



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

Dated: April 19, 2012

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
Fax: (248) 758-3292

ORDER NO. S-188

RE: Agreement to Permit Drainage Districts the Right to Reduce, Set-off, and Retain Amount Due to the City from DTRF by Such Amount Assessed by Drainage Districts.

TO: Sherikia Hawkins, City Clerk
John Naglick, Acting Finance Director
Carl Johnson, Controller (Plante & Moran)

The Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011) in Section 17(1) empowers an Emergency Manager to issue the orders the Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local officials or employees to whom they are issued. Section 19(1) provides that an Emergency Manager may take on one or more additional actions with respect to a local government in receivership: (f) Examine all records and books of account, and require under the procedures of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55, or both, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the unit of local government; (g) Make, approve or disapprove any appropriation, contract, expenditure...; (u) Authorize the borrowing of money by the local government as provided by law; (v) Approve or disapprove of the issuance of obligations of the local government on behalf of the local government under this subdivision; (dd) Exercise solely, for and on behalf of the local government, all other authority and responsibilities of the local government of the chief administrative officer and governing body concerning the adoption, amendment and enforcement of ordinances or resolutions of the local government...; and 19(2) ...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the Emergency Manager.

Based upon the presentations made by the Oakland County Water Resources Commissioner the Emergency Manager has concluded that the City has from time-to-time has not timely paid drain assessments with respect to the following list of drains (and respective Drainage Districts) under the jurisdiction of the Oakland County Water Resources Commissioner:

CHAPTER 20
Augusta
Brewer
Brooklyn
Earlmoor
Hamlin
Holland
Levinson
Murphy
Pontiac Clinton Rive #1
Pontiac Clinton Rive #2
Pontiac Clinton Rive #3
Pontiac Clinton River Brush St. Ext.
Rufe Collier
Skarrit
Oaks
Joseph Jones
Richton
Joachim
Davide L. Moffit
Rowland
Guyer
Moore
Mainland
Palmer
John E. Olson
Joslyn

CHAPTER 4 DRAINS
Tilden
West End
Bartlett
Galloway Farms
Ward Orchards
Jewel
Pontiac Creek Ext.
Galloway
Sinking Bridge
Josephine
Tuttle
Linden

Accordingly, the City will approve the execution of an agreement in the form attached to the Resolution set for the below whereby the City agrees that if there is any amount due and owing to the foregoing drainage districts which is unpaid at the time the County of Oakland distributes funds to the City of Pontiac from the Delinquent Tax Revolving Fund (DTRF), the drainage districts shall be entitled to reduce, set-off, and permanently retain any amount due to the City from DTRF by any such amount assessed by the drainage districts.

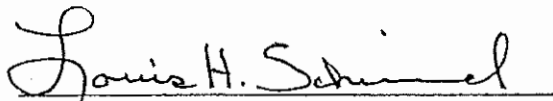
It is hereby ordered:

- (1) The Resolution attached is hereby adopted. (see Attachment A).
- (2) The City Clerk take all steps necessary to reflect the above Resolution on the City books and records, including publication of the Resolution.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and the Law Department and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (**Public Act 442 of 1976, MCL 15.231, et. seq.**).

This Order is necessary in order to carry out the duties and responsibilities required of the Emergency Manager as set forth in the **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** and the contract between the Local Emergency Financial Assistance Loan Board and the Emergency Manager.



Louis H. Schimmel
City of Pontiac
Emergency Manager

10:14 A.M.

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council

ATTACHMENT A

RESOLUTION

WHEREAS, Section 15(4) of Act 4 of the Public Acts of 2011 ("Act 4") authorizes the Emergency Manager to "act for and in place and stead of the governing body and the office of the chief administrative officer" of the City of Pontiac, and "shall have broad powers . . . to rectify the financial emergency and to assure . . . the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety and welfare".

WHEREAS, based upon the presentations made by the Oakland County Water Resources Commissioner, the Emergency Manager has concluded that the City has from time-to-time has not timely paid drain assessments with respect to the following list of drains (and respective Drainage Districts) under the jurisdiction of the Oakland County Water Resources Commissioner:

CHAPTER 20
Augusta
Brewer
Brooklyn
Earlmoor
Hamlin
Holland
Levinson
Murphy
Pontiac Clinton Rive #1
Pontiac Clinton Rive #2
Pontiac Clinton Rive #3
Pontiac Clinton River Brush St. Ext.
Rufe Collier
Skarrit
Oaks
Joseph Jones
Richton
Joachim
Davide L. Moffit
Rowland
Guyer
Moore
Mainland
Palmer
John E. Olson
Joslyn

CHAPTER 4 DRAINS
Tilden
West End
Bartlett
Galloway Farms
Ward Orchards
Jewel
Pontiac Creek Ext.
Galloway
Sinking Bridge
Josephine
Tuttle
Linden

NOW THEREFORE, IT IS HEREBY RESOLVED by the City of Pontiac as follows:

1. The Emergency Manager of the City of Pontiac shall execute and deliver an agreement to ensure the timely payment of drain assessments whereby the City agrees that if there is any amount due and owing to the foregoing drainage districts which is unpaid at the time the County of Oakland distributes funds to the City of Pontiac from the Delinquent Tax Revolving Fund (DTRF), the drainage districts shall be entitled to reduce, set-off, and permanently retain any amount due to the City from DTRF by any such amount assessed by the drainage districts.
2. All other resolution and parts of resolution by the City of Pontiac or its City Council inconsistent herewith are rescinded.

CITY OF PONTIAC

AGREEMENT REGARDING DRAINS

This Agreement is made this 19th day of April, 2012, by and between the Oakland County Water Resources Commissioner ("WRC") whose address is, 1 Public Works Drive, Waterford, Michigan ("WRC"), and the City of Pontiac, by and through its Emergency Manager, whose address is 47450 Woodward Avenue, Pontiac, Michigan ("City"):

RECITATIONS:

WHEREAS, Section 15(4) of Act 4 of the Public Acts of 2011 ("Act 4") authorizes the Emergency Manager to "act for and in place and stead of the governing body and the office of the chief administrative officer" of the City of Pontiac, and "shall have broad powers . . . to rectify the financial emergency and to assure . . . the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety and welfare".

WHEREAS, based upon the presentations made by the WRC, the Emergency Manager has concluded that the City has from time-to-time has not timely paid drain assessments with respect to the drains (and respective Drainage Districts) set forth herein and under the jurisdiction of the WRC.

WHEREAS, to ensure proper management of the drains listed herein, the WRC and the City agree to proceed in the following manner:

NOW THEREFORE the WRC and City agree as follows:

1. City agrees that if there is any amount due and owing to the drainage districts listed below which is unpaid at the time the County of Oakland distributes funds to the City of Pontiac from the Delinquent Tax Revolving Fund (DTRF), the drainage districts shall be entitled to reduce, set-off, and permanently retain any Agreement due to the City from DTRF by any such Agreement assessed by the drainage districts. The drains and respective drainage districts are listed as follows:

CHAPTER 4 DRAINS
Tilden
West End
Bartlett
Galloway Farms
Ward Orchards
Jewel
Pontiac Creek Ext.
Galloway
Sinking Bridge
Josephine
Tuttle
Linden

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Rowland
Guyer
Moore
Mainland
Palmer
John E. Olson
Joslyn

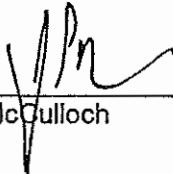
2. This agreement shall be construed under Michigan law, and if any part, term or provision of this Agreement shall be determined by a court of competent jurisdiction to be unlawful or unenforceable; such determination shall not affect the validity and enforceability of the remaining parts, terms and provisions of this Agreement.

3. Except as otherwise expressly provided for herein, any and all correspondence and/or any other written notices required, permitted or provided for under this Agreement to be delivered to either Party shall be sent to that Party by first class mail. All such written notices, shall be sent to the other party's signatory to this Agreement, or that signatory's successor in office, at the addresses shown in this Agreement. All correspondence or written notices shall be considered delivered to a party as of the date that such notice is deposited with sufficient postage with the U.S. Postal Service.

4. This Agreement sets forth the entire understanding between the WRC and the City, and shall not be changed or supplemented orally and may be amended only by written agreement of the Parties.

This Agreement is executed by the WRC (on behalf of the drainage districts listed herein) and the City, acting by and through their duly appointed and acting agents on the date(s) indicated below:

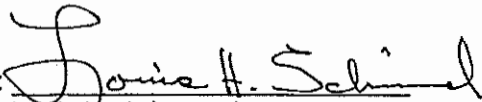
WATER RESOURCES COMMISSIONER

By: 
John P. McCulloch

Date: 4-19-12

10:29 am.

CITY OF PONTIAC

By: 
Louis H. Schimmel
Its: Emergency Manager

Date: 4-19-12

10:19 A.M.