



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER

LOUIS H. SCHIMMEL

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Dated: April 20, 2012

ORDER NO. S-200

RE: Approval of Defeasance of City of Pontiac Water Supply System Revenue Bonds, Series 1995

TO: Sherikia Hawkins, City Clerk
John Naglick, 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 agreements 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 provide for the defeasance of certain bonds of the City of Pontiac from the proceeds to be received by the City from the restructuring of the Sanitary Sewage Disposal System of the City 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 an escrow agreement in the form attached to the Resolution set forth below.

ATTACHMENT A

RESOLUTION AUTHORIZING ACTION TO DEFEASE
AND APPROVING ESCROW AGREEMENT
ALL OF THE OUTSTANDING
CITY OF PONTIAC WATER SUPPLY SYSTEM
REVENUE BONDS, SERIES 1995
PRIOR TO MATURITY

WHEREAS, the City issued its City of Pontiac Water Supply System Revenue Bonds, Series 1995 (the "Bonds") to pay part of certain costs of public improvements and paying costs incidental to the issuance of the series of Bonds (the "Prior Bonds"); and

WHEREAS, the City has or will have available sufficient funds to defease all of said Bonds prior to maturity with maturities and interest rates as set forth in *EXHIBIT A*, (such bonds referred to as the "BONDS TO BE DEFEASED") in an amount not to exceed _____ and to pay the costs of defeasing said Bonds; and

WHEREAS, pursuant to Act No. 202, Public Acts of Michigan, 1943, as amended, the defeasance will save the City approximately \$ _____ in interest costs over the life of the Bonds; and

WHEREAS, pursuant to Act No. 202, Public Acts of Michigan, 1943, as amended, in order that the BONDS TO BE DEFEASED may be properly defeased utilizing proceeds of the bonds, the City must enter into an agreement with a bank or trust company;

WHEREAS, the City must approve such defeasance;

NOW, THEREFORE, IT IS RESOLVED, as follows:

1. The City hereby approves the defeasance of all of the outstanding Bonds as described in *EXHIBIT A*.

2. The City hereby authorizes entering into an escrow agreement, dated as of June 1, 2012 (the "Escrow Agreement"), with a bank or trust company designated by the Emergency _____ Manager of the City. The Escrow Agreement shall be in substantially the form attached hereto as *EXHIBIT B* (with such changes, modifications and additions as may be approved by the Emergency _____ Manager of the City). The Escrow Agreement shall be completed with appropriate figures prior to execution on behalf of the Emergency _____ Manager of the City.

3. The Emergency _____ Manager of the City is hereby authorized, upon execution of the Escrow Agreement, to cause \$1,000 to be deposited with the escrow agent and when sufficient monies are received by the City in Escrow for this purpose to cause those to be deposited with the escrow agent, pursuant to said Escrow Agreement, to

Exhibit A

\$3,675,000
City of Pontiac Water Supply
System Revenue Bonds, Series 1995

DUE JANUARY 1, 2014 THROUGH JANUARY 1, 2015

| <u>Principal</u> | <u>Rate</u> | <u>Due</u> |
|------------------|-------------|-----------------|
| \$285,000 | 6.500% | January 1, 2014 |
| 300,000 | 6.500% | January 1, 2015 |

the same in accordance with the standards specified in this Agreement and shall be entitled to advice of counsel concerning all matters of and the duties under this Agreement, and may in all cases pay such reasonable compensation to such counsel and in addition to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the same. The Escrow Agent may act upon the opinion or advice of any counsel. The Escrow Agent shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice.

(b) The Escrow Agent shall not be responsible for any recital in this Agreement, or in the Refunding Bonds or for the validity of the execution by the City of this Agreement or of any supplements to it or instruments of further assurance. The Escrow Agent shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the City, except as set forth in this Agreement. The Escrow Agent shall be only obligated to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Escrow Agent.

(c) The Escrow Agent may become the owner of the Prior Bonds with the same rights which it would have if not Escrow Agent.

(d) The Escrow Agent shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telex, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Escrow Agent pursuant to this Agreement upon the request or consent of any person who at the time of making such request or consent is the owner of any Prior Bond, shall be conclusive and binding upon all future owners of the same Prior Bond.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Escrow Agent shall be entitled to rely upon a certificate of the City signed by (i) the Emergency _____ Manager of the City (ii) any other duly authorized person as sufficient evidence of the facts contained in it, but may secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Escrow Agent may accept a certificate of the Emergency _____ Manager of the City to the effect that an ordinance or resolution in the form

shall be uncertain as to how to proceed in a situation not explicitly addressed by the terms of this Agreement whether because of conflicting demands by the other parties hereto or otherwise, be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties hereto other than the Escrow Agent further agree to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to the same.

(l) The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document between the other parties hereto, in connection herewith. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other Agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (i) DAMAGES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES WHICH RESULT FROM THE ESCROW AGENT'S FAILURE TO ACT IN ACCORDANCE WITH THE STANDARDS SET FORTH IN THIS AGREEMENT, OR (ii) SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(m) Any banking association or corporation into which the Escrow Agent may be merged converted or with which the Escrow Agent may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(n) In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting property deposited under this

Section 4. Investments. As directed by the City, moneys deposited in the Escrow Fund will be a Non-Interest bearing cash deposit shown on APPENDIX III ("Escrow Deposit"), in the amount of \$ _____ to be held in the Escrow Fund to meet the escrow requirements for the Bonds to be Redeemed.

The Escrow Deposit in the Escrow Fund shall be credited to the Escrow Fund and shall not be reinvested. The Escrow Agent shall not sell any Escrow Deposit. All moneys not invested as provided in this Agreement shall be held by the Escrow Agent as a trust deposit.

Section 5. Use of Moneys. Except as expressly provided in this Agreement, no paying agents' fees for the payment of principal of, premium, if any, or interest on the Bonds to be Redeemed or the Prior Bonds or other charges may be paid from the escrowed moneys or Escrow Deposit prior to retirement of all Prior Bonds, and the City agrees that it will pay all such fees from its other legally available funds as such payments become due prior to such retirement.

Section 6. Deficiency in Escrow Fund. At such time or times as there shall be insufficient funds on hand in the Escrow Fund for any purpose, the Escrow Agent shall promptly notify the City of such deficiency.

Section 7. Reports to City. The Escrow Agent shall deliver to the _____ of the City a semi-annual statement reflecting each transaction relating to the Escrow Fund; and on or before the first day of April of each year shall deliver to the City a list of assets of the Escrow Fund as of December 31 of such year and an operating statement for the Escrow Fund for the year then ended.

Section 8. Fees of Escrow Agent. The Escrow Agent agrees with the City that the charges, fees and expenses of the Escrow Agent throughout the term of this Agreement (other than the acceptance fee of the Escrow Agent) shall be the total sum of _____ Dollars (\$ _____) payable on the date of establishment, which charges, fees and expenses shall be paid from monies deposited with the Escrow Agent from the City bond proceeds and other available funds of the City, subject to the provisions of Section 12 below.

Section 9. Payments from Escrow Fund. The Escrow Agent shall without further authorization or direction from the City, collect the principal of, premium, if any, and interest on the Escrow Deposit promptly as the same shall become due (if any) and, to the extent that Escrow Deposit and moneys are sufficient for such purpose, shall on January 1, 2013 out of the Escrow Fund to the proper paying agent or agents or their successors for the Bonds to be Redeemed, of moneys sufficient for the payment of the principal of, premium, (if any), and interest on the Bonds to be Redeemed, all as set out in APPENDIX IV, IV and APPENDIX V. The payments so forwarded or transferred shall be

either event, the duties of the Escrow Agent shall terminate thirty (30) days after the date of such notice (or as of such earlier date as may be mutually agreeable); and, the Escrow Agent shall then deliver the balance of the Escrow Fund then in its possession to a successor Escrow Agent as shall be appointed by the City.

If the City shall have failed to appoint a successor prior to the expiration of thirty (30) days following the date of the notice of resignation or removal, the then acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief; and, any such resulting appointment shall be binding upon the City.

Upon acknowledgment by any successor Escrow Agent of the receipt of the then remaining balance of the Escrow Fund, the then acting Escrow Agent shall be fully released and relieved of all duties, responsibilities, and obligations under this Agreement.

Section 15. Benefit. This Agreement shall be for the sole and exclusive benefit of the City, the Escrow Agent and the holders of the Bonds to be Redeemed. With the exception of rights expressly conferred in this Agreement, nothing expressed in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties set forth above, any legal or equitable right, remedy or claim under or in respect to this Agreement.

Section 16. Severability. If any provision of this Agreement shall be held or deemed to be invalid or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions contained in this Agreement or render the same invalid, inoperative or unenforceable to any extent whatsoever.

Section 17. Notices. Any notice, request, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed, by registered or certified mail, postage prepaid or sent by facsimile transmission, except reports as required in Section 7 which may be delivered by regular mail, as follows:

If to the City:
City of Pontiac
47450 Woodward Avenue
Pontiac, Michigan 48342
Attention: Louis H. Schimmel,
Emergency _____ Manager
Facsimile: 248-758-3292

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it by their duly authorized officers as of the date first above written.

CITY OF PONTIAC

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

THE HUNTINGTON NATIONAL BANK,
as Escrow Agent

By: _____
Its: _____

Dmh/ES-EFM9-WATER-1995

APPENDIX II

NOTICE OF REDEMPTION

\$3,675,000

**City of Pontiac Water Supply
System Revenue Bonds, Series 1995**

DUE JANUARY 1, 2014 THROUGH JANUARY 1, 2015

NOTICE IS HEREBY GIVEN that the City of Pontiac, Oakland County, State of Michigan has called for redemption, on January 1, 2013, (the "Redemption Date"), all of the callable outstanding City of Pontiac Water Supply System Revenue Bonds, Series 1995 (the "Bonds"), bearing the original issue date of September 1, 1995, maturing in the principal amounts, on the dates, bearing interest at the rates, with the "CUSIP" numbers, as follows:

| <u>Principal</u> | <u>Rate</u> | <u>CUSIP*</u> | <u>Due</u> |
|------------------|-------------|---------------|-----------------|
| \$285,000 | 6.500% | _____ | January 1, 2014 |
| 300,000 | 6.500% | _____ | January 1, 2015 |

Said Bonds will be redeemed at 100% of the par value thereof.

The Bonds to be redeemed should be surrendered on the Redemption Date. The Bonds shall not bear interest on and after the Redemption Date, whether the Bonds are presented for redemption or not.

Bonds may be surrendered for payment at the office of the Bond Registrar and Paying Agent indicated below. Method of delivery is at the option of the Holder, but if by mail, registered mail is suggested.

Under the provisions of the Interest and Dividend Tax Compliance Act of 1983 and the Comprehensive National Energy Policy Act of 1995, paying agents making payments of principal on municipal securities may be obligated to withhold a 31% tax from remittances to individuals who have failed to furnish the paying agent with a certified and valid Taxpayer Identification Number on a fully completed Form W-9 or Form W-8BEN, as applicable. Holders of the above described Bonds, who wish to avoid the application of these provisions, should submit certified Taxpayer Identification Numbers on I.R.S. Form W-9 or Form W-8BEN, as applicable, when presenting their securities for redemption or for payment at maturity.

* No representation is made as to the correctness of the CUSIP numbers either as printed on the Bonds or as contained herein.

Dmh/ES-EFM9-WATER-1995

APPENDIX IV

\$3,675,000
City of Pontiac Water Supply
System Revenue Bonds, Series 1995

REDEMPTION SCHEDULE

| Date | Principal | Interest | Redeemed Principal | Redemption Premium | Total Debt Service |
|-------------|------------------|-----------------|-------------------------------|-------------------------------|-------------------------------|
| 1/01/13 | \$270,000.00 | \$27,787.50 | \$585,000.00 | \$0.00 | \$882,787.50 |

Dmh/ES-EFM9-WATER-1995