

**AGREEMENT**

THIS AGREEMENT by and between the CITY OF PONTIAC, 47450 Woodward Ave., Pontiac, Michigan 48342 (the "City") and the PONTIAC HOUSING COMMISSION, 132 Franklin Blvd., Pontiac, Michigan 48341 ("PHC").

**RECITALS**

WHEREAS, the City established a Housing Commission pursuant to Michigan state law (MCLA 125.651, et. seq.);

WHEREAS, PHC has operated pursuant to state law and City Ordinance 42-176, as amended, concerning the Housing Commission, entitled "Article 5 – Housing Commission";

WHEREAS, PHC has relied upon the City to provide certain services to PHC;

WHEREAS, PHC and the City have agreed that PHC no longer requires city services, such as payroll, employee benefits, insurance and related services;

WHEREAS, for good and valuable consideration, which is acknowledged by the parties, the City and PHC agree as follows:

1. **Balance Due.** PHC acknowledges that it owes the City the balance of Seven Hundred Forty-Six Thousand Nine Hundred Ten and 64/100 Dollars (\$746,910.64) for past administrative and other services rendered. The breakdown of this balance due is as follows (see attached **Exhibit A** for detail of breakdown):

(a)	Payroll	\$283,971.04
(b)	Fuel	11,067.21
(c)	Salt	762.67
(d)	Unemployment	27,975.27
(e)	Health, Life, Dental, Optical, STD/LTD, Workers' Compensation	\$423,134.45
	<b>Total:</b>	<b><u>\$746,910.64</u></b>

PHC has agreed to pay and City agrees to accept the amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) in full and complete settlement and satisfaction of the balance due as stated above (the "Settlement Amount").

PHC and City acknowledge that the Settlement Amount is subject to MRE 408.

All other terms and conditions of Agreement are not subject to MRE 408 and remain in full force and effect.

The Settlement Amount shall be paid by PHC to the City as follows:

- (a) Five (5) equal annual installments of Sixty Thousand and 00/100 no later than each annual anniversary date of this Agreement;
- (b) This first installment shall be made no later than August 6, 2013 ("First Installment");
- (c) The Settlement Amount shall be payable no later than August 6, 2017.

In the event that, for any reason, PHC is unable to pay the First Installment of the Settlement Amount within one (1) year of the effective date of this Agreement, such settlement shall be null and void and City shall be entitled to pursue all legal remedies to pursue the full amount of the balance due of Seven Hundred Forty-Six Thousand, Nine Hundred Ten and 64/100 (\$746,910.64) Dollars. In the event that, for any reason, PHC is unable to pay all future Installments as stated above, the City shall be entitled to pursue all legal remedies to pursue the full amount of the balance due of Seven Hundred Forty-Six Thousand, Nine Hundred Ten and 64/100 (\$746,910.64) Dollars less any amounts received from the First and future Installment payments. PHC agrees not to dispute and waives any defense against the full balance due to the City of Seven Hundred Forty-Six Thousand, Nine Hundred Ten and 64/100 (\$746,910.64) Dollars in any future proceedings.

Balance  
due:  
8/6

13 240  
14 180  
15 120  
16 60  
17 0

Notwithstanding the foregoing, even with full payment of the Settlement Amount, as stated above, PHC acknowledges and shall continue to be obligated for any and all payments made on behalf of PHC by City, if any. PHC agrees to pay such sums within ten (10) days of receipt of invoice from the City. Any such sum not paid in a timely manner by PHC to the City will accrue interest at the rate of five percent (5%) per annum until fully paid. In the event PHC fails to pay the City as required, PHC consents to the assignment of funds received from federal grant agencies, including, but not limited to, HUD.

2. **Termination of Services.** As of November 30, 2011, the City no longer provides any payroll, employee benefit, legal, insurance, administrative, fuel/vehicle, public works and other services to PHC. Consequently, PHC acknowledges that it has made its own arrangements for payroll, employee benefit, unemployment, workers' compensation, insurance and other services to PHC. In the event that the City continues to be billed by any entity (such as the State of Michigan for unemployment insurance) and pays such amounts on behalf of PHC, City will be reimbursed by PHC, as stated in Paragraph 1.

3. **Employee/Retiree Benefits.** PHC represents and warrants that it shall continue to:

- (a) be solely responsible for and directly pay all payroll and fringe benefits including, but not limited to, unemployment insurance charges from the State of Michigan, for its current employees and future employees (see list of current employees attached as Exhibit B);
- (b) be solely responsible for and directly pay all pension and retiree health care benefit contributions of its current employees and future employees;

- (c) be solely responsible for and directly pay all pension and retiree health care benefit for current and future retirees of PHC (see list of current retired PHC employees attached **Exhibit C**); and
- (d) make all necessary arrangements with the City Retirement Office to report wage and other information for purposes of calculating pension and retiree health care benefit contributions.

4. **No Change in Employer/Employee Relationships**. Nothing hereunder should be construed to change the relationship of PHC as employer of its employees. Nothing herein modifies or changes the Decision and Order of the State of Michigan Employment Relations Commission in Case Nos. CO5 F-128 and CO7 C-049 that found that, "PHC is the sole and independent employer of its employees" (see attached **Exhibit D**). PHC agrees to hold harmless, indemnify and defend City from any and all unemployment claims filed or made against the City by PHC employees.

5. **City Ordinance**. Nothing hereunder should be construed to change, alter or modify the Housing Commission Ordinance. Notwithstanding the foregoing, the City has informed PHC that it will be amending Section 42-180 to delete reference to personnel rules authorized by the City Council and, instead, add the following language: "All employees of the Housing Commission shall continue to be employed by the Housing Commission, and not the City, and governed by all personnel rules adopted by the Housing Commission and not by the City."

Such amendment to Ordinance shall be processed by the City within sixty (60) days of the execution of this Agreement.

6. **Indemnification**. PHC agrees to fully indemnify and hold harmless City from any and all claims from the effective date of this Agreement for: (i) any payments to or on behalf of any employees or retirees of PHC including, but not limited to, pension

plan and retiree health care payments and contributions; and (ii) any and all matters and/or obligations of PHC to the City or others arising from this Agreement.

7. Vehicles. PHC acknowledges and agrees that it will no longer have access to City facilities for vehicle gas and vehicle maintenance. All fuel keys previously issued to PHC have been returned to the City by PHC. All PHC vehicles are properly titled to PHC, not to the City. PHC has made arrangements for all vehicle insurance and maintenance.

8. False Alarms. PHC agrees to pay all future false alarm charges issued to PHC or PHC Properties within thirty (30) days of invoicing.

9. Contracts. It is the intention of the Agreement that any and all contracts of PHC remain the contracts and obligations of PHC. While the City and PHC are not currently aware of any contracts signed by the City on behalf of PHC, PHC agrees to assume all liability of any contract or obligation that arises which the City has executed or assumed in favor of PHC.

10. Audit Report. PHC will cause to be delivered to the City Finance Director, a copy of the PHC annual audit required by state and/or federal law and regulations within ten (10) days of filing with the appropriate governmental agency.

11. Effective Date. The effective date of this Agreement is August 6, 2012.

12. Authority. The signatories to this Agreement state that they are hereby authorized to execute this Agreement on behalf of the City and PHC and bind the same.

CITY OF PONTIAC

By: Louis H. Schimmel  
Louis Schimmel  
Its: Emergency Manager

PONTIAC HOUSING COMMISSION

By: Sam Scott  
Sam Scott  
Its: Chairman

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