. The breakout of these funds into accounts is as follows; \$34,666.67 to Salaries and Wages account 208-756-702.00, \$2,652 to F.I.C.A – City Contribution account 208-756-715.000, \$9,320.50 to Medical Insurance account 208-756-716.000, \$438.36 to Life Insurance account 208-756-717.000, \$2,333.33 to MERS Employer Contribution account 208-756-718.500, \$1,866.67 to Workers Compensation Insurance account 208-756-719.000, and lastly \$178.56 to Dental Insurance account 208-756-719.001. The total funds amount of \$51,456.09 are to be used to restore the Pontiac Youth and Empowerment Center's (PYREC) Youth Recreation Assistant Manager position to a full-time status. **(This item was postponed for two meetings at the Council Meeting on November 7, 2019.)**
13. Resolution to direct the City Clerk to publish the notice in a newspaper of general circulation at least one week before consideration of the proposed budget amendment for the Pontiac Youth Recreation and Enrichment Center (PYREC) for fiscal year 2019/2020 to allocate a total of \$51,456.09 (includes fringe benefits), from the Youth Recreation Fund's (208) fund balance to Youth Recreation Fund - Recreation Facility Department (756) Personnel Accounts. The breakout of these funds into accounts is as follows; \$34,666.67 to Salaries and Wages account 208-756-702.00, \$2,652 to F.I.C.A – City Contribution account 208-756-715.000, \$9,320.50 to Medical Insurance account 208-756-716.000, \$438.36 to Life Insurance account 208-756-717.000, \$2,333.33 to MERS Employer Contribution account 208-756-718.500, \$1,866.67 to Workers Compensation Insurance account 208-756-719.000, and lastly \$178.56 to Dental Insurance account 208-756-719.001. The total funds amount of \$51,456.09 are to be used to restore the Pontiac Youth and Empowerment Center's (PYREC) Youth Recreation Assistant Manager position to a full-time status. **(This item was postponed for two meetings at the Council Meeting on November 7, 2019.)**
14. Resolution to approve a budget amendment for the fiscal year 2019/2020 to decrease a total of \$320,035 from the General Fund's (101) fund balance and increase General Fund's – Police/Sheriff Department (301) line item for the City of Pontiac's Law Enforcement Services Agreement with the Oakland County Sheriff's Department, account 101-301-818.068 Prof. Serv-Oakland Co. Sheriff, for a total of \$320,035.
15. Resolution to authorize the Mayor to sign the amended Law Enforcement Services Agreement with the Oakland County Sheriff's Department effective December 21, 2019 for the calendar years 2019 through 2021 for the following amounts. \$596,154 for 2019, \$612,995 for 2020, and \$630,278 for 2021. **(The budget amendment must be approved before the agreement can be authorized.)**

Planning/Community Development

16. Resolution to Schedule Public Hearing for Community Development Block Grant Program Year 2020 on December 3, 2019.
17. Resolution to approval Mayoral recommendation to reappoint the following individuals to the Planning Commission: Mona Parlove for a term ending June 30, 2021 and Dayne Thomas for a term ending June 30, 2022.

Adjournment

#1

MINUTES

November 12, 2019 Formal

**Official Proceedings
Pontiac City Council
123rd Session of the Tenth Council**

A Formal Meeting of the City Council of Pontiac, Michigan was called to order in City Hall, Tuesday, November 12, 2019 at 6:00 p.m. by Councilwoman Patrice Waterman as Chair.

Call to Order

Roll Call

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

Members Absent: Carter, Miller and K. Williams.

Mayor Waterman was present.

Clerk announced a quorum.

19-552 **Excuse Councilperson Gloria Miller, Randy Carter and Kermit Williams for personal reasons.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Ayes: Pietila, Taylor-Burks, Waterman and G. Williams

No: None

Motion Carried.

Councilwoman Gloria Miller arrived at 6:03 p.m.

19-553 **Motion to remove items #3 & #6 from the agenda, amend language for closed session and add a resolution for Veterans Day as the new item #5.** Moved by Councilperson G. Williams and second by Councilperson Pietila.

Ayes: Pietila, Taylor-Burks, Waterman, G. Williams and Miller

No: None

Motion Carried.

19-554 **Approve the agenda as amended.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Ayes: Taylor-Burks, Waterman, G. Williams, Miller and Pietila

No: None

Motion Carried.

Point of Privilege – Mayor reported a Snow Emergency for the City of Pontiac

November 12, 2019 Formal

19-555 **Approval of meeting minutes for November 7, 2019.** Moved by Councilperson Pietila and second by Councilperson G. Williams.

Ayes: Waterman, G. Williams, Miller, Pietila and Taylor-Burks

No: None

Motion Carried.

19-556 **Resolution to go into Close Session.** Moved by Councilperson Pietila and second by Councilperson G. Williams.

Be It Resolved, A closed session pursuant to MCL15.268 (e) to discuss pending litigation, specifically Ottawa Towers II, LLC, et al. v. City of Pontiac, et al., United States District Court Case No. 2:12-cv-13134-AC-MKM.

Ayes: G. Williams, Miller, Pietila, Taylor-Burks and Waterman

No: None

Resolution Passed.

19-557 **Motion to come out of Close Session.** Moved by Councilperson Taylor-Burks and second by Councilperson Pietila.

Ayes: Miller, Pietila, Taylor-Burks, Waterman and G. Williams

No: None

Motion Carried.

Special Presentations

Medical Marihuana Roles and responsibilities, Application Review and Moratorium Update
Presentation Presenter: Garland Doyle, Interim City Clerk

Medical Marihuana Process and Next Steps
Presentation Presenter: Vern Gustafsson

19-558 **Resolution Commemorating Veterans Day. (Agenda add-on)** Moved by Councilperson Pietila and second by Councilperson G. Williams.

Whereas, it is with warm and sincere gratitude that we graciously recognize November 11, the anniversary of the ending of World War I, by paying tribute to the heroes of the tragic struggle and by rededicating ourselves to the cause of peace; and,

Whereas, in the intervening years, the united States has been involved in subsequent military conflicts, which have added millions of veterans living and dead to the honor rolls of this nation; and,

Whereas, Congress passed a concurrent resolution on June 4, 1928 (44 Stat. 1962), calling for the observance of November 11 with appropriate ceremonies, and later provided in an act approved May 13,

1938 (53 Stat. 351), the eleventh of November should be a legal holiday and should be known as Armistice Day; and,

Whereas, in order to expand the significance of that commemoration and in order that a grateful nation might pay appropriate homage to the veterans of all its wars who have contributed so much to the preservation of this Nation, the Congress, by an act approved June 1, 1954 (68 Stat. 168), changed the name of the holiday to Veterans Day.

Now, Therefore, Be It Resolved, that we the members of the Pontiac City Council, hereby call upon the citizens of Pontiac, to observe Thursday, November 11 as Veterans Day and on that day, let us remember the sacrifices of those who fought so courageously on the seas, in the air, and on the foreign shores, to preserve our heritage of freedom, and let us commit ourselves, to the task of promoting and enduring peace, so that their efforts shall not have been in vain.

Ayes: Miller, Pietila, Taylor-Burks, Waterman and G. Williams

No: None

Resolution Passed.

19-559 **Resolution honoring Gerald Lamarr Jennings.** Moved by Councilperson Taylor-Burks and second by Councilperson Pietila.

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, inspiring and empowering the community; and;

WHEREAS, it is feelings of the deepest regret that the Pontiac City Council mourns the passing of Gerald Lamarr Jennings, a giving and loyal member of this community; and,

WHEREAS, Gerald Lamarr Jennings was born on June 24, 1949 in McComb, Mississippi to the late Alphonse and Cleo Jennings; and,

WHEREAS, Gerald Lamarr Jennings accepted Christ at a young age and joined Society Hill Missionary Baptist Church in McComb, Mississippi; and,

WHEREAS, Gerald Lamarr Jennings displayed his ambitious nature and scholastic ability by earning a Bachelor's degree from Albany State College in Business Administration in 1971; and,

WHEREAS, Gerald Lamarr Jennings upon graduation, migrated to Pontiac, Michigan where he later met the love of his life of 44 years, his wife Carolyn, and to this union, the couple had one daughter, Nikia; and,

WHEREAS, Gerald Lamarr Jennings embraced the gift of laughter and was known to be the life of the party, for these reasons, he was affectionately given the nicknames "squirrel" and "biscuit;" and,

WHEREAS, Gerald Lamarr Jennings without question, lived life to the fullest, as there was never any doubt that the essential components were family and friends; and,

WHEREAS, Gerald Lamarr Jennings selflessly devoted 32 years to the City of Pontiac where he attained the rank of Superintendent in the Department of Public Works & Utilities, where he subsequently retired in 2004 and where he was proven to be a master at balancing work and enjoying life's pleasures; and,

WHEREAS, Gerald Lamarr Jennings joined Liberty Missionary Baptist Church where he served on the Usher Board and later moved his membership to Welcome Baptist Church.

November 12, 2019 Formal

NOW, THEREFORE BE IT RESOLVED, that the Pontiac City Council and members of this great community will greatly miss Gerald Lamarr Jennings, as his life was a portrait of service, a legacy that 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 Gerald Lamarr Jennings.

Ayes: Miller, Pietila, Taylor-Burks, Waterman and G. Williams

No: None

Resolution Passed.

19-560 **Table for one week the resolution to authorize Mayor to sign a one-year contract with Clean Net of Greater Michigan, Inc., for custodial services in an amount not to exceed \$228,126.74.** Moved by Councilperson Taylor-Burks and second by Councilperson G. Williams.

Ayes: Pietila, Taylor-Burks, Waterman, G. Williams and Miller

No: None

Motion Carried.

Eight (8) individuals addressed the body during public comment.

Mayor Waterman, Interim City Clerk Doyle, Councilwoman Miller, Councilman G. Williams, Councilwoman Taylor-Burks, Councilwoman Pietila and Councilwoman Waterman made closing comments.

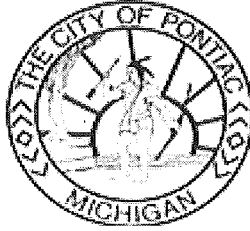
Councilwoman Patrice Waterman as Chair adjourned the meeting at 7:55 p.m.

GARLAND S. DOYLE
INTERIM CITY CLERK

#2

**CLOSED
SESSION**

Pontiac City Council Resolution

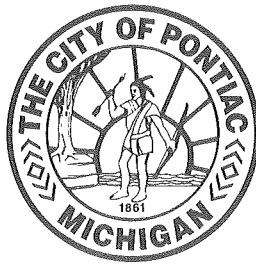


Whereas, Michigan Open Meetings Act Section 8(h), MCL 15.268(h), allows a public body to go into closed session to consider material exempt from discussion or disclosure by state or federal statute; and

Whereas, Michigan Freedom of information Act Section 13(g) exempts from disclosure records subject to the attorney-client privilege; to discuss an attorney-client privileged memorandum exempt from disclosure pursuant to MCL 15.243(1)(g) regarding CPREA Settlement Agreement.

#4

**MAYOR'S
STATEMENT ON
VETO OF
RESOLUTION 19-531**



DR. DEIRDRE WATERMAN
MAYOR
CITY OF PONTIAC

Statement of Mayor Waterman's veto regarding Motion 19-531 to extend Medical Marihuana Moratorium until January 6, 2020.

On October 29, 2019, Council voted to extend the motion 19-531 to extend Medical Marihuana Moratorium until January 6, 2020.

Tuesday, November 12, 2019

Interim Clerk:

I am receipt of the November 4th, 6:07 PM email from your office that purportedly forwarded the resolutions and ordinances which Council had voted on during the October 29, 2019 meeting. However, this packet did not include the resolution passed by the Council during that same meeting for a sixth moratorium to delay the implementation of the Medical Marihuana Ordinance in the city for another 60 days.

Not including that the resolution to my attention was an omission on the part of your office.

As I wish to veto that resolution passed by Council, I am sending this email to constitute my veto and my statement as required by the city charter.

The statement of my veto regarding this resolution includes the following:

- The review of the Medical Marihuana Chronology (attached) establishes that the vote for the ballot proposal was certified on September 12, 2018.
- The length of time between that date and now was certainly adequate time for the City (via the Clerk's office) to implement the application process without requiring yet another 60-day delay to do so.
- During that same time, there have been five prior moratoriums, seven zoning ordinances amendments, and seven ordinance amendments which certainly should have been more than adequate for beginning this process in the City.

Furthermore, the Medical Marihuana Dispensary Application Flow Chart submitted by City Attorney Anthony Chubb shows that there is adequate staffing within the city currently to fulfill the requirements needed to complete the application process. According to this chart, there would be no need to delay any longer, in order for the interim Clerk to put in place additional personnel which he hasn't yet selected or funded, including a Hearing Officer. The fault of the Interim Clerk to enact a flow chart with personnel

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and action plan that is not yet fully staffed or funded should not put the City in jeopardy with yet another delay in implementation.

Another moratorium would increase the City's vulnerability to lawsuits as well as cause undue hardships and confusion among those who had depended that the application process would proceed as had been previously set by the City.

For these reasons, I issue a veto for the Council resolution as identified above.

A handwritten signature in cursive script, appearing to read "Deirdre Waterman", is written over a horizontal line.

Mayor Deirdre Waterman



City of Pontiac

Medical Marihuana Chronology

6 Moratoriums | 7 Amendments | 7 Ordinances

Proposal 1 (60 Days)		
Moratorium Days Left		
September 12, 2018	60 Days	Proposal 1 Vote Certified
October 18, 2018	51 Days	Medical Marihuana Town Hall
October 29, 2018 (Planning Commission)	41 Days	Public Hearing Planning Commission Ordinance #1
November 8, 2018 (City Council)	1 Day	Councilwoman Miller Amendment #1 withdrawn <u>City Council approved 90-Day Moratorium ending February 8, 2019</u>
City Council Moratorium #1 (90 Days)		
December 18, 2018 (City Council)	40 Days	Carter/City Council Amendment #2 introduced and Planning Commission Ordinance #1 Denied
January 30, 2019 (Planning Commission)	32 Days	Public Hearing Planning Commission Ordinance #2 and Carter/City Council Amendment #3 Mattie Hatchett Presented Community Option Amendment #4 to Planning Commission
City Council Moratorium #2 (30 Days)		
February 26, 2019 (City Council)	21 Days	City Council introduce Amendment #5 for Planning Commission Review
March 4, 2019	4 Days	Medical Marihuana Town Hall
March 6, 2019 (Planning Commission)	2 Days	Public Hearing Planning Commission Ordinance #3 & City Council Amendment #6 includes C-1 in areas outside the Medical Marihuana Overlay District

March 7, 2019 (City Council)	1 Day	PC Ordinance #3 denied by City Council City Council adopts Carter/City Council Amendment #6 <u>Voted Moratorium #3 to March 15th</u> March 8, 2019 Mayor Veto Amendment #6
City Council Moratorium #3 (15 Days)		
March 12, 2019 (City Council)	11 Days	Council approves Carter/City Council Amendment #6 over Mayor's Veto [Ordinance 2361] Ordinance 2361 with added Planning Commission Ordinance regulations #4 and refer to Planning Commission <u>Voted Moratorium #4 until April 15th</u>
City Council Moratorium #4 (30 Days)		
March 26, 2019 (City Council)	20 Days	Council confirms Ordinance 2361 with Planning Commission Ordinance regulations #5 & Refer to April 3 rd Planning Commission meeting.
April 3, 2019 (Planning Commission)	12 Days	PC Public Hearing – Recommend approval of Ordinance 2361 with Planning Commission Ordinance regulations #6
April 9, 2019 (City Council)	6 Days	City Council Vote to amend Ordinance 2361 with Planning Commission Ordinance Regulations #7
April 15, 2019	-	<u>End of Moratorium #4</u>

City Council Moratorium #5 (71 Days)		
August 27, 2019 (City Council)	71 Days	Voted Moratorium #5 and Pro Tem Carter introduce Buffer Distance Restrictions Amendment #7
August 27, 2019 (City Council)	71 Days	Community Benefit Ordinance Remains Invalid
October 15, 2019	23 Days	Met with Pro Tem Carter to discuss Buffer Distance Restrictions Amendment #7
November 6, 2019	-	<u>End of Moratorium #5</u>

City Council Moratorium #6 (70 Days)		
October 29, 2019 (City Council)	70 Days	Voted Moratorium #6
October 29, 2019 (City Council)	70 Days	Community Benefit Ordinance Remains Invalid
January 6, 2020	-	<u>End of Moratorium #6</u>

FROM: Anthony K. Chubb, Esq.
DATE: August 13, 2019
RE: Medical Marihuana Dispensary Application Flow Chart

Consistent with Pontiac City Ordinance 2357(B), please see the below proposed marihuana dispensary application flow chart.

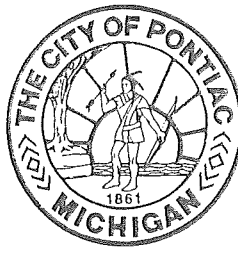
1. Applications shall be submitted to the City Clerk. *See* Ord. 2357(B)(8)(b).
2. The Clerk shall forward application payment to the Treasurer. *See* Ord. 2357(B)(8)(d).
 - a. If the applicant fails to provide payment, the Clerk will send a notice of rejection.
3. The Clerk shall review all applications for completeness. *See* Ord. 2357(B)(8)(c).
 - a. If the applicant fails to submit a complete application, the Clerk will send a notice of rejection.
4. The Clerk shall distribute the application to the Fire Department, Building Safety Department, and Planning Department. *See* Ord. 2357(B)(9)(b)(1-2).
 - a. If the application fails review of Fire, Building and Safety, or Planning, the Clerk will send a notice of rejection.
5. In order to comply with duties to assess, evaluate, score, and rank applications set forth at Ord. 2357(B)(9)(f)(1-8), the Clerk shall distribute copies of applications to the following for their review and consideration:
 - a. Mayor
 - b. Deputy Mayor
 - c. Director of Finance
 - d. City Attorney
 - e. Director of Economic Development
6. To complete the overall scoring and ranking as set forth in Ord. 2357(B)(9)(g), the Clerk shall convene a meeting with the individuals set forth above to assign points to each applicant in a manner consistent with Ord. 2357(B)(9)(f)(1-8).

#5

**COMMUNICATION
FROM THE
CITY CLERK**

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

SHEILA GRANDISON
Deputy City Clerk



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

Clerk's Response to Mayor's Veto of Resolution 19-531 Medical Marihuana Moratorium
Mayor refuses to adhere to the Citizen Approved Ordinance 2357(B) and the will of Pontiac Voters

In Mayor Waterman's statement of veto on the extension of the Medical Marihuana Moratorium, she states that "the ballot proposal was certified on September 12, 2018. The length of time between that date and now was certainly adequate time for the city via the Clerk's office- to implement the application process without requiring yet another 60 day delay to do so."

The Mayor's statement would be true if the Mayor had not been intentionally setting up roadblocks to prevent the City Clerk from overseeing this process. Ordinance 2357 (B) requires the City Clerk to oversee the medical marihuana application process. Not only is the Clerk responsible to "assess, evaluate, score and rank" all applications for provisioning centers, but the ordinance also allows the clerk to engage professional expert assistance in performing the clerk's duties and responsibilities under this ordinance.

Garland Doyle was appointed Interim City Clerk in October 2018. "Since being named City Clerk, the Mayor has continuously interfered with my ability to do my job" Doyle said. It has gotten so bad, that Doyle officially filed a complaint against the Mayor with Human Resources and asked for an independent investigation.

According to Interim Clerk Doyle, there are several issues that need to be resolved before the moratorium is ended.

- August 27, 2019, the City Council referred a zoning text amendment regarding buffers and playground equipment to the Planning Commission that as of today has yet to be considered by the Planning Commission.
- Planning staff has been informing potential applicants that they can request a rezoning with their application. Based on the application, all request for rezoning has to be completed before the medical marihuana application is submitted. If you are not properly zoned at the time an applicant submits an application, their application will be denied.
- The Mayor has not signed the engagement letter for Fausone Bohn, LLP to serve as the Professional Expert-Legal Advisor to the City Clerk although the money to pay the legal advisor is in the Medical Marihuana Application (Dept 255) budget. As a result, Fausone Bohn, LLP has

requested that they be withdrawn from consideration. **"The Mayor runs away any professional expert I attempt to engage with her shenanigans. This unprofessional behavior has to stop if we are going to move this process forward"** stated Doyle.

- The Mayor refused to sign a Request for Proposal (RFP) for a Professional Expert-Financial Advisor to the City Clerk although the money to pay the financial advisor is in the Medical Marihuana Application (Dept 255) budget. The Mayor has had the RFP since August 26, 2019. The RFP was approved by the City Attorney Anthony Chubb, yet the Mayor refuses to sign it.
- The Mayor has failed to name the members of the Medical Marihuana Commission as required by Ordinance 2357(B).

Additionally, the Mayor further states in her veto statement that according to the Medical Marihuana Dispensary Application Flow Chart submitted by City Attorney Anthony Chubb, "shows that there is adequate staffing within the city currently to fulfill the requirements needed to complete the application process". Clerk Doyle wants to know when the City Attorney got to decide adequate staffing levels for the City and more importantly the Clerk's Office. "If I allow city staff not named in the ordinance that are under the control of the Mayor to review applications, then I will be negligent of my duties under the ordinance. The Mayor has made it clear to me that according to the Charter I cannot tell her staff what to do and she is right" Doyle said. "This is why the Ordinance 2357(B) allows the Clerk to engage professional expert assistance in performing the Clerk duties under the ordinance.

The Mayor is trying to circumvent the Clerk in any way possible according to Doyle. **This was evident when City Attorney Chubb issued a legal opinion to modify Ordinance 2357(B) by allowing applicants to appeal directly to the Medical Marihuana Commission that is appointed by the Mayor instead of going through the Hearing Officer as required by Ordinance 2357(B). "Then City Attorney Chubb told me if I did not modify the application to note the change in the appeal process, I could be sued" said Doyle. Despite the fact that I informed City Attorney Chubb that the City of Lansing whose ordinance is very similar to the City of Pontiac does not grant a Hearing Officer waiver.**

Furthermore, Clerk Doyle stated that **"my office has developed an application process despite the Mayor's roadblocks and I am prepared to fully implement it. I will not be a part of the Mayor's egregious effort to blatantly ignore the will of Pontiac voters."** I will continue to work to ensure that Ordinance 2357 (B) is enacted as approved by the residents of Pontiac.

CITY OF PONTIAC



Official Medical Marihuana Applications: Evaluation, Scoring, And Ranking Process

Office of the City Clerk, Garland S. Doyle, M.P.A., Interim City Clerk
47450 Woodward Avenue, Pontiac, MI 48342 PHONE: (248) 758-3200

Application Review Process for Grower, Processor, Secure Transporter, and Safety Compliance Applicants

1

The Office of the City Clerk will review all applications to make sure all information and exhibits have been submitted.

2

The City Clerk will check with the following departments to ensure that the applicant is not in default with the City.

50th District Court Review, to be completed by City Clerk

Income Tax

Treasury

3

The Legal Advisor to the City Clerk will conduct the criminal background checks of the applicants.

4

The City Clerk will refer the applications to the following.

Building

- Sec. 9(b)(1)
- Sec. 9(b)(3)

Planning

- Sec. 8(c)(18)-(20)
- Sec. 8(c)(27), (30)
- Sec. 9(b)(2)

Fire

- Sec. 8(c)(31)
- Sec. 9(b)(1)

Financial Advisor to City Clerk

- Sec. 8(c)(6)-(13)
- Sec. 8(c)(22), (24)

Sheriff

- Sec. 8(c)(17)

Finance

- Sec. 8(c)(25)

DPW

- Sec. 8(c)(21)

Legal Advisor

- Sec. 8(c)(5)
- Sec 8 (c)(14)

City Clerk

- Sec. 8(c)(15)-(16)

5

The City Clerk will award permits to applicants that have satisfactorily met all requirements of Ordinance 2357(b) and have received 9(b)(1) clearance from Building and Fire, 9(b)(2) clearance from Planning, and 9(b)(3) clearance from Building.

Appeal Process

- An applicant denied a permit may appeal to the City Clerk, who shall appoint a hearing officer to hear and evaluate an appeal and make a recommendation to the City Clerk. Such appeal would be taken by filing a written statement of appeal with the City Clerk, within fourteen (14) days after notice of the denial.
 - The City Clerk would review the report and recommendation of the hearing officer and make a decision on the matter.
- The City Clerk's decision may be further appealed to the Medical Marihuana Commission by written appeal no later than thirty (30) days after the City Clerk's decision.
- IN THE ALTERNATIVE, an applicant may waive, in writing within fourteen (14) days after notice of the denial, its opportunity to be heard before a hearing officer, and instead submit its appeal directly to the Medical Marihuana Commission no later than (30) days after mailing of the denial decision.
- The Medical Marihuana Commission shall only overturn a decision or finding of the clerk if it finds such decision or finding to be arbitrary or capricious and not supported by material, substantial, and competent facts on the whole record considered by the clerk in arriving at such decision or finding (Ordinance 2357B).

**APPEAL
OPTION 1**

PROCESS FOR APPEAL

**APPEAL
OPTION 2**

Pontiac City Clerk makes decision on application

Applicant submits written appeal to Pontiac City Clerk within 14 days.

Pontiac City Clerk appoints hearing officer to hear and evaluate appeal.

Applicant can present additional clarifying information or evidence that the applicant believes should be considered in assessing its

Hearing officer conducts hearing on appeal and makes recommendation to Pontiac City Clerk, who makes a decision on the matter.

Applicant may submit further written appeal to medical marihuana commission within 30 days.

Applicant waives, in writing, its right to be heard before a hearing officer within 14 days.

After waiving its right in writing to be heard before a hearing officer, Applicant submits written appeal to medical marihuana commission through the Pontiac City Clerk's Office within 30 days.

The medical marihuana commission shall only overturn a decision or finding of the Pontiac City Clerk if it finds such decision or finding to be arbitrary or capricious and not supported by material, substantial, and competent facts on the whole record considered by the Pontiac City Clerk in arriving at such decision or finding.

Application Review Process for Provisioning Centers

1

The Office of the City Clerk will divide all applications into one of four (1 of 4) districts. Applicants will be scored and ranked by district.

2

The City Clerk will check with the following departments to ensure that the applicant is not in default with the City.

50th District Court Review, to be completed by City Clerk

Income Tax

Treasury

3

The Scoring Team will consist of the City Clerk, Planning Manager, Professional Expert- Financial Advisor to the City Clerk and the Professional Expert-Legal Advisor to the City Clerk.

The City Clerk, Planning Manager and Professional Expert-Financial Advisor will score the relevant sections of the application.

The Scoring Team will meet after all the applications in a district have been scored by the City Clerk, Planning Manager and Professional Expert-Financial Advisor to tally the total score and rank the applications. (The scoring team will meet at least four times.)

The Legal Advisor will complete a compliance review of scored provisioning center applications to ensure criteria have been consistently applied by members of the scoring team.

4

No Scoring or Ranking will be announced until after the Legal Advisor compliance review and all four of the districts have been scored and ranked. The Legal Advisor will conduct the criminal background checks of the top 5 ranked applicants by district.

5

The City Clerk will announce the application rankings by district.

6

The City Clerk will refer the applications of the top 5 ranked applicants to the following.

Building

- Sec. 9(b)(1)
- Sec. 9(b)(3)

Planning

- Sec. 8(c)(18)-(20)
- Sec. 8(c)(27), (30)
- Sec. 9(b)(2)

Fire

- Sec. 8(c)(31)
- Sec. 9(b)(1)

Sheriff

- Sec. 8(c)(17)

Finance

- Sec. 8(c)(25)

DPW

- Sec. 8(c)(21)

Legal Advisor

- Sec. 8(c)(5)

7

The City Clerk will award permits to the top 5 applicants from each district after they have received 9(b)(1) clearance from Building and Fire, 9(b)(2) clearance from Planning, and 9(b)(3) clearance from Building.

Appeal Process

- An applicant denied a permit may appeal to the City Clerk, who shall appoint a hearing officer to hear and evaluate an appeal and make a recommendation to the City Clerk. Such appeal would be taken by filing a written statement of appeal with the City Clerk, within fourteen (14) days after notice of the denial.
 - The City Clerk would review the report and recommendation of the hearing officer and make a decision on the matter.
- The City Clerk's decision may be further appealed to the Medical Marihuana Commission by written appeal no later than thirty (30) days after the City Clerk's decision.
- IN THE ALTERNATIVE, an applicant may waive, in writing within fourteen (14) days after notice of the denial, its opportunity to be heard before a hearing officer, and instead submit its appeal directly to the Medical Marihuana Commission no later than (30) days after mailing of the denial decision.
- The Medical Marihuana Commission shall only overturn a decision or finding of the clerk if it finds such decision or finding to be arbitrary or capricious and not supported by material, substantial, and competent facts on the whole record considered by the clerk in arriving at such decision or finding (Ordinance 2357B).

**APPEAL
OPTION 1**

PROCESS FOR APPEAL

**APPEAL
OPTION 2**

Pontiac City Clerk makes decision on application

Applicant submits written appeal to
Pontiac City Clerk within 14 days.

Pontiac City Clerk appoints hearing officer to hear
and evaluate appeal.

Applicant can present additional clarifying
information or evidence that the applicant
believes should be considered in assessing its

Hearing officer conducts hearing on appeal and
makes recommendation to Pontiac City Clerk,
who makes a decision on the matter.

Applicant may submit further written appeal to
medical marihuana commission within 30 days.

Applicant waives, in writing, its right to
be heard before a hearing officer within
14 days.

After waiving its right in writing to be heard before
a hearing officer, Applicant submits written appeal
to medical marihuana commission through the
Pontiac City Clerk's Office within 30 days.

The medical marihuana commission shall only
overturn a decision or finding of the Pontiac City
Clerk if it finds such decision or finding to be
arbitrary or capricious and not supported by
material, substantial, and competent facts on the
whole record considered by the Pontiac City Clerk
in arriving at such decision or finding.

#6

**COMMUNICATION
FROM THE
MAYOR**

The City of Pontiac Retired Employees Association, et. al.
vs.
Louis Schimmel, et. al.

U.S. District Case No. 12-cv-12830

CHRONOLOGY OF SETTLEMENT	
July 13, 2017	Pontiac City Council approval of proposed settlement between the City and Pontiac Retirees ("CPREA")
September 2017	Hospital Retirees file Motion to Intervene in the Lawsuit and seek an Order from the Court ruling the proposed settlement unlawful
October 2017	CPREA and the City file Response to Motion to Intervene
November 2017	Hearing on Motion to Intervene. Court defers a ruling on the Motion to Intervene
January to March 2018	Initial preparation of motion for tentative approval of settlement agreement. This is a highly complicated and detailed court pleading that must meet several specific court rules and mandates.
April 2018	Hospital Retirees file response to motion for approval of settlement asking for a ruling that the Settlement is unlawful
June 13, 2018	Order Granting Joint Motion for Class Certification, Preliminary Approval of Class Action Settlement, Approval of Proposed Class Notice, and Set Fairness Hearing
August 13, 2018	City and CPREA file Joint Motion for Final Approval of Class Action Settlement
August 29, 2018	Hospital Retirees' file Objections to Proposed Settlement
August - September 2018	City analysis of methods of termination of the GERS plan, with a reversion to the City, that will meet IRS requirement
September 12, 2018	Fairness Hearing – USDC – Judge Avern Cohn
November 19, 2018	Order Granting Motion for Final Approval of Class Action Settlement
November 2018 – March 2019	Analysis of history of GERS retirement plan, actuarial valuations and prior ordinances entered by former boards, to determine that plan termination and reversion is consistent with those prior documents and decisions, and to confirm the required process for plan termination

January – March 2019	Draft VEBA trust documents and associated documents
April 19, 2019	Initial draft of new VEBA trust agreement presented to CPREA Board attorney
July 25, 2019	Receipt of CPREA Board attorney's initial comments on draft VEBA trust agreement
August to October 2019	Several drafts of the VEBA trust agreement are exchanged between the City attorneys and attorney for the CPREA Board
November 8, 2019	Finalize VEBA trust agreement and related documents
November 19, 2019	Presentation to Pontiac City Council
December 10, 2019	Submittal of VEBA trust agreement to IRS (contingent on City Council approval)

#8

RESOLUTION

FINAL

CITY OF PONTIAC VEBA DECLARATORY TRUST AGREEMENT

November ___, 2019

THIS CITY OF PONTIAC VEBA DECLARATORY TRUST AGREEMENT (the "Trust Agreement") is made and entered into November ___, 2019, by the City of Pontiac, Michigan (the "City") and the Trustees (as hereinafter identified) and their successors. The City and the Trustees are collectively referred to herein as "Parties" and individually as a "Party."

WHEREAS, the City provides certain medical, prescription, dental, and vision benefits to eligible City retirees and their eligible spouses, dependents, and beneficiaries who elect to participate in the City of Pontiac Retiree Group Health and Insurance Plan (the "Plan") in accordance with provisions of the settlement agreement entered into in *City of Pontiac Retired Employees Association et. al. v. Schimmel et. al.*, Docket #64-2, Case No. 2:12-cv-12830-AC-PJK dated March 30, 2018 (United States District Court Eastern District of Michigan) ("the "Settlement Agreement") and the Plan ("Retiree Health Benefits"), both of which are incorporated herein; and

WHEREAS, the funds which will be contributed to and/or any insurance policies held by the trust created by this Trust Agreement will constitute a trust fund created for the purpose of funding the payment of Retiree Health Benefits (the "Trust Fund"); and

WHEREAS, the City desires to establish a trust exempt from taxation under Internal Revenue Code section 501(c)(9), which when combined with the Plan constitutes a voluntary employees' beneficiary association and conforms with the requirements of Internal Revenue Code section 501(c)(9) and its implementing regulations; and

WHEREAS, the City desires to establish this trust in order to provide Retiree Health Benefits through the Trust Fund, to irrevocably receive and hold in trust the Trust Fund assets, and to hold, invest and distribute the Trust Fund assets, all in accordance with this Trust Agreement ("Trust"); and

WHEREAS, the City desires for the Trust Fund to (1) comply with the applicable requirements of the Public Employee Health Care Fund Investment Act, Public Act 1999, No. 149, MCL 38.1211 *et. seq.* ("Act 149"), (2) to comply with the applicable requirements of Protecting Local Government Retirement and Benefits Act, Public Act 2017, No. 202, MCL 38.2801 *et. seq.* ("Act 202"), and (3) satisfy the applicable requirements of Statements No. 74 and 75 of the Governmental Standards Accounting Board ("GASB"); and

WHEREAS, the City desires the Trustees to hold and administer the Trust Fund, and the Trustees are willing to hold and administer such Trust Fund pursuant to the terms of this Trust Agreement; and

WHEREAS, on November ___, 2019, the Pontiac City Council approved a resolution authorizing the adoption of this Trust Agreement.

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NOW, THEREFORE, the Parties agree and declare that this Trust Agreement is hereby entered into and the Trust Fund is hereby declared established to provide funding for Retiree Health Benefits.

ARTICLE 1 **DEFINITIONS**

The following definitions shall govern the following terms when used in this Agreement, unless otherwise specifically required by the context.

1.1 “Act 149” means the Public Employee Health Care Fund Investment Act, Public Act 1999, No. 149, MCL 38.1211 *et. seq.*

1.2 “Act 202” means the Protecting Local Government Retirement and Benefits Act, Public Act 2017, No. 202, MCL 38.2801 *et. seq.*

1.3 “Act 314” means the Public Employee Retirement System Investment Act, Public Act 1965, No. 314, MCL 38.1132 *et. seq.*

1.4 “Additional Contribution” has the meaning set forth in Section 3.5.

1.5 “Administrator” means the person, persons, firm, corporation or insurance company or companies, appointed by the Trustees to administer the Trust (or a function of the trust) as set forth in Section 5.3.

1.6 “Board of Trustees” means the seven Trustees appointed pursuant to Article 4.

1.7 “City” means the City of Pontiac, Michigan.

1.8 “Code” means the Internal Revenue Code of 1986, as may be amended from time to time.

1.9 “City of Pontiac Retired Employees Association” means the representative party in *City of Pontiac Retired Employees Association et. al. v. Schimmel et. al.*, Case No. 2:12-cv-12830-AC-PJK (United States District Court Eastern District of Michigan).

1.10 “Excess Assets” means the assets held within the GERS on the GERS Approved Termination Date which exceed 130% the GERS pension liabilities on that date.

1.11 “Fiscal Year” means the fiscal year under which the Trust shall be maintained beginning on July 1.

1.12 “GASB” means the Governmental Standards Accounting Board.

1.13 “GERS” means the City of Pontiac General Employees’ Retirement System.

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1.14 “GERS Approved Termination Date” means the date on which the GERS’ application for determination of plan termination (IRS Form 5310) is approved by the Internal Revenue Service.

1.15 “IRS Approval Date” means the date the IRS approves the Trust and the Plan as a VEBA Trust.

1.16 “Participant” means a Retiree (or his or her spouse and/or dependent) who is participating in the Plan.

1.17 “Parties” means the City and the Trustees.

1.18 “Plan” means the City of Pontiac Retiree Group Health and Insurance Plan.

1.19 “Retiree” means an employee who has retired from employment with the City and who is a member of the class which was a party to the Settlement Agreement.

1.20 “Retiree Health Benefits” means the medical, prescription, dental, and vision benefits made available and provided under the Plan.

1.21 “Settlement Agreement” means the settlement agreement entered into in *City of Pontiac Retired Employees Association et. al. v. Schimmel et. al.*, Docket #64-2, Case No. 2:12-cv-12830-AC-PJK dated March 30, 2018 (United States District Court Eastern District of Michigan).

1.22 “Trustees” means the trustees nominated and appointed and successor Trustees designated in the manner provided in Article 4. The term “Trustee” means all persons or entities who occupy the office of Trustee under this Trust Agreement, when such persons or entities occupy such office, whether one or more persons or entities occupy the office of Trustees at the same time or times, and includes any successor Trustee(s).

1.23 “Trust” means the City of Pontiac VEBA Trust.

1.24 “Trust Agreement” means this City of Pontiac VEBA Declaratory Trust Agreement.

1.25 “Trust Fund” means the funds which will be contributed to and/or the insurance policies held by the trust created by this Trust Agreement which constitute a trust fund created for the purpose of funding the payment of Retiree Health Benefits.

1.26 “VEBA Trust” means a voluntary employees’ beneficiary association which is established and maintained pursuant to the requirements of Code section 501(c)(9) and its implementing regulations.

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ARTICLE 2

GENERAL

2.1. Establishment. The City, as settlor, hereby establishes, and the Trustees hereby agree to act as fiduciaries of the Trust.

2.2 Purpose. The purpose of this Trust Agreement and the Trust is to provide, through insurance contracts, contracts with health maintenance organizations, preferred provider organizations, other similar health care provider organizations, or otherwise for medical benefits for Retirees and their spouses and dependents, pursuant to the terms of the Plan, and for such life, sickness, accident or other benefits as defined in Code section 501(c)(9) for Retirees and their spouses and dependents, as the City and the Trustees shall from time to time agree shall be funded through this Trust or as may be required to be funded through this Trust pursuant to the terms of the Settlement Agreement. Together with the Plan and any other benefit plan funded through this Trust, this Trust shall constitute a VEBA Trust and shall be administered and interpreted so as to comply with the requirements of Code section 501(c)(9). This Trust is created for the exclusive purpose of providing for the funding of and payment of Retiree Health Benefits through any lawful means in accordance with the Plan and the Settlement Agreement for the exclusive benefit of Participants and beneficiaries.

2.3 Part of Plan. This Trust forms a part of the Plan and is used to provide benefits thereunder. The City agrees to furnish the Trustees with a true and correct copy of the Plan as currently in effect. The City agrees that promptly upon the adoption of any amendment to the Plan it will furnish the Trustees with a copy of the amendment and with an appropriate certificate evidencing its due adoption. The City further agrees that no amendment of the Plan shall have the effect of changing the rights, duties, and liabilities of the Trustees without their written consent. The Trustees may rely on the latest Plan documents furnished to them as provided above without further inquiry or verification.

2.4 Certification of Fiduciaries and Administrator. The City will certify to the Trustees the name of the person or persons who have authority on behalf of the City to communicate with the Trustees with respect to any matters relating to the Trust. The Trustees shall recognize the City as the administrator of the Plan unless and until receipt from the City of a certification evidencing the appointment of some other person or persons as said administrator. The City shall provide the Trustees with a specimen signature of each of said persons. The Trustees may rely on the latest certificate without further inquiry or verification. The Trustees shall be fully protected in acting upon written instructions received from the City or the Administrator.

2.5. Principal Office. The principal office and site of the Trust shall be 47450 Woodward Avenue, Pontiac, Michigan 48342. The Trustees shall have the power to move the principal office of the Trust to another location and to establish other offices, as they deem necessary.

2.6. Conformity with Applicable Law. The Trust shall conform to all applicable sections of the Code, Act 149, Act 314, the statement of purposes set forth in this Trust

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Agreement, and all statutes, ordinances, rules, regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

2.7. Funding. The Trust shall receive contributions made by the City and the Excess Assets into the Trust Fund to pay its obligations to provide Retiree Health Benefits. The Trust may also receive contributions from (a) Participants and beneficiaries related to the election of coverage in addition to that required to be paid for by the City pursuant to the Settlement Agreement and Plan, (b) investments made or held under Trust and all income, proceeds, earnings, and accumulations therefrom (both received and accrued) and (c) any other property that may be received or held by reason of this Trust.

2.8. Permitted Uses of Trust Assets / Impossibility of Diversion. No part of the net earnings of the Trust may inure to the benefit of any Participant or beneficiary other than through the payment of Retiree Health Benefits or for the payment of reasonable and necessary administrative expenses incurred by the Trustees in their administration of this Trust. To the extent consistent with the Trust's qualified status as a VEBA Trust, a portion of net earnings may be used for payment for reasonable and necessary administrative expenses incurred to assist the Trustees and Administrator in the operation of the Trust. The Trustees shall determine what expenses are reasonable and necessary in accordance with applicable law. No Participants (or their eligible beneficiaries) or any other City retiree shall have a preferred claim on, or any other beneficial ownership interest in, any specific Trust assets.

ARTICLE 3

CONTRIBUTIONS TO THE TRUST FUND

3.1 General. The Trust shall receive contributions made by the City and the Excess Assets into the Trust Fund to pay its obligations to provide Retiree Health Benefits as set forth in this Article 3. Subject to the requirements of Section 3.3, Section 3.4, Section 3.5, and the Settlement Agreement, the City has sole authority to decide the amount of contributions and deposits into the Trust Fund and shall consult with an actuary regarding the funding levels necessary to fund Retiree Health Benefits on an actuarially sound basis taking into account any amounts payable by Participants or their spouses and/or dependents under the terms of the Plan. The City, in its sole and absolute discretion, may cause additional funds to be irrevocably transferred or contributed to the Trust, and such funds, if any, shall be subject to the terms of this Trust Agreement. However, this Trust Agreement does not create any obligation for the City to provide additional funds to the Trust above and beyond the funding obligations described in the Settlement Agreement and applicable law.

3.2 Composition. All sums and all securities and other property acceptable to the Trustees and received by them to be held in this VEBA Trust, as evidenced by their receipts, from whatever source received, together with all investments made therewith, the proceeds thereof, and all earnings and accumulations thereon, and the part thereof from time to time remaining, shall be held and administered by the Trustees in the Trust Fund. The Trust Fund shall be held, administered and disbursed by the Trustees without distinction between principal and income.

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3.3 Initial Contribution. The City shall make an initial contribution of \$100.00 to the Trust Fund as soon as administratively feasible after execution of this Trust Agreement. Thereafter, the City shall make an initial contribution to the Trust Fund of up to \$4,250,000.00, as required by Settlement Agreement §8.a, within ninety (90) days of the later of the IRS Approval Date and the GERS Approved Termination Date.

3.4 Excess Assets Contribution. As soon as reasonably feasible after the IRS Approval Date and the GERS Approved Termination Date, the Excess Assets shall be transferred into the Trust Fund, as required by the Settlement Agreement.

3.5 Additional Contributions. In any Fiscal Year (after the Fiscal Year in which the City's initial contribution to the Trust Fund of up to \$4,250,000.00 is made pursuant to Section 3.3) in which actuaries hired by the Trustees determine that additional contributions are required by the City to the Trust Fund to fund the Retiree Health Benefits' unfunded liability (e.g., if such actuary determines that there are not enough funds in the Trust Fund to last through the life of the last Participant), the City shall make a contribution to the Trust Fund on or before June 30 of such Fiscal Year in the amount of the lesser of the actuarial required contribution to satisfy the unfunded liability, or \$1,500,000.00 ("Additional Contribution"). The City's Additional Contribution shall be due within one (1) year and six (6) months of the date that an actuarial valuation determines that such contribution to the Trust Fund is required (e.g., if an actuarial valuation dated December 31, 2018 determines that a contribution is required because the Plan is less than 100% funded then that contribution will be due on July 1, 2020). Under no circumstances shall the Additional Contribution exceed \$1,500,000.00 in any Fiscal Year.

3.6 Participant Contributions. Participants are not responsible for paying any part of the premium for Retiree Health Benefits unless the Trust Fund has insufficient funds to provide the level of benefits and coverage specified in the Plan in a given Fiscal Year or otherwise required by the Settlement Agreement. If and when the Trust Fund has insufficient funds to provide the level of benefits and coverage specified in the Plan, the Trustees shall have the discretion to make reasonable plan design changes, and change benefit, and coverage levels.

3.7. Payments.

(a) The Trustees may compel and enforce payments of contributions in any manner they deem proper.

(b) Time is of the essence for all contributions to this Trust Fund. The Parties recognize that regular and timely payments of contributions are essential to the operation of the Trust and the provision of Retiree Health Benefits. Unless otherwise indicated in this Article 3 or required by law, contributions shall be deposited into the Trust no later than the last day of the Fiscal Year in which they relate.

(c) Nothing contained herein shall be deemed to modify or limit in any way the rights that the parties to the Settlement Agreement may have, any supplements or memoranda thereto, or any arbitrator's award to enforce collection of any amounts due to this Trust Fund, including the right of the parties to sue for same.

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3.8 Initial Qualification. Except for the initial \$100.00 contribution set forth in Section 3.3, all contributions to the Trust Fund are conditioned on the initial qualification of the Trust as a VEBA Trust. If the Trust is determined to not be a tax-exempt VEBA Trust, the Parties shall, consistent with the terms of the Settlement Agreement, make good faith efforts to modify the terms of this Trust Agreement in order to obtain IRS approval of the Trust as a VEBA Trust. If thereafter the Trust is still determined to not be a tax-exempt VEBA Trust, then the Trust shall terminate.

3.9 Mistakes. If a contribution is attributable in whole or in part to a good faith mistake of fact, then an amount may be returned to the City or Participant which, as determined by the Trust's actuary, is equal to the excess of the amount contributed over the amount which would have been contributed had the mistake not occurred. Earnings attributable to any such excess contribution will not be returned and will be credited to fund Retiree Health Benefits, but losses attributable to the excess contributions will reduce the amount so returned.

ARTICLE 4 **TRUSTEES**

4.1. Composition of Board of Trustees. The Trust Fund shall be administered by a seven-member Board of Trustees which shall be composed as follows:

- Two Trustees chosen by the Mayor of the City of Pontiac (with no Pontiac City Council approval required);
- One Trustee chosen by the Pontiac City Council;
- Three Trustees chosen by Retiree-Participants by election and ballot as follows: (i) one Trustee shall be chosen by and from the members of the Police and Fire Retirement System; (ii) one Trustee shall be chosen by and from the members of the City's general defined benefit plan; and (iii) one Trustee shall be chosen by and from the membership of the Plan as a whole; and
- The six Trustees referenced above shall confer and select the seventh Trustee.

Each Trustee shall be a fiduciary and have fiduciary responsibilities under applicable law and shall act prudently and in the best interests of the Trust and its beneficiaries.

4.2. Initial Trustees. The seven initial Trustees who are hereby appointed to serve as Trustees are:

1. Trustee appointed pursuant to the terms of the Settlement Agreement (as chosen by the Mayor of the City, with no Pontiac City Council approval required)

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2. Trustee appointed pursuant to the terms of the Settlement Agreement (as chosen by the Mayor of the City, with no Pontiac City Council approval required)
3. Trustee appointed pursuant to the terms of the Settlement Agreement (as chosen by the Pontiac City Council)
4. Claudia Filler (as chosen by the members of the City's general defined benefit plan)
5. Walter L. Moore (as chosen by and from membership of the Plan as a whole)
6. Lon G. Britton (as chosen by the members of Police and Fire Retirement System)
7. Trustee selected by the above six Trustees

The above named Trustees individually accept their appointment as Trustees under this Trust Agreement and consent to act as Trustees hereunder until their successors are designated as provided in this Trust Agreement, and they declare and agree that they will receive and hold the Trust Fund as Trustees by virtue of the terms, conditions and provisions of this Trust Agreement.

4.3. Acceptance of Duties. The seven initial Trustees, as designated, shall sign this Trust Agreement and their signature shall constitute acceptance of office and agreement to act under and be subject to the terms and conditions of this Trust Agreement. The appointment of a successor Trustee shall be effective when such Trustee signs an acceptance of this Trust Agreement. Notice of the acceptance of this Trust Agreement shall be provided to the City. Each successor Trustee shall have the identical powers, rights, duties and obligations of the initial Trustees named in this Trust Agreement.

4.4. Chairperson and Secretary. Prior to the commencement of their duties, the initial Trustees shall select a Chairperson and a Secretary from the group of then existing Trustees and the Chairperson and Secretary shall serve a term of one year or until a new Chairperson and Secretary is elected. In the event of the absence of the Chairperson and the Secretary from a meeting of the Board of Trustees, the Trustees shall designate another Trustee as acting Chairperson and/or acting Secretary until such person's return.

4.5. Appointment of the Seventh Trustee. The seventh Trustee may resign at any time and be discharged from duties and liabilities under this Trust Agreement by giving at least thirty (30) days advance written notice to the remaining Trustees. A successor seventh Trustee shall be appointed by unanimous vote of the first six Trustees within thirty (30) days of any vacancy. Any successor Trustee appointed under the terms of this Agreement shall, upon appointment, and without further act, deed or conveyance, succeed to all the rights, duties, titles, and powers, of every type and description of his or her predecessor. If the six Trustees cannot agree on seventh member within thirty (30) days of the initial effective date of the resignation, they will, within fourteen (14) days after the thirty (30)-day deadline, select an arbitrator and submit proposals to the arbitrator (who will be paid for by both sides in equal amounts), who shall decide the seventh Trustee. The Parties agree that the arbitrator's decision is final and may not be appealed. If the six Trustees cannot agree on the selection of an arbitrator within thirty (30) days, the Trustees selected by the Mayor of the City, on the one hand, and the three trustees

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selected by the Retiree-Participants, on the other hand, shall each select one person per side, with the only selection prohibition being that these two individuals must not be participants in the Plan, or be employed by, or represent the City. These two individuals shall then select the arbitrator within fourteen (14) days of the thirty (30)-day deadline.

4.6. Term of Trustees. The term of service for each Trustee shall be four years, unless such Trustee holds a public office or is appointed by a person holding a public office in which case the term shall be the person's or appointer's term of office. However, for purposes of the appointment of Claudia Filler, Walter L. Moore, and Lon G. Britton as initial Trustees, their initial terms shall be three years, four years, and two years respectively.

Each Trustee shall serve until the expiration of his/her term of service or until his or her death, incapacity, resignation or removal.

4.7. Vacancy. A vacancy or vacancies in the office of the Trustees shall not impair the powers of the remaining Trustees to administer the affairs of the Trust, provided there are sufficient Trustees to constitute a quorum hereafter.

If a mid-term vacancy in the office of the Trustee occurs due to death, incapacity, resignation, or removal, then an interim Trustee shall be appointed for the remainder of the vacating Trustee's term as follows:

- If the vacating Trustee is one of the two Trustees chosen by the Mayor of the City of Pontiac, then the Mayor of the City of Pontiac shall appoint the interim Trustee;
- If the vacating Trustee is the Trustee chosen by the Pontiac City Council, then the Pontiac City Council shall appoint the interim Trustee;
- If the vacating Trustee is one of the three Trustees chosen by Retiree-Participants by election and ballot, then the members of the applicable representative group (e.g., members of the City's general defined benefit plan, members of Police and Fire Retirement System, or members of the Plan as a whole) shall appoint the interim Trustee; and
- If the vacating Trustee is the seventh Trustee, then the interim Trustee shall be appointed as set forth in Section 4.5.

4.9. Quorum. Four attending Trustees shall constitute a quorum at any meeting of the Board of Trustees. Each attending Trustee shall be entitled to one vote. All decisions of the Board of Trustees shall be made by at least four affirmative votes, unless otherwise noted in this Trust Agreement.

4.10. Meetings. The Trustees shall meet at least once quarterly. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The Secretary of the Trustees or his designee, shall be responsible for

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giving notice of the time and place of such meetings to the other Trustees. Notice of such regular meeting shall be provided to the Trustees at least ten (10) days prior to the scheduled meeting. Special meetings of the Trustees may be held at the call of the Chairperson, the Secretary, or any two Trustees upon five days written notice to each Trustee. Special meetings of the Trustees may also be held at any time, without notice, if all Trustees consent in writing thereto. Notice of all meetings of the Trustees, both regular and special, shall be given to the City and to the City of Pontiac Retired Employees Association. All meetings of the Trust shall be held subject to the provisions of the Michigan Open Meetings Act, if and to the extent so required.

ARTICLE 5

POWERS AND DUTIES OF THE TRUSTEES

5.1. Power. The Trustees shall have the entire care and custody of all assets of the Trust, except that the Trustees shall appoint a professional management company experienced in managing public and private sector VEBA Trusts to act as the Trust Fund's investment manager, as described in Section 5.6. The Trustees shall hold all the powers of Trustees that are necessary to carry out the purposes of this Trust that are generally available to Trustees under the laws of the State of Michigan, except as limited by this Trust and by federal law. It is intended that this Trust shall be tax exempt and shall qualify as a VEBA Trust. The Trustees shall have the continuing power and duty to amend this Trust Agreement to the extent it becomes necessary to qualify the Trust under the Code, to continue the tax exempt status of the Trust Fund, and/or to comply with applicable Michigan and federal law. The Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator, or the courts with respect to this Trust Fund. In the case of amendments to the Internal Revenue Code or changes of regulations by the Internal Revenue Service or other controlling government agencies, the Trustees are empowered to take all necessary action to continue the qualifications of this Trust as a qualified VEBA Trust and to continue its contributions to it as tax-free deductions. The Trustees are also authorized to take all necessary action to maintain the Plan in compliance with applicable federal and state law. Except as expressly otherwise provide herein, the Trustees shall have exclusive authority and discretion to manage and control the assets of the Plan held in the Trust Fund, and shall be the investment fiduciary for the Trust Fund as required by Act 149, provided that the Trustees may delegate such authority and discretion to an investment manager as described in Section 5.6.

5.2. Duties.

(a) The Trustees shall carry out the purposes of this Trust Agreement, and may maintain any Retiree Health Benefits now in force and effect and available to Participants or may substitute other comparable or more comprehensive policies in lieu thereof. In providing Retiree Health Benefits to the Participants of the Plan so as to effectuate the purposes of this Trust Agreement, the Trustees shall be bound by the terms of this Trust Agreement and the Settlement Agreement and shall comply with all applicable laws. The Trustees may make application to insurance companies, duly authorized to conduct the business of insurance in the State of Michigan for the issuance of insurance policies providing for life, sick, accident or other benefits as defined in Code section 501(c)(9). In addition to, or in lieu of, policies of insurance

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obtained through commercial or other companies, the Trustees may, consistent with applicable federal and Michigan laws, adopt a self-insured plan. The Trustees may arrange for a continuation of the present arrangements regarding the provision of benefit coverage by the employer through the employer's self-insured arrangement and all existing policies between the City and applicable insurance carriers.

(b) The Trustees shall establish a uniform system for the timely transmission of required reports and contributions from the City on behalf of Participants. The Trustees shall have the right and duty to enforce payment of all contributions provided for in the Settlement Agreement, and the performance of all obligations provided in this Trust. The Trustees shall immediately notify the City, the City of Pontiac Retired Employees Association, and the Administrator of a delinquency, mistake or discrepancy in any report or contribution. In a suit or action brought by the Trustees pursuant to this paragraph, the Party in default agrees to pay all costs and expenses, including reasonable attorneys' fees incurred and paid by the Trustees. Delay by the Trustees in bringing this suit to recover delinquent contributions from the City shall not be considered a waiver of any of the rights reserved to the Trustees.

(c) The Trustees, in accordance with the requirements of law, may, upon their own initiative or upon the City becoming delinquent, direct an impartial firm of independent certified public accountants to act as agent of the Trustees at any reasonable time during business hours, to enter upon the premises of the City and to examine only the payroll records, papers and reports pertaining thereto as may be necessary to determine the moneys due on behalf of a Participant covered by this Trust and to make a written report to the Trustees, with an identical copy to the City. This procedure is to ensure that the Trustees can fully ascertain whether the City is making payments to the Trust, as required by the Settlement Agreement, and any amendment thereto, court decisions or arbitration awards. Reports required by this paragraph shall be confidential and released only to the Trustees and the City, except to the extent that disclosure would otherwise be required by law.

(d) Notice given to all Parties shall, unless otherwise specified, be sufficient if in writing and delivered or sent by prepaid first class mail or electronic mail. Except as otherwise noted, the distribution or delivery of any statements or documents required under this Trust Agreement shall be sufficient if delivered in person, by prepaid first class mail, or by electronic mail.

(e) The Trustees shall maintain proper books of accounts and records of administration of the Trust, including written records of all meetings. The Trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions hereunder as may be required by Treasury Regulation section 1.501(c)(9)-5, and all such accounts and other records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the City. The Trustees shall furnish to the City a written statement of account within sixty (60) days after the end of the Fiscal Year setting forth all receipts and disbursements, if any. The City shall acknowledge receipt thereof in writing and advise the Trustees of approval or disapproval thereof. Failure of the City to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed approval thereof. The approval by the City of the statement of account shall serve to release and

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discharge the Trustees from any liability or accountability to the City as respects the property of the Trustees' act or transactions shown in the statement of account, except with respect to any acts or transactions as to which the City shall file written objections with the Trustees within the thirty (30)-day time periods prescribed. The Trustees shall retain their records relating to the Trust as long as necessary for the proper administration thereof and at least for any period required by law.

(f) The Trustees shall compile and furnish to each individual Trustee all records which they individually or collectively require to properly discharge their duties. The books of accounts and records of administration of the Trust, including the minutes of all meetings, shall be available for inspection at the permanent office of the Trust during reasonable business hours by the City, by the City of Pontiac Retired Employees Association, or any Participant covered by this Agreement.

(g) The Trustees shall make available to the City of Pontiac Retired Employees Association information relating to contributions from the City, pursuant to the Settlement Agreement and the status of coverage of their covered Participants.

(h) The City shall be entitled to receive from the Trustees records pertaining to its contributions and any Participant shall be entitled to receive records of the Trustees relating to his or her own accounts.

(i) The Trustees shall make reports to and file such information with the Internal Revenue Service, or any other appropriate public authority as may be required by state or federal law.

(j) A written instrument signed by the Trustees shall be evidence of the action of the Trustees. Whenever the signature of a Trustee is required on any document, signature of the Chairperson or acting Chairperson and Secretary or acting Secretary shall be required, unless such authority has been delegated to an individual Trustee pursuant to the provisions hereof; and as to any person doing business with the Trustees, any such instrument so signed shall be conclusively presumed to be authentic and all facts and matters stated therein shall be conclusively presumed to be true and said persons may rely on such instrument for all purposes.

(k) The Trustees may assign or allocate specific responsibilities or duties among the Trustees, or appoint committees for the purpose of overseeing any activity or pursuing or investigating any activity or transactions in which the Trustees are interested. The Trustee or committee of Trustees may be assigned the responsibility to take action without prior approval by the remainder of the Board of Trustees. Any such action taken under such circumstances shall be valid, proper and not a breach of fiduciary responsibility of the Trustee or committee so appointed and so acting. The Trustees may rely on the report the individual Trustee or committee of Trustees who prepared the report or recommended the action which was undertaken by the full Board of Trustees after receiving the report of the Trustee or committee of Trustees. No Trustee shall be liable for the acts of any Trustee or committee of Trustees under these circumstances because of any act or omission on the part of the Trustee or committee of Trustees to whom such responsibilities, obligations or duties have been assigned or allocated,

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unless he/she participates with the knowledge that such act or omission is a breach of fiduciary responsibility or if he/she has knowledge of a breach by such other fiduciary without making reasonable efforts under the circumstances to remedy the breach.

(l) In the event of any suit brought against the Trustees arising out of the acts within the scope and powers and duties of the Trustees, or in the event of any lawsuit brought by the Trustees as authorized herein, the cost of the defense or prosecution of such lawsuit by the Trustees shall be charged to the Trust Fund, and shall be paid directly from the Trust Fund, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust Fund or to the beneficiaries thereof.

(m) All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities and properties of any kind at any time received or held by the Trustees hereunder, shall become part of this Trust Fund when received, and shall be held for the uses and purposes hereof.

(n) The Trustees may authorize the purchase of insurance for the Trust Fund and for the Trustees to cover liability or losses occurring by reason of an act or omission (errors or omissions) of a fiduciary, including the Trustees.

5.3 Appointment of Administrator. The Trustees may employ such clerical personnel or administrative personnel to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Trustees may, contract with a third-party Administrator to perform such clerical and administrative duties as they may, in their discretion, determine is reasonable and prudently necessary to carry out the Trust Fund's activities and purposes. The Administrator so appointed, or with whom the contract was made, may be assigned the activities of receiving the City's reports, entering the information of those reports on permanent records, maintaining such records, receiving contributions from the City and/or on behalf of Participants in the form of checks or drafts solely for the purpose of forwarding the contributions to the Trustees' bank or investment accounts, preparation of governmental reports, furnishing reports required by law to Participants, the preparation of checks for the payment of obligations of the Trustees, and all related activities and other activities necessary to help administer the Trust Fund. The Trustees are further authorized to enter into contracts with such Administrator for the administration of said Plan or Plans and Trust Fund for whatever periods, in their discretion, the said Trustees deem advisable. The Trustees shall be entitled to rely on the reports and recommendations of said Administrator or any actions taken by said Administrator with the authority granted him/her. The Trustees shall not be responsible for any act taken with respect to the appointment, designation, retention, discharge, or employment of such Administrator which is taken prudently and in good faith. Under no circumstances shall said Administrator have control or authority with respect to the management of the Plan or its assets. The Administrator so appointed, or with whom the contract was made, may be assigned the activities of receiving the City's reports, entering the information of those reports on permanent record, maintaining such records, receiving contributions from the City and/or on behalf of Participants in the form of checks or drafts solely for the purpose of forwarding the contributions to the Trustees' bank or investment accounts, preparation of governmental reports, furnishing reports required by law to Participants, the

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preparation of checks for the payment of obligations of the Trustees, and all related activities and other activities necessary to help administer the Trust Fund. The Trustees are further authorized to enter into contracts with such Administrator for the administration of the Plan and Trust Fund for whatever periods, in their discretion, the said Trustees deem advisable. The Trustees shall be entitled to rely on the reports and recommendations of said Administrator or any actions taken by said Administrator with the authority granted him/her. The Trustees shall not be responsible for any act taken with respect to the appointment, designation, retention, discharge, or reemployment of such Administrator which is taken or made in good faith. Under no circumstances shall said Administrator have control or authority with respect to the management of the Plan or its assets. The said Administrator shall not have any type of authority or power which will constitute the administrator as a fiduciary. Said Administrator will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice. The Administrator will not be clothed with the discretion to act in any way with respect to the Plan or management or its assets. In the event of the Administrator's discharge, the Trustees shall require the Administrator to return all necessary books, records, and documents in the possession of said Administrator which are necessary for the proper administration, handling, and operation of this Trust. If the Trustees have appointed, employed, hired, or contracted with an Administrator, a provision to this effect shall be incorporated in the written agreement between the Trustees and Administrator. The Trustees may, in their discretion, assign certain administrative duties to the City; provided, however, that the direction and management of such activities shall be within the exclusive control of the Trustees.

5.4 Appointment of Accountant. The Trustees shall employ an independent certified public accountant or licensed public accountant who is not providing services to the City, the City of Pontiac Retired Employees Association, or any other association representing the Retirees. Said accountant shall be employed to perform the services as may be required by the Trustees. The Trustees shall cause the Trust Fund to be audited at least once each year. Copies of such audit report shall be furnished to the Parties and a copy shall be made available at the principal office of the Trust for inspection by Participants or current beneficiaries. Such audit shall contain a summary of the assets and liabilities of the Trust Fund, a resume of the operations for the preceding year, together with such other data as the Trustees request or is required by law. The audit report shall be published to the extent required by applicable state and/or federal law.

5.5 Appointment of Legal Counsel. The Trustees may employ legal counsel with whom they may seek advice, consult with, and require attendance at Trustees meeting and to represent the Trustees whenever necessary, including the preparation of any documents, legal or otherwise, which may have any legal consequences. In choosing said counsel, the Trustees may, with prudence, give consideration to the developed skills and expertise of the attorney and experience and reputation he/she has achieved. The Trustees may rely upon the opinion of such counsel so chosen in respect to any action taken or suffered by the Trustees hereunder in good faith, in accordance with the opinion of said counsel, and the Trustees shall not be liable therefore.

5.6 Appointment of Investment Manager. The Trustees shall appoint (an) investment manager(s) to manage and hold the Trust Fund after a request for proposal is issued for qualified

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applicants. Such investment manager shall be experienced in managing public and private sector VEBA Trusts. The fee for the services of such management shall be paid out of the Trust's assets. Such investment manager(s) must be registered under the Investment Advisor's Act of 1940 and must meet any applicable state and/or federal requirements to act as investment manager. Such appointment may include the power to acquire and dispose of the assets of the Trust Fund; provided, however, that if any state or federal agency promulgates any rules with respect to limitation of liability on the part of the Trustees in choosing an investment manager or counselor, then the Trustees shall follow said regulations to the extent that they can maximize the protection available to them.

The Trustees shall enter into a written agreement with said investment manager, which will provide for the investment or reinvestment of the assets of the Trust Fund; and upon such execution, the Trustees may convey, if it is so provided, to such investment manager, any assets of the Trust Fund so that said investment manager may engage in such transactions which are legal for trust funds in the State of Michigan and in the United States and which are prudent for the Trustees to undertake. The Trustees shall not be liable for the acts or omissions of such investment manager or under any obligation to invest or otherwise manage the assets of the Trust Fund, which assets are subject to the management of such investment manager.

The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institution, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust Fund, so that said fiduciary may handle, manager and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provision of the agreement or agreements between the Trustees and the fiduciary.

Except as otherwise provided in this Trust Agreement, the Trustees (or investment manager to the extent such responsibility is delegated thereto) shall invest and reinvest the assets of the Trust subject to the terms, conditions, limitations and restrictions imposed by the State of Michigan on the investments of public employee retirement systems by Act 314, made applicable to public employee health care funds through Act 149 and specifically, MCL §38.1214. In exercising their discretionary authority as to the management of the Trust Fund, the Trustees (or investment manager) shall be investment fiduciaries (in accordance with MCL §38.1214) and shall exercise the care, skill, prudence and diligence under circumstances then prevailing, that a prudent person, acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims, as further described in MCL §38.1133(3), and shall not engage in transactions prohibited by law and as described in MCL §§38.1133. This shall include diversifying the assets of the Trust so as to minimize the risk of large losses, unless under the circumstances it appears prudent not to do so. This standard shall not be applied to investments in isolation, but rather in the context of the Trust's overall portfolio and as part of the overall investment strategy, which shall incorporate risk and return objectives reasonably suited to the purposes of the Trust.

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ARTICLE 6
TRUSTEE COMPENSATION

Administrative costs of the operation of the Trust shall be paid out of the Trust Fund's assets. The Trustees shall not receive any compensation for performing any services for the Trust. Each Trustee shall be reimbursed for any reasonable and necessary costs, expenses, and disbursements properly and actually incurred in the performance of his/her duties to the Trust. Included in such reasonable expenses properly and actually incurred in the performance of services to this Trust is the attendance at educational meetings and seminars organized and designed to instruct the Trustees in the proper performance of their duties as Trustees and fiduciaries and to instruct, familiarize and acquaint the Trustees with all the provisions of all applicable laws. Included in such reasonable costs and expenses will be per diem allowance, costs and travel expenses, lodging and food expenses and other reasonable and necessary expenses involved in the participation in such educational conferences conducted and carried out for the purposes expressed herein. The Trustees may further authorize any of the experts who they may retain, including administrators, insurance experts, actuaries, auditors, accountants, attorneys or others, to attend such educational conferences for the purpose of becoming informed of any new developments or for the purpose of keeping current as to the developments in their proper area of expertise. The Trustees are authorized to pay for or reimburse such persons the cost of attending such meetings and/or compensation as the person would ordinarily earn representing the Trustees and familiarizing themselves with the developments in their area of expertise for the purpose of properly serving the Board of Trustees. Any Trustee who is actively employed by the City shall be permitted attendance at any and all functions of the Trust, including travel to educational programs and seminars without loss of pay, benefits, or status.

Notwithstanding any provision in this Trust Agreement to the contrary, no Trustee shall be entitled to any fees or expenses claimed to be owing because such Trustee is resigning, being removed, or is no longer serving as a Trustee for any reason; provided, however, that any Trustee shall be eligible to receive any Retiree Health Benefits to which he or she is entitled by virtue of employment with the City.

ARTICLE 7
LIABILITIES OF THE PARTIES

The City shall not be liable for payment to the Trust of any amounts other than those required of it by this Trust Agreement. The City shall not be liable to make contributions to the Trust or pay any expenses whatsoever in connection therewith, except as provided by the terms of this Trust Agreement. Neither the City, nor any Participant or Trustee shall be liable for any debts, liabilities, or obligations of the Trust except as set forth in this Trust Agreement. Neither the City nor any Participant shall have any right to return of any money properly paid into the Trust Fund, except as otherwise specifically provided herein, or to money improperly paid which has already been invested or distributed. Any contribution improperly paid into the Trust Fund by the City or on behalf of a Participant shall be returned by the Trustees upon the request of the City or the Participant or upon discovery by the Trustees that such moneys have been improperly paid into the Trust Fund, unless those moneys have already been invested or distributed in which case the contributor shall be given a credit towards the payment of required future contributions.

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No part of the Trust Fund or any benefits payable by the Trustees shall be subject to alienation, sale, transfer, assignment, pledge, or encumbrance charge by any person.

ARTICLE 8

CLAIMS PROCEDURE

The claims procedures associated with denials of Retiree Health Benefits are set forth in the Plan. However, in general adequate notice shall be provided to any Participant or beneficiary whose claims for Retiree Health Benefits have been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the Participant. Further, the Trustees shall afford a reasonable opportunity to any Participant whose claim for Retiree Health Benefits has been denied for a full and fair review of the decision denying the claim in accordance with the terms of the Plan. The Trustees shall have the authority to promulgate rules setting forth the precise conduct of any such claims procedure.

ARTICLE 9

TERMINATION OF THE TRUST

9.1 Termination. This Trust shall continue during such period of time as may be necessary to carry out the provisions of the Settlement Agreement and shall continue for a period of time sufficient to wind up the affairs of the Trust.

Provided there are no longer any Participants eligible for benefits from the Trust Fund, this Trust may be terminated at any time by the Trustees or their successors in office who are signatories hereto by the execution of an instrument in writing, so long as the termination is not inconsistent with the Settlement Agreement. It shall not be necessary for the City, the City of Pontiac Retired Employees Association, or the Retirees to execute such an agreement for the Trust to terminate. This Trust shall terminate in any case upon the death of the last survivor of such persons who are living at the time of its creation or entitled to receive Retiree Health Benefits.

If this Trust shall terminate, the Trustees shall notify any insurance carrier or carriers then providing Retiree Health Benefits and any investment managers.

9.2 Remaining Assets. In the event of the termination of this Trust, the remaining funds available after providing for all the outstanding obligations, shall be used in a manner as will, in the opinion of the Trustees, comply with Code section 501(c)(9) and best effectuate the purposes of this Trust, including, but not limited to, the purchase of insurance benefits.

9.3 Spendthrift Provision. The Trustees are hereby vested with full and complete equitable and legal title to all of the property which becomes subject to the terms of this Trust Agreement, until the termination of this Trust Agreement and until the entire Trust assets shall have been distributed as otherwise provided herein. No person who is a beneficiary of this Trust or an employee benefit that will be funded by this Trust, or to the income therefrom, shall take or have any title or interest in such Trust, or income, until the same shall be actually received by

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such person. No disposition, charge or encumbrance by way of anticipation of such Trust or income, or any part thereof, by any beneficiary hereunder shall be of any validity or legal effect, or be in any way regarded by Trustees.

ARTICLE 10 **AMENDMENTS**

10.1 Right to Amend. The provisions of this Trust Agreement may be amended at any time, by (A) negotiation between the City of Pontiac Retired Employees Association and the City and (B) by a unanimous vote of the seven Trustees, concurred in by the Pontiac City Council provided, however, that such amendments are not inconsistent with the Settlement Agreement, and do not adversely affect the tax exempt status of the VEBA Trust. Except as otherwise provided in this Trust Agreement, the Trustees shall have no power to amend the provision of this Trust Agreement as to the amount of contributions required of the City.

10.2 Restrictions. The Trustees shall not have the power to adopt any amendments to this Trust Agreement which:

(a) alters the basic purposes of this Trust, as set forth herein or divests any Participant or beneficiary of any rights which have already vested and to which they have already become entitled to and for sums of money which they are entitled to receive then or in the future;

(b) conflicts with any applicable law or government regulation;

(c) causes the use or diversion of any part of the Trust Fund for purposes other than those generally authorized herein; or

(d) conflicts with the Settlement Agreement.

10.3 Legal Compliance. Despite any provision to the contrary above, or which may be inconsistent herewith, the Trustees may amend and shall have the duty to amend this Trust Agreement to comply with any rule or regulation of the Internal Revenue Service for qualification under the Internal Revenue Code, continuation of tax exemptions of the Trust to obtain a favorable determination letter from the Internal Revenue Service, or to comply with applicable Michigan law. In the event any amendment is made, a copy of such Amendment bearing requisite signatures of the Trustees, shall be sent to all parties required by law to receive such notice.

ARTICLE 11 **RULEMAKING POWERS**

Consistent with the terms of the provisions of state and federal law, the Trustees shall have the power to promulgate rules and regulations for the day to day management of the Trust, the investment of moneys held by the Trust, the establishment of eligibility and benefit levels, to determine all questions regarding the interpretation of the Trust, and such other subjects as shall

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be deemed necessary and proper by the Trustees. All such rules and regulations shall be reduced to writing and shall be kept in the permanent office of the Trust and available for inspection by the City, the City of Pontiac Retired Employees Association and the Participants. Any such rule or regulation promulgated by the Trustees shall be adopted, repealed, or amended by an affirmative vote of four of the Trustees. If any rule or regulation of the Trust is found to be in conflict with the Settlement Agreement, law, statute, judicial decision, arbitration decision, or any other competent body or tribunal, such rule or regulation shall be deemed voided and, all other rules and regulations of the Trust shall remain in full force and effect. The City, the City of Pontiac Retired Employees Association, and the Participants shall be given appropriate notice of all pending rulemaking meetings and all such parties shall be afforded an opportunity to be heard at said meetings.

ARTICLE 12

MISCELLANEOUS

12.1. Construction of Trust. This Trust shall be construed and enforced according to the laws of the State of Michigan. If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of this Trust.

12.2. No Assignment. The right of an individual to any benefit from the Trust and the moneys and assets of the Trust Fund shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law, except as specifically required by the Michigan or federal law and shall be unassignable except as required by Michigan or federal law. Nothing contained herein shall be construed as giving an employee or other person, any legal or equitable rights against the City or the Trustees, except as expressly granted herein.

12.3. Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced in any one counterpart.

12.4. Errors. The Trustees shall correct errors in the records of the Trust. The Trustees shall seek to recover overpayments.

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EXECUTION

This Trust Agreement shall become effective as of the date it is executed and pursuant to the terms and conditions set forth in the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have caused this instrument to be signed and/or executed by duly authorized officers in the City of Pontiac, Michigan and the Trustees, as of the day and year first above written.

Signed, sealed and delivered CITY OF PONTIAC, MICHIGAN in the presence of:

By: _____
Dr. Deirdre Waterman, Mayor

By: _____
Finance Director

TRUSTEES:

1. Claudia Filler

2. Walter L. Moore

3. Lon G. Britton

4. _____

5. _____

6. _____

7. _____

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City of Pontiac

Retiree Group Health and Insurance Plan

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City of Pontiac Retiree Group Health and Insurance Plan

Preamble

City of Pontiac, Michigan has adopted a welfare benefit plan for its Retirees. This Plan is the overall plan by the Employer to provide certain health and welfare benefits to its Retirees through self-funded programs and through contracts with various insurance companies and/or administrative service organizations. The Plan, when combined with the City of Pontiac VEBA Trust, is intended to constitute a voluntary employees' beneficiary association and is intended to comply with the requirements of Internal Revenue Code section 501(c)(9) and its implementing regulations.

Each of the underlying benefit programs is summarized in a certificate of insurance booklet issued by an insurance company, a summary plan description and/or another governing document prepared by the Employer. Because of the involvement of third-party insurers, administrators, and/or providers, this Plan necessarily incorporates by reference the various certificates of coverage, insurance contracts and/or other documents which provide relevant terms of this Plan. This Plan, accompanied by the above-referenced documents, constitutes the plan document. Moreover, the Plan shall be treated as a single employee welfare benefit plan. However, this Plan does not expand the responsibilities regarding the included benefits beyond the requirements of federal and state law. It is intended that the health and welfare benefits provided through the underlying benefit programs are eligible for exclusion from income under Internal Revenue Code section 105.

Article 1

Definitions

When used in this Plan, the following words shall have the following meanings, unless the context clearly indicates otherwise:

1.1 **"Administrative Simplification Rules"** means the Breach Notification Rules, Privacy Rules, and Security Rules.

1.2 **"Administrator" or "Plan Administrator"** means the City or another person or entity designated by the City Council to administer the Plan.

1.3 **"Benefits"** means the benefits provided under any of the Component Benefit Programs.

1.4 **"Breach Notification Rules"** means the Standards and Implementation Specifications for Notification in the Case of Breach of Unsecured Protected Health Information under 45 C.F.R. Part 160 and Part 164, Subparts A and D, and as may be amended from time to time.

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1.5 **“City Council”** means the city council for the Plan Sponsor and is the Plan’s Sponsor’s governing body.

1.6 **“Claimant”** means any Participant who seeks to file a claim pursuant to the terms of this Plan.

1.7 **“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time. References in the Plan to any COBRA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.8 **“Code”** means the Internal Revenue Code of 1986, as amended from time to time. References in the Plan to any Code section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the Code section.

1.9 **“Component Benefit Programs”** means all programs and plans offered by the Employer providing benefits which are being combined under this Plan, whether through Insurance Contracts or otherwise. Specifically, the Component Benefit Programs offered under this Plan are:

- Medical and prescription benefits through the insurance carrier(s) selected by the Administrator (“Pre-Age 65 Medical Plan”)
- Medicare supplemental benefits (including prescription benefits) through the insurance carrier(s) selected by the Administrator (“Age 65+ Medical Plan”)
- Vision benefits through the insurance carrier(s) selected by the Administrator (“Vision Plan”)
- Dental benefits through the insurance carrier(s) selected by the Administrator (“Dental Plan”)

The Component Benefit Programs are attached at Exhibit A.

1.10 **“Contract Administrator”** means any third-party with whom Plan Sponsor has contracted to provide and/or administer benefits under the Plan.

1.11 **“Dependent”** generally means a Participant's Spouse and any person who is a dependent of the Participant within the meaning of Code section 152 (however, for health benefits, a Dependent generally means any person who is a dependent as defined as set forth in Code sections 105(b), 106 and the regulations and other authority thereunder), who is a member of the class which was a party to the Settlement Agreement, and who is eligible to participate in the underlying Component Benefit Programs. Dependents may also include those Dependents allowed continued participation under Michelle’s Law, Pub. L. No. 110-381 (2008). Dependents may or may not be eligible to participate in certain Benefits within the Component Benefit Programs. Each Component Benefit Program may have a specific definition of Dependent with respect to that Component Benefit Program.

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1.12 **“Effective Date”** of this Plan is November [], 2019.

1.13 **“Electronic Protected Health Information (EPHI)”** means PHI that is transmitted by electronic media or maintained in electronic media, as specifically defined in the Security Rules.

1.14 **“Employer”** means the City of Pontiac, Michigan and any successor which shall maintain this Plan.

1.15 **“GERS Approved Termination Date”** means the date on which the City of Pontiac General Employees’ Retirement System’s application for determination of plan termination (IRS Form 5310) is approved by the Internal Revenue Service.

1.16 **“GINA”** means the Genetic Information Nondiscrimination Act of 2008, as amended from time to time. References in the Plan to any GINA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.17 **“Health Care Component”** means the Component Benefit Programs which are subject to the Administrative Simplification Rules. Specifically, the Health Care Components within this Plan and which, if separate entities, would also be covered entities under HIPAA are each of the Component Benefit Programs listed in Section 1.9.

1.18 **“Highly Compensated Individual”** means an individual defined under Code section 105(h), as amended, as a “highly compensated individual” or “highly compensated employee.”

1.19 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, and as may otherwise be amended from time to time, and their implementing regulations. References in the Plan to any HIPAA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.20 **“HITECH Act”** means Subtitle D of the Health Information Technology for Economic and Clinical Health Act as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, and as may be amended from time to time.

1.21 **“HMO”** as used in Article 4, means a federally qualified health maintenance organization (HMO), an organization recognized as an HMO under state law, or a similar organization regulated for solvency under state law in the same manner and to the same extent as such an HMO.

1.22 **“Individually Identifiable Health Information”** means the information that is a subset of health information, including demographic information collected from an individual, and: (a) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (b) (1) relates to (i) the past, present or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the

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past, present, or future payment for the provision of health care to an individual; and (2) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.23 **“Insurance Contracts”** means any insurance contracts, certificates of coverage, certificates of insurance, benefit booklets, policies or other contracts between the Plan Sponsor and Contract Administrators providing and/or administering Benefits under the applicable Component Benefit Programs to Participants and their eligible Dependents.

1.24 **“IRS Approval Date”** means the date that the IRS approves the Trust and this Plan as a voluntary employees’ beneficiary association under Code section 501(c)(9) and its implementing regulation.

1.25 **“MHPA”** means the Mental Health Parity Act of 1996, as amended from time to time. References in the Plan to any MHPA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.26 **“MHPAEA”** means the Mental Health Parity and Addiction Equity Act of 2008, as amended from time to time. References in the Plan to any MHPAEA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.27 **“Named Fiduciary”** means the Plan Sponsor and Plan Administrator. The Named Fiduciaries for purposes of benefits claims and appeals for each Component Benefit Program are the insurance carriers for the applicable Component Benefit Programs.

1.28 **“NMHPA”** means the Newborns’ and Mothers’ Health Protection Act of 1996, as amended from time to time. References in the Plan to any NMHPA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.29 **“Participant”** means a Retiree who has satisfied the eligibility requirements of Article 2 and who is participating in the Plan pursuant to the terms of the Plan or any continuation requirements of state or federal law. A surviving Spouse shall also be deemed a “Participant” to the extent he or she is eligible for and continues participation in the Plan after the participating Retiree’s death.

1.30 **“Plan”** means the City of Pontiac Retiree Group Health and Insurance Plan set forth in this document and all subsequent amendments. The Plan is referenced within and is a part of the Trust Agreement.

1.31 **“Plan Sponsor”** means the City of Pontiac, Michigan.

1.32 **“Plan Year”** means the 12-month period ending on each June 30; however, there may be different plan years for each individual underlying benefit as set forth in the Component Benefit Programs. However, the initial Plan Year for the Plan shall be a short plan year beginning on November [], 2019 and ending on June 30, 2019.

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1.33 **“PPACA”** means the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, and as may be further amended from time to time. References in the Plan to any PPACA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

1.34 **“Privacy Rules”** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act, and as may otherwise be amended from time to time.

1.35 **“Protected Health Information (PHI)”** means Individually Identifiable Health Information, except as provided below in this definition, that is transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information (a) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (b) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (c) in employment records held by a covered entity in its role as employer; and (d) regarding a person who has been deceased for more than 50 years.

1.36 **“Qualified Beneficiary”** means the term “qualified beneficiary” as defined in 26 U.S.C. §4980B(g)(1).

1.37 **“Qualifying Event”** means those events specified in Section 5.3.

1.38 **“Retiree”** means an Employee who has retired from employment with Employer and who is a member of the class which was a party to the Settlement Agreement.

1.39 **“Security Rules”** means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, Subparts A and C, as amended by the HITECH Act, and as may otherwise be amended from time to time.

1.40 **“Settlement Agreement”** means the settlement agreement entered into in *City of Pontiac Retired Employees Association et. al. v. Schimmel et. al.*, Docket #64-2, Case No. 2:12-cv-12830-AC-PJK dated March 30, 2018 (United States District Court Eastern District of Michigan). The Settlement Agreement is attached as Exhibit B.

1.41 **“Spouse”** means an individual who is a member of the class which was a party to the Settlement Agreement and continues to be legally married to a Participant as determined under applicable Michigan state law and who is treated as a spouse under the Code.

1.42 **“Summary Health Information (SHI)”** means information, that may be Individually Identifiable Health Information and (a) that summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a group health plan; and (b) from which the information described at 45 C.F.R. §164.514(b)(2)(i) has been deleted, except that such geographic information described in 45 C.F.R. §164.514(b)(2)(i)(B) need only be aggregated to the level of a five digit zip code.

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1.43 "Trust" means the City of Pontiac VEBA Trust which is a tax-exempt voluntary employees' beneficiary association under Code section 501(c)(9).

1.44 "Trust Agreement" means the City of Pontiac VEBA Trust Agreement.

1.45 "Trustee" means the trustees of the Trust, as specifically listed in the Trust Agreement.

1.46 "WHCRA" means the Women's Health and Cancer Rights Act of 1998, as amended from time to time. References in the Plan to any WHCRA section shall include any comparable or succeeding provisions of any legislation which amends, supplements, or replaces the section.

Article 2

Eligibility and Participation

2.1 **Eligibility and Participation Requirements.** The eligibility requirements for this Plan and requirements for commencing participation are governed by the terms and conditions of the Component Benefit Programs, attached as Exhibit A, and by the Settlement Agreement.

(a) Retiree Coverage. A Retiree shall be eligible to participate in the Component Benefit Programs pursuant to the terms, conditions, and limitations set forth in the Settlement Agreement and the Component Benefit Programs. Some of the Component Benefit Programs may require the Retiree to make an annual election to enroll for coverage. The details of such annual elections are described in the underlying documents. In certain circumstances, enrollment may occur outside the open enrollment period.

(b) Dependent Coverage. Coverage may also be provided to Dependents who are eligible to participate in the underlying Component Benefit Programs. Dependents may or may not be eligible to participate in certain Benefits within the Component Benefit Programs. A Spouse, surviving Spouse, and Dependent child shall be eligible to participate in the Component Benefit Programs pursuant to the terms, conditions, and limitations set forth in the Settlement Agreement and Component Benefit Programs. Please see the underlying Component Benefit Programs and Settlement Agreement for more information on Dependent eligibility.

Coverage for a Dependent will be effective on the date the Retiree's coverage becomes effective if he applies for Dependent coverage when he enrolls in the Plan. Unless otherwise required by the Settlement Agreement, in no event will the Retiree's Dependents be covered before the date the Retiree's coverage begins.

This Plan is intended to comply with OBRA '93 with respect to dependent child eligibility and any national medical support notice.

NOTE: The Participant shall be required to present, upon request, to the Employer certified documentation providing proof of parentage, spousal, and/or dependent relationships,

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proof of the physical or developmental disability, and proof of dependent eligibility status. This required documentation may be requested by the Employer at any time to determine eligibility status.

The Retiree may not be covered under this Plan as both a Retiree and a Dependent. Eligible Dependent children of two parents who are both covered as Retirees under this Plan may be enrolled as Dependents of only one of the Retirees. In the event that one Retiree's coverage should terminate, his eligible covered Dependents will be eligible to become covered Dependents under the remaining parent's Retiree coverage.

2.2 Election Periods.

(a) Initial Election Period. A Retiree must affirmatively elect to receive coverage under the Plan within the later of (1) the 30-day period immediately prior to meeting the eligibility requirements set forth in Section 2.1; or (2) the 90-day period immediately following the later of the IRS Approval Date and the GERS Approved Termination Date. A Retiree who does not affirmatively elect to receive coverage within the applicable initial election period shall be deemed to have irrevocably opted out of coverage under the Plan and shall not be eligible to participate in the Plan in the future.

(b) Open Enrollment / Election Period. A Retiree who wishes to make an election change may do so only during the open enrollment / election period. However, an election change may be made before the open enrollment/election period if a special enrollment event occurs which legally requires mid-year enrollment pursuant to the terms of the underlying Component Benefit Program documents. The change in election request must be timely submitted. Please see the underlying Component Benefit Programs for information related to any permissible mid-year special enrollment rights. Once a Participant elects to opt-out of coverage for a particular Component Benefit Program, he or she shall be ineligible to participate in that Component Benefit Program in the future.

2.3 **Date of Participation.** Unless otherwise provided in the Component Benefit Programs, and as long as the Retiree has timely and properly elected coverage pursuant to Section 2.2, a Retiree will become a Participant on the later of 90-day period immediately following the later of the IRS Approval Date and the GERS Approved Termination Date, or the date the Retiree becomes eligible to participate pursuant to Section 2.1 with respect to a particular Component Benefit Program.

2.4 Cessation of Participation and Loss of Benefits.

(a) Retiree Coverage. Unless provided otherwise in the Component Benefit Programs, the Settlement Agreement, or pursuant to COBRA, a Participant's participation in the Plan will automatically cease at 11:59 p.m. on the earliest of the following dates:

- (1) the last day of the month in which the Participant fails to make any required contribution for coverage;
- (2) the date the Plan is terminated;

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- (3) the date the Employer terminates coverage;
- (4) (i) the original effective date of coverage if coverage is rescinded due to misrepresentation on the Participant's enrollment application;
- (5) the last day of the month of the Participant's death (unless coverage is continued for a surviving Spouse); and
- (6) the date the Participant revokes his or her election as permitted under the terms of the relevant Component Benefit Program.

(b) Dependent Coverage. Generally, Dependents will lose coverage under the Component Benefit Programs as of the earlier of the date they are no longer eligible or at the same time the Participant loses coverage for any of the events listed above. Please see the Component Benefit Programs and Settlement Agreement for more details. Additionally, and unless otherwise provided in the Component Benefit Programs or Settlement Agreement, coverage of any Dependent under the Component Benefit Programs will automatically cease at 11:59 p.m. on the earliest of the following dates, unless coverage is otherwise required to continue by law:

- (1) for Spouses:
 - (A) upon judgment of separate maintenance or legal separation (if applicable within the applicable State);
 - (B) upon divorce; or
 - (C) upon otherwise losing eligibility under the terms of the applicable Component Benefit Program or Settlement Agreement.
- (2) for Dependent children:
 - (A) upon reaching the limiting age set forth in the applicable Component Benefit Program;
 - (B) upon no longer meeting the eligibility requirements for extension of coverage due to disability under the terms of the applicable Component Benefit Program; or
 - (C) upon otherwise losing eligibility under the terms of the applicable Component Benefit Program or Settlement Agreement.

(c) Other. Other circumstances can result in the termination, reduction or denial of benefits. The Participant should consult the underlying Component Benefit Program documents for additional information. Termination of participation will automatically revoke elections and benefits as of the dates specified in the Component Benefit Programs. The Participant may also be entitled to continue certain benefits pursuant to state and federal law after participation ends. Pursuant to COBRA, a former Participant (or his or her covered Spouse

or Dependent children) may be able to elect to continue certain group health plan benefits provided under this Plan for a limited period of time by paying the cost of the benefits.

Article 3

Benefits Offered and Method of Funding

3.1 **Insured Benefits.** This Plan offers certain fully-insured benefits to Participants in the Plan and their eligible Dependents. Specifically, the fully-insured benefits offered under this Plan are the Pre-Age 65 Medical Plan, the Age 65+ Medical Plan, the Vision Plan and the Dental Plan. Any Insurance Contracts between the Plan Sponsor and third-party insurers providing benefit coverage to Participants are incorporated by reference. The rights and conditions with respect to the benefits payable under the Insurance Contracts shall be determined from the terms of those contracts. This Plan is not intended to expand or in any way increase the benefits available under those contracts. Any Participant (or Dependent of a Participant) who is receiving coverage under the fully-insured Component Benefit Programs shall not have any claim against the Employer for any benefits provided. The Participant (and/or his or her Dependents) shall only have a right to recover from the insurer for such benefits.

3.2 **Employer-Funded Benefits.** Additionally, the Plan may offer Participants and their eligible Dependents the opportunity to participate in certain self-funded benefits. However, there are not currently any self-funded benefits being offered under this Plan. Any Insurance Contracts between the Plan Sponsor and Contract Administrators providing and/or administering benefit coverage to Participants are incorporated by reference. The rights and conditions with respect to the benefits payable under these documents shall be determined from the terms of those documents. This Plan is not intended to expand or in any way increase the benefits available under those contracts.

3.3 **Contributions and Funding.** The cost of the benefits provided through the Component Benefit Programs will be funded as provided in the Trust Agreement through Employer, Participant, and/or other contributions. The Participant is also responsible for any deductible, co-payment, and coinsurance that may be required under the terms of the Component Benefit Programs. Unless provided otherwise in the Settlement Agreement, the Employer will determine and periodically communicate the Participant's cost of the benefits provided through each Component Benefit Program, and it may change that determination at any time. The self-funded Component Benefit Programs are funded by the Employer and are not insured by an insurance company. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

3.4 **Component Benefit Program Limitations and Exclusions.** Each Component Benefit Program sets forth the scope of benefits provided and may contain specific limitations to and/or exclusions from coverage. Please see the underlying Component Benefit Program documents for detailed information.

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3.5 **Reimbursements to Highly Compensated Individuals.** It is the intent of this Plan not to discriminate in violation of the Code and the Treasury Regulations thereunder. Therefore, reimbursements under any self-funded Component Benefit Program to Highly Compensated Individuals may be limited or treated as taxable compensation in order to comply with Code section 105(h), as may be determined by the Administrator in its sole discretion. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner.

3.6 **Applicable Laws.** With respect to Component Benefit Programs that are group health plans, the Plan will provide benefits in accordance with COBRA, GINA, HIPAA, MHPA, MHPAEA, NMHPA, WHCRA, PPACA and other group health plan laws to the extent required by such laws.

Article 4

HIPAA Privacy and Security Health Information for Self Insured and Fully Insured Group Health Plans

4.1 **Limited Application of HIPAA to Health Care Components.** It is contemplated that the Plan may contain both self-funded and fully-insured Component Benefit Programs.

(a) Exclusively for Administrative Simplification Rules purposes, the self-funded and fully-insured Health Care Components shall be considered separate group health plans. Sections 4.1, 4.2, 4.3, 4.5, 4.7, 4.8, 4.10, 4.11, and 4.12 shall apply to the fully-insured Health Care Components. Sections 4.1, 4.2, 4.4, 4.5, 4.6, 4.8, 4.9, 4.10, 4.11, and 4.12 shall apply to the self-funded Health Care Components.

(b) This Article does not extend application of HIPAA to create any obligations for the Plan (or any Component Benefit Program or portion thereof) or the Plan Sponsor that they would not otherwise have under HIPAA. Additionally, under no circumstances does this Article extend the rights and obligations of HIPAA to benefits that would otherwise be outside the scope of the Administrative Simplification Rules (e.g., the Component Benefit Programs which are not Health Care Components).

(c) This Article does not apply and has no legal effect on the Plan (or a Component Benefit Program) if the Plan (or Component Benefit Program) does not meet the definition of “health plan” or “group health plan” as defined by 45 C.F.R. 160.103. Under HIPAA, a “Group Health Plan” is defined as an employee welfare benefit plan (as defined in §3(1) of ERISA, 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in §2791(a)(2) of the Public Health Service Act, 42 U.S.C. 300gg-91(a)(2)) including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that: (1) has 50 or more participants (as defined in §3(7) of ERISA, 29 U.S.C. 1002(7)); or (2) is administered by an entity other than the employer that established and maintains the plan.

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(d) When permitted, it is the intention of the Plan (or any Component Benefit Program or portion thereof) to qualify as an exempted group health plan under 45 C.F.R. 164.520(a)(2) and 164.530(k), or qualify under any exemption of any requirement under HIPAA.

4.2 Permitted and Required Uses and Disclosures of Summary Health Information. Except as prohibited by 45 C.F.R. §164.502(a)(5)(i) (related to the prohibition against using or disclosing PHI that is genetic information for underwriting purposes), the Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose SHI to the Plan Sponsor, if the Plan Sponsor requests the SHI for the following purposes:

(a) Obtaining premium bids from health plans for providing health insurance coverage under the Plan.

(b) Modifying, amending or terminating the Plan.

4.3 Permitted and Required Uses and Disclosure of Protected Health Information for Fully-Insured Health Care Components . For the fully-insured Health Care Components, except as permitted in Sections 4.2 and 4.5, the Plan will not be disclosing any PHI to the Plan Sponsor in its capacity as Plan Sponsor, and no PHI may be disclosed to the Plan Sponsor unless such disclosure is otherwise permitted by an exception to the HIPAA Privacy Rules, keeping in mind 45 C.F.R. 164.520(a)(2) and 164.530(k).

4.4 Permitted and Required Uses and Disclosure of Protected Health Information for Self-Funded Health Care Components. Unless otherwise permitted by law, Section 4.2 or Section 4.5, only the self-funded Health Care Components may disclose PHI to the Plan Sponsor, provided the Plan Sponsor uses or discloses such PHI only for the purpose of carrying out plan administration functions (as defined under applicable HIPAA guidance) that the Plan Sponsor performs. In all other cases and situations, the Plan will not be disclosing any PHI to the Plan Sponsor in its capacity as Plan Sponsor, and no PHI may be disclosed to the Plan Sponsor unless such disclosure is otherwise permitted by the Administrative Simplification Rules.

However, enrollment and disenrollment functions performed by the Employer are performed on behalf of Plan participants and beneficiaries, and are not plan administration functions. Health information that the Employer receives, creates, maintains, and/or transmits in conjunction with performing enrollment and/or disenrollment functions on behalf of the Participant is deemed employment information to the extent it remains in the Employer's hands, and is not PHI.

4.5 Permitted Disclosure of Enrollment/Disenrollment Information. The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose to the Plan Sponsor information on whether the individual is participating in the Plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the Plan. Health information that the Employer receives, creates, maintains, and/or transmits in conjunction with performing enrollment and/or disenrollment functions on behalf of the Participant is deemed employment information to the extent it remains in the Employer's hands, and is not PHI.

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4.6 **Obligations of Self-Funded Plan Sponsor.** The Plan Sponsor agrees that with respect to any PHI and EPHI, as applicable, disclosed to it by the self-funded Health Care Components or any other covered entity, the Plan Sponsor shall:

(a) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law.

(b) Ensure that any agents to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such information.

(c) Not use or disclose the information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Plan Sponsor.

(d) Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware.

(e) Make PHI available in accordance with 45 C.F.R. §164.524 (related to access of individuals to PHI).

(f) Make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. §164.526.

(g) Make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528.

(h) Make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with 45 C.F.R. Part 164, Subpart E.

(i) If feasible, return or destroy all PHI received from the Plan that the Plan Sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(j) Ensure that the adequate separation required by 45 C.F.R. §164.504(f)(2)(iii) is established.

(k) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the Plan.

(l) Report to the Plan any security incident, as defined by the HIPAA Security Rules, of which it becomes aware.

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(m) Ensure that any agent to whom it provides EPHI agrees to implement reasonable and appropriate security measures to protect the EPHI that is created, received, maintained or transmitted to or by the Plan Sponsor on behalf of the group health plan.

(n) Ensure that adequate separation required by 45 C.F.R. §164.504(f)(2)(iii) is supported by reasonable and appropriate security measures.

4.7 Obligations of Fully Insured Plan Sponsor. The Plan Sponsor agrees that with respect to any EPHI disclosed to it by the fully-insured Health Care Components or any other covered entity, the Plan Sponsor shall:

(a) Ensure that any agent to whom it provides EPHI agrees to implement reasonable and appropriate security measures to protect the EPHI that is created, received, maintained or transmitted to or by the Plan Sponsor on behalf of the group health plan;

(b) Ensure that adequate separation required by 45 C.F.R. §164.504(f)(2)(iii) is supported by reasonable and appropriate security measures;

(c) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the Plan; and

(d) Report to the Plan any security incident, as defined by the HIPAA Security Rules, of which it becomes aware.

4.8 Adequate Separation. For the self-funded Health Care Components, the Plan Sponsor shall only allow employees with specific classifications/designations access to PHI and EPHI. The Plan Sponsor shall designate these employees or classes of employees from time to time. A list of such employees or classes of employees may be obtained from the Plan Sponsor. These specified employees or classes of employees shall only have access to and use PHI and EPHI to the extent necessary to perform plan administration functions that the Plan Sponsor performs for the Plan. In the event that any of these specified employees or classes of employees do not comply with the provisions of this Article, the non-complying employee(s) shall be subject to disciplinary action by the Plan Sponsor for noncompliance pursuant to the discipline and termination procedures of the Plan Sponsor.

For the fully-insured Health Care Components, the Plan Sponsor shall only have access to certain SHI, and/or enrollment/disenrollment information as permitted by Sections 4.2, 4.3, and 4.5. With respect to such limited information, the Plan Sponsor shall only allow employees with specific classifications/designations access to such information. The Plan Sponsor shall designate these employees or classes of employees from time to time. A list of such employees or classes of employees may be obtained from the Plan Sponsor. In the event that any of these specified employees or classes of employees do not comply with the provisions of this Article, the non-complying employee(s) shall be subject to disciplinary action by the Plan Sponsor for noncompliance pursuant to the discipline and termination procedures of the Plan Sponsor.

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The Plan Sponsor shall ensure that the provisions of this Section are supported by reasonable and appropriate security measures to the extent that the persons designated above create, receive, maintain or transmit EPHI on behalf of the Plan.

4.9 **Certification of Plan Sponsor.** The Plan (or health insurance issuers or HMO with respect to the Plan) shall disclose PHI to the Plan Sponsor only upon receipt of a certification by the Plan Sponsor that the Plan documents have been amended to incorporate the provisions of section 164.504(f)(2)(ii) of the Privacy Rules and that the Plan Sponsor agrees to the conditions of the disclosures set forth in this Article.

4.10 **Miscellaneous Interpretive Provision.** Notwithstanding the provisions of this Plan to the contrary, in no event shall the Plan or the Plan Sponsor be permitted to use or disclose PHI in a manner that is inconsistent with HIPAA. Any ambiguity in this Article shall be resolved in favor of a meaning that permits the Plan and Plan Sponsor to comply with HIPAA. This Article does not create any contractual rights or obligations between the Plan and other parties to Plan benefits that would otherwise be outside the scope of HIPAA.

4.11 **HITECH Act.** This Plan shall comply with the HITECH Act, and any authoritative guidance issued pursuant to that Act, if and as they become applicable to the Plan. If there is any conflict between the requirements of the HITECH Act, and any provision of this Plan, applicable law will control.

This Article only applies to health plan coverage within the Component Benefit Programs.

Article 5

Continuation of Coverage for Group Health Plan Benefits

5.1 **In General.** The following provisions may apply to benefits provided to eligible Participants and their Qualified Beneficiaries under the Plan, but only to the extent that the benefits selected pertain to group health plan coverage pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) Title X (COBRA).

Importantly, this Article only applies to group health plan coverage within the Component Benefit Programs. It does not apply to non-health benefits.

5.2 **Continuation of Coverage.** To the extent required by Section 5.1 above, a covered Retiree or Qualified Beneficiary who would lose coverage under this Plan as a result of a Qualifying Event is entitled to elect continuation coverage within the election period under this Plan. Coverage provided under this provision is on a contributory basis. No evidence of good health will be required.

Except as otherwise specified in an election, any election by a covered Retiree or Qualified Beneficiary who is a spouse of the covered Retiree will be deemed to include an election for continuation coverage under this provision on behalf of any other Qualified Beneficiary who would lose coverage by reason of a Qualifying Event.

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If this Plan provides a choice among the types of coverage under this Plan, each Qualified Beneficiary is entitled to make a separate selection among such types of coverage. However, the Qualified Beneficiary may only be able to continue that type of coverage which he or she would have lost as a result of the Qualifying Event.

5.3 Qualifying Event. The term "Qualifying Event" means any of the following events which, but for COBRA continuation coverage, would result in the loss of coverage of the covered Retiree or Qualified Beneficiary:

- (a) death of the covered Retiree;
- (b) divorce or legal separation of the covered Retiree from the Retiree's spouse;
- (c) covered Retiree becoming entitled to benefits under Title XVIII of the Social Security Act (Medicare);
- (d) a dependent child ceasing to be a dependent child of a covered Retiree under the generally applicable requirements of the Plan; or
- (e) with regard to a covered Retiree, a bankruptcy proceeding under Title 11 of the United States Code, with respect to the Employer from whose employment the covered Retiree retired at any time. For purposes of an employer's bankruptcy proceedings, a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary (covered Retiree who retired on or before the date coverage was substantially eliminated, or spouse, surviving spouse, or dependent child of said covered Retiree if, on the date before the bankruptcy event, the spouse, surviving spouse, or dependent child is a beneficiary under the group health plan) within 12 months before or after the date the proceeding commenced.

An event described above is only a Qualifying Event if it causes a loss of coverage for the covered Retiree, or Qualified Beneficiary under the group health plan. For this purpose, "loss of coverage" generally means to cease to be covered under the same terms and conditions as in effect immediately before the Qualifying Event (including any increase in the premium or contribution that must be paid by a covered /Retiree (or his/her spouse or dependent child) for coverage under the group health plan). If coverage is reduced or eliminated in anticipation of an event (for example, an employer's eliminating an employee's coverage in anticipation of the termination of the employee's employment, or an employee's eliminating the coverage of the employee's spouse in anticipation of a divorce or legal separation), then the reduction or elimination is disregarded in determining whether the event causes a loss of coverage.

5.4 Type of Coverage. Continuation coverage under this provision is coverage which is identical to the coverage provided to similarly-situated beneficiaries under the group health plan with respect to whom a Qualifying Event has not occurred as of the time coverage is being provided. If coverage under the group health plan is modified for any group of similarly-situated beneficiaries, then coverage shall also be modified in the same manner for all Qualified Beneficiaries under the group health plan in connection with such group.

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5.5 Duration of Coverage. The coverage under this provision will extend for at least the period beginning on the date of a Qualifying Event (unless otherwise provided) and ending not earlier than the earliest of the following:

(a) In case of a loss of coverage due to bankruptcy proceeding under Title 11 of the United States Code, with respect to the Employer from whose employment the covered Retiree retired at any time, (i) for a qualified beneficiary who is the covered Retiree, the date of the covered Retiree's death, or (ii) for a Qualified Beneficiary who is the spouse, surviving spouse or dependent child of the covered Retiree, the earlier of the date of the Qualified Beneficiary's death or the date that is 36 months after the date of the covered Retiree's death;

(b) In the case of any Qualifying Event except as described in Section 5.5(a) for the Qualified Beneficiaries, the date which is 36 months after the date of the Qualifying Event;

(c) The date on which the participating Employer ceases to provide any group health plan to any Retiree;

(d) The date on which coverage ceases under the Plan by reason of failure to make timely payment of the required contribution pursuant to this provision;

(e) The date on which the covered Retiree or Qualified Beneficiary first becomes, after the date of the election, covered under any other group health plan (as an employee or otherwise), or becomes entitled to benefits under Title XVIII of the Social Security Act (Medicare). However, if the other group health plan has a preexisting condition limitation, coverage under the plan will not cease while such preexisting condition limitation under the other group plan remains in effect, subject to the maximum period of coverage limitations set forth in this Section; or

(f) COBRA may be terminated for any reason the plan would terminate coverage of a participant or beneficiary not receiving COBRA coverage (such as fraud).

5.6 Cost of Coverage. COBRA permits the Plan to require payment of an amount that does not exceed 102 percent of the applicable premium (i.e., the full cost to the Plan (including both employer and employee contributions) for coverage for similarly situated beneficiaries with respect to whom a Qualifying Event has not occurred). If coverage is continued due to a disability, COBRA permits the Plan to require the payment of an amount that does not exceed 150 percent of the applicable premium for any period of COBRA coverage if the coverage would not be required to be made available in the absence of a disability extension (e.g. for the last 11 months of the 29-month period during which coverage may continue).

5.7 Payment of Premium.

(a) A covered Retiree or Qualified Beneficiary shall only be entitled to continuation coverage provided the Qualified Beneficiary or covered Retiree pays the applicable premium required by the Employer in full and in advance, except as provided in (b) below. Such premium shall not exceed the maximum thresholds of applicable federal law. A Qualified

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Beneficiary or covered Retiree may elect to pay such premium in monthly installments. The Plan may also permit payment at other intervals.

(b) Except as provided in (c) below, the payment of any premium shall be considered to be timely if made to the Plan within 30 days after the first day of the applicable period of coverage, or within such longer period of time as permitted under this Plan.

(c) Notwithstanding (a) and (b) above, if an election is made after a Qualifying Event during the election period, this Plan will permit payment of the required premium for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

5.8 Qualified Beneficiary Must Notify Plan Administrator of Certain Qualifying Events.

(a) It is the responsibility of the covered Retirees and Qualified Beneficiaries to provide the following notices to the Plan Administrator:

(1) Notice of the occurrence of a Qualifying Event that is a divorce or legal separation of a covered Retiree from his or her spouse;

(2) Notice of the occurrence of a Qualifying Event that is a Qualified Beneficiary ceasing to be covered under the Plan as a dependent child; and

(3) Notice that a covered Retiree or Qualified Beneficiary subsequently becomes entitled to Medicare or covered under other group health coverage (but only after any preexisting condition exclusions of the other plan have been exhausted or satisfied).

(b) Notice to the Plan Administrator must be made in writing and must be mailed or hand-delivered to:

City of Pontiac
Human Resources Department
47450 Woodward Avenue
Pontiac, Michigan 48342

Oral notice or electronic notice (by e-mail or facsimile) is not acceptable. If mailed, the notice must be postmarked no later than the deadline described below. If hand-delivered, notice must be received by the individual at the address above no later than the deadline described below.

(c) Required Contents of Notice. The notice must at a minimum contain the following information:

(1) the name of the Plan;

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(2) the name and address of the Retiree who is or was covered under the Plan;

(3) the nature of the Qualifying Event, and, if applicable, the nature of the initial Qualifying Event that started the COBRA coverage, including any verifying documentation which may be required by the Plan Administrator;

(4) the date of this Qualifying Event, and, if applicable, the initial Qualifying Event;

(5) the name(s) and address(es) of all Qualified Beneficiary(ies) who lost coverage due to the Qualifying Event or initial Qualifying Event, and, if applicable, whether those individuals are receiving COBRA coverage at the time of this notice;

(6) if the notice is regarding subsequent entitlement of Medicare or coverage under another group health plan, the initial Qualifying Event and the subsequent event terminating coverage and the dates they occurred; and

(7) the signature, name; and contact information of the individual sending the notice.

Furthermore, the Plan requires that the following documents, if relevant to the particular Qualifying Event, be provided with the notice: Death Certificate; Divorce Decree or Legal Separation Agreement; Birth Certificate or Order of Adoption; Marriage Certificate;; Spouse's Notice of Employment Termination or Proof of Loss of Coverage; Qualified Domestic Relations Order.

Any notice that does not contain all of the information required by the Plan must be supplemented in writing within 15 business days with the additional information necessary to meet the Plan's reasonable content requirements for such notice in order for the notice to be deemed to have been provided in accordance with this section.

(d) Time Periods to Provide Notice. If written notice is not provided within the time periods provided below, the covered Retiree and Qualified Beneficiaries will lose the right to elect COBRA.

(1) Time limits for notices of Qualifying Events. The notice described in Section 5.8(a)(1) or (2) must be furnished within 60 days after the latest of:

(A) the date on which the relevant Qualifying Event occurs; or

(B) the date on which the covered Retiree or Qualified Beneficiary loses (or would lose) coverage under the plan as a result of the Qualifying Event.

(2) Time limits for notice of subsequent Medicare entitlement, or coverage under another group health plan. The notice described in Section 5.8(a)(3) must be furnished within 30 days after the date the covered Retiree or Qualified Beneficiary becomes entitled to Medicare or covered under other group health coverage.

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(e) Person to Provide Notice. With respect to each of the notice requirements of this section, any individual who is either the covered Retiree, a Qualified Beneficiary with respect to the Qualifying Event, or any representative acting on behalf of the covered Retiree or Qualified Beneficiary may provide the notice, and the provision of notice by one individual shall satisfy any responsibility to provide notice on behalf of all related Qualified Beneficiaries with respect to the Qualifying Event.

5.9 Employer Must Notify Plan Administrator of Certain Qualifying Events. Upon the occurrence of a Qualifying Event that is the covered Retiree's death, Medicare entitlement, or commencement of a bankruptcy proceeding of the Employer, the Employer must notify the Plan Administrator within 30 days after the date of the Qualifying Event.

5.10 Notification to Qualified Beneficiary.

(a) The Plan Administrator (or entity which it has hired) shall provide written notice within 14 days after receipt of the notice of Qualifying Event to each covered Retiree and spouse of such covered Retiree of his/her right to continuation coverage and the cost, if any, under this provision as required by federal law. However, in the case where the Employer is the Plan Administrator and the Employer is otherwise required to furnish a notice of a Qualifying Event to the Plan Administrator, the Plan Administrator shall provide written notice within 44 days after the date of the Qualifying Event.

(b) The Plan Administrator (or entity which it has hired) shall notify any Qualified Beneficiary of the right to elect continuation coverage under this provision as required by federal law. If the Qualifying Event is the divorce or legal separation of the covered Retiree from the covered Retiree's spouse or a dependent child ceasing to be a dependent under the terms of this Plan, the Plan Administrator shall only be required to notify a covered Retiree or Qualified Beneficiary of his/her right to elect continuation coverage if the covered Retiree or the Qualified Beneficiary notifies the Employer of such Qualifying Event as previously stated. Additionally, the right to extend COBRA coverage may only be provided upon the Plan Administrator receiving proper notice.

(c) Notification of the requirements of this provision to a Qualified Beneficiary who is the spouse of a covered Retiree shall be treated as notification to all other Qualified Beneficiaries residing with such spouse at the time notification is made.

5.11 Election of COBRA. A covered Retiree and Qualified Beneficiaries each will have an independent right to elect COBRA continuation coverage and shall have 60 days to elect COBRA from the later of (1) the date on which coverage would be lost on account of the Qualifying Event; or (2) the date notice of the right to elect COBRA continuation coverage is provided. Covered Retirees and spouses who are Qualified Beneficiaries may elect COBRA coverage on behalf of all other beneficiaries, and parents may elect COBRA coverage on behalf of their minor children. Any covered Retiree and/or Qualified Beneficiary for whom COBRA is not elected within the 60-day election period specified in the Plan's COBRA election notice will lose his or her right to elect COBRA coverage.

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A covered Retiree and/or Qualified Beneficiary then shall have 45 days after the date on which the COBRA election is made to pay for any required premium. Thereafter, payment is timely if made within the time periods of the Plan or 30 days of the due date.

5.12 **Special Election Period.** Special COBRA rights apply to certain Retirees who are eligible for federal trade adjustment assistance (TAA) or alternative trade adjustment assistance (ATAA). These individuals are entitled to a second opportunity to elect COBRA for themselves and certain family members (if they did not already elect COBRA) during a special second election period. This special second election period lasts for 60 days or less. It is the 60-day period beginning on the first day of the month in which an eligible Retiree becomes eligible for TAA or ATAA, but only if such election is made within the six months immediately after the date of the TAA/ATAA-related loss of coverage. If the Retiree qualifies for TAA or ATAA, he/she must contact the Employer promptly or the Retiree will lose the right to elect COBRA during a special second election period.

Article 6

Fiduciary Responsibilities

6.1 **Named Fiduciary.** The Named Fiduciaries shall have the authority to control and manage the operation and administration of the Plan. The specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement to allocate or delegate responsibilities, the terms of which are incorporated herein by reference. In general, the Plan Sponsor shall have the sole authority to appoint and remove the Administrator; and to amend Plan provisions or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. Furthermore, each Named Fiduciary may rely upon any such direction, information or action of another Named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each Named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. Any person or group may serve in more than one fiduciary capacity.

6.2 **General Fiduciary Responsibilities.** The Administrator and any other fiduciary shall discharge its duties with respect to this Plan solely in the interest of the Participants and their beneficiaries and —

(a) for the exclusive purpose of providing Benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) by diversifying the investments of the Plan (if any) so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with applicable law.

Article 7

Record Keeping and Administration

7.1 **Administrator.** The Administrator shall be designated by the City Council and shall carry out the duties assigned to the Administrator under the Plan. The administration of this Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to ensure that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

7.2 **Applicability of Article and Power and Authority of Contract Administrators.** This Article shall only apply to this Plan and to the underlying Component Benefit Programs which are self-funded and administered by the Plan Administrator. For all other Component Benefit Programs, this Article does not apply, and the Contract Administrators shall administer the Component Benefit Programs as provided in the Insurance Contracts and other governing documents; the Plan Administrator shall retain no responsibility for such acts. Moreover, the Contract Administrators for the fully-insured Component Benefit Programs are responsible for (1) paying claims; (2) determining eligibility for and the amount of any benefits payable under their respective Component Benefit Programs; and (3) prescribing legally compliant claims procedures to be followed and the claims forms to be used by employees pursuant to their respective Component Benefit Program.

7.3 **Powers of the Administrator.** The Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, subject to the pertinent provisions of the Code and Treasury Regulations. All determinations of the Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Administrator shall have the following discretionary authority:

(a) to make and enforce rules and regulations necessary or proper for the efficient administration of the Plan, including the establishment of any claims procedures that may be required by applicable provisions of law;

(b) to construe and interpret this Plan, including all possible ambiguities, inconsistencies and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of Benefits under this Plan;

(c) to approve reimbursement requests and to authorize the payment of Benefits;

(d) to prepare and distribute information explaining this Plan and the Benefits under this Plan in such manner as the Administrator determines to be appropriate;

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(e) to furnish each Participant with such reports with respect to the administration of this Plan as the Administrator determines to be reasonable and appropriate and/or as required by law;

(f) to allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities in writing (such delegation shall expressly identify the delegate(s) and expressly describe the nature and scope of the delegated responsibility).

(g) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan; and

(h) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal.

The Plan Administrator, and other fiduciaries of the Plan (including any named fiduciary for claim appeals), have the requisite discretionary authority and control over the Plan to require deferential judicial review of its decisions, as set forth by the U.S. Supreme Court in Firestone Tire & Rubber Co. v. Bruch.

7.4 Examination of Records. In accordance with applicable law, the Administrator will make records available to each Participant for examination at reasonable times during normal business hours.

7.5 Reliance on Participant, Tables, etc. The Administrator may rely upon the information submitted by a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

7.6 Nondiscriminatory Exercise of Authority. Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall also be consistent with the intent that the Plan shall continue to comply with the terms of Code section 105(h) and the Treasury Regulations thereunder.

7.7 Indemnification of Administrator. The Employer agrees to indemnify and to defend, to the fullest extent permitted by law, any employee serving as the Administrator or as a member of a committee designated as Administrator (including any employee or former employee who formerly served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorneys' fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission in connection with the Plan, if such act or omission is in good faith.

7.8 Bonding. The Administrator shall be bonded to the extent required by applicable law.

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7.9 **Records.** The Administrator shall keep records containing all relevant data and information pertaining to the administration of the Plan.

7.10 **Assurance of Receipt of Benefits.** The Administrator shall take all necessary action to ensure that Participants receive the Benefits to which they are entitled under the Plan.

7.11 **Conflict of Interest.** The Administrator may not decide any matter relating solely to the Administrator's rights or benefits under the Plan. These decisions shall be made by an individual appointed by the City Council.

7.12 **Exercise of Discretion on a Uniform Basis.** In those instances where the Administrator is granted discretion in making its determinations, and the decision of the Administrator affects the benefits, rights or privileges of Participants, such discretion shall be exercised uniformly so that all Participants similarly situated are similarly treated.

7.13 **Timely Filing of Reports.** The Administrator shall cause to have prepared and filed or furnished, as the case may be, in a timely fashion, such information and reports as are required by applicable law and regulations to be filed or furnished by the Plan.

7.14 **Employment of Agents.** The Administrator has the right to employ agents and advisors to assist the Administrator in the performance of its duties.

7.15 **Provision for Third-Party Plan Service Providers.** The Administrator, subject to approval of the Plan Sponsor, may employ the services of such persons as it deems necessary or desirable in connection with the operation of the Plan. Unless otherwise provided in the applicable service agreement, obligations under this Plan shall remain the obligation of the Employer.

7.16 **Insurance Contracts.** The Plan Sponsor shall have the right to enter into a contract with one or more insurance companies for the purposes of providing any Benefits under the Plan and to replace any such insurance companies or contracts. Any dividends, retroactive rate adjustments or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and be retained by, the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

7.17 **Reliance Upon Information and Advice.** The Administrator may rely upon the written information, opinions or certificates supplied by any agent, counsel, actuary, investment manager, physician or fiduciary.

7.18 **Administration of Claims.** The Administrator shall administer all claims procedures under the Plan, except as otherwise provided.

7.19 **Compensation of Administrator.** The Administrator, if not an employee of Employer, shall be paid a reasonable compensation for services on behalf of the Plan as may be agreed upon from time to time by Plan Sponsor and the Administrator. Unless otherwise determined by the Plan Sponsor and permitted by law, any Administrator who is also an

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employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

7.20 **Liability Limitations.** The Administrator is not liable or responsible for the acts or omissions of another fiduciary, unless:

(a) the Administrator knowingly participated in, or knowingly attempted to conceal, the act or omission of another fiduciary and the Administrator knew the act or omission was a breach of fiduciary responsibility by the other fiduciary,

(b) the Administrator had knowledge of a breach by the other fiduciary and did not make reasonable efforts under the circumstances to remedy the breach, or

(c) the Administrator's breach of the Administrator's fiduciary responsibility permitted the other fiduciary to commit a breach.

7.21 **Resignation of Administrator.** The Administrator may resign by giving written notice to Plan Sponsor not less than 15 days before the effective date of the resignation.

7.22 **Removal of Administrator; Filling Vacancy.** The Administrator may be removed at any time, without cause, by the City Council. In such case, the City Council shall fill the vacancy as soon as reasonably possible after the vacancy occurs. Until a new Administrator is appointed, the City Council has full authority to act as the Administrator.

Article 8

Claims Procedure and Appeal

8.1 **Applicability of Article.** As used within this Article only, the term "Administrator" shall also mean "Contract Administrator." Specifically, the term "Administrator" shall mean the Plan Administrator or relevant Contract Administrator, as applicable, who is administering benefits with respect to a particular Component Benefit Program.

The underlying documents for each Component Benefit Programs sets forth its applicable claims and appeals procedures. Claims and appeals procedures set forth within the applicable Insurance Contracts control; this Article supplements those documents to the extent required by law and for the purpose of imposing the limitations period for filing suit.

Claims for benefits incorporated in this Plan shall be submitted to the relevant Administrator. Generally, the provider will file all claims. However, in some circumstances, nonparticipating providers may not file a claim. In those cases, a Claimant shall make a claim for benefits by making a request pursuant to the procedures specified in the claim forms provided by the Administrator. For purposes of determining the amount of, and entitlement to, Benefits under the fully-insured Component Benefit Programs, the respective insurer is the named fiduciary under the Plan, with the full power to interpret and apply the terms of the Plan as they

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relate to the benefits provided under the applicable fully-insured Component Benefit Programs. For purposes of determining the amount of, and entitlement to, Benefits under the self-funded Component Benefit Programs, the Administrator is the named fiduciary under the Plan, with the full power to make factual determinations and to interpret and apply the terms of the Plan as they relate to the benefits provided through a self-funded Component Benefit Program.

To obtain benefits under a Component Benefit Program, the Participant must follow the claims procedures under the applicable Insurance Contract, which may require the Participant to complete, sign, and submit a written claim on the insurer's/administrator's form. The Administrator will decide a Participant's claim in accordance with its reasonable claims procedures, as required by law. Any claims not submitted within the specified time requirements will not be considered.

In conjunction with the requirements of applicable law, the Administrator may have the right to secure independent medical advice and to require such other evidence as it deems necessary in order to decide a claim. If the Administrator denies a claim in whole or in part, then the Claimant will receive a written notification setting forth the reason(s) for the denial.

If a Claimant thinks an error has been made in determining his or her benefits, then the Claimant or his or her beneficiaries may make a request for any Plan benefits to which he or she believes he or she is entitled. Any such request should be in writing and should be made to the Administrator. If the Administrator determines the claim is valid, then the Claimant will receive a statement describing the amount of benefit, the method or methods of payment, the timing of distributions and other information relevant to the payment of the benefit.

If a claim is denied, the Claimant may appeal to the Administrator for a review of the denied claim. The Administrator will decide the claim in accordance with its reasonable claims procedures. If the Claimant does not appeal on time, then he or she will lose his or her right to file suit in a state or federal court, as he or she will not have exhausted his or her internal administrative appeal rights (which generally is a prerequisite to bringing a suit in state or federal court). The Insurance Contracts contain additional information regarding how to file a claim and the details regarding the claims procedures applicable to a Claimant's claim.

Article 9

Amendment and Termination of the Plan

9.1 **Amendment and Termination.** Although the Plan Sponsor intends to maintain this Plan indefinitely, it reserves the right to amend or terminate the Plan at any time to the extent not inconsistent with the terms of the Settlement Agreement. The Plan Sponsor further reserves the right to change insurers and/or modify the terms of any contracts with insurers who are providing benefits pursuant to this Plan to the extent not inconsistent with the terms of the Settlement Agreement. The amendment or termination shall be made by a written instrument and shall be communicated to all Participants in writing. Any decision to amend or terminate the Plan and any and all benefits provided under the Plan shall be made either by the City Council or by any person or persons authorized by the City Council to take such action. Any amendment may be made retroactively effective to the extent not prohibited by the Code.

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Unless otherwise provided in the Component Benefit Programs, no Participant, Dependent or any other person shall have any further right, title, interest or claim, legal or equitable, in or to any reimbursement or benefit payable under such Plan beyond the date in which such Plan or benefit is terminated. Assets remaining in the Plan upon termination arising from employer contributions may revert to the Employer, but only to the extent not inconsistent with the Trust's qualified status under Code section 501(c)(9). Plan assets remaining in the Plan upon termination will be handled in accordance with the applicable Component Benefit Program, unless otherwise required by law.

9.2 **Payment of Claims Upon Amendment or Termination.** If the Plan is amended or terminated, benefits will only be paid for claims incurred before the date of amendment or termination. In the event of Plan termination, claims incurred prior to the date of termination will be paid out of the Trust, to the extent sufficient funds are available. Other than the Trust, there are no specific assets set aside to use to pay claims incurred prior to the date of termination. If the Plan should be terminated, only claims incurred prior to the date of such termination would be paid by the Plan.

Article 10

Coordination of Benefits

10.1 **General.** Coordination of benefits involves coordinating payments between two separate plans that both cover the Participant and/or Dependents. In general, the coordination of benefits provisions set forth within the underlying fully-insured Component Benefit Programs shall control with respect to such Component Benefit Programs. To the extent it does not conflict with the coordination of benefits provisions in an applicable Component Benefit Program, this coordination of benefits Article shall apply.

10.2 **Order of Payment.** According to the following section outlining the order of payment, one plan will be designated as the primary plan and succeeding plans will be designated as secondary plans. The primary plan must pay benefits as if the secondary plan does not exist. The secondary plan will then adjust and reduce its expense payments so that the total benefit payable by both plans will not exceed 100% of allowable expenses. This Plan will never pay more than it would without this coordination provision.

When a person is covered under two or more plans, the rules below apply to decide which plan's benefits are payable first:

(a) If one plan does not have a coordination of benefits provision, then it is the primary payer on the claim. The plan with the coordination of benefits provision, such as this one, is the secondary payer.

(b) The plan that covers the insured as a nondependent (i.e., as an employee, member, subscriber, or retiree) is primary over a plan that covers the insured as a dependent.

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(c) In cases of coverage for a dependent child, the plan of the parent whose birthday falls earlier in the year is primary if:

- (1) The parents are married; or
- (2) The parents are not separated (whether or not they have ever been married); or
- (3) A court decree awards joint custody without specifying that one parent has the responsibility to provide health care coverage.

If both birthdays are the same, then the plan covering the parent the longest is primary.

(d) If the parents are not married or are separated (whether or not they were ever married) or are divorced, and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and their spouses, if any, is as follows:

- (1) The plan of the parent with custody;
- (2) The plan of the custodial parent's spouse;
- (3) The plan of the parent without custody;
- (4) The plan of the noncustodial parent's spouse.

(e) If a court decree states that one of the parents must pay health coverage, then that parent's plan pays primary (as long as the plan has actual knowledge of the court decree and its terms). If that parent has no coverage for the child's health care services, then the plan of that parent's spouse is primary (as long as the plan has actual knowledge of the court decree and its terms). This paragraph shall not apply with respect to any claim determination period or plan year during which the benefits are paid or provided before the plan has actual knowledge. If it is determined that another plan is primary due to the terms of a divorce decree after the secondary plan has paid as primary, the secondary plan shall not retroactively seek refunds of the overpayments it previously issued as the primary plan.

(f) A plan that covers a person as a former employee (or dependent of a former employee) is secondary to the plan that covers the person as an active employee (or an active employee's dependent). However, if the other plan does not have this rule, and the plans do not agree on the order of benefits, this rule is ignored.

(g) If none of the above rules can determine the order of benefits, then the plan that covered the insured the longest pays before the plan which covered the person for the shorter period of time. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the covered person was eligible under the second within 24 hours after the first ended. The start of a new plan does not include (1) a change in the amount or scope of a plan's benefits; (2) a change in the entity that pays, provides, or administers the

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plan's benefits; or (3) a change from one type of plan to another (such as from a single employer plan to that of a multiple employer plan). A person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(h) With regard to COBRA, the plan covering the person as an employee, member, subscriber, or retiree (as their dependent) is primary. The COBRA plan is secondary, unless the plan that would be primary contains pre-existing condition limitations. However, this rule is ignored if only one plan follows the COBRA rules and the plans do not agree on the order of benefits.

(i) If another plan contains a provision whereby such plan considers its plan to be excess of other available benefits or considers the plan to be secondary only in normal coordination of benefits situations, this plan will coordinate to consider benefits payable on a 50%/50% basis, between this Plan and the other plan.

(j) If none of the above rules apply, then the expenses must be shared equally between the plans.

The total maximum benefit limits under this Plan will only be reduced by the charges actually paid by this Plan. Any benefits coordinated and paid by other coverage providers will not be charged against the benefit limits of this Plan.

10.3 Coordination With Medicare. This Plan is intended to comply with applicable federal regulations as they apply with respect to Medicare coverage and coordination of benefits. To the extent required by applicable law, when determining Medicare benefits, the Plan will base its payment upon benefits that have been paid by Medicare under Parts A and B, whether or not the covered Participant and/or Dependent has enrolled for the full coverage. In the case of services and supplies for which Medicare makes direct reimbursement to the health care provider, this Plan will coordinate its benefits based on the amount approved by Medicare and not the amount of the charge.

10.4 Coordination With Medicaid. Notwithstanding any other provisions of this Plan to the contrary, this Plan shall not take into account, with respect to Plan enrollment or the payment of benefits to a covered Participant and/or Dependent, that such Participant and/or Dependent qualifies for medical assistance under a state Medicaid plan.

Article 11

Miscellaneous Provisions

11.1 Gender and Number. Except where otherwise indicated by the context, as used in this agreement the masculine gender includes the feminine and neuter, and words used in the singular include the plural.

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11.2 **Headings.** The headings of the various Articles and Sections are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

11.3 **Controlling Law.** This Plan shall be construed, administered and enforced according to applicable Michigan laws, to the extent not superseded by the Code or any other federal law.

11.4 **Participation in Plan Not Contract of Employment.** The establishment of the Plan, the creation of any account, or the payment of any benefit does not create in any Participant, or other party a right to continuing employment with Employer. This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be consideration or an inducement for the employment of any Participant.

11.5 **Participants' Rights.** Except as may be required by law, the existence of the Plan shall not give any Participant or beneficiary any equity or other interest in the assets, business or affairs of the Employer; the right to challenge any action taken by the Employer's officers, directors or stockholders, or any policy adopted or followed by the Employer; or the right to examine any of the books and records of the Employer. The rights of all Participants and their beneficiaries shall be limited to their right to receive payment of their benefits from the Plan when due and payable in accordance with the terms of the Plan.

11.6 **Insurance Contract or Governing Document Controls.** Benefits are provided under the Plan pursuant to the Insurance Contracts or other governing document of the underlying Component Benefit Programs. If the terms of this document conflict with the terms of such other contracts or documents, then the terms of the Insurance Contract or governing document will control, rather than this Plan, unless otherwise required by law.

11.7 **Information to be Furnished by Participants.** Participants shall provide the Employer and Administrator with information and evidence, and shall sign documents, as may be reasonably requested from time to time for the purpose of administration of the Plan.

11.8 **Non-Assignability of Rights.** The right of any Participant to receive any Benefit under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

11.9 **Children Placed for Adoption.** With respect to Component Benefit Programs that are group health plans, this Plan shall provide benefits to dependent children placed with Participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of Participants or beneficiaries under the Plan, irrespective of whether the adoption has become final. The Plan shall not restrict coverage under the Plan of any dependent child adopted by a Participant or beneficiary, or placed with a Participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the Plan, if the adoption or placement for adoption occurs while the Participant or

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beneficiary is eligible for coverage under the Plan. The term "placement," or being "placed" for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation. The term "child" means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

11.10 National Medical Support Notices. With respect to Component Benefit Programs that are group health plans, the Plan shall provide benefits in accordance with the applicable requirements of any national medical support notice.

The Administrator shall promptly notify the Participant and each alternate recipient of the receipt of a medical child support order by the Plan and the Plan's procedures for determining the qualified status of medical child support orders. Within a reasonable period after receipt of a medical child support order, the Administrator shall determine whether the order constitutes a national medical support notice and shall notify the Participant and each alternate recipient of such determination. If the Participant or any affected alternate recipient disagrees with the determinations of the Administrator, the disagreeing party shall be treated as a Claimant and the claims procedure of the Plan shall be followed. The Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

The Plan has established reasonable procedures to determine whether medical child support orders are national medical support notices and to administer the provision of benefits under such qualified orders. Such procedures, are set forth in a separate document, but shall: (1) be in writing, (2) provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the Plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the Plan of the medical child support order; and (3) permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the alternate recipient with respect to a medical child support order.

Alternate recipients of a national medical support notice shall be treated as beneficiaries under the Plan for all purposes of applicable law. A person who is an alternate recipient under any medical child support order shall be considered a Participant for purposes of applicable reporting and disclosure requirements.

Payments under this Plan pursuant a national medical support notice in reimbursement for expenses paid by the alternate recipient or the alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

11.11 State Recovery of Medicaid Payments. Notwithstanding any other provision of this Plan to the contrary, if this Plan provides benefit payments on behalf of a covered person who is also covered by a state's Medicaid program, the Plan shall be subject to the state's right to reimbursement for benefits the state has paid on behalf of the covered person, provided that the state has an assignment of rights made by or on behalf of the covered person,

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or the covered person's beneficiary, as may be required by the state medical assistance plan. Specifically, payment for benefits with respect to a Participant will be made in accordance with any assignment of rights made by or on behalf of such Participant or a beneficiary of the Participant as required by a state plan for medical assistance approved under title XIX of the Social Security Act pursuant to section 1912(a)(1)(A) of such Act (as in effect on the date of enactment of the Omnibus Reconciliation Act of 1993).

11.12 Coordination with Medicaid. Notwithstanding any other provisions of this Plan to the contrary, with respect to any Component Benefit Program deemed a group health plan, this Plan shall not take into account, with respect to Plan enrollment or the payment of benefits to a Participant or Participant's beneficiary, that such individual is eligible for or is provided medical assistance under a state plan for medical assistance approved under title XIX of the Social Security Act.

11.13 Honor of State Subrogation Rights. Notwithstanding any other provision of this Plan to the contrary, the Plan will honor any subrogation rights that a state may have gained from a Medicare-eligible beneficiary covered by the Plan by virtue of the state's having paid Medicare benefits, provided that the Plan has a legal liability for coverage. To the extent that payment has been made under a state plan for medical assistance approved under title XIX of the Social Security Act in any case in which the Plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the Plan will be made in accordance with any state law which provides that the state has acquired the rights with respect to a Participant to such payment for such items of services.

11.14 Subrogation, Reimbursement and Third Party Recovery Provision. Except as otherwise provided in the Component Benefit Programs, the Plan shall have the following rights:

(a) Benefits under the Plan shall be paid subject to its rights of recovery and will be paid only if the Participant fully adheres to the terms and conditions of the Plan. The Plan shall have the right to recover from the Participant, representative, or beneficiary ("covered person") any payment, amount, or recovery for benefits paid by the Plan to which the covered person is entitled to recover from a third party, including but not limited to any liability insurance, uninsured/underinsured motorist proceeds, or other health plan. Specifically, the Plan has a first right of recovery upon any proceeds on any claim against a third party before the covered person receives payment from the third party to the extent of paid benefits, whether by settlement, judgment or otherwise that the covered person receives from a third party, not to exceed the amounts of benefits paid by the Plan or the amount received by the covered person for such treatment. The Plan's first priority right to payment is superior to any and all claims, debts or liens asserted by any medical providers, including but not limited to hospitals or emergency treatment facilities, that assert a right to payment from funds the covered person recovers from a third party. This lien or right of reimbursement exists regardless of (1) how those proceeds are captioned or characterized; (2) whether the money or other valuable consideration is designated as economic, non-economic or punitive damages; (3) whether the recovery is partial or complete; and (4) who holds the money or other valuable consideration or where it is held. Any settlement or recovery shall be held in trust for the benefit of the Plan and shall first be applied to reimbursement of medical expenses paid by the Plan. The Plan is not

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required to help the covered person pursue his/her claim for damages or personal injuries, or pay any associated costs, including attorney fees.

(b) If benefits are paid or payable by this Plan, this Plan shall be subrogated to any and all rights, recoveries, causes of actions, or claims of any covered person under this Plan. Benefits paid by the Plan may also be considered to be benefits advanced and the Plan may offset any future benefits otherwise payable to the covered person. Participant agrees to cooperate with the Plan and its agents in a timely manner to protect the Plan's legal and equitable rights to subrogation and reimbursement, including but not limited to: (1) complying with the terms of this section; (2) providing any relevant information requested; (3) signing and/or delivering documents at its request; (4) notifying the Plan, in writing, of any potential legal claim(s) the Participant may have against any third party for acts which caused benefits to be paid or become payable; (5) responding to requests for information about any accidents or injuries; (6) appearing at medical examinations and legal proceedings, such as depositions or hearings; and (7) obtaining the Plan's consent before releasing any party from liability or payment of medical expenses. Failure or refusal to furnish such information does not preclude the Plan from exercising its rights to subrogation or obtaining full reimbursement. Participants receiving benefits under this Plan are obligated to avoid doing anything that would prejudice the Plan's rights, including but not limited to reimbursement.

(c) If a covered person brings a liability claim against a third party, benefits paid or payable under the Plan shall be included in the claim. When the claim is resolved, the covered person must reimburse the Plan for benefits provided.

(d) If any suit is filed, the covered person shall not assert the common fund, make-whole, or other apportionment actions in contravention of the Plan's reimbursement terms and that reimbursement shall be made immediately upon collection of any sum recovered regardless of its legal, financial or other sufficiency. The Plan may enforce its subrogation and reimbursement rights regardless of whether the person has been "made whole" (fully compensated for injuries and damages). No so-called "Fund Doctrine" or "Common Fund Doctrine" or "Collateral Source Rule" or "Attorney's Fund Doctrine" shall defeat these rights. The Plan shall be informed of when an attorney is hired to represent the covered person and the covered person shall inform his or her attorney of the Plan's rights.

(e) If a suit is filed, a lien and constructive trust is automatically acquired on any amount recovered. The Plan's reimbursement shall not be reduced by attorneys' fees or costs, unless the Plan Sponsor agrees in writing. If the covered person receives payment as part of a settlement or judgment from any third party and the Plan alleges some or all of those funds are due and owed to it, the payment funds will be held in trust, either in a separate bank account in the covered person's name or the name of his/her attorney. Participant agrees to serve as trustee over those funds to the extent of the benefits the Plan has paid. The covered person agrees to cooperate with the Plan to facilitate the Plan's recovery and/or to secure its rights.

(f) No settlement shall be accepted by the covered person that does not fully reimburse the Plan without the Plan's prior written approval.

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(g) If suit is filed against the Participant to enforce this section, the Participant agrees to pay the Plan's attorney's fees and costs associated with the action regardless of the action's outcome.

(h) Participant will assign to the Plan all rights of recovery against third parties to the extent of benefits the Plan has provided. If a person to whom benefits are paid or payable under this Plan fails to bring suit promptly against a third party, the Plan may institute suit or other necessary and appropriate action to assert its rights under this section against such third party in its own name or in the name of such person. Such action by the Plan shall not obligate it in any way to pay the covered person part of any recovery the Plan might obtain and the Plan shall be entitled to retain from any judgment the amount of benefits paid or to be paid to such person without reduction for court costs, attorney fees, negligence, limits of collectability or responsibility, or otherwise. The remainder of any recovery shall be paid to such person or as the court directs.

(i) If the injured person is a minor, any amount recovered by the minor, the minor's trustee, guardian, parent, or other representative, shall be subject to this section regardless of applicable state law and whether the minor's representative has access or control of any recovery funds. If a parent or guardian may bring a claim for damages arising out of a minor's sickness or injury, the terms of this section shall apply to that claim.

(j) If a third-party action causes injury or sickness to a person while a Participant in this Plan, the provisions of this section continue to apply even after the person is no longer a Participant.

(k) In the case of a wrongful death or survival claims, the provisions of this section apply to the Participant's estate, the personal representative of the Participant's estate, and the Participant's heirs.

(l) The Plan's rights of recovery set forth in this section apply regardless of whether the third party is deemed or found liable or denies or otherwise disputes liability.

(m) Failure to cooperate with the Plan or its agents is considered a breach of contract, providing the Plan with the right to terminate benefits, deny future benefits, take legal action and/or set off from any future benefits by the value of benefits the Plan has paid relating to any sickness or injury caused by any third party to the extent not recovered by the Plan due to the covered person not cooperating with the Plan.

(n) The Plan Administrator has sole discretion to interpret the terms and conditions of this section in its entirety and reserves the right to make changes as it deems necessary.

11.15 Overpayments. An "overpayment" occurs if the Plan pays an amount not payable under the Plan (e.g., if the Plan pays an expense or benefit more than once, or if an expense or benefit is paid by both the Plan and a third party). An expense or benefit is considered paid if it is paid to a Participant or to someone else (e.g., a health care provider) on a Participant's or a Dependent's behalf.

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If an overpayment is made by the Plan, the Plan has the right to recover the overpayment. If that overpayment is made to a health care provider, the Plan may request a refund of the overpayment from either the Participant or the provider. If the refund is not received from either the Participant or the provider, the overpayment will be deducted from future Plan benefits available to a Participant or a Dependent, but the amounts withheld may not reduce a Participant's pay below the applicable state minimum wage law to the extent permitted by law. Any overpayment a Participant owes due to his or a Dependents ineligibility for Plan benefits will be reduced by the amount of any contributions the Participant paid for coverage for the person while ineligible.

11.16 **Errors.** An error cannot give a benefit to an individual if an individual is not actually entitled to the benefit.

11.17 **Exclusive Benefit.** This Plan shall be maintained for the exclusive benefit of the Participants who participate in the Plan.

11.18 **Action by the Employer.** Whenever the Employer, under the terms of the Plan, is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

11.19 **No Guarantee of Tax Consequences.** Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. Coverage for domestic partners, same sex spouses, and/or their dependents may result in tax consequences. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

11.20 **Indemnification of Employer by Participants.** If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax, plus any penalties, that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

11.21 **Expenses.** All reasonable expenses incurred in administering the Plan are currently paid by the Employer.

11.22 **Code Compliance.** It is intended that this Plan meet all applicable requirements of the Code, and of all regulations issued thereunder. This Plan shall be

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construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan and the Code, the provisions of the Code shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

11.23 Plan Provisions Controlling. Except as provided in Section 11.6, in the event that the terms or provisions of any summary or description of this Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

11.24 COBRA Continuation of Coverage. Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to COBRA, the Plan will be operated in accordance with COBRA and any regulations and guidance thereunder.

11.25 Health Insurance Portability and Accountability Act (HIPAA). Notwithstanding anything in this Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of HIPAA, this Plan shall be operated in accordance with HIPAA and any regulations thereunder.

11.26 Newborns' and Mothers' Health Protection Act (NMHPA). Notwithstanding any provision of this Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of NMHPA, this Plan shall be operated in accordance with NMHPA and any regulations thereunder.

11.27 Mental Health Parity Act (MHPA) and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Notwithstanding any provision of this Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of MHPA and/or the MHPAEA, this Plan shall be operated in accordance with MHPA and/or the MHPAEA and any regulations thereunder.

11.28 Genetic Information Nondiscrimination Act of 2008 (GINA). Notwithstanding any provision of this Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of GINA, this Plan shall be operated in accordance with GINA and any regulations thereunder.

11.29 Women's Health and Cancer Rights Act of 1998 (WHCRA). Notwithstanding any provision of this Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of WHCRA, this Plan shall be operated in accordance with WHCRA and any regulations thereunder.

11.30 Patient Protection and Affordable Care Act of 2010 (PPACA) Notwithstanding any provision of this Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of PPACA, this Plan shall be operated in accordance with the PPACA and any regulations thereunder.

11.31 Conformity with Statutes This Plan is intended to conform with any and all applicable state and federal statutes. Any reference to any federal, state, local, or foreign

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statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

11.32 **Severability.** If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

Executed this ____ day of _____, 2019.

City of Pontiac, Michigan

By: _____
Dr. Deirdre Waterman, Mayor

City of Pontiac Retiree Group Health and Insurance Plan

Exhibit A

Component Benefit Program Information

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Exhibit B

Settlement Agreement



CITY OF PONTIAC CITY COUNCIL

RESOLUTION TO APPROVE VEBA DOCUMENTS
AND REQUEST IRS APPROVAL

AT A REGULAR meeting of the Pontiac City Council of the City of Pontiac, Michigan, held at Pontiac City Hall on November 19, 2019, the following resolution was offered by _____ and supported by _____.

WHEREAS, the City of Pontiac's ("City") attorneys, Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), presented a letter relating to effectuating the terms of the settlement agreement entered into between the City and a class of retirees as to City funding for retiree health benefits in the United States District Court for the Eastern District of Michigan Case No. 2:12-cv-12830, which was given final approval by the court on November 19, 2018 ("Settlement Agreement");

WHEREAS, the letter includes a proposed City of Pontiac VEBA Declaratory Trust Agreement and corresponding City of Pontiac Retiree Group Health Insurance Plan ("VEBA Documents");

WHEREAS, the City Council has reviewed and discussed the VEBA Documents; and

WHEREAS, to effectuate the terms of the Settlement Agreement, the following resolutions are hereby adopted:

THEREFORE, BE IT RESOLVED, that the VEBA Documents are approved in their proposed substantive form;

BE IT FURTHER RESOLVED, that Dr. Deirdre Waterman, Mayor of the City of Pontiac and the acting Finance Director of the City of Pontiac are authorized to execute the City of Pontiac VEBA Declaratory Trust Agreement on behalf of the City;

BE IT FURTHER RESOLVED, that pursuant to the terms of the Settlement Agreement, the City Council appoints _____ to serve as a trustee under the City of Pontiac VEBA Declaratory Trust Agreement.

BE IT FURTHER RESOLVED, that Dr. Deirdre Waterman, Mayor of the City of Pontiac is authorized to:

1. Execute the City of Pontiac Retiree Group Health Insurance Plan; and
2. Execute and authorize Miller Canfield to submit to the Internal Revenue Service (a) the City of Pontiac General Employees' Retirement System Application for Determination for Terminating Plan (Form 5310); (b) the City of Pontiac Reestablished General Employees' Retirement System Application for Determination for Employee Benefit Plan (Form 5300); and (c) a private letter ruling request related to the terms of the Settlement Agreement;

BE IT FURTHER RESOLVED, that _____, a trustee of the City of Pontiac VEBA Trust, is authorized to execute and authorize Miller Canfield to submit the City of Pontiac VEBA Trust Application for Recognition of Exemption Under Section 501(a) (Form 1024) with the Internal Revenue Service; and

BE IT FURTHER RESOLVED, that the filing fees associated with the above referenced submissions to the Internal Revenue Service are authorized to be paid to the Internal Revenue Service by the City.

PASSED AND APPROVED BY THE PONTIAC CITY COUNCIL on November 19, 2019.

AYES: _____

NAYS: _____

I, Garland Doyle, Interim Clerk of the City of Pontiac, hereby certify that the above Resolution is a true copy and accurate copy of the Resolution passed by the City Council of the City of Pontiac on November 19, 2019.

GARLAND DOYLE, Interim City Clerk

Dated: November 19, 2019

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RESOLUTION



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

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

FROM: Jane Bais DiSessa, Deputy Mayor

CC: Honorable Mayor Deirdre Waterman, Irwin William, Interim Finance Director/Plante Moran.

DATE: October 31, 2019

RE: **Resolution to Approve the Salary Pay Range for the Finance Director Position between \$100,000.00 and \$120,000.00.**

In order to hire a Finance Director with the proper qualifications, the following resolution is recommended:

Whereas, a proper salary range will attract qualified candidates, and

Whereas, based on a recent compensation survey of other municipalities, it is deemed that a salary range between \$120,000.00 and \$140,000.00 is representative of the current job market.

Now therefore, the City Council authorizes the Mayor to recruit candidates for the Finance Director Position, between the salary range of \$100,000.00 and \$120,000.00

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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
Dan Ringo, Deputy Director of Public Works

DATE: October 31, 2019

RE: Resolution to Approve Custodial Contract with CleanNet of Greater Michigan, Inc.

In September 2019, the City of Pontiac publicly published a Request For Proposals (RFP) for Janitorial Services for seven buildings owned and operated by the city. The contract between the city and its current provider The Kristel Group expires November 30th 2019. Interested vendors were provided an opportunity to attend a guided walk-through of city buildings listed under the RFP and ask city officials questions regarding the language or concept of the RFP. The walk-through was voluntary and occurred October 4th 2019. There were ten (10) companies that appeared. The sign-in sheet of the walk-through is included in this packet for your review. Of the ten that appeared, five (5) submitted formal proposals. The initial five bid totals are included in your packet for review. Selection of a custodial provider was presented and discussed at the September Department of Public Works (DPW) Sub-Committee meeting. During this meeting, Council President Kermit Williams requested an analysis of the cost to in-service the custodial operations juxtaposed with continuing with outsourcing this function. That analysis was performed by our Financial Analyst, Ben Plassman and is included in this packet for your review.

The Department of Public Works further conducted interviews of all vendors that submitted formal bids. Interrogatories were provided via email a week in advance of the formal interviews. Formal interviews occurred October 15th 2019. A list of the interrogatories asked of all interviewed vendors has been included in your packet for your review.

After interviewing all five vendors, the committee consisting of Dan Ringo, Purchasing Agent, Jessica Massey and Financial Analyst, Ben Plassman found the lowest qualified vendor for the RFP was CleanNet of Greater Michigan (CleanNet). A copy of the final scoring sheet of all vendors has been included in your packet for your review.

The committee moved forward with interviewing CleanNet's references after determining based on submitted pricing and interview scores that CleanNet was the lowest qualified bidder. A questionnaire was sent to the supplied references of CleanNet. The questionnaire is included in this packet for your review.

CleanNet, Inc. is a Michigan based company headquartered in Farmington Hills, Michigan. Clean.net USA, Inc is the parent company and is a certified Minority Business Enterprise. Clean.net has over 32 years' experience maintaining 160 million square feet in 35,000 commercial facilities nationwide.

By providing significant infrastructure, CleanNet operates to common standards, including but not limited to: Quality Control, Cost Savings for Customers, Safety in Work Place, Guidelines to Property Security, Hiring Procedures, Background Checks, Training, Certification, Cleaning Processes, Cleaning Procedures for Resilient/Non-Resilient Floors,

Green Cleaning, Sustainability, Equipment Maintenance, Work Place Behavior, Uniforms, Management Processes, Staff Etiquette, Fire Prevention and Electrical Safety, and Chemical Handling.

With that, the Department of Public Works is requesting that the committee's recommendation to award CleanNet of Greater Michigan the custodial contract in the amount of \$228,126.74 annually.

WHEREAS, The City of Pontiac has advertised and received responses to a request for proposals for Custodial Services on 9/24/2019, 2019 and publically opened bids on October 15, 2019, and;

WHEREAS, a review panel has reviewed the submittal and held interviews, and;

WHEREAS, after review and interviews, the most qualified contractor was CleanNet, with an annual cost of \$228,126.74.

NOW, THEREFORE,
BE IT RESOLVED, The Pontiac City Council authorizes the Mayor to enter a one year contract with CleanNet of Greater Michigan, Inc., for Custodial services for an annual amount of \$228,126.74.

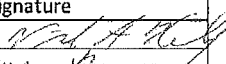
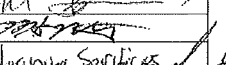

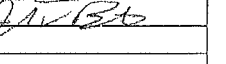
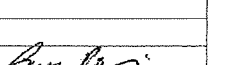
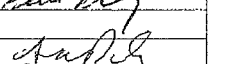
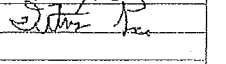
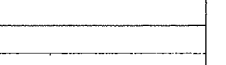


JVB

attachments

City of Pontiac Custodial Walk-through

10/4/19

Sign-In Sheet

Name	Email	Company	Signature
Vince Hebel	vince.hebel@roanoke.com	Roanoke RRM	
Kim Futrell	Kimberly.Futrell@lgcorp.com	LG Corp	
Mike McIntyre	McIntyre@grahne.com	GRBS	
Lyndi Copeland	CopelandCleaningCoopnd@gmail.com	Copeland Cleaning Services	
Mark Langkos	mark.langkos@dmh.com	DMH Burr	
Ben Denton	bdenton@cleanmotusa.com	CleanNet	
John Bellur		City of Pontiac	
Dean Ringo		" " "	
Larry Robinson		" " "	
Victor Stevens		" " "	
Ben Pilupaj	ben@krystalgroup.com	KRISTEL GROUP	
LAARON DAVEN	laaron.daven@pbss.com	Professional Building Services	
RITUS Lee	hrscleanllc@gmail.com	hrscleanllc	
	info@hrsclean.com		

Cleaning Services Bid Tabulation

This unofficial tabulation is for your information and only included what was read at the bid opening. The information has not been evaluated or confirmed.

	Kristel Group. Inc.	Giant Janitorial Service, Inc.	All Inclusive	CleanNet of Greater Michigan	Professional Clean CSM Services
	136 S. Rochester Road Clawson, MI 48017	18485 Mack Ave. Detroit, MI 48236	1580 Woodcreek Blvd. Ann Arbor, MI 48104	30665 Northwestern Hwy. Suite 203 Farmington Hills, MI 48393	3536 Highland Dr. Hudsonville, MI 49426
City Hall 34,210 sq. ft. Cost/Month	\$3,695	\$4,000	\$5,545	\$3,190	\$9,339
Police Building 49,920 sq. ft. Cost/Month	\$3,850	\$4,900	\$5,961	\$3,490	\$8,708
District Court 32,102 sq. ft. Cost/Month	\$3,950	\$3,900	\$4,956	\$3,190	\$4,804
Robert Bowens Center 10,110 sq. ft. Cost/Month	\$1,650	\$2,200	\$574	\$1,645	\$1,345
Ruth Peterson Center 10,987 sq. ft. Cost/Month	\$950	\$1,900	\$384	\$988	\$1,952
Youth Recreation Center 50,000 sq. ft. Cost/Month	\$3,640	\$5,100	\$4,924	\$2,879	\$8,103
Monthly Rate	\$17,735	\$22,000	\$22,344	\$15,382	\$34,251
Rate/Hour over 8 hours in a day	\$19.75	\$25.00	\$22.00	\$19.00	\$35.00
Special Event Cleaning					
Supervisor \$/Hour	\$17.00	\$35.00	\$34.00	\$22.00	\$27.00
Labor \$/Hour	\$15	\$22	\$24	\$19	\$18.50
Annual Rate	\$212,820	\$264,000	\$268,128	\$184,584	\$411,012

Name/Work Activity of RFP: Janitorial and Custodial Services

City of Pontiac
47450 Woodward Ave.

In-Sourcing Estimates for Janitorial Services at the City of Pontiac

Building	Weekly Hours Spent	Cost per hour of staff	Weekly Salary & Benefits	Annual Salary & Benefits
City Hall 34,210 sq. ft.	40	\$ 21.00	\$ 840.00	\$ 43,680.00
Police Building 49,920 sq. ft.	40	\$ 21.00	\$ 840.00	\$ 43,680.00
District Court 32,102 sq.ft.	45	\$ 21.00	\$ 945.00	\$ 49,140.00
Robert Bowens Center 10,110 sq. ft.	20	\$ 21.00	\$ 420.00	\$ 21,840.00
Ruth Peterson Center 10,987 sq. ft	9	\$ 21.00	\$ 189.00	\$ 9,828.00
Youth Recreation Center 50,000 sq. ft.	35	\$ 21.00	\$ 735.00	\$ 38,220.00
Supervisor	40	\$ 25.20	\$ 1,008.00	\$ 52,416.00
				\$ 258,804.00

Variable Costs

Cost of Training	\$ 1,000.00
Cost of Supplies	\$ 12,000.00
Cost of OverTime	\$ 8,190.00

Total Cost \$ 279,994.00

Salary & Benefits = 1.4 times the hourly wage

City of Pontiac

Custodial RFP Interrogatories

10/22/19

1. Did you attend the building walk-through on 10/4/19?
2. What immediate improvements would your company make to improve the facilities appearance based on the condition of the buildings today?
3. Tell us about the team member that will oversee this account? What is their background and relevant experience that will benefit the City of Pontiac?
4. How does your company handle vacancies and call-offs?
5. What method of reporting do you provide customers to indicate performance?
6. Are you opposed to providing KPIs and Benchmark to the City of Pontiac on a monthly basis?
7. Are you familiar with "Fees at Risk"?
8. What technology are you using in other accounts that help you manage provided services to customer expectations?
9. Would you be open to perform quality checks or building walk-through with a city representative?
10. What chemicals do you currently use in your other accounts?
11. Walk us through how your employees are trained to perform their jobs?
12. Do you have a safety plan in place?

City of Pontiac

Custodial RFP Interrogatories

10/22/19

	All-Inclusive	Kristel	Professional	Clean Net	Giant
Question 1	8	10	8	9	10
Question 2	8	3	8	9	8
Question 3	8	3	8	9	8
Question 4	8	3	8	9	8
Question 5	8	3	8	9	6
Question 6	8	1	8	9	7
Question 7	7	1	8	9	7
Question 8	8	1	8	9	7
Question 9	8	8	8	9	8
Question 10	8	8	8	9	8
Question 11	5	4	8	9	5
Question 12	5	4	8	9	8
Total Score	89	49	96	108	90

Reference Check Questionnaire

Date: 10/30/2019

Title: Janitorial and Custodial Services

Company Name: CleanNet of Greater Michigan

Name & Number of Reference: Cleary University Jeff Cole 317-650-5026

Good Morning/Afternoon, I am calling on behalf of the City of Pontiac in regards to Janitorial and Custodial Services performed by CleanNet of Greater Michigan. We had a bid opening for Janitorial and Custodial Services and the contractor listed above had you down as a reference. I was hoping you had a few moments to answer the following questions.

Question:	Response:
1. How long have you worked with this company?	Since July
2. On a scale of 1-5, with 5 being the highest: how would you rate their overall quality of service?	4.
3. How would you rate their communication? Did they respond to problems & Submit invoices in a timely manner?	Submit invoices consistently, communication is good. Handle specific things. Accommodating to last minute request for extra work outside of normal scope. The company does a good job.
4. Did you receive many (if any) complaints about their conduct or service?	No complaints.
5. Would you recommend this company? If no, please explain why.	Yes. No issues so far. Good price, accommodating to needs. Different schedules for each building which CleanNet has been able to handle with no problem.
6. Any additional Comments?	Works with Ben. Able to accommodate changes and schedules fairly easy.

Reference Check Questionnaire

Date: 10/30/2019

Title: Janitorial and Custodial Services

Company Name: CleanNet of Greater Michigan

Name & Number of Reference: Pontiac Hospital John Krieger 248-857-6778

Good Morning/Afternoon, I am calling on behalf of the City of Pontiac in regards to Janitorial and Custodial Services performed by CleanNet of Greater Michigan. We had a bid opening for Janitorial and Custodial Services and the contractor listed above had you down as a reference. I was hoping you had a few moments to answer the following questions.

Question:		Response:
1.	How long have you worked with this company?	6-7 years.
2.	On a scale of 1-5, with 5 being the highest: how would you rate their overall quality of service?	4
3.	How would you rate their communication? Did they respond to problems & Submit invoices in a timely manner?	Good Communication. Didn't have any issues with response time or invoices.
4.	Did you receive many (if any) complaints about their conduct or service?	No.
5.	Would you recommend this company? If no, please explain why.	Yes. Had no issues with the company.
6.	Any additional Comments?	

#12

RESOLUTION



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

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

FROM: Jane Bais DiSessa, Deputy Mayor

CC: Honorable Mayor Deirdre Waterman and Robert Burch, Interim PYREC Manager

DATE: August 29, 2019

RE: Resolution to approve a budget amendment for fiscal year 2019/2020 to allocate a total of \$51,456.09 (includes fringe benefits), from the Youth Recreation Fund's (208) fund balance to Youth Recreation Fund - Recreation Facility Department (756) Personnel Accounts to restore the Pontiac Youth and Empowerment Center's (PYREC) Youth Recreation Assistant Manager position to a full-time status.

On November 8, 2019, the Citizens of Pontiac overwhelmingly passed a millage to ensure that the youth of the City of Pontiac have a safe, sustainable, and educational youth and recreation center for the children of Pontiac.

In order to fulfill our obligation to the voters of Pontiac and give our youth the absolute best opportunity to expand their horizons, it is respectfully requested that the City Council reinstate the originally budgeted full-time PYREC position, known as the "Assistant Youth Recreation Manager" (\$51,456.09, includes benefits). See attachment for itemized funding costs for this position.

The reinstatement of this position will constitute the necessary staffing levels to ensure the safety of all PYREC participants at any given time in the center. In addition, this position will provide the administrative support required to develop and implement quality recreational programming. As PYREC continues to grow, proper staffing levels are an essential resource that will help secure the success of Pontiac's recreation and enrichment programs for our youth.

As such, the following resolution is recommended for your consideration:

Whereas, on November 8th 2016 the citizens of Pontiac passed a millage proposition to fund youth recreation services for the citizens of Pontiac; and

Whereas, adequate staffing levels are necessary to help administer the City's growing youth programs; and

Whereas, funding had been previously allocated and approved for full-time staff of a Youth Recreation Assistant Manager; and

Whereas, the restoration of this position will ensure a safe, sustainable, and educational environment for the youth of the City of Pontiac.

NOW THEREFORE be resolved that the City Council hereby approves a budget amendment for fiscal year 2019/2020 to allocate a total of \$51,456.09 (includes fringe benefits), from the Youth Recreation Fund's (208) fund balance to Youth Recreation Fund - Recreation Facility Department (756) Personnel Accounts. The breakout of these funds into accounts is as follows; \$34,666.67 to Salaries and Wages account 208-756-702.00, \$2,652 to F.I.C.A – City Contribution account 208-756-715.000, \$9,320.50 to Medical Insurance account 208-756-716.000, \$438.36 to Life Insurance account 208-756-717.000, \$2,333.33 to MERS Employer Contribution account 208-756-718.500, \$1,866.67 to Workers Compensation Insurance account 208-756-719.000, and lastly \$178.56 to Dental Insurance account 208-756-719.001. The total funds amount of \$51,456.09 are to be used to restore the Pontic Youth and Empowerment Center's (PYREC) Youth Recreation Assistant Manager position to a full-time status.

JDB/JJ

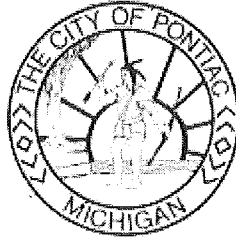
Attachment

Account	Description	Amount
208-756-702.000	Salaries and Wages	\$ 34,666.67
208-756-715.000	F.I.C.A - City Contribution	\$ 2,652.00
208-756-716.000	Medical Insurance	\$ 9,320.50
208-756-717.000	Life Insurance	\$ 438.36
208-756-718.500	MERS Employer Contribution	\$ 2,333.33
208-756-719.000	Workers Compensation Insurance	\$ 1,866.67
208-756-719.001	Dental Insurance	\$ 178.56
	Total	\$ 51,456.09

#13

RESOLUTION

Resolution of the Pontiac City Council



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

Whereas, the adopted FY 2019-2020 Youth Recreation Fund budget includes an appropriation for a part-time Youth Recreation Assistant Manager for the Pontiac Youth and Enrichment Center (PYREC); and

Whereas, the Administration is requesting to restore this part-time position to a full-time status; and

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

Whereas, the proposed appropriation increases are to allocate a total of \$51,456.09 (includes fringe benefits), from the Youth Recreation Fund's (208) fund balance to Youth Recreation Fund - Recreation Facility Department (756) Personnel Accounts. The breakout of these funds into accounts is as follows:

- \$34,666.67 to Salaries and Wages account 208-756-702.00,
- \$2,652 to F.I.C.A – City Contribution account 208-756-715.000,
- \$9,320.50 to Medical Insurance account 208-756-716.000,
- \$438.36 to Life Insurance account 208-756-717.000,
- \$2,333.33 to MERS Employer Contribution account 208-756-718.500,
- \$1,866.67 to Workers Compensation Insurance account 208-756-719.000, and
- \$178.56 to Dental Insurance account 208-756-719.001.

Now therefore, be it resolved that the City Council authorizes the City Clerk to publish the notice of the budget amendment in the Oakland Press.

#14

RESOLUTION



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

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

FROM: Jane Bais DiSessa, Deputy Mayor

CC: Honorable Mayor Deirdre Waterman and Robert Burch, Interim PYREC Manager

DATE: October 31, 2019

RE: Resolution to approve a budget amendment for fiscal year 2019/2020 to decrease a total of \$320,035 from the General Fund's (101) fund balance and increase General Fund's – Police/Sheriff Department (301) line item for the City of Pontiac's Law Enforcement Services Agreement with the Oakland County Sheriff's Department, account 101-301-818.068 Prof. Serv-Oakland Co. Sheriff for a total of \$320,035.

In order for the police to provide more effective services to the residents of the City of Pontiac a directed patrol unit (DPU) is recommended to be added to the City of Pontiac's Law Enforcement Services Agreement. New businesses and developers are seeing the potential for Pontiac and are willing to invest capital in the city to make Pontiac their home. As the needs of the community expand, the ability of the police to provide services should follow suit.

The purpose of the amended Law Enforcement Services Agreement is to increase law enforcement personnel assigned to the City of Pontiac's directed patrol unit.

This DPU will enhance services provided to residents of the City of Pontiac including:

- To be available to immediately respond to violent in-progress crimes including, but not limited to, crimes involving firearms, robberies, sexual assaults, and home invasions.
- To utilize a wide variety of police tactics and resources to address hand-to-hand drug sales on city streets, prostitution concerns, blight, and other quality of life issues.
- Assist patrol units during times of heavy call loads to ensure a timely response.
- Secure major crime scenes so that patrol deputies can return to responding to incoming calls for service, thus decreasing our response times.
- Proactively seek out and arrest wanted fugitives. Presently the City of Pontiac has several hundred wanted fugitives at large in our community. Past incidences have shown fugitives will continue to commit the same types of crimes until they are brought to justice.
- Monitor neighborhood community problems and work with citizens to prevent minor disputes from progressing into major issues.
- Provide additional high-visibility patrol for community housing complexes, city parks, the downtown business district, future marijuana dispensaries, and new developments to help prevent the theft of material and equipment.

As such, the following resolution is recommended for your consideration:

Whereas, a resolution has been passed to accept the revised law enforcement services agreement with the Oakland County Sheriff's Department effective December 21, 2019, and

Whereas, a budget amendment is required to increase the General Fund – Police/Sheriff Department (301) line item 101-301-818.068 Prof. Serv-Oakland Co. Sheriff in the amount of \$320,035

NOW THEREFORE be resolved that the City Council hereby approves a budget amendment for the fiscal year 2019/2020 to decrease a total of \$320,035 from the General Fund's (101) fund balance and increase General Fund's – Police/Sheriff Department (301) line item for the City of Pontiac's Law Enforcement Services Agreement with the Oakland County Sheriff's Department, account 101-301-818.068 Prof. Serv-Oakland Co. Sheriff for a total of \$320,035.

#15

RESOLUTION



CITY OF

Executive Branch

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

FROM: Jane Bais DiSessa, Deputy Mayor

CC: Honorable Mayor Deirdre Waterman and Robert Burch, Interim PYREC Manager

DATE: October 31, 2019

RE: **Resolution to approve an increase to the City of Pontiac's Law Enforcement Services Agreement with the Oakland County Sheriff's Department effective December 21, 2019 in the amount of \$596,154 for calendar year 2019, \$612,995 for the calendar year 2020, and \$630,278 for the calendar year 2021.**

In order for the police to provide more effective services to the residents of the City of Pontiac a directed patrol unit (DPU) is recommended to be added to the City of Pontiac's Law Enforcement Services Agreement. New businesses and developers are seeing the potential for Pontiac and are willing to invest capital in the city to make Pontiac their home. As the needs of the community expand, the ability of the police to provide services should follow suit.

The purpose of the amended Law Enforcement Services Agreement is to increase law enforcement personnel assigned to the City of Pontiac's directed patrol unit.

This DPU will enhance services provided to residents of the City of Pontiac including:

- To be available to immediately respond to violent in-progress crimes including, but not limited to, crimes involving firearms, robberies, sexual assaults, and home invasions.
- To utilize a wide variety of police tactics and resources to address hand-to-hand drug sales on city streets, prostitution concerns, blight, and other quality of life issues.
- Assist patrol units during times of heavy call loads to ensure a timely response.
- Secure major crime scenes so that patrol deputies can return to responding to incoming calls for service, thus decreasing our response times.
- Proactively seek out and arrest wanted fugitives. Presently the City of Pontiac has several hundred wanted fugitives at large in our community. Past incidences have shown fugitives will continue to commit the same types of crimes until they are brought to justice.
- Monitor neighborhood community problems and work with citizens to prevent minor disputes from progressing into major issues.
- Provide additional high-visibility patrol for community housing complexes, city parks, the downtown business district, future marijuana dispensaries, and new developments to help prevent the theft of material and equipment.

As such, the following resolution is recommended for your consideration:

Whereas, an amended contract is necessary to improve law enforcement services with the Oakland County Sheriff's Department, and

Whereas, a Directed Patrol Unit is to be added for additional law enforcement services.

NOW THEREFORE be resolved that the City Council hereby approves an amendment to the City of Pontiac's Law Enforcement Services Agreement with the Oakland County Sheriff's Department effective December 21, 2019 for the calendar years 2019 through 2021 for the following amounts. \$596,154 for 2019, \$612,995 for 2020, and \$630,278 for 2021.

**OAKLAND COUNTY SHERIFF'S OFFICE
2019-2021 LAW ENFORCEMENT SERVICES AGREEMENT WITH
CITY OF PONTIAC**

Amendment 1

Pursuant to Paragraph 29 of the 2019-2021 Law Enforcement Services Agreement between the COUNTY and the CITY OF PONTIAC (the "Contract"), the parties hereby agree to amend said Contract to add one (1) Patrol Sergeant position, three (3) Deputy II (no-fill) positions, one (1) Technical Assistant position and delete two (2) Part Time Non-Eligible positions in accordance with the attached Exhibit 1 (Schedule A) beginning on the effective date of this Amendment 1. The attached Exhibit 1 replaces and supersedes the Schedule A attached to the Contract beginning on the effective date of this Amendment 1.

This Amendment 1 shall take effect on December 21, 2019 and shall continue until the Contract expires or is terminated. All other provisions in the Contract not otherwise affected by the attached Exhibit 1 remain in full force and effect.

FOR AND IN CONSIDERATION of the mutual assurances, promises, acknowledgments, set forth in this Amendment 1 and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned hereby execute this Amendment 1 on behalf of the Parties, and by doing so legally obligate and bind the Parties to the terms and conditions of this Amendment 1.

IN WITNESS WHEREOF, Dr. Deirdre Waterman, Mayor of the City of Pontiac, hereby acknowledges that she has been authorized by a resolution of the Municipality's governing body to execute this Amendment 1 on behalf of the Municipality and hereby accepts and binds the Municipality to the terms and conditions of this Amendment 1.

EXECUTED: _____ DATE: _____
Dr. Deirdre Waterman
Mayor

WITNESSED: _____ DATE: _____
Garland Doyle
Interim City Clerk

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, to execute this Amendment 1 on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Amendment.

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

WITNESSED: _____ DATE: _____
County of Oakland

SCHEDULE A
City of Pontiac 2019-2021 Law Enforcement Services Agreement
Amendment #1, effective December 21, 2019

SHERIFF'S DEPUTIES CONTRACTED FOR AND TO BE ASSIGNED TO MUNICIPALITY

Rank of Sheriff's Deputies Contracted	Number of Sheriff's Deputies Contracted	Biweekly Charge for each Sheriff's Deputy to Municipality in 2019	Annual Costs 2019	Biweekly Charge for each Sheriff's Deputy to Municipality in 2020	Annual Costs 2020	Biweekly Charge for each Sheriff's Deputy to Municipality in 2021	Annual Costs 2021
Captain	1	\$7,434.12	\$193,287	\$7,631.69	\$198,424	\$7,883.02	\$204,958
Lieutenant	3	\$6,410.34	\$500,007	\$6,592.89	\$514,245	\$6,780.49	\$528,878
Patrol Sergeant	8	\$5,800.20	\$1,206,441	\$5,964.26	\$1,240,566	\$6,132.68	\$1,275,597
Detective Sergeant	1	\$5,950.40	\$154,710	\$6,123.75	\$159,217	\$6,301.96	\$163,851
Deputy II (w/fill)		\$5,874.47		\$6,038.75		\$6,207.41	
Deputy II (no-fill)	54	\$5,115.24	\$7,181,796	\$5,264.55	\$7,391,428	\$5,417.93	\$7,606,774
Deputy II (no-fill/no-vehicle)		\$4,844.28		\$4,981.82		\$5,122.88	
Patrol Investigator (no-fill)	18	\$5,324.86	\$2,492,034	\$5,486.43	\$2,567,649	\$5,652.72	\$2,645,473
Deputy I (no-fill)		\$4,707.87		\$4,850.08		\$4,996.22	
Estimated Overtime			\$762,410		\$777,658		\$793,211
Front desk & building PTNE Security Deputies	12	\$24.09 per hour	\$289,080 Estimated	\$24.57 per hour	\$294,840 Estimated	\$25.06 per hour	\$300,720 Estimated
Technical Assistant	1	\$3,283.88	\$85,381	\$3,349.56	\$87,089	\$3,416.55	\$88,830
PTNE Office Assistant II	2	\$19.51 per hour	\$39,020 Estimated	\$19.90 per hour	\$39,800 Estimated	\$20.30 per hour	\$40,600 Estimated
TOTAL	100		\$12,904,166		\$13,270,916		\$13,648,892

NOTE: For each "Deputy II (w/fill)" identified above, the O.C.S.O. will, at no additional cost to the Municipality, provide a substitute Sheriff's Deputy (i.e., a "fill-in") to provide Law Enforcement Services to the Municipality whenever a contracted "Deputy II (w/fill)" is absent from the Municipality during any 80 hour biweekly period for any reason except those reasons enumerated in Paragraph 6.1 above.

NOTE: The O.C.S.O. will not assign any trainees to perform the duties of any Sheriff's Deputy contracted for and assigned to perform Law Enforcement Services under this Agreement.

#16

RESOLUTION



DEPARTMENT OF COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Jane Bais DiSessa, Deputy Mayor

CC: Jessica Massey, Purchasing Agent

DATE: November 14, 2019

RE: **Schedule Public Hearing for Community Development Block Grant Program Year 2020 on December 3, 2019**

The City of Pontiac's application for the Community Development Block Grant Program Year 2020 is due to Oakland County on December 13, 2019.

Prior to the City Council voting to approve the application, a public hearing will need to be held. We are required to inform the public at least 10 days prior to the public hearing. In order to meet this notice requirement, we are requesting that your honorable body set the public hearing for December 3, 2019.

The following projects are being considered:

- \$250,000 (Pontiac Public Housing Authority)
- \$234,257 (Sidewalks)
- \$50,000 Public Service (Seniors)
- \$265,000 (Senior Centers: Repair both Parking lots)

We are requesting that the following resolution be considered:

Resolved that the Pontiac City Council schedules a public hearing on the Community Development Block Grant Application for Program Year 2020 on December 3, 2019 and instruct the clerk to have the public notice published in the newspaper on or before November 21, 2019.



City of Pontiac
City Council
Notice of Public Hearing
Community Development Block Grant Funds

NOTICE IS HEREBY GIVEN that the City of Pontiac will hold a public hearing on the use of Community Development Block Grant Funds. The hearing will be held on **Tuesday, December 3, 2019 at 6:00 P.M. at the City Council Chambers in City Hall 47450 Woodward Avenue, Pontiac MI 48342** for hearing public comments on the Community Development Block Grant (CDBG) Program Year 2019 application in the approximate amount of \$799,257.00 to fund eligible projects.

All interested citizens are requested to attend the Hearing. In addition, comments will be received in writing or in person at the Mayor's Office in City Hall until 5:00 PM on Monday, December 2, 2019. Arrangements to reasonably accommodate special needs, including handicap accessibility or interpreter, will be made upon receiving a 72-hour advanced notice. Please contact Jessica Massey, Purchasing Agent at (248) 758-3120 for special services.

Garland Doyle, Interim City Clerk
Published (Oakland Press, _____, 2019)

#17

RESOLUTION



CITY OF PONTIAC

OFFICIAL MEMORANDUM

Executive Branch

TO: Honorable Council President and City Council Members

FROM: Dr. Deirdre Waterman, Mayor

DATE: November 14, 2019

Cc: Jane Bais DiSessa, Deputy Mayor; Anthony Chubb, City Attorney; and Garland Doyle, Interim City Clerk

RE: **Resolution to Re-Appoint the following individuals to the City's Planning Commission: Mona Parlove for a term ending June 30, 2021 and Dayne Thomas to the Planning for a term ending June 30, 2022.**

As you are aware, the Planning Commission has several members with expired terms, in order to address this matter, for your consideration, the following resolution is recommended:

Whereas, Article V. Section 2-372 of the Municipal Code, the Planning Commission is comprised of six non-elected officials and the Mayor or his/her designee; and

Whereas, there are currently several appointments with expired terms on the Planning Commission; and

Whereas, according to State Law and City Ordinance, the Mayor shall appoint the commissioners subject to the approval by a majority of the City Council.

Now therefore, be it resolved that based upon the recommendation of the Mayor, that the City Council reappoint Mona Parlove to serve on the City's Planning Commission for a term ending June 30, 2021 and to reappoint Dayne Thomas to serve on the City's Planning Commission for a term ending June 30, 2022.

Attachments

jbd

Subject: Follow up to the interview of my Planning Commission appointment

Good afternoon, City Council Members -

Thank you for the opportunity to talk with you yesterday. I know how busy everyone is, so I appreciated the time you each had to share with me.

After we parted company, I had a few thoughts I wanted to share. The initial interview I had with the Council Members last year was much shorter. This year, we certainly did not have enough time to discuss all the topics mentioned, nor did I have the ability to answer all the questions which were asked of me, due to the limited time of our meeting.

Please be aware that I've had over 45 agenda items I was asked to consider while having the honor of being a Planning Commissioner, thus far. While one item of the 45 seemed to be the primary focus of our meeting yesterday -- the drag racing event on the Silverdome grounds -- the other 44 items which were considered over the course of this year were important items to the appropriate petitioners, as well. If there were any outstanding concerns from those approximately 44 items, I think someone would have mentioned something yesterday...so, from that perspective, I am happy that most everything else seems to be satisfactory..

In regard to my showing empathy and compassion toward my fellow residents who have come out to express their feelings about the various petitioner's requests for variances or special exceptions from the Planning Commission, a few moments from my "tenure" come to mind. The first was when a petitioner wanted to build a Dollar Store within an extremely close proximity to our City Hall. Though the parcel was zoned to accept that proposed business, neighbors came to share their opposition to having an adjoining parcel modified to allow the business to move forward. After much consideration of the residents' comments and overall positions, I voted to deny that petitioner's request for the variance that was sought.

In November, a petitioner wanted to repurpose a former General Motors plant site, and needed a special exception permit to move forward with his intended plan. Several residents came out, and shared their views. When it was discovered the petitioner was potentially creating a nuisance at the site for the neighbors (with noise & dust), we worked collectively to address the solution to the request. Per always, I was extremely mindful of the residents that evening. The decision made by my fellow Commissioners and myself was one that reached a middle ground, which seemingly worked for pretty much everyone in the room that evening.

In some cases, while I do listen to all residents who publicly share their feelings, I may not feel it is best for the City to "go along with" the residents who have spoken their views at a Planning Commission meeting. For example, a couple of months ago, a long-time business owner in Pontiac wanted to add packaged beer and wine sales to his existing Dollar Store business. Many neighbors came out in full support of that business owner, and shared their reasons of support of the request. However, my personal feeling was that we already have far too many opportunities to purchase alcohol in the city. Even though neighbors came out to let the Commissioners know their feelings, I voted to deny the requested variance. I was evaluating the long term ramifications, while being mindful of what I think is best for our City. The requested way of "enhancing" an existing business by that business owner did not make sense to me, even though the majority of the neighbors who spoke that night were in support of the business owner's request.

Dr Taylor Burks brought up extra vehicle parking at the Silverdome, which had been approved for car storage. That vote had taken place prior to my being a Planning Commissioner. She also mentioned a former Planning Commissioner who had chosen to take herself off the Commission. No one has stepped away from the Planning Commission while I have been a part of it, so I don't know what Dr Taylor Burkes was referencing.

As a follow up to the drag strip event in August on the Silverdome grounds....I did subsequently learn the event was a huge success for those who put it on. So much so, the event creators are hoping to repeat the event in 2016, ideally somewhere in Pontiac. I understand there were over 10,000 people who attended. To have more than 10,000 people for one event

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in our great city for only a few hours is pretty impressive, I think. I spoke to several people who visited, and they all had a fun time, they loved seeing the tremendous turn out, and I did not hear one negative comment. I still think the vote to approve the permit was the right vote for Pontiac, overall. If the request were to put a permanent drag strip at that site, my vote would not have been the same.

As for the Silverdome, itself, I am beyond disappointed in what I see has happened to that structure. However, the Planning Commission does not have the authority to enforce code violations. I mentioned that fact the night we approved the permit for the drag strip event. Please do keep that one fact in mind, Council Members, especially as we move forward -- the Planning Commission must consider what is put in front of us as a commission, and we can't make building owners and business owners comply with code requirements. My suggestion for Pontiac to deal with the Silverdome owner would be to find a way to place liens on the title to the property, for outstanding fees and fines which he most certainly must owe the city, by now. Hopefully, that will be the impetus for him to start to comply with what is required of him as a property owner. When he sells the property, he would have to pay off the liens that have been placed against the title, or he cannot transfer the ownership to the new buyer.

When Mayor Waterman asked me to be a Planning Commissioner, I was extremely humbled and incredibly honored. I still feel that way, and I shall for as long as my commission lasts. My mind is open when I attend every Planning Commission meeting. I listen closely to all information presented by those who speak and share what they have to share. I am not capricious in my decisions. I do not know where the term "executive branch" comes from, when asked yesterday if that is what I consider when I render a decision for a petitioner. Rather, I try to look ahead at what is best for the City, as a whole.

I have had several people tell me that they like to watch our current Planning Commission meetings when we are in session, or, when the meetings rerun on the cable channel. They appreciate how we have respectful dialogue with each other, as well as the whole approach we take in being courteous to those who come into the Planning Commission meetings. I appreciate those comments, and I think our group of Commissioners are very gracious in how we treat each other and our guests in the audience -- which would include our fellow residents. As Commissioners, accepted our appointments without any provisions for monetary compensation. We do our best, with the overall concern we have for a better Pontiac.

It is critical for all of us to collectively move Pontiac forward. Every single day, I do what I can to improve the undeserved reputation our City has, that our community is perceived as 'undesirable'. That the City has 'nothing to offer', and why would anyone want to live or work where all of us have chosen to live and work.

I believe I can be more effective in helping Pontiac succeed by being a Planning Commissioner. I am extremely proud of what I have contributed to the City, thus far. I have done so by conducting myself in a very fair and respectful way, while in the Planning Commission chambers, as well as in all aspects of my life. I believe we all lead by example, and I think it is critical to treat every single person with dignity.

I very much look forward to continuing my work as a Planning Commissioner. Additionally, I hope we can all find a time to sit together, as a collective group -- the Mayor, City Council Members, Zoning Board Members, the Planning Commissioners, and anyone else within our City Hall who wants to see the City of Pontiac succeed -- so we can not only learn a bit more about each other, but all work together in moving Pontiac forward with the same cohesive plan and positive outcome in mind.

Thank you -

Mona Parlove
Associate Broker
Hall & Hunter, Realtors
248.514.0685 cell

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Interests/Reasons/Qualifications:

I am extremely passionate about being a part of the positive momentum that is underway in Pontiac. My belief is the level of integrity in our City needs to be simultaneously raised and embraced as a realistic expectation for our community. As a long-time resident, I feel I have a responsibility to help make a difference. It is a fallacy to think that "someone else" is going to suddenly show up and "fix" everything. Rather, those who are going to make the needed corrections and improvements are people just like myself...the ones who are trying to be good neighbors, while going through their day. Understanding that we are all responsible for where we live, and how we are each the face and the fabric of our community is a core belief of mine, and an important attribute which I would bring to the Planning Commission.

Boards/Commissions/Committees on which I have served:

Pontiac Master Plan Steering Committee, from March 2014 to present

District 2 Advisory Group, co-chair, from January 2014 to present

Elective offices I have held:

NONE

Other organizations, Pertinent Education, Hobbies/Interests

I have been a licensed real estate agent since 1987 (27 years, and a broker for 10 years), practicing my profession on a full time basis the entire time. I have acquired an expansive (mental) database of information, as it pertains to construction and materials used in residential, and sometimes, commercial applications. While serving on the Planning Commission, I will be able to readily access this acquired information while making the important decisions presented to the City by various petitioners.

Also, I have been in virtually every community in Oakland County, as well as scores in Wayne, Macomb, Livingston & Washtenaw Counties. The "real time" experiences of transacting real estate in these communities affords me the opportunity to see how the various neighboring municipalities function on a daily basis, as well as with an overall longer view.

I am a member of the Pontiac Women's Round Table, focusing on positive interaction and change in the City of Pontiac.

Interests are expansive – food (cooking & enjoying); running, biking, interacting with people, art, reading, writing, music of all types, travel, volunteering, photography, independent films, baseball, trying to learn something about everything, being a good person that makes a small difference every day if possible.

To be asked to be a Planning Commissioner is an honor beyond my greatest dreams. If confirmed, I will do all I can to help move Pontiac forward and in a direction the residents can all be proud of.



CITY OF PONTIAC

Click here to print the completed form for mailing to the City Clerk.

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CANDIDATE QUESTIONNAIRE
BOARDS & COMMISSIONS

E-MAIL

COUNCIL DISTRICT _____

DATE September 30, 2014

NAME Mona Parlove

ADDRESS _____ ZIP 48341

PHONE (home) _____ PHONE (business or cell) _____

EMAIL _____

The City of Pontiac wishes to thank you for your interest in serving as a Citizen Representative on a Board or Commission. Your Candidate Questionnaire will be kept on file and entered for consideration for posted openings on any Board or Commission that you expressed an interest in for a period of two years. Please feel free to submit an updated Candidate Questionnaire at any time.

Please be advised that the information contained in this Questionnaire is not confidential, and will be reviewed by the Mayor, City Council and other appropriate personnel as vacancies or openings occur on the various Boards or Commissions. Page 2 of this Candidate Questionnaire may also be included in any City Council Meeting Agenda Packet which is published and made available for public inspection in print and on the Internet. Your address, phone numbers and e-mail, contained here on Page 1 will not be published in an Agenda Packet.

Information relative to the below boards or commissions can be found on the City's webpage at www.pontiac.mi.us.

BOARDS/COMMISSIONS ON WHICH YOU WANT TO SERVE:

Appointed by City Council

- ☐ Board of Appeals
- ☐ Income Tax Board of Review
- ☐ Zoning Board of Appeals
- ☐ Board of Review
- ☐ General Employee Retirement System

Appointed by Mayor,
Confirmed by City Council

- ☐ Tax Incremental Financing Authority/Brownfield Redevelopment Authority
- ☐ Historic District Commission, No Council Confirmation
- ☐ Local Officers Compensation Commission
- ☐ Arts Commission
- ☐ Construction Code Board of Appeals, No Council Confirmation
- ☒ Planning Commission
- ☐ Housing Commission, No Council Confirmation

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PONTIAC RESIDENT FOR: over 24 years, 23 of them in 1991 years

OCCUPATION: Residential Real Estate Sales

INTERESTS/REASONS/QUALIFICATIONS SEE ATTACHED

BOARDS/COMMISSIONS/COMMITTEES ON WHICH YOU HAVE SERVED (LIST MUNICIPALITIES AND DATES) X

ELECTIVE OFFICES THAT YOU HAVE HELD

None

OTHER ORGANIZATIONS PERTINENT EDUCATION HOBBIES/INTERESTS X

ADDITIONAL INFORMATION

Please return completed form to: City of Pontiac, Clerk's Office, 47450 Woodward Avenue, Pontiac, MI 48342 or fax to 248.758.3460 or click the e-mail tab on the first page to send form by e-mail.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

In order to avoid any potential conflict of interest, I, the undersigned, agree not to be involved in any recommendations or decision making regarding any agency(ies) or entity(ies) for which I serve in the following capacity(ies) which may contract or subcontract with the City of Pontiac.

Agency: Does not apply
Capacity in Which I Serve: None
Signature: [Signature]
Date: 10/2/14

July 31, 2018

Dear Honorable Mayor Waterman,

Thank you for the opportunity to serve the Pontiac Planning Commission.

As you know, I have served on the Planning Commission since 2011, and during my tenure as Chairman, I have presided over more than 400 planning proposals and in turn, the Planning Commission have approved some of the biggest developments in Pontiac history, including but not limited to:

- M-1 Concourse
- Ultimate Soccer
- Wessen Lawn Tennis Club
- Challenger Stamping
- Williams Aerospace
- GM Global Propulsion Systems (multiple expansions)
- Washington Junior High School repurposed as Senior Living

Indeed, during my tenure as Chair, the Pontiac Planning Commission have recommended for approval a glut of vacant industrial sites that were repurposed into viable, tax revenue producing enterprises for which the City of Pontiac can be proud.

Moreover, during my tenure the Planning Commission have approved hundreds of smaller commercial enterprises as well which are the lifeblood of any community, and altogether, large and small, it has resulted in hundreds of thousands of dollars of new tax revenue for the City of Pontiac.

I am especially proud of the fact that a multitude of business owners, large and small, have thanked me for the respect and dignity for which they were treated by our commissioners during their presentations to Planning Commission: I am proud of that, because as Chair I seek proper decorum and for the most part, my wishes have been fulfilled.

In closing, my professional background earned over 40 years in Marketing, Product Planning and Product Development with some of the largest corporations in the world has uniquely prepared me to Chair the Pontiac Planning Commission, so I think I am well suited to bring professional guidance and expertise to the Planning Commission for another term.

Thank you for the opportunity to serve you and the City of Pontiac.

Respectfully,
Dayne Thomas
Chair, Pontiac Planning Commission
Chair, GM Modern Housing Board of Directors

Personal Bio
Dayne Thomas
Chairman, Pontiac Planning Commission
[REDACTED]
Pontiac, MI 48342
dayne@daynethomas.net
[REDACTED]

Dayne Thomas was born and raised in Pontiac, Michigan but a business odyssey took him across the US and Asia Pacific...and then back!

He worked for companies as diverse as GM, BMW, AIG, Aon and Gulf States Financial Services and lived and worked in cities as diverse as Pontiac, Deriver, Houston, LA, NY, Hong Kong, Tokyo and Melbourne (Australia).

Dayne Thomas was born and raised on Pontiac's near north side in the modest, Historic neighborhood known as GM Modern Housing...a planned housing development conceived by Pierre DuPont, GM Chairman and largest shareholder of GM (at the time), as well as patriarch of DuPont Companies. It was Pierre DuPont who visualized and developed the 61 acre site circa 1919 to 1926.

Dayne Thomas family moved to Pontiac in the mid 1930's...his father worked at Baldwin Rubber Company (a major automotive supplier of the day), where he was responsible for Chemical Department and Salvage...while his mother worked at Pontiac Motor in Salary Payroll.

The family moved into their home on Oliver Street, (GM Modern Housing) in September 1945 and Dayne Thomas was born in November 1945.

The tragic death of Dayne's father in 1956 meant the family would not move from Oliver Street, so the modest house on Oliver Street, in GM Modern Housing is the only family home Dayne Thomas has known.

Dayne Thomas matriculated Pontiac Schools: McCarroll Elementary, Lincoln Jr. High School and Pontiac Northern High School where he played Football, Basketball and Tennis (as Captain) and graduated in 1963. Prior to his senior year, he was nominated by VFW to attend prestigious, Wolverine Boy State.

Dayne Thomas went on to study Communication Arts at Michigan State University where he graduated with a BA Degree in Advertising in 1972 after proudly serving 2nd Infantry Division in the Republic of Korea during the Viet Nam era. He earned the rank of Sergeant/SP5 and was awarded an Army Commendation Medal as well as an Expedition Medal awarded by Republic of Korea.

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Dayne Thomas commenced his professional career with GMC Truck & Coach in Pontiac, Michigan as a Sales Engineer in 1972.

In 1980, as the domestic auto industry was suffering thru major economic turmoil, Dayne Thomas accepted a post with BMW of North America as a District Sales Manager living in Denver and overseeing the Rocky Mountain Region.

Then in 1984, Dayne Thomas moved to Southern California (Orange County) and accepted a post with General Group of Companies as Sales Manager in the Automotive Financial Services sector, overseeing the contiguous US.

In 1996, Dayne Thomas accepted a post with AIG as Regional Director in Southeast Asia, based in Hong Kong, overseeing consumer financial service operations in Singapore, Malaysia, Indonesia, Thailand, Philippine's and Guam.

In 1998, after overseeing the successful launch of consumer financial service programs with AIG in Southeast Asia, Dayne Thomas accepted a post with Aon Corp as Regional VP based in Tokyo, successfully overseeing a consumer financial service program developed specifically for Best Denki, Japan's largest electronic retailer.

In 1999, Dayne Thomas took a post with Aon in Melbourne (Australia) as Regional VP overseeing consumer financial service program developed exclusively for Fisher-Paykel, New Zealand's premier Consumer Appliance Manufacturer.

In 2002, Dayne Thomas repatriated to the US and accepted a post with Gulf States Financial Services (an affiliate of Toyota Financial Services) as Sr. Manager, Product Development based in Houston, TX.

In the fall of 2009, Dayne Thomas came full circle and moved back into the modest boyhood home where he was raised in Pontiac. The neighborhood is listed upon the National Register of Historic Places, and he has set about to restore the home true to its historical character.

Dayne Thomas says: "So many people have helped me, so I came back...to give back. While others moved out...I moved back...to give back to the city that gave me a start".

Dayne Thomas is single (divorced, no children) and proudly serves as Chairman, Pontiac Planning Commission; serves as Chair, GM Modern Housing Board of Directors (an association he founded), and served upon Master Plan Advisory Committee

Dayne is also owner/proprietor of "Oliver Street Farms and Vineyards", a personal revitalization project founded to clean up Urban blight and repurpose abandon parcels and convert dust and blight into Community Gardens...Orchards...Vineyards...and Open Air Farmers Market!

Dayne Thomas is a proud son of Pontiac...and a proud Alumnus of Michigan State University!

Personal Resume

Dayne Thomas

Pontiac, Michigan 48342
dayne@daynethomas.net

Professional Overview:

More than 40 years of experience in Marketing, Product Planning and Product Development domestically and internationally.

Professional Skills:

Planning, development and execution

Professional Experience:

GMC Truck & Coach (HQ, Pontiac, Michigan):

- Sales Engineer
- Market Research Analyst
- Government Sales
- Municipal Fleet Sales
- Government Sales
- District Mgr

BMW North America (HQ, Montvale, NJ):

- Sales Manager serving Rocky Mountain Region

General Group International (HQ, Harbor City, California-Automotive Financial Services):

- Sales Manager serving contiguous 48 states

American International Group (HQ, New York-Insurance & Financial Services):

- Regional VP (Southeast Asia Regional Office-Hong Kong, serving Singapore, Malaysia, Indonesia, Philippines' and Guam)

Aon Corp (HQ, Chicago, Illinois-Insurance & Financial Services):

- Regional Director (Tokyo, serving Japan and Korea)
- Regional Director (Melbourne, Australia, serving Australia and New Zealand)

Gulf States Financial Services (HQ, Houston, Texas-Automotive Financial Services):

- Senior Manager/Product Planning, serving US Gulf States)

Civic Engagement:

- Chair, Pontiac Planning Commission (2011 to 2018)
- Chair (and founder), GM Modern Housing Board of Directors (2016 to 2018)
- Owner/Proprietor: Oliver Street Orchard/Vineyards/Community Gardens