

JAY SHAH, Chairperson
ANDY MEISNER, Vice-Chairperson &
O.C. Treasurer
DONALD SNIDER, Secretary
JAMELE HAGE
L. BROOKS PATTERSON, O.C. Executive

AGENDA

WEDNESDAY, NOVEMBER 7, 2018

9:00 a.m.

Public Works Building
Facilities Management Conference Room, 1st Floor
One Public Works Drive
Waterford, MI 48328

1. Roll Call
2. Approval of Agenda – **Committee Action Required**
3. Approval of Minutes – **Committee Action Required**
4. Comments from Public
5. Settlement Agreement & Release for Phoenix Center (pages **1** thru **3**)
 - a) Memo from Jody Hall, Corp Counsel (pages **1** thru **3**) – **Informational**
6. Animal Shelter Project (pages **4** thru **7**)
 - a) Project Work In Progress, Statement of Fund Balance, Balance Sheet (pages **4** thru **7**) – **Informational**
7. Infrastructure – IT Projects (pages **8** thru **9**)
 - a) Project Work In Progress, Statement of Fund Balance, Balance Sheet (pages **8** thru **9**) – **Informational**
8. Other Business
9. Adjourn until next regular meeting on **Wednesday, December 12, 2018**

To: Jay Shah, Chairperson, Oakland County Building Authority
From: Jody Hall, Assistant Corporation Counsel
Date: November 1, 2018
Re: Request for Agenda Item for November 7, 2018 Meeting: Settlement Agreement and Release for the Phoenix Center

I am requesting that the above-referenced item be placed on the Building Authority Agenda for review and approval on November 7, 2018.

Below is a brief overview of the events leading to the Settlement Agreement and Release.

On October 30, 1979, the City of Pontiac (“City”), the Pontiac Downtown Development Authority, and the Downtown Pontiac Development Company entered into a Comprehensive Development Agreement (“Development Agreement”), recorded at Liber 7770, Page 127, Oakland County Records, which required, among other obligations, that the developer construct a parking deck (the “Deck”), a plaza (the “Plaza”), and other improvements on the public sites of a certain parcel of land located in the City of Pontiac, now commonly known as the “Phoenix Center.”

The Development Agreement provided that the City convey certain parcels of land within the project area to the developer to develop various buildings on private sites within the project area, including, but not limited to, two office buildings now known as the Ottawa Towers.

On May 8, 1980, a Declaration of Easements (“Declaration of Easements”) was executed and recorded at Liber 7788, Page 01, Oakland County Records, which created certain easements and other rights and obligations as referenced therein.

On December 8, 2005, the Oakland County Board of Commissioners, via MR# 05309, authorized the Building Authority to issue bonds, in the

aggregate principal amount of \$20,500,000.00, for refinancing existing bonds for the Phoenix Center and for improvements to the Phoenix Center. These bonds were issued on March 1, 2006.

The Ottawa Towers office buildings are now owned by Ottawa Tower II, LLC and the North Bay Drywall, Inc. Profit Sharing Plan and Trust.

On July 5, 2012, the City's Emergency Manager issued Order S-221 regarding the demolition of the Phoenix Center. Thereafter, in July 2012, the Ottawa Towers commenced litigation against Defendants (City of Pontiac, Louis Schimmel, Emergency Manager of the City of Pontiac, Oakland County, and Oakland County Building Authority) to prevent the demolition of the Phoenix Center and to assert related claims against the Defendants (Oakland County Circuit Court Case No. 12-130331-CH, the "2012 Case"). The City and County filed counterclaims against the Ottawa Towers. On November 30, 2012, the Oakland County Circuit Court entered a preliminary injunction preventing the demolition of the Phoenix Center, among other relief. At the time the case was commenced, the Building Authority held title to the Phoenix Center (due to bonds issued to refinance the debt associated with the Phoenix Center and for improvements thereto). However, during the pendency of the case, the City paid the bonds¹ and the Building Authority transferred title of the Phoenix Center to the City (as required by the lease and sublease); thereafter, the counterclaims were dismissed.

On March 28, 2014, the City filed a condemnation action against the Ottawa Towers, among others, relating to the Phoenix Center (Oakland County Case No. 14-139761-CC, the "2014 Case"). The City's condemnation action was dismissed in October 2014 by the Oakland County Circuit Court, which dismissal was thereafter affirmed upon appeal; however, the Ottawa Towers' claim for reimbursement of attorney fees and costs under MCL 213.66 remains pending.

The Parties participated in mediation, facilitated by the Honorable Gerald Rosen (retired), to assist with the resolution of the remaining claim. The Parties agreed upon the material terms for settling the remaining claim in the form of a Proposed Term Sheet dated April 30, 2018. Based upon the Proposed Term Sheet, the Parties drafted a Settlement Agreement and Release, which resolves the 2012 Case and 2014 Case.

All payments and obligations included in the Settlement Agreement and Release are the sole responsibility of the City. The Building Authority and County assume no liability, responsibilities, or payment obligations in connection with the proposed Settlement Agreement and Release.

¹ The bonds were defeased on May 1, 2013 as referenced in Oakland County Board of Commissioners MR# 13073. The Building Authority approved such defeasance on April 18, 2013.

Request for Placement on Agenda
November 1, 2018
Page 3 of 3

The City of Pontiac considered and approved the Settlement Agreement and Release on October 30, 2018. Myself and our outside counsel, David Timmis, will be the presenters of this item at the November 7, 2018 meeting. A copy of the Settlement Agreement and Release will be forwarded within the next day, once we receive a finalized version. Please let me know if you have any questions or if you need anything else from me.



Facilities Management
PROJECT WORK IN PROGRESS
BA Animal Ctrl Pet Adoption Ct
10000002199
 (as of September 30, 2018)

	Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
BLDCO - Building Construction				
702000 - Salaries		0.00	13,079.09	
730352 - Construction		0.00	13,194,856.32	
773535 - Info Tech CLEMIS		0.00	200.59	
777560 - Radio Communications		0.00	3,599.06	
Building Construction TOTALS				
13,429,604.00	0.00	13,211,735.06	\$217,868.94	
CONT - Contingency				
730359 - Contingency		0.00	77,560.00	
730520 - Design Fees		0.00	3,660.00	
Contingency TOTALS				
94,000.00	0.00	81,220.00	\$12,780.00	
FM_CONSTR_DOCS - Construction Documents				
730520 - Design Fees		0.00	847,608.85	
Construction Documents TOTALS				
820,000.00	0.00	847,608.85	(\$27,608.85)	
FM_DESIGN_DEV - Design Development				
702000 - Salaries		0.00	215.25	
Design Development TOTALS				
0.00	0.00	215.25	(\$215.25)	
FM_PRELIM_PLNG - Preliminary Planning				
702000 - Salaries		0.00	77.26	
Preliminary Planning TOTALS				
0.00	0.00	77.26	(\$77.26)	
FRINGE_BENEFITS - Fringe Benefits				
722000 - Fringe Benefits		0.00	8,600.75	
Fringe Benefits TOTALS				
0.00	0.00	8,600.75	(\$8,600.75)	
FURNISHINGS - Furnishings				
760160 - Furniture and Fixtures		0.00	112,402.83	
Furnishings TOTALS				
105,000.00	0.00	112,402.83	(\$7,402.83)	
GLB - GL Balance Sheet				
730352 - Construction		0.00	214.45	
GL Balance Sheet TOTALS				
0.00	0.00	214.45	(\$214.45)	
LEGAL - Legal and Financial				
731073 - Legal Services		0.00	117,337.50	
731528 - Publishing Legal Notices		0.00	1,850.75	
793938 - Discount on Bonds		0.00	23,432.54	
Legal and Financial TOTALS				
250,000.00	0.00	142,620.79	\$107,379.21	
MAT - Storeroom Materials Only				



Facilities Management
PROJECT WORK IN PROGRESS
BA Animal Ctrl Pet Adoption Ct
100000002199
 (as of September 30, 2018)

	Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
775754 - Maintenance Department Charges		0.00	486.08	
Storeroom Materials Only TOTALS	0.00	0.00	486.08	(\$486.08)
OWNERS COST - OWNERS COSTS				
702000 - Salaries		0.00	832.91	
730324 - Communications		0.00	3,105.00	
730352 - Construction		0.00	302,718.57	
731115 - Licenses and Permits		0.00	110,435.92	
731241 - Miscellaneous		0.00	8,848.47	
731360 - Planning		0.00	106,230.93	
OWNERS COSTS TOTALS	690,396.00	0.00	532,171.80	\$158,224.20
TESTING - Testing Services				
731906 - Testing Services		0.00	40,168.81	
Testing Services TOTALS	61,000.00	0.00	40,168.81	\$20,831.19

Project 100000002199 - BA Animal Ctrl Pet Adoption Ct			
Total Project Expenses			
Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
\$15,450,000.00	\$0.00	\$14,977,521.93	\$472,478.07
Total Project Revenue			
Account	Month-to-Date Revenue	Life-to-Date Revenue	
655077-Accrued Interest Adjustments	\$51.42	\$25,546.64	
655385-Income from Investments	\$916.61	\$210,603.96	
697551-Issuance of Bonds	\$0.00	\$15,450,000.00	
TOTAL REVENUE	\$968.03	\$15,686,150.60	
REVENUE OVER/(UNDER) EXPENSES		\$708,628.67	

County of Oakland
BA Animal Control Pet Adoption
Statement of Fund Balance
For The Twelve Months Ended September 31, 2018 (Mo. 13)
Fund 41425

Revenues:

Income from Investments	20,812.18
Accrued Interest Adjustments	(1,574.64)
	19,237.54

Expenditures:

Charges Against Project	79,280.99
	(60,043.45)
Subtotal	
Operating Transfers In	0.00
Operating Transfers Out	0.00

Fund Balance at Beginning of Year	768,672.12
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Fund Balance at September 30, 2018 (Mo. 13)	\$708,628.67
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**County of Oakland
BA Animal Control Pet Adoption
Balance Sheet
9/30/2018 (Mo. 13)
Fund 41425**

ASSETS

Cash Operating	683,082.03
Accrued Interest on Investment	25,546.64
	<u>708,628.67</u>

LIABILITIES AND FUND BALANCE

Current Liabilities:

Accounts Payable	0.00
Vouchers Payable	0.00
Total Current Liabilities	<u>0.00</u>

Fund Balance	<u>708,628.67</u>
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Total Liabilities and Fund Balance	<u><u>708,628.67</u></u>
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County of Oakland
BA-FAC Infrastructure-IT Projects
Statement of Fund Balance
For The Twelve Months Ended September 30, 2018 (Mo. 13)
Fund 41423

Revenues:	
Income from Investments	59,291.57
Accrued Interest Adjustments	2,655.91
Refund Prior Years Expenditure	28,977.58
	90,925.06
Expenditures:	
Charges Against Project	(5,375,223.31)
Subtotal	(5,284,298.25)
Reimbursement General	
Operating Transfers In	
Operating Transfers Out	
Fund Balance at Beginning of Year	5,673,515.20
Fund Balance at September 30, 2018 (Mo. 13)	\$389,216.95

**County of Oakland
BA-FAC Infrastructure-IT Projects
Balance Sheet
September 30, 2018 (Mo. 13)
Fund 41423**

ASSETS

Cash Operating	\$1,624,263.95
Accrued Interest on Investment	13,297.42
Due from Com. Road Commission	28,977.58
Total Assets	<u><u>\$1,666,538.95</u></u>

LIABILITIES AND FUND BALANCE

Current Liabilities:	
Vouchers Payable	1,277,322.00
Accounts Payable	0.00
Total Current Liabilities	<u>1,277,322.00</u>
Fund Balance	<u>389,216.95</u>
Total Liabilities and Fund Balance	<u><u>\$1,666,538.95</u></u>