



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

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
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Dated: April 19, 2012

ORDER NO. S-185

**RE: Approval of Restructuring Agreement for the City of Pontiac
Wastewater Treatment Facility**

**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 it is in the best interest of the City of Pontiac to restructure the wastewater treatment facilities for the treatment of sanitary sewage collected within the corporate limits of the City of Pontiac, which will permit the financing of the acquisition of wastewater treatment facilities, construction of repairs and improvements of said

facilities, and the operation and maintenance of said facilities to serve lands located in the corporate limits of the City of Pontiac to provide for the public health and safety of the City for the reasons set forth in the Resolution set forth below.

Accordingly, the City will approve the execution of a Restructuring Agreement in the form attached to the Resolution set forth below.

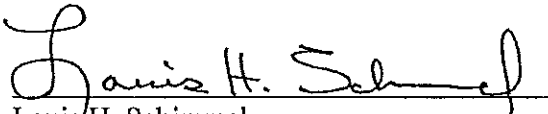
It is hereby ordered:

- (1) The Resolution attached ~~and identified as Resolution No. _____~~ is hereby adopted ^{JHS} (see ~~attached~~ 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

Jra.EFM-73.Order

ATTACHMENT A

RESOLUTION NO.

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

WHEREAS, based upon the presentations made by the Oakland County Water Resources Commissioner the Emergency Manager has concluded that it is in the best interest of the City of Pontiac to restructure the wastewater treatment facilities for the treatment of sanitary sewage collected within the corporate limits for the City of Pontiac, which will permit the financing of the acquisition of wastewater treatment facilities, construction of repairs and improvements of said facilities, and the operation and maintenance of said facilities to serve lands located in the corporate limits of the City of Pontiac to provide for the public health and safety of the City.

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 the Restructuring Agreement set forth in Appendix 1 attached hereto.
2. All other resolutions and parts of resolutions adopted by the City of Pontiac or its City Council inconsistent herewith are rescinded.

JRA.EFM-73.ORDER

APPENDIX 1

**CITY OF PONTIAC WASTEWATER TREATMENT FACILITY
RESTRUCTURING AGREEMENT**

This City of Pontiac Wastewater Treatment Facility Restructuring Agreement (the "Agreement") made and entered into as of this _____ day of April, 2012, between the **CITY OF PONTIAC**, a Michigan municipal corporation ("Pontiac") and **PONTIAC CLINTON RIVER # 2 DRAIN DRAINAGE DISTRICT** ("District"), a Michigan statutory public corporation organized pursuant to Chapter 20 of the Drain Code of 1956, as amended, MCL 280.461, et seq.

A. Pontiac is the owner of the Pontiac System (as defined below).

B. Pontiac and the District have determined that it is in their respective best interests for Pontiac to transfer, upon the terms and subject to the conditions set forth herein, the Pontiac System to the District.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties and agreements in this Agreement, Pontiac and the District agree as follows:

**ARTICLE I.
DEFINITIONS**

Capitalized terms used in this Agreement shall have the meanings given to them in this Article I, unless defined elsewhere in this Agreement.

1.1 **"Agreement"** shall have the meaning such term is given in the introductory paragraph hereof.

1.2 **"Applicable Law"** shall mean any applicable federal, state or local law, statute, ordinance, rule, regulation and any other executive or legislative proclamation of any Governmental Entity.

1.3 **"Assumed Liabilities"** shall mean any and all Liabilities, excluding the Retained Liabilities.

1.4 **"Claims"** shall mean any Order, any investigation announced or performed by a Governmental Entity, or any actual or alleged complaints, claims or charges, demands for relief or damages, suits, hearings, causes of action, proceedings or litigation which the parties hereto may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened, which are related in any way to the Pontiac System.

1.5 **"Default"** shall mean, as to any party to this Agreement, (a) a default by such party in the performance of any of its obligations hereunder and the continuation of such default for a period of thirty (30) days after written notice is delivered by the non-defaulting party to the defaulting party that a default has occurred, or (b) the breach of any representation, warranty, or covenant hereunder.

1.6 **"District's Knowledge"** shall mean the actual knowledge of Oakland County Water Resource Commission.

1.7 **"Emergency Manager"** shall mean the emergency manager of Pontiac appointed pursuant to Act No. 4 of the Public Acts of Michigan of 2011 serving as Emergency Manager under that Act or as Emergency Financial Manager under any other Act of the Michigan Legislature.

1.8 **"Encumbrance"** shall mean any security interest, mortgage, pledge, claim, lien, charge, option, defect, encumbrance, lease, tenancy, license, covenant, condition, restriction, right of way, easement, judgment, or other right or interest of any nature.

1.9 **"Environmental Requirements"** shall mean all federal, state and local statutes, regulations, and ordinances concerning pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, as such requirements are enacted and in effect on or prior to the Restructuring.

1.10 **"Governmental Entity"** shall mean the United States of America, any state, county, city, municipality and any subdivision thereof, any court, administrative or regulatory agency, commission, department or body or other governmental authority or instrumentality or any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.11 **"Indemnified Party"** shall have the meaning such term is given in Section 11.2.

1.12 **"Indemnifying Party"** shall have the meaning such term is given in Section 11.2.

1.13 **"Liability"** means any responsibility, liability, obligation, expense, Claim, Loss, damage, indebtedness, principal, interest, penalty, guaranty or endorsement of or by any Person, asserted, absolute or contingent, known or unknown, accrued or unaccrued, due or to become due, liquidated or unliquidated, which is related to or arising out of the ownership condition, operation, maintenance and repair of the Pontiac System.

1.14 **"Loss" or "Losses"** means any damages (excluding consequential), deficiencies, dues, principal, interest, penalties, fines, costs, amounts paid in settlement,

liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys' fees and expenses related to or arising out of the condition, operation, maintenance and repair of the Pontiac System, or out of the breach of any representation, warranty, or covenant of this Agreement.

1.15 **"Material"** or **"materially"** means, depending on the context, any condition, change or effect that, individually or when taken together with all other such conditions, i) is or is reasonably likely to be significantly adverse to the condition of the Pontiac System, ii) will or is reasonably likely to prevent the consummation of the transactions contemplated hereby or the validity of this Agreement or defeat the purpose of this Agreement, or iii) if such change or condition had occurred before the execution of this Agreement is of such a nature that it would have induced a party not to enter into this Agreement

1.16 **"MDEQ"** means the Michigan Department of Environmental Quality.

1.17 **"NPDES"** means the National Pollutant Discharge Elimination System.

1.18 **"Order"** shall mean any decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling or writ of any Governmental Entity.

1.19 **"Ordinary Course of Business"** shall mean shall an action taken by a Person with respect to the Pontiac System which is consistent in nature, scope and magnitude with the past practices of such Person with respect to the Pontiac System and is taken in the ordinary course of the normal, day-to-day operations of such Person with respect to the Pontiac System.

1.20 **"Person"** shall mean any individual, corporation, association, partnership, joint venture, trust, estate, unincorporated organization or Governmental Entity.

1.21 **"Pontiac's Knowledge"** shall mean the actual knowledge of the Emergency Manager.

1.22 **"Pontiac System"** means the City of Pontiac wastewater treatment facility, including but not limited to, (a) the real property described in Exhibit A, together with the buildings and improvements located thereon, (b) the improvements and major components of the wastewater treatment facility described in Exhibit B and (c) all tangible and intangible real and personal property, and appurtenant facilities used or necessary for the operation of the wastewater treatment facility. The Pontiac System does not include the Pontiac Collection System. The responsibility for the operation and maintenance of the Pontiac Collection System is the subject of the Act 342 Agreement described in Section 8.6 herein.

1.23 **"Pontiac System Debt"** means all outstanding obligations, including principal and interest, as of the date of delivery of the Restructuring Payment on any bonded debt allocated to facilities comprising the Pontiac System and the Pontiac Collection System described in Exhibit C.

1.24 "Pontiac System Real Property Rights" shall mean the easements, rights of way, licenses, and other interests in real property necessary for the use and operation of the Pontiac System.

1.25 "Representative" with respect to a particular Person means any officer, employee, agent, consultant, engineer, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

1.26 "Requisite Regulatory Approvals" shall have the meaning such term is given in Section 5.1.

1.27 "Retained Liabilities" shall mean the Pontiac System Debt and those Liabilities which were incurred and Claims which accrued prior to the Restructuring Date. Notwithstanding the foregoing, for the purposes of this Agreement, any Claim, whether in trespass or other cause of action, whenever (whether before or after the Restructuring Date), against whomever asserted, and arising out of any allegation that Pontiac or the District did or does not have an easement, right of way or other Interest in real property sufficient to entitle Pontiac or the District to use, maintain and operate the Pontiac System shall be deemed to have accrued on or before the Restructuring Date and be deemed a Retained Liability.

1.28 "Restructuring Date" shall mean the date that the Restructuring Payment is made to Pontiac and the Restructuring Instruments and other documents required to consummate the transaction contemplated hereby are delivered to the District.

1.29 "Restructuring Payment" shall have the meaning set forth in Section 2.2.

1.30 "Schedules" shall mean each schedule specifically referenced in this Agreement.

1.31 "Third Party Claim" shall have the meaning such term is given in Section 11.3.

ARTICLE II. THE RESTRUCTURING PAYMENT

2.1 Transfer to the District. In consideration for the delivery of the Restructuring Payment and other good and valuable consideration, subject to satisfaction of the conditions set forth in Article VIII, Pontiac shall transfer and convey the Pontiac System to the District, free and clear of all liens and encumbrances pursuant to the Restructuring Instruments (defined below). Concurrent with the execution of this Agreement, Pontiac shall place fully executed Restructuring Instruments (defined below) into escrow with USA Title Company, as escrow holder ("Escrow Holder") to be held and released by Escrow Holder pursuant to an escrow agreement in a form satisfactory to the District ("Escrow Agreement") which shall

provide that upon payment of the Restructuring Payment to Pontiac the Restructuring Instruments shall be delivered to the District.

2.2 Restructuring Payment. As part of the consideration for the transfer and conveyance of the Pontiac System to the District from Pontiac, subject to the satisfaction of the conditions set forth in Article VIII, the District shall deliver to Pontiac in a sum equal to Fifty Five Million and 00/100 Dollars (\$55,000,000.00) (the "Restructuring Payment").

2.3 Pontiac System. THE PONTIAC SYSTEM SHALL BE CONVEYED BY PONTIAC TO THE DISTRICT IN "AS IS" PHYSICAL CONDITION.

2.4 Retained and Assumed Liabilities.

(a) At and as of Restructuring Date, Pontiac shall retain, and the District shall in no way assume, the obligation to pay, discharge, perform or defend, as applicable and when due, any and all of the Retained Liabilities. Pontiac shall pay, discharge, perform and satisfy all of the Retained Liabilities when due.

(b) At and as of the Restructuring Date, the District shall assume, and Pontiac shall in no way retain, the obligation to pay, discharge, perform or defend, as applicable and when due, any and all of the Assumed Liabilities. District shall pay, discharge, perform and satisfy all of the Assumed Liabilities when due.

2.5 Restructuring Date. Provided that all contingencies to delivery of the Restructuring Payment have been satisfied or waived by the District, the District shall use its best efforts to consummate the transactions contemplated hereby on such date as is determined by the District, in its sole discretion (the "Restructuring Date") by September 30, 2012. If the transactions contemplated hereby are not completed by September 30, 2012, the District shall use its best efforts to complete such transactions as soon thereafter as reasonably possible but no later than December 31, 2015.

2.6 Deliveries Into Escrow. Contemporaneously with the execution of this Agreement, Pontiac shall deliver the following to the District or to Escrow Holder, as the case may be:

(a) A certified resolution of the Emergency Manager authorizing the execution and delivery of this Agreement and the transactions and instruments of conveyance contemplated hereby shall be delivered to the District;

(b) A personal property transfer agreement conveying all tangible personal property constituting or used in connection with the operation of the Pontiac System to the District or its assignee in form and substance satisfactory to the District and its counsel and executed by Pontiac shall be deposited with Escrow Holder;

(c) An assignment of all contracts, warranties, guarantees, licenses, permits, architectural and engineering drawings, work product and other intangible personal property related to the construction, operation or maintenance of the Pontiac

System, to the District or its assignee, in form and substance satisfactory to the District and its counsel, and executed by Pontiac shall be deposited with Escrow Holder;

(d) A warranty deed, or such other appropriate document or instrument of transfer, as the case may require, transferring the real property constituting the Pontiac System (including the Pontiac System Real Property Rights) to the District or its assignee each in form and substance satisfactory to the District and its counsel and executed by Pontiac shall be deposited with Escrow Holder;

(e) Such certificates, affidavits, undertakings and other evidence as may be required to induce the title company selected by the District ("Title Company") to issue such title insurance policies, in form and substance satisfactory to the District, as the District may elect to purchase with respect to the real property constituting the Pontiac System executed by Pontiac shall be deposited with the Escrow Holder;

(f) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by the District with respect to matters required to operate the Pontiac System, each in form and substance satisfactory to the District and its counsel and executed by Pontiac shall be deposited with the Escrow Holder;

(g) The Escrow Agreement executed by Pontiac, the District and the Escrow Holder shall be delivered to the District, Pontiac and the Escrow Holder;

(h) An opinion of bond counsel to Pontiac providing, in substance, that the transactions contemplated by this Agreement do not violate covenants made by Pontiac to its bondholders; and

(i) An opinion of legal counsel to Pontiac providing that the transactions contemplated by this Agreement are within the power and authority of the Emergency Manager as of the date of this Agreement, and this Agreement, the Escrow Agreement and the Restructuring Instruments are the valid and binding obligations of Pontiac.

The documents identified in (b), (c), (d), (e) and (f) shall be collectively referred to as the "Restructuring Instruments".

2.7 Deliveries on the Restructuring Date. On the Restructuring Date, Pontiac shall deliver the following to the District:

(a) A certificate executed by Pontiac as to the accuracy of its representations and warranties as of the Restructuring Date and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Restructuring Date;

(b) An opinion of legal counsel to Pontiac providing that the transactions contemplated by this Agreement are within the power and authority of the Emergency Manager as of the Restructuring Date and this Agreement, the Escrow

Agreement and the Restructuring Instruments are the valid and binding obligations of Pontiac.

(c) Such additional certificates, affidavits, undertakings and other evidence as may be required to induce the Title Company to issue such title insurance policies, in form and substance satisfactory to the District, as the District may elect to purchase with respect to the real property constituting the Pontiac System; and

(d) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by the District with respect to matters required to operate the Pontiac System, each in form and substance satisfactory to the District and its counsel and executed by Pontiac.

2.8 Transfer of Operation. Effective as of 11:59 p.m. on the Restructuring Date, the District shall take over from Pontiac all of the operation, maintenance and administration of the Pontiac System.

2.9 Expenses. In the event that, and for any reason, the transaction contemplated by this Agreement does not close, each party shall bear its own costs.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF PONTIAC

Pontiac makes the following representations and warranties to the District:

3.1 Corporate Organization. Pontiac is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Michigan.

3.2 Authorization. Pontiac, through the Emergency Manager, pursuant to Act No. 4 of the Public Acts of Michigan of 2011, has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement constitutes a legal, valid and binding obligation of Pontiac, enforceable against Pontiac in accordance with its terms.

3.3 Subsequent Action. As to any other subsequent action, which is required to be taken by the City, the City agrees that it will cause execution and delivery of all necessary documents to fulfill the transactions contemplated by this agreement either by the Emergency Manager, an Emergency Financial Manager, or the Mayor and City Council depending on who has the authority at that time.

3.4 No Conflict. The execution, delivery and performance by Pontiac of this Agreement, the compliance by Pontiac with any of the provisions hereof, and the consummation by Pontiac of the transactions contemplated hereby; (i) do not violate any provision of Pontiac's Charter or any bond covenants associated with the Pontiac System Debt; (ii) do not require the consent, approval, clearance, waiver, order or authorization of any Person other than the Emergency Manager and the Treasurer of the state of Michigan pursuant to Act No. 4 of the Public Acts of Michigan of 2011; (iii)

do not conflict with or violate any Applicable Law or any order, judgment, award or decree of any court or other Governmental Entity to which Pontiac or the Pontiac System is subject; and (iv) do not conflict with, or result in any breach of, or default or loss of any right under (or an event or circumstance that, with notice or the lapse of time, or both, would result in a default), or the creation of any encumbrance pursuant to, or cause or permit the acceleration prior to maturity of any amounts owing under any indenture, mortgage, deed of trust, lease or other agreement to which Pontiac is a party or to which the Pontiac System is subject, in each case, which failure, violation, conflict or breach would, in the aggregate, materially hinder or impair the consummation of the transactions contemplated by this Agreement.

3.5 No Material Transactions. Pontiac has not engaged in any Material transactions related to the Pontiac System since April 1, 2012.

3.6 Real Property.

(a) Exhibit A identifies all of the real property occupied by the Pontiac System.

(b) To Pontiac's Knowledge, Pontiac possesses all necessary, permanent, perpetual and transferable Pontiac System Real Property Rights (not including easements, licenses or rights of way by prescription, necessity, implication or acquiescence) necessary for the use and routine operation of Pontiac System.

(c) Pontiac has good and marketable title to the Pontiac System free and clear of all Encumbrances.

3.7 Environmental Requirements. Pontiac has complied in all Material respects with all Environmental Requirements in connection with the ownership, operation and administration of the Pontiac System, including, without limitation, NPDES permits and MDEQ requirements, and has not received notice of any violation of any of the foregoing.

3.8 Litigation. There is no action, suit or proceeding pending or, to Pontiac's Knowledge, threatened against or affecting Pontiac before any Governmental Entity in which there is a reasonable possibility of an adverse decision which could have a Material adverse effect upon the ability of Pontiac to perform its obligations under this Agreement or which in any manner questions the validity of this Agreement.

3.9 Disclosure of Pontiac System Debt. Exhibit C sets forth all Pontiac System Debt, including the relevant bond Issue(s) and the outstanding principal as of April 1, 2012. None of the written data or information furnished or made available to District by Pontiac as part of the due diligence process with regard to Pontiac System Debt or other debt or rate-related matters contains an untrue statement of a Material fact or omits to state a Material fact required to be stated therein or necessary to make the statements made, in the context in which made, not false or misleading.

3.10 Contracts, Permits and Licenses. Schedule 3.10 sets forth all contracts, permits and licenses associated with or required for the operation, maintenance and repair of any part of the Pontiac System, all such contracts, permits and licenses are in full force and effect, and, to Pontiac's Knowledge, no default exists (and no event or circumstance exists that with notice or the lapse of time, or both, would constitute such default) thereunder.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE DISTRICT

The District makes the following representatives and warranties to Pontiac:

4.1 Corporate Organization. The District is a body corporate duly organized and validly existing under the laws of the state of Michigan and has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

4.2 Authorization. The District has the requisite power and authority to execute and deliver this Agreement and to consummate the transaction contemplated hereby. This Agreement constitutes a legal, valid and binding obligation of the District, enforceable against the District in accordance with its terms.

4.3 No Conflict. The execution, delivery and performance by the District of this Agreement, the compliance by the District with any of the provisions hereof and thereof, and the consummation by the District of the transactions contemplated hereby and thereby: (i) do not violate any Applicable Law; (ii) do not require the consent, approval, clearance, waiver, order or authorization of any Person; and (iii) do not conflict with, or result in any breach of, or default or loss of any right under (or an event or circumstance that, with notice or the lapse of time, or both, would result in a default), or the creation of any encumbrance pursuant to, or cause or permit the acceleration prior to maturity of any amounts owing under any indenture, mortgage, deed of trust, lease or other agreement to which the District is a party, which failure, violation, conflict or breach would, in the aggregate, materially hinder or impair the consummation of the transactions contemplated by this Agreement.

4.4 Litigation. There is no action, suit or proceeding pending or, to the District's Knowledge, threatened against or affecting the District before any Governmental Entity in which there is a reasonable possibility of an adverse decision which could have a Material adverse effect upon the ability of the District to perform its obligations under this Agreement or which in any manner questions the validity of this Agreement.

ARTICLE V. COVENANTS OF PONTIAC

Pontiac covenants and agrees with the District as follows:

5.1 Pontiac's Obligation With Respect to Pontiac System Debt and Pontiac System Debt - Collection System. Pontiac covenants that the Pontiac System Debt and the Pontiac System Debt - Collection System is the sole responsibility of Pontiac and not to be prorated or shared in any manner with any future users of the Pontiac System. Pontiac further covenants that future improvements, and all costs thereof, to the Pontiac System to address the Pontiac System's deficiencies in existence as of the Restructuring Date is the sole responsibility of Pontiac and not with any future users of the Pontiac System.

5.2 Pontiac's Obligation to Pay Outstanding Obligations to Other Chapter 20 Drainage Districts. Pontiac covenants that it will pay the amounts owed to other Chapter 20 Drainage Districts as described in the attached Exhibit D.

5.3 Governmental Approvals, Consents. Pontiac shall use reasonable efforts and shall cooperate with the District (including, to the extent necessary, after the Restructuring Date), to obtain all permits, approvals and consents, and to make all filings, necessary or required to be obtained or made for the District to have full use and enjoyment of the Pontiac System and for the consummation of the transactions contemplated by this Agreement under Applicable Law (all such permits, approvals, filings and consents being referred to as the "Requisite Regulatory Approvals").

5.4 Operation and Maintenance of the Pontiac System. Between the date of this Agreement and the Restructuring Date, Pontiac shall:

- (a) Operate the Pontiac System in the Ordinary Course of Business;
- (b) Obtain the consent of the District before implementing operational decisions of a Material nature;
- (c) Maintain the Pontiac System in a state of repair and condition consistent with Pontiac's conduct of the operation of the Pontiac System before delivery of the Restructuring Payment;
- (d) Comply in all Material respects with Applicable Law and contractual obligations applicable to the operation of the Pontiac System;
- (e) Maintain all books and records relating to the operation of the Pontiac System in the Ordinary Course of Business.
- (f) Provide to the District reasonable notice prior to making any capital expenditures or implementing any maintenance, repair or operational decisions of a Material nature relating to the Pontiac System and obtain written permission of the District or its agent before making any expenditure or obligating any funds for any capital expense;
- (g) Refrain from entering into any sale, assignment, or other transfer of all or any part of Pontiac's right, title or interest in and to any portion of the Pontiac System without first obtaining the consent of the District;

(h) Refrain from entering into any extraordinary transaction or any transaction which is not at arm's length with any person or entity, in either case relating to the Pontiac System without first obtaining the consent of the District; and

(i) Promptly notify the District of any emergency or other change in the normal course relating to the Pontiac System (or communications indicating that the same may be contemplated) if such emergency or change would be Material.

5.5 Litigation and Claims. Pontiac shall promptly inform the District in writing of any Claims of which Pontiac is or becomes aware that are or might reasonably be expected to become the subject of litigation affecting the Pontiac System or the transactions contemplated by this Agreement.

5.6 Notice of Changes. Pontiac shall inform the District in writing if it becomes aware that any representation or warranty made by Pontiac in this Agreement has ceased to be accurate or if Pontiac becomes aware of the occurrence of any breach of any covenant or other agreement required by this Agreement to be performed or complied with by Pontiac.

5.7 Further Assurances. In case at any time after the Restructuring Date any further action is necessary to carry out the purposes of this Agreement or to facilitate the operation of the Pontiac System or implement the Act 342 Agreement (defined in Section 8.6 below), Pontiac will take such further action (including the execution and delivery of such further instruments and documents) as the District may reasonably request, all at the sole cost and expense of Pontiac.

5.8 Access. After the date hereof, Pontiac shall provide the District and its employees and agents with such access to the Pontiac System, the employees of the Pontiac System and the books and records relating to the Pontiac System as the District shall request, and shall cooperate with the District in the conduct by the District in its due diligence investigation of the Pontiac System.

5.9 Future Easements. Pontiac by way of compliance with Section 29, Article VII, Michigan Constitution of 1963 consents and agrees to the establishment and location of the Pontiac System within Pontiac's corporate boundaries and to the use by the District of its streets, highways, alleys, lands, rights-of-ways and other public places for the purposes and improvements of the Pontiac System and any improvements, enlargements or extensions thereof, and Pontiac further agrees that, in order to evidence and effectuate the forgoing agreement and consent, it will execute and deliver to the District such grants of easements, rights-of-way, licenses, permits or consents as may be requested by the District at Pontiac's expense.

5.10 Payments by Pontiac. The costs to be paid by Pontiac for easements and other real estate matters under Sections 5.9 and 10.4 of this Agreement or under the Act 342 Agreement shall be paid from the Reserve Fund to be established by Pontiac pursuant to paragraph 2 of the Act 342 Agreement or as otherwise apportioned by the District.

**ARTICLE VI.
COVENANTS OF THE DISTRICT**

The District covenants and agrees with Pontiac as follows:

6.1 District's Obligation With Respect to Pontiac System Debt and Pontiac System Debt - Collection System. District agrees to covenant to the holders of the remaining Pontiac System Debt to make semiannual payments to the holders of such debt in the event the amounts paid by Pontiac and other beneficial users of the Pontiac System and Pontiac Collection System are not sufficient to meet such payments. Pontiac understands and agrees that if there is any amount due and owing to the District (or assignees) under this Agreement, which is still unpaid at the time the County of Oakland distributes funds to Pontiac from the Delinquent Tax Revolving Fund of Oakland County ("DTRF"), the District (or assignees) shall be entitled to reduce, set-off, and permanently retain any amount due to Pontiac from the DTRF by any such amount then still due and owing the District pursuant to this Agreement.

6.2 Cooperation. Subject to the terms and conditions of this Agreement, the District shall cooperate with Pontiac to use its best efforts to secure all necessary consents, approvals, authorizations, exemptions and waivers from all Persons and Governmental Entities as shall be requested by Pontiac or required to be obtained to consummate the transactions contemplated in this Agreement.

6.3 Litigation and Claims. The District shall promptly inform Pontiac in writing of any Claims (or communications indicating that the same may be contemplated) of which Pontiac is or becomes aware that are or might reasonably be expected to become the subject of litigation affecting the Pontiac System or the transactions contemplated by this Agreement.

6.4 Notice of Changes. The District shall inform Pontiac in writing if it becomes aware that any representation or warranty made by the District in this Agreement has ceased to be accurate or if the District becomes aware of the occurrence of any breach of any covenant or other agreement required by this Agreement to be performed or complied with by the District.

**ARTICLE VII.
CONDITIONS TO OBLIGATIONS OF PONTIAC**

The obligations of Pontiac to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction (or waiver by Pontiac) on or prior to the delivery of the Restructuring Payment of all of the following conditions:

7.1 Accuracy of Representations and Warranties. Except as set forth in the Schedules, the representations and warranties of the District set forth in this Agreement shall be true and correct in all Material respects as of the date when made and as of the delivery of the Restructuring Payment.

7.2 Performance of Covenants and Agreements. The District shall have duly performed and complied in all Material respects with the covenants, agreements and conditions required by this Agreement to be performed or complied with by it.

**ARTICLE VIII.
CONDITIONS TO OBLIGATIONS OF THE DISTRICT**

The obligations of the District to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction (or waiver by the District) on or before the Restructuring Date, of all of the following conditions:

8.1 Accuracy of Representations and Warranties. The representations and warranties of Pontiac set forth in this Agreement shall be true and correct in all Material respects as of the date when made and at and as of the Restructuring Date.

8.2 Performance of Covenants and Agreements. Pontiac shall have duly performed and complied in all Material respects with the covenants, agreements and conditions required by this Agreement to be performed or complied with by it before or on the Restructuring Date.

8.3 Consent. Any consent required for the consummation of the transactions contemplated by this Agreement or under any agreement, contract, license or other instrument described in any Schedule or exhibit hereto or referred to herein, shall have been obtained and shall be effective.

8.4 Governmental Approvals. All Requisite Regulatory Approvals shall have been obtained or made, shall be in full force and effect and shall not contain any conditions which are not acceptable to the District, in its sole discretion. There shall be no injunction, restraining order or decree of any nature that restrains or prohibits the transactions contemplated by this Agreement.

8.5 Title Insurance and Surveys. The District shall have obtained title commitments and searches and, if the District elects, title insurance policies and surveys with respect to real estate constituting the Pontiac System and the Pontiac System Real Property Rights, from title companies, surveyors and engineering firms, as applicable, in form and substance satisfactory to the District.

8.6 Act 342 Agreement. Pontiac shall have entered into an agreement with the County of Oakland under Act 342 of Public Acts of 1939, as amended (the "Act 342 Agreement") relating to the administration, operation and management of the Pontiac sewage disposal system (also referred to as the Pontiac Collection System herein) after the Restructuring Date, on terms and conditions satisfactory to the County, in its sole discretion.

8.7 Chapter 20 Drain. A new county drain and drainage district shall have been established pursuant to Chapter 20 of Act 40 of Public Acts of 1956, as amended ("New District") on terms and conditions satisfactory to the District in its sole discretion.

8.8 Bond Financing. Bond financing for the payment of the Restructuring Payment on terms and conditions satisfactory to the District, in its sole discretion, shall be available to the District or its assignee hereunder.

8.9 Due Diligence. The District shall be satisfied, in its sole discretion, with the condition of the Pontiac System and the suitability of the Pontiac System for the District's intended use, in its sole discretion.

8.10 Escrow Release. The Restructuring Instruments shall be released from escrow and delivered to the District.

ARTICLE IX. TERMINATION

9.1 Termination. This Agreement may be terminated at any time before the Restructuring Date:

- (a) By mutual written consent of Pontiac and the District.
- (b) By written notice from Pontiac if the District is in Default.
- (c) By written notice from the District if Pontiac is in Default.
- (d) By written notice from the District if any condition set forth in Article VIII is not satisfied on the Restructuring Date, or in the case of the conditions set forth in Section 8.3, 8.4, 8.5, 8.7, 8.8 or 8.9, such condition is not satisfied at any time after the date hereof.

9.2 Effect on Obligations. Termination of this Agreement pursuant to this ARTICLE IX shall terminate all obligations of the Parties hereto; provided, however, that termination shall not relieve any defaulting party from any liability to the other party resulting from such Default. Notwithstanding the foregoing, any and all existing agreements (other than this Agreement) between Pontiac and the District and/or any constituent entity thereof which are related to the Pontiac System shall remain in full force and effect following any termination of this Agreement unless and until such existing agreements are otherwise terminated pursuant to the terms thereof.

ARTICLE X. REMEDIES FOR BREACHES OF THIS AGREEMENT

10.1 Survival of Representations and Warranties. All of the representations, warranties and covenants of the District and Pontiac in this Agreement and the schedules and exhibits hereto shall survive and continue in full force and effect forever thereafter (subject only to any applicable statutes of limitations applicable to their breach).

10.2 Remedies. The Parties shall have all remedies available at law and equity for a breach of contract for any breaches of any terms of this Agreement.

10.3 Remedies for Breach of Representations, Warranties and Covenants. If a Party sustains any Losses because the representations or warranties provided by the other Party are incorrect or untrue or because the other Party has breached its covenants given herein, the other Party shall be liable for all Losses incurred by the Party to cure such representations, warranties or covenants. In addition or in the alternative, the Party may require the other Party to take such actions as required to cure such misrepresentations, warranties or breached covenants.

10.4 Remedies to Cure Title Issues. In the event that Pontiac does not possess all necessary, permanent, perpetual and transferable interest in the real property constituting the Pontiac System and the Pontiac System Real Property Rights, the District may obtain by purchase, condemnation or otherwise such easements, rights of way, licenses or other agreements on terms reasonably acceptable to District and in any case sufficient to entitle the District to use and operate the Pontiac System in the same manner as used and operated by Pontiac. The District shall use good faith efforts to minimize the cost of obtaining such easements, rights of way, licenses or other agreements. Pontiac, at its sole cost and expense, shall cooperate in taking all actions requested by the District to assist the District in obtaining such easements and other interests in property. Within 60 days of demand, as may be made from time to time by the District, Pontiac shall reimburse the District in an amount equal to any and all costs incurred by the District to obtain such easements and other interests in property including, but not limited to, costs of acquisition or condemnation awards (including the condemnation defendant's attorneys fees and costs) and all legal, expert and professional fees and costs incurred by the District and any Losses actually incurred by the District arising out of Claims asserted against the District by third parties based on the failure to have an easement, right of way, license or other agreement for real property necessary for the use and routine operation of the Pontiac System. These reimbursable costs include all costs incurred by the District to ascertain the location of any improvements constituting any part of the Pontiac System. Further, within 60 days of demand, as may be made from time to time by the District, Pontiac shall reimburse the District for all Losses actually incurred by the District arising out of Claims asserted against the District arising out of any obligation occurring under the Pontiac System Real Property Agreements.

ARTICLE XI.

PROCEDURES IN THE EVENT OF CLAIMS BY THIRD PARTIES

11.1 Existing Service Contract. To the extent permitted by law, Pontiac promises to hold harmless, indemnify and defend the District from claims by United Water Environmental Services, Inc. for losses, damages, or injuries arising out of this Agreement in any way, including but not limited to judgments, verdicts, awards, settlement, attorney fees, costs, and fees.

11.2 Remedies For Third Party Claims Asserted Against One Party Arising out of or Related to Liabilities Assumed or Retained by the Other Party. In the event that a Third Party Claim, as defined below, is asserted against one Party ("Indemnified Party") arising out of or related to matters for which the other Party ("Indemnifying Party") has

assumed liability under this Agreement, the Indemnifying Party shall defend the Indemnified Party from such Third Party Claims and shall reimburse the Indemnified Party for any Loss incurred by the Indemnified Party resulting from such Third Party Claims.

11.3 Defense and Settlement of Third Party Claims.

(a) If any third party shall notify an Indemnified Party with respect to any matter (a "Third Party Claim") which arises out of a matter for which liability was expressly assumed or retained by the Indemnifying Party under this Agreement or arises out of the breach of a representation, warranty or covenant given in this Agreement, the Indemnified Party shall promptly (and in any event within 30 days after receiving notice of the Third Party Claim) notify the Indemnifying Party thereof in writing. Third Party Claim does not include any Claim covered by Section 10.4. Failure to give the required notice shall not bar the rights of the Indemnified Party under this Agreement except to the extent that such failure prejudices the Indemnifying Party's ability to defend and settle the Third Party Claim.

(b) To the extent permitted by Applicable Law, the Indemnifying Party will have the right at any time to assume and thereafter conduct the Indemnified Party's defense of the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party provided that within 30 days after receipt of the notice of the claim the Indemnifying Party confirms in writing its responsibility therefore; provided, however, that the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party, (not to be withheld unreasonably) unless the judgment or proposed settlement involves only the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party and includes a full and complete release of the Indemnified Party as an unconditional term thereof.

(c) Unless and until the Indemnifying Party timely assumes the defense of the Third Party Claim as provided in Section 11.2(b) above, however, the Indemnified Party may defend against the Third Party Claim in any manner it reasonably may deem appropriate.

(d) In no event will the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without seeking the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

(e) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense) and the Indemnified Party shall be entitled to have sole entire control over the defense or settlement of the Claim or portion of a Claim to the extent the Claim or portion of a Claim seeks an order, injunction, non-monetary or other equitable relief against the Indemnified Party which if successful, could materially interfere with the business, operations assets, condition (financial or otherwise) or prospects of the Indemnified Party.

11.4 Survival of Remedies. The rights and remedies given in Article XI shall survive indefinitely.

ARTICLE XII. MISCELLANEOUS

12.1 Assignment. It is expressly acknowledged by Pontiac that the District will assign, in whole or in part, its interest under this Agreement in its sole discretion and without the need of any approval of Pontiac, to the New District. Other than this assignment, neither party shall assign its rights, nor secure the assumption of its obligations under this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.2 Continued Support. In the event and for so long as the District is contesting or defending against any Claim in connection with (a) any transaction contemplated under this Agreement, (b) the resolution of any encroachments or trespasses by the Pontiac System, encroaching easements, encumbrances or rights-of-way, or (c) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving the Pontiac System, Pontiac will cooperate with the contesting or defending the District and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of Pontiac. The rights and obligations in this Section 12.2 shall survive indefinitely.

12.3 Cooperation on Repairs. After the Restructuring Date, Pontiac shall cooperate with the District to facilitate any repairs, improvements or expansions constructed by the District to the Pontiac System.

12.4 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.

12.5 Incorporation of Schedules and Exhibits. The schedules and exhibits identified in this Agreement are incorporated by reference and made part of this Agreement.

12.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties. No amendment to this Agreement shall be valid unless it is in writing and signed by both parties by an authorized representative.

12.7 Taking of Necessary Action. Subject to the terms and conditions of this Agreement, each of the parties agrees, subject to Applicable Law, to use all reasonable best efforts promptly to take or cause to be taken all action and to promptly do or cause to be done all things necessary, proper or advisable under Applicable Laws and regulations to consummate and make effective the transactions contemplated by this Agreement. Without limiting the foregoing and subject to the terms and conditions of this Agreement, the parties shall use their commercially reasonable efforts to obtain and make all Required Regulatory Approvals. Each party hereto shall cooperate with the other in good faith to help the other satisfy its obligations hereunder.

12.8 Severability and Invalidity. If any provision of this Agreement is declared unenforceable or contrary to law, the remaining portions shall be given full force and effect.

12.9 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. This Agreement may be executed by facsimile signatures which shall be considered originals.

12.10 Headings. The headings of the articles, sections and paragraphs of this Agreement and of the exhibits hereto are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof or thereof.

12.11 Construction and References. Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require. Unless otherwise specified, all references in this Agreement to articles, sections, paragraphs or clauses are deemed references to the corresponding articles, sections, paragraphs or clauses in this Agreement, and all references in this Agreement to exhibits are references to the corresponding exhibits attached to this Agreement.

12.12 Modification and Waiver. Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions hereof (whether or not similar). Oral modifications of this Agreement are not permitted. Modification or amendment of this Agreement shall require the written approval of the District and Pontiac.

12.13 Dispute Resolution. In the event that a dispute arises among the parties, the disputing party shall provide the other party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive shall also be included in the

notice and response. The executives shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as they reasonably deem necessary to resolve the dispute. If the executives have not resolved the dispute through good faith efforts within sixty (60) days, then, before resorting to taking the case to court, the parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both parties. If either party is unsatisfied with the outcome of the mediation, either party may file suit.

12.14 Notices. Any notice, request, instruction or other document to be given under this Agreement shall be in writing and delivered personally, via telecopy (with receipt confirmed) or by registered or certified mail, postage prepaid:

(a) if to the District, to:

John P. McCulloch
Oakland County Water Resources Commissioner
District Secretary
One Public Works Drive, Bldg. 95 West
Waterford, Michigan 48328-1907

If to Pontiac, to:
City of Pontiac
City Clerk
Attn: Emergency Manager
47450 Woodward Ave.,
Pontiac, Michigan 48342

12.15 No Third-Party Beneficiaries. Other than the assignee of the District, which is an intended third party beneficiary of this Agreement, there are no intended third-party beneficiaries of this Agreement.

[Signatures on Following Page]

THIS AGREEMENT is executed on the date above-stated by each of the District and Pontiac by its authorized Signatory.

PONTIAC CLINTON RIVER # 2 DRAIN
DRAINAGE DISTRICT

By: _____
John P. McCulloch
Oakland County Water Resources
Commissioner
Its: Authorized Agent

CITY OF PONTIAC

By: _____
Louis H. Schimmel
Its: Emergency Manager under Act 4 of
Public Acts of 2011

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