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CASE – 252642

**MICHIGAN STRATEGIC FUND  
GRANT AGREEMENT  
WITH THE  
MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY**

THIS GRANT AGREEMENT (this “Agreement”), effective as of December 18, 2018 (the “Effective Date”), is between the Michigan Strategic Fund, a public body corporate and politic (the “MSF”), whose address is 300 North Washington Square, Lansing, Michigan 48913, and the Marquette Downtown Development Authority, a Michigan public body corporate, whose address is 337 West Washington Street, Michigan 49855 (the “DDA”). As used in this Agreement, the MSF and the DDA are, individually, a “Party” and, collectively, the “Parties”.

**RECITALS**

A. The Michigan Legislature passed and the Governor signed into law, legislation establishing the 21<sup>st</sup> Century Jobs Trust Fund Initiative.

B. As part of the 21<sup>st</sup> Century Jobs Trust Fund Initiative, and pursuant to the Act (specifically, MCL125.2088b(2)(c)), funds appropriated to the MSF for purposes of carrying out the Act shall be expended or invested for activities authorized under the Act.

C. Pursuant to the Act (specifically, MCL 125.2007(c)), the MSF has, among other things, the power to make grants.

D. Under the control and direction of the MSF Board, staff of the Michigan Economic Development Corporation, a public body corporate (the “MEDC”), provides administrative services for the MSF.

E. On April 24, 2018, the MSF approved the creation and operation of the Façade Restoration Initiative to award grants to eligible applicants to strengthen and expand the positive impact of local façade improvements in downtowns and commercial corridors around Michigan (“FRI”).

F. The DDA responded to a Request for Information seeking an FRI award.

G. On August 28, 2018, the MSF Board approved an award to the DDA in the amount of up to Three Hundred Thousand Dollars (\$300,000) to be disbursed under the terms of this Agreement (the “MSF Grant”).

H. Consistent with this Agreement, the DDA desires to re-grant the MSF Grant under the DDA’s existing façade improvement program (“DDA Program”) to award its own grants to eligible grantees under the DDA Program (each an “Eligible Sub-grantee”) for improvements to the respective Eligible Grantee privately owned buildings (collectively, “Façade Projects”).

In consideration of the recitals and promises in this Agreement, the Parties agree:

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## ARTICLE I

### DEFINITIONS

**Section 1.1 Defined Terms.** Except as otherwise defined in this Agreement, all capitalized terms in this Agreement shall have the respective meanings set forth on Exhibit A, which contains the defined terms for this Agreement.

**Section 1.2 Construction of Certain Terms.** Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; and (ii) words using the singular or plural number also include the plural or singular number.

## ARTICLE II

### MSF GRANT

**Section 2.1 MSF Grant Commitment.** Subject to the terms and conditions of this Agreement, and in reliance upon the representations and warranties of the DDA set forth in this Agreement, the MSF agrees to make, and the DDA agrees to accept, the MSF Grant.

**Section 2.2 MSF Grant Manager.** The MSF Fund Manager shall designate a Grant Manager to administer and monitor the performance of the DDA and Grant Disbursements under this Agreement ("Grant Manager"). The Grant Manager may be changed at the discretion of the MSF Fund Manager. The initial Grant Manager is Vern Taylor. The MSF Fund Manager shall give the DDA notice of any change to the designated Grant Manager.

### **Section 2.3 Grant Terms.**

(a) **Vendor Registration.** To receive the MSF Grant, the DDA must register to receive payments by electronic funds transfer at the State Integrated Governmental Management Applications (SIGMA) Vendor Self Service (VSS) website ([www.michigan.gov/VSSLogin](http://www.michigan.gov/VSSLogin)). All payments to the DDA under this Agreement will be made via electronic funds transfer.

(b) **Conditions to MSF Grant Disbursement.** The MSF's obligation to fund any portion of the MSF Grant is subject to all of the terms and conditions of this Agreement, including without limitation, the DDA's satisfaction of all of the requirements to obtain a Grant Disbursement under the Key Milestones set forth on Exhibit B, the approval of the Grant Manager as set forth in Section 2.3(c) below, and the DDA being in compliance with this Agreement. Provided further, the DDA may only submit a Grant Disbursement Request (i) no more frequently than once every thirty (30) days (unless otherwise permitted by the MSF Fund Manager); and (ii) if no other Certificate submitted by the DDA is pending review and action of the Grant Manager as more particularly described in Section 2.3(c).

(c) **Grant Manager Review.** The Grant Manager shall within thirty (30) calendar days of receipt of a Certificate, do one or more of the following:

(i) request to review DDA records, request additional information, or request a site visit to the DDA or the Façade Projects ("Site Visit"), or any combination, all of which shall be determined in the sole discretion of the Grant Manager. The DDA shall comply with the written request of the DDA to the satisfaction of the Grant Manager, or the Grant Manager shall reject the Certificate in the manner provided in Section 2.3(c)(ii); or

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(ii) reject the Certificate, by providing an explanation of the reason for the rejection, which may be based on any one or more of the following: (A) the failure of the DDA to demonstrate achievement of the applicable Key Milestone, (B) there is an outstanding Event of Default, or (C) the DDA is otherwise not in compliance with this Agreement; or

(iii) approve the Certificate provided there is no outstanding Event of Default, the DDA is otherwise in compliance with this Agreement, and the DDA has achieved all of its then required Key Milestones to the satisfaction of the Grant Manager.

If after receipt of a Certificate, the Grant Manager requests to review DDA records, requests additional information or otherwise conducts a Site Visit, the Grant Manager shall take the action set forth in Section 2.3(c)(ii) or Section 2.3(c)(iii) above, within an additional thirty (30) calendar days after the last to occur of: (A) the date the DDA provides the DDA records or additional information to the Grant Manager as requested by, and to the satisfaction of, the Grant Manager, or (B) the date of the Site Visit conducted by the Grant Manager.

### **ARTICLE III**

#### **REPRESENTATIONS AND COVENANTS OF THE DDA**

The DDA represents and warrants to the MSF:

**Section 3.1 Organization.** The DDA is a public body corporate and has the power and authority to enter into and perform its obligations under this Agreement.

**Section 3.2 Authority.** The execution, delivery and performance by the DDA of this Agreement has been duly authorized and approved by all necessary and proper action on the part of the DDA and will not violate any provision of law or result in the breach, be a default of, or require any consent under, any agreement or instrument to which the DDA is a party, or by which the DDA or its property may be bound or affected. This Agreement is valid, binding, and enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws or principles of equity affecting the enforcement of creditors' rights generally or by general principles of equity.

**Section 3.3 Consent.** Except as has been disclosed in writing to the MSF, no consent or approval is necessary from any governmental or other entity, except the MSF, as a condition to the execution and delivery of this Agreement by the DDA or the performance of any of its obligations under this Agreement.

**Section 3.4 Full Disclosure.** Neither this Agreement, nor any written statements or certificates furnished by the DDA to the MEDC or the MSF in connection with the making of the MSF Grant and Agreement contain any untrue statement of material fact, or to the best of the DDA's knowledge, omit a fact necessary to make the statements true. There are no undisclosed facts, which materially adversely affect or, to the best of the DDA's knowledge, are likely to materially adversely affect the properties, business, or condition (financial or otherwise) of the DDA or the ability of the DDA to perform its obligations under this Agreement.

**Section 3.5 Litigation or Other Proceedings.** Except as has been disclosed in writing to the MSF, to the knowledge of the DDA and its officers and directors, there are no suits or proceedings pending or, to the knowledge of the DDA or their officers and directors, threatened, before any court, governmental commission, board, bureau, or other administrative agency or

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tribunal, which, if resolved against the DDA, would have a material adverse effect on the financial condition or business of the DDA or impair the DDA's ability to perform its obligations under the Agreement.

**Section 3.6 Compliance with Laws.** To its knowledge, the DDA is not and will not during the Term be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by any governmental authority to which it is subject and will not knowingly fail to obtain any licenses, permits or other governmental authorizations necessary to the ownership of its properties or to the conduct of its operations, which violation or failure to obtain might materially and adversely affect its operations, properties or condition (financial or otherwise).

**Section 3.7 Uses of Grant Disbursements.**

(a) The DDA shall not use any Grant Disbursement for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, as prohibited by the Act (see MCL 125.2088c(4)(c) and (d)).

(b) All Grant Disbursements to the DDA shall be paid by the DDA to applicable Eligible Sub-grantees under the DDA Program for Façade Projects. In no event shall the DDA approve any Grant Disbursement to be used for the purpose of payment of salaries, wages, benefits, or compensation of any kind, in any form, for the benefit of any officer, director or employee of the DDA.

(c) In addition to submission of information required by the Key Milestones, if requested by the Grant Manager, the DDA shall provide additional information satisfactory to the Grant Manager evidencing the DDA's use of the Grant Disbursements.

This Section 3.7 shall survive indefinitely.

**Section 3.8 Criminal or Civil Matters.** The DDA affirms that to the best of its knowledge that its officers, directors, managerial employees, and if applicable, any person who, directly or indirectly, holds a pecuniary interest in the DDA of 20% or more: (i) do not have any criminal convictions incident to the application for or performance of a state contract or subcontract; and (ii) do not have any criminal convictions or have not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes.

**Section 3.9 Conflict of Interest.** The DDA affirms that there exists no actual or potential conflict of interest between the DDA, the DDA's key personnel or its business, or any financial interest and the performance by the DDA under this Agreement. The DDA affirms that it has, and during the Term, will have, a procedure in place to require disclosure and subsequent management of conflicts of interest between the DDA's key personnel, business financial interests and its activities under the Agreement. In the event of a change in either its private interests or activities under this MSF Grant, the DDA will inform the MSF regarding possible conflicts of interest that may arise as a result of such change that would conflict with the DDA's performance of its obligations under this Agreement or otherwise create the appearance of impropriety with

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respect to this Agreement. The DDA agrees that conflicts of interest shall be resolved to the MSF's satisfaction. As used in this paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.

The DDA further affirms that neither the DDA nor its officers, directors, or employees, have accepted, shall accept, have offered, or shall offer, directly or indirectly, anything of value to influence the MSF, MEDC, its Executive Committee and their respective directors, participants, officers, agents and employees. The DDA also affirms that neither the DDA nor any of its officers, directors, or employees has paid or agreed to pay any person, other than bona fide employees and consultants working for the DDA, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

**Section 3.10 Key Milestones.** The DDA agrees to the Key Milestones set forth in Exhibit B. The Grant Manager determines compliance with the Key Milestones.

**Section 3.11 State Required Terms.** The DDA shall comply with all of its representations, warranties and obligations in this Agreement, including as set forth in Exhibit C. Additionally, the DDA, prior to delivering any portion of a Grant Disbursement to any Eligible Sub-grantee, the DDA shall require each Eligible Sub-grantee to deliver to the DDA a copy of the Eligible Sub-grantee Assurances, completed and fully signed by each the Eligible Sub-grantee, in substantially the form and substance set forth on Exhibit C-1. The DDA shall provide copies of the fully signed Eligible Sub-grantee Assurances to the Grant Manager upon request.

**Section 3.12 Discharge of Obligations.** During the Term, to the extent applicable and unless contested in good faith by appropriate proceedings, the DDA shall promptly pay and discharge all taxes, assessments, and governmental charges lawfully levied or imposed upon it (in each case before they become delinquent and before penalties accrue).

**Section 3.13. DDA Program.**

(a) Each of Eligible Sub-grantees shall be qualified by the DDA to receive a DDA Program grant for its respective Façade Project. Upon the reasonable request of the Grant Manager, the DDA shall provide a copy of each of the DDA Program grant agreements with Eligible Sub-grantees to the Grant Manager.

(b) The DDA Program requires Eligible Sub-grantees to fully complete their respective Façade Project.

(c) The DDA Program requires Eligible Sub-grantees to meet all requirements of the DDA Program, including without limitation,

(i) that each Eligible Sub-grantee must meet all applicable historic preservation guidelines and standards; and

(ii) that each Eligible Sub-grantee may not use any proceeds of MSF Grant or DDA Program to improve federal, state, county, locally owned or other buildings owned by the public; and

(iii) that at least 50% of the funding to complete each Façade Project must be derived from private and local funding; provided that while the source of such private and local funding

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may include donation based crowd-funding, such sources may not include the proceeds of any investment based crowd-funding.

#### ARTICLE IV

##### REPRESENTATIONS AND COVENANTS OF THE MSF

The MSF represents and warrants to the DDA:

**Section 4.1 Organization.** The MSF is a public body corporate and politic within the Department of Talent and Economic Development of the State of Michigan created under the Act. The MSF has the power and authority to enter into and perform its obligations under this Agreement.

**Section 4.2 Consent.** Except as disclosed in writing to the DDA, or provided by law, no consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the MSF or the performance of any of its obligations under this Agreement.

#### ARTICLE V

##### SUSPENSION, TERMINATION, DEFAULT AND REPAYMENT

**Section 5.1 Suspension, Termination, Event of Default.** Notwithstanding anything to the contrary, the MSF's obligation to disburse any portion of the MSF Grant shall automatically be suspended, and may be terminated as provided by this Agreement, all at the option of the MSF, upon the occurrence, and during the continuance, of any one or more of the following events (each, an "Event of Default"), unless a written waiver is provided by the MSF Fund Manager:

(a) the failure of the DDA to request Grant Disbursements in accordance with this agreement, which in the aggregate, total the full amount of the MSF Grant, by no later than March 31, 2020;

(b) any representation or covenant made by the DDA in support of this Agreement shall prove incorrect at the time that such representation was made in any material respect, including, but not limited to, any information provided in any Certificate or otherwise in support of any Key Milestone, or the representations and covenants set forth in Article III;

(c) any material failure by the DDA to comply with any of the terms, covenants and conditions on its part to be performed under this Agreement, including without limitation, any of the terms, covenants or conditions under Article III, or failure to fully satisfy any Key Milestone as required by this Agreement, which, if considered curable by the MSF Fund Manager, is not cured by the DDA to the satisfaction of the MSF Fund Manager within the Cure Period;

(d) the DDA is in default, violation, breach, or non-compliance, of any kind or nature under any agreement or requirement, including submission of reports, with the MEDC, or for any department or agency within the State, federal, local or any governmental agency, including without limitation, the Department of Licensing and Regulatory Affairs, the Department of Talent and Economic Development, or the MSF, which, if considered curable by the MSF Fund Manager, is not cured by the DDA to the satisfaction of the MSF Fund Manager within the Cure Period;

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(e) any voluntary bankruptcy or insolvency proceedings are commenced by, or against, the DDA, with any such proceedings against the DDA not being set aside within sixty (60) calendar days from the date commenced.

**Section 5.2 Repayment for Certain Events.**

(a) **Event of Default.** In the Event of a Default, the DDA shall upon written notice by the MSF Fund Manager, repay an amount equal to the amount of the MSF Grant then disbursed to the DDA. Provided however:

(i) No repayment by the DDA is required as a result of the occurrence of an Event of Default under Section 5.1(a); and

(ii) Except as provided in Section 5.2(b), no repayment by the DDA is required as a result of the occurrence of an Event of Default which is the result of one or more Eligible Sub-grantees failing to comply with their DDA Program grant, or completing their respective Facade Project, in order for the DDA to timely submit to the Grant Manager the required Project Completion Certificate; and

(iii) No repayment by the DDA is required as a result of the occurrence of an Event of Default which is the result of one or more Eligible Sub-grantees failing to sign their respective acknowledgment on the Project Completion Certificate in order for the DDA to timely submit to the Grant Manager the required Project Completion Certificate.

In the case of Section 5.2(a)(ii) or Section 5.2(a)(iii), the DDA shall fully describe: (i) the facts and circumstances known to it surrounding the status of the event(s), and (ii) the DDA's effort, and plans, to seek compliance by the applicable Eligible Sub-grantee.

(b) **Recovery by the DDA.** In the event the DDA receives repayment for any reason, voluntarily or involuntarily, of any portion of any DDA Program grant funds from or on behalf of any Eligible Sub-grantee, the amount received (not to exceed the amount of the MSF Grant used to fund the applicable DDA Program grant), less reasonable costs of collection, if any, shall be repaid to the MSF within thirty (30) calendars of receipt by the DDA.

(d) **Failure to Disburse.** In the event the DDA has received Grant Disbursements and has not disbursed all such Grant Disbursements under the DDA Project as permitted by this Agreement by September 30, 2021, the DDA shall return to the MSF all such MSF Grant monies not disbursed by the DDA.

**Section 5.3 Available Remedies.** The suspension or termination of payments to the DDA are not intended to be the sole and exclusive remedies available to the MSF, and each remedy shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law, in equity, by statute or otherwise. The DDA shall also pay all costs and expenses, including, without limitation, reasonable attorney's fees and expenses incurred by the MSF in collecting any sums due the MSF from the DDA under this Agreement, in enforcing any of its rights against the DDA under this Agreement, or in exercising any remedies against the DDA available to the MSF.

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## ARTICLE VI

### MISCELLANEOUS

**Section 6.1 Notice.** Any notice or other communication under this Agreement shall be in writing and e-mailed, or faxed, or mailed by first class mail, postage prepaid, or sent by express, overnight courier to the respective Party at the address listed at the beginning of this Agreement or such other last known addresses or e-mail accounts, and shall be deemed delivered one business day after the delivery or mailing date.

**Section 6.2 Counterparts; Facsimile/Pdf Signatures.** This Agreement may be signed in counterparts and delivered by facsimile or in pdf form or other electronic format, and in any such circumstances, shall be considered one document and an original for all purposes.

**Section 6.3 Severability.** All of the clauses of this Agreement are distinct and severable and, if any clause shall be deemed illegal, void or unenforceable, it shall not affect the validity, legality or enforceability of any other clause or provision of this Agreement. To the extent possible, the illegal, void or unenforceable provision shall be revised to the extent required to render the Agreement enforceable and valid, and to the fullest extent possible, the rights and responsibilities of the Parties shall be interpreted and enforced to preserve the Agreement and the intent of the Parties. Provided, if application of this section should materially and adversely alter or affect a Party's rights or obligations under this Agreement, the Parties agree to negotiate in good faith to develop a structure that is as nearly the same structure as the original Agreement (as may be amended from time to time) without regard to such invalidity, illegality or unenforceability.

**Section 6.4 Captions.** The captions or headings in Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 6.5 Governing Law.** This Agreement is a contract made under the laws of the State, and for all purposes shall be governed by, and construed in accordance with, the laws of the State.

**Section 6.6 Relationship between Parties.** The DDA and its officers, agents and employees shall not describe or represent themselves as agents of the State, the MSF, or the MEDC to any individual person, firm or entity for any purpose.

**Section 6.7. Successors and Assigns.** The MSF may at any time assign its rights in this Agreement. The DDA may not assign its rights or obligations under this Agreement without the prior written consent of the MSF. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**Section 6.8 Waiver.** A failure or delay in exercising any right under this Agreement will not be presumed to operate as a waiver unless otherwise stated in this Agreement, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further exercise of that right or the exercise of any other right.

**Section 6.9 Termination of Agreement.** Except as to this Article VI and the Exhibit A definitions, which shall survive indefinitely, and except as to other terms and conditions which shall survive as provided in this Agreement, this Agreement shall terminate at the end of the Term.



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Provided however, any claims for repayment which arise out an Event of Default that occurred during the Term, shall be brought within three (3) years after the end of the Term, and all available remedies thereon shall survive until all amounts due the MSF are paid in full.

**Section 6.10 Amendment.** This Agreement may not be modified or amended except pursuant to a written instrument signed by the DDA and the MSF Fund Manager.

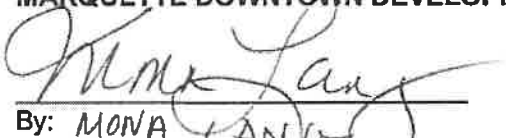
**Section 6.11 Publicity.** At the request and expense of the MSF or the MEDC, the DDA will cooperate with the MSF or the MEDC, and request that the Eligible Sub-grantees also cooperate, to promote the Project through one or more of the placement of a sign, plaque, media coverage or other public presentation at the Eligible Sub-grantee locations, or other locations, acceptable to the Parties.

(Signature page follows)

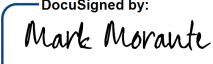
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The Parties have executed this Agreement effective on the Effective Date.

**MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY**

  
By: MONA LANG  
Its: EXECUTIVE DIRECTOR

**MICHIGAN STRATEGIC FUND**

DocuSigned by:  
  
71161A2DEB02474  
By: Mark Morante  
Its: Fund Manager

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**EXHIBIT A  
DEFINED TERMS**

- (a) **“Act”** means the Michigan Strategic Fund Act, MCL 125.2001 et seq., as amended.
- (b) **“Agreement”** means this Agreement, including the Exhibits to this Agreement.
- (c) **“Auditor General”** means the auditor general of the State of Michigan.
- (d) **“Certificate”** means each of the following individually, or collectively, as applicable:
  - (i) A Grant Disbursement Request in support of Key Milestone Number One and Key Milestone Number Two; and
  - (ii) A Project Completion Certificate in support of Key Milestone Number Three.
- (e) **“Company”** has the meaning set forth on the respective Exhibits.
- (f) **“Confidential Information”** has the meaning set forth in Section 2 of Exhibit C.
- (g) **“Cure Period”** means within thirty (30) calendar days after written notice by the MSF Fund Manager, or within such longer period of time as determined in writing and at the sole discretion of the MSF Fund Manager.
- (h) **“DDA”** has the meaning set forth in the preamble.
- (i) **“DDA Match”** has the meaning set forth in Key Milestone Number One.
- (j) **“DDA Program”** has the meaning set forth in Recital H.
- (k) **“Effective Date”** has the meaning set forth in the preamble.
- (l) **“Eligible Sub-grantee”** has the meaning set forth in Recital H.
- (m) **“Eligible Sub-grantee Assurances”** means the written assurances signed by each Eligible Sub-grantee, in substantially the form and substance set forth on Exhibit C-1.
- (n) **“Event of Default”** means any one or more of those events described in Section 5.1.
- (o) **“Exhibit”** means each of the documents or instruments attached to this Agreement.
- (p) **“Façade Projects”** has the meaning in Recital H.
- (q) **“FRI”** has the meaning set forth in Recital E.
- (r) **“Grant Disbursement”** means MSF Grant funds paid to the DDA under this Agreement.
- (s) **“Grant Disbursement Request”** means:
  - (i) As to Key Milestone Number One, a written request from the DDA for a Grant Disbursement in support of Key Milestone Number One, in the form and substance set forth on Exhibit B-1; and

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- (ii) As to Key Milestone Number Two, a written request from the DDA for a Grant Disbursement in support of Key Milestone Number Two, in the form and substance set forth on Exhibit B-2.
- (t) “**Grant Manager**” has the meaning set forth in Section 2.2.
- (u) “**Indemnified Persons**” has the meaning set forth in Section 5 of Exhibit C.
- (v) “**Key Milestones**” means Key Milestone Number One, Key Milestone Number Two, and Key Milestone Number Three, each of which is set forth on Exhibit B.
- (w) “**MEDC**” has the meaning set forth in Recital D.
- (x) “**MSF**” has the meaning set forth in the preamble.
- (y) “**MSF Fund Manager**” means the person designated by the Board of Directors of the MSF from time to time to serve as the manager for the MSF programs.
- (z) “**MSF Grant**” has the meaning set forth in Recital G.
- (aa) “**Party**” or “**Parties**” has the meaning set forth in the preamble.
- (bb) “**Progress Report**” means the annual report submitted no later than October 10<sup>th</sup> of each year that consists of the quantitative or numerical data, as more particularly described and required in the Act and Section 1 of Exhibit C, and otherwise in form and substance required from time to time by the Grant Manager.
- (cc) “**Project Completion Certificate**” means the written certificate signed by the DDA and each applicable Eligible Sub-grantee in support of Key Milestone Number Three, in substantially the form and substance set forth on Exhibit B-3.
- (dd) “**Site Visit**” has the meaning set forth in Section 2.3(c)(i).
- (ee) “**State**” means the State of Michigan.
- (ff) “**Term**” means from the Effective Date and, unless earlier terminated as provided by this Agreement through March 31, 2021.

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## EXHIBIT B KEY MILESTONES

### Key Milestone Number One:

**Subject to the terms and conditions of the Agreement, including the terms and conditions of Section 2.3 of the Agreement which include the required submission of a Grant Disbursement Request, and any other information as may be required under Section 2.3, a Grant Disbursement may be requested by the DDA:**

**Grant Disbursement:** Up to \$150,000.

By no later than March 31, 2019, the DDA must submit, and demonstrate to the satisfaction of the Grant Manager, all of the following, and must otherwise be in compliance with the Agreement:

1. A fully completed Grant Disbursement Request in the form and substance set forth in Exhibit B-1, signed by the DDA; and
2. A resolution of the DDA, formal approval of a DDA budget, or such other documentation to the satisfaction of the Grant Manager, supporting the DDA's commitment of the sum of at least Thirty Thousand Dollars (\$30,000) for the DDA Program for Façade Projects ("DDA Match").

### Key Milestone Number Two:

**Grant Disbursement:** The greater of (i) up to \$150,000, or (ii) when taken together with the Grant Disbursement under Key Milestone Number One, up to the total amount of the MSF Grant.

By no later than March 31, 2020, the DDA must submit, and demonstrate to the satisfaction of the Grant Manager, all of the following, and must otherwise be in compliance with the Agreement:

1. A fully completed Grant Disbursement Request in the form and substance set forth on Exhibit B-2, signed by the DDA.

### Key Milestone Number Three:

**Grant Disbursement:** No Grant Disbursement

By no later than September 30, 2021, the DDA must submit, and demonstrate to the satisfaction of the Grant Manager, all of the following, and must otherwise be in compliance with the Agreement:

1. For each Façade Project:
  - (a) A fully completed Project Completion Certificate with respect to each Façade Project, in the form and substance set forth on Exhibit B-2, signed by the DDA and the applicable Eligible Sub-grantee;
  - (b) One or more photographs of each Façade Project supporting that such Eligible Sub-grantee has substantially completed the Façade Project.

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**EXHIBIT B-1  
KEY MILESTONE NUMBER ONE  
GRANT DISBURSEMENT REQUEST**

This Grant Disbursement Request (the "Certificate") is being delivered pursuant to Section 2.3 and Key Milestone Number One of the Grant Agreement dated as of December 18, 2018 (the "Grant Agreement"), by and between the Michigan Strategic Fund (the "MSF"), and the Marquette Downtown Development Authority, (the "DDA"), Case No. 252642. Capitalized terms in this Certificate and not otherwise defined in this Certificate shall have the meanings ascribed to them in the Grant Agreement.

The undersigned, in the name and on behalf of DDA, hereby certifies, represents and warrants, that as of the date of signing this Certificate:

1. The DDA has complied, and is in compliance, with all the terms, covenants and conditions of the Grant Agreement.

2. No Event of Default (as defined in Section 5.1 of the Grant Agreement) exists, and no event which, with the giving of notice or the lapse of time, or both, would constitute such an Event of Default.

3. The representations and covenants of the DDA contained in Article III of the Grant Agreement are true.

4. Attached is a copy of supporting documentation evidencing that the DDA has an authorized commitment for, or actually received, at least \$30,000 in local funding, which shall be used for the DDA Match as required by Key Milestone Number One.

5. The DDA requests a Grant disbursement in the amount of (\*\$ \_\_\_\_\_) (\*note: amount requested cannot exceed \$150,000)

6. The undersigned has the authority, and signs this Certificate, on behalf of the DDA as of \_\_\_\_\_.

**MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
By:  
Its:

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**EXHIBIT B-2  
KEY MILESTONE NUMBER TWO  
GRANT DISBURSEMENT REQUEST**

This Grant Disbursement Request (the "Certificate") is being delivered pursuant to Section 2.3 and Key Milestone Number One of the Grant Agreement dated as of December 18, 2018 (the "Grant Agreement"), by and between the Michigan Strategic Fund (the "MSF"), and the Marquette Downtown Development Authority, (the "DDA"), Case No. 252642. Capitalized terms in this Certificate and not otherwise defined in this Certificate shall have the meanings ascribed to them in the Grant Agreement.

The undersigned, in the name and on behalf of DDA, hereby certifies, represents and warrants, that as of the date of signing this Certificate:

1. The DDA has complied, and is in compliance, with all the terms, covenants and conditions of the Grant Agreement.

2. No Event of Default (as defined in Section 5.1 of the Grant Agreement) exists, and no event which, with the giving of notice or the lapse of time, or both, would constitute such an Event of Default.

3. The representations and covenants of the DDA contained in Article III of the Grant Agreement are true.

4. DDA Program grant award information for each Eligible Sub-grantee and their respective Façade Project is set forth below\*:

A	B	C	D	E	F
Name of Eligible Sub-grantee	Address of Façade Project	Total Projected cost of Façade Project	Of the Total Projected cost the Façade Project, the projected amount to be paid from the DDA Match	Of the total Projected cost of the Façade Project, the projected amount to be from the MSF Grant**	Of the Total Projected cost of the Façade Project, the projected amount to be paid from private funding

\*use additional sheets as necessary

\*\*cannot exceed 50% of the total cost of the Façade Project

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5. To the knowledge of the DDA: (i) the DDA and each of the Eligible Sub-grantees have complied, and are in compliance, with all of the terms and conditions of each of the DDA Program grants, and (ii) no event of default exists, and no event which, with the giving of notice or the lapse of time, or both, would constitute an event of default, under any of the DDA Program grants.

6. The DDA requests a Grant Disbursement in the amount of (\$ \_\_\_\_\_)\*\*\*.

*(\*\*\*amount requested cannot exceed the greater of (i) up to \$150,000, or (ii) when taken together with the Grant Disbursement under Key Milestone Number One, the total amount of the MSF Grant)*

The undersigned has the authority, and signs this Certificate, on behalf of the DDA as of \_\_\_\_\_.

**MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_



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**EXHIBIT B-3  
KEY MILESTONE NUMBER THREE  
PROJECT COMPLETION CERTIFICATE**

This Project Completion Certificate (the "Certificate") is being delivered pursuant to Section 2.3 and Key Milestone Number Three of the Grant Agreement dated as of December 18, 2018 (the "Grant Agreement"), by and between the Michigan Strategic Fund (the "MSF"), and the Marquette Downtown Development Authority, (the "DDA"), Case No. 252642. Capitalized terms in this Certificate and not otherwise defined in this Certificate shall have the meanings ascribed to them in the Grant Agreement.

The undersigned, in the name and on behalf of DDA, hereby certifies, represents and warrants, that as of the date of signing this Certificate:

1. The DDA has complied, and is in compliance, with all the terms, covenants and conditions of the Grant Agreement.

2. No Event of Default (as defined in Section 5.1 of the Grant Agreement) exists, and no event which, with the giving of notice or the lapse of time, or both, would constitute such an Event of Default.

3. The representations and covenants of the DDA contained in Article III of the Grant Agreement are true.

4. This Project Completion Certificate is being submitted with respect to the Façade Project commonly known as \_\_\_\_\_ completed by **[INSERT NAME OF ELIGIBLE SUB-GRANTEE]** ("Company").

5. DDA Program information for the above referenced Façade Project:

A. Total Cost of the Façade Project: \$ \_\_\_\_\_

B. Of the Total Cost of the Façade Project:

1. Total paid to Eligible Sub-Grantee from DDA Match \$ \_\_\_\_\_

2. Total paid to Eligible Sub-Grantee from MSF Grant: \$ \_\_\_\_\_

3. Total amount of private funding: \$ \_\_\_\_\_

B. To the knowledge of the DDA: (i) the DDA and the Company have complied, and are in compliance, with all of the terms and conditions of their applicable DDA Program grant, and (ii) no event of default exists, and no event which, with the giving of notice or the lapse of time, or both, would constitute an event of default, under their applicable DDA Program grant.

C. To the knowledge of the DDA, the Company has substantially completed its applicable Façade Project improvements in accordance with the requirements of its DDA Program grant. Attached are photographs evidencing such Façade Project improvements.

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The undersigned has the authority, and signs this Certificate, on behalf of the DDA as of \_\_\_\_\_.

**MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ELIGIBLE SUB-GRANTEE ACKNOWLEDGMENT:**

The undersigned has the authority to sign this acknowledgment, in the name and on behalf of the Company, and acknowledges that:

1. The Company has received the total amount of \$\_\_\_\_\_ from the DDA for the Façade Project; and
2. The Company has substantially completed its applicable Façade Project in accordance with its DDA Program grant, and
3. To the knowledge of the Company: (i) the DDA and the Company have complied, and are in compliance, with all of the terms and conditions of the DDA Program grant to the Company, and (ii) no event of default exists, and no event which, with the giving of notice or the lapse of time, or both, would constitute an event of default, under the DDA Program grant with the Company.

**[INSERT NAME OF ELIGIBLE SUB-GRANTEE]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

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## EXHIBIT C STATE REQUIRED TERMS

1. **Progress Reports.** No later than October 10 of each year during the Term, the DDA shall submit to the MSF Fund Manager an annual Progress Report relative to the Project. The Progress Report shall be an all-encompassing report and shall include a description of the Key Milestones achieved during the preceding twelve (12) months ending September 30, and submission of all data required for the MSF to comply with its annual reporting requirements to the Michigan legislature under the Act (see MCL 125.2009); including reporting for the previous twelve (12) months ending September 30:

(a) the amount of financial support for each Façade Project other than State resources;

(b) the actual number of new jobs created relative to each Facade Project that are not temporary employees, and the average annual salary of those new jobs;

(c) the actual number of retained jobs relative to each Facade Project that are not temporary employees, and the average annual salary of those retained jobs; and

(d) the total actual amount of square footage revitalized or added by the Façade Project.

2. **Confidentiality.** In connection with the transactions contemplated by this Agreement, the MSF, the MEDC or their representatives may obtain, or have access to all information or data concerning the business, operations, assets or liabilities of the DDA. Under MCL 125.2005(9), the MSF Board has authority, upon the DDA's request, to acknowledge financial or proprietary DDA information as confidential. If the MSF acknowledges DDA information as confidential (the "Confidential Information"), the MEDC and the MSF agree that they and their representatives will use the Confidential Information solely for the purpose of administering this Agreement, and that the Confidential Information will be kept strictly confidential and that neither the MEDC, the MSF, nor any of their representatives will disclose any of the Confidential Information in any manner whatsoever. However, the MSF or the MEDC may disclose Confidential Information: (i) to such of its representatives who need such information or data for the sole purpose of administering the Act and the transactions contemplated by this Agreement; (ii) to the extent required by applicable law (including, without limitation, the Michigan Freedom of Information Act); (iii) if, before the Effective Date, such information or data was generally publicly available; (iv) if after the Effective Date, such information or data becomes publicly available without fault of or action on the part of the MSF, the MEDC or its representatives; and (v) in all other cases, to the extent that the DDA gives its prior written consent to disclosure. This Section shall survive indefinitely.

3. **Access to Records and Inspection Rights.** During the Term, there will be frequent contact between the MSF, the MEDC, or representative of the State, and the DDA, including possible site visits. In addition, to enable the Auditor General, the Chief Compliance Officer, the MSF, or the MEDC to monitor and ensure compliance with the terms of this Agreement, the DDA shall permit the Auditor General, the Chief Compliance Officer, the MSF, or the MEDC to visit the DDA, and any other location where books and records of the DDA are normally kept, to inspect the books and records, including financial records and all other information and data relevant to the terms of this Agreement, including the expenditure of the Grant Disbursements; provided, however, that such audit right shall survive the end of the Term by three (3) years. In connection with any such audit, the DDA shall cooperate with the Chief

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Compliance Officer, if contacted, as provided in MCL 125.2088i(6)(h). At such visits, the DDA shall permit the Auditor General, the Chief Compliance Officer, the MSF, or any member, employee or agent of the MSF, the MSF Fund Manager or any employee or agent of the MEDC to make copies or extracts from information and to discuss the affairs, finances and accounts of the DDA related to this Agreement with its officers, employees or agents. Notwithstanding anything to the contrary, any information and data that the DDA reasonably determines is Confidential Information shall be reviewed by the Auditor General, the Chief Compliance Officer, the MSF, and the MEDC at the offices of the DDA and the Auditor General, the Chief Compliance Officer, the MSF, or the MEDC shall have the right to remove, photocopy, photograph or otherwise record in any way any part of such books and records with the prior written consent of the DDA, which consent shall not be unreasonably withheld.

**4. Non-Discrimination and Unfair Labor Practices.** In connection with this Agreement, the DDA agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The DDA further agrees that every subcontract entered into by the DDA for the DDA's performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach thereof may be regarded as a material breach of this Agreement.

Under 1980 PA 278, MCL 423.321, *et seq.*, the State shall not invest in a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information. The DDA shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, subsequent to the grant of the contract, the name of the DDA as an employer, or the name of a subcontractor, manufacturer, or supplier of the DDA appears in the register.

**5. Indemnification and Hold Harmless.** Except for their respective obligations to process or disburse the Grant Disbursement as required in this Agreement, the MSF, the State, the Chief Compliance Officer, the MEDC, its Executive Committee and their respective directors, participants, officers, agents and employees (collectively, the "Indemnified Persons") shall not be liable to the DDA for any reason. To the extent permitted by law, the DDA shall indemnify and hold the Indemnified Persons harmless against all claims asserted by or on behalf of any individual person, firm or entity (other than an Indemnified Person), arising or resulting from, or in any way connected with this Agreement or any act or failure to act by the DDA under the Agreement, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. The DDA shall also indemnify the Indemnified Persons from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of the DDA under this Agreement.

The DDA shall have no obligation to indemnify an Indemnified Person under this Section if a court with competent jurisdiction finds that the liability in question was solely caused by the willful misconduct or gross negligence of the Indemnified Person, unless the court finds that despite the adjudication of liability, the Indemnified Person is fairly and reasonably entitled to indemnity for

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the expenses the court considers proper. The MSF, the MEDC and the DDA agree to act cooperatively in the defense of any action brought against the MSF, the MEDC or another Indemnified Person to the greatest extent possible.

Performance of the DDA's obligations contemplated under this Agreement is within the sole control of the DDA and its employees, agents and contractors, and an Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or failures to act, products and processes of the DDA, its employees, agents or contractors. This Section shall survive indefinitely.

**6. Termination of Funding.** In the event that the State Legislature or the State government fails to provide or terminates the funding necessary for the MSF to fund the MSF Grant, the MSF may terminate this Agreement by providing notice to the DDA not less than thirty (30) calendar days before the date of cancellation provided, however, that in the event the action of the State Legislature or State government results in an immediate absence or termination of funding, this Agreement may be terminated effective immediately upon delivery of written notice to the DDA. In the event of termination of funding, the MSF has no further obligation to make Grant Disbursements beyond the date of termination of this Agreement.

**7. Jurisdiction.** The parties shall make a good faith effort to resolve any controversies that arise regarding this Agreement. If a controversy cannot be resolved, the parties agree that any legal actions concerning this Agreement shall be brought in the Michigan Court of Claims or, as appropriate, Ingham County Circuit Court in Ingham County, Michigan. The DDA acknowledges by signing this Agreement that it is subject to the jurisdiction of this court and agrees to service by first class or express delivery wherever the DDA resides, in or outside of the United States. This Section shall survive indefinitely.

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**EXHIBIT C-1  
ELIGIBLE SUB-GRANTEE ASSURANCES**

This Eligible Sub-grantee (the "Certificate") is being submitted by [INSERT NAME OF ELIGIBLE SUB-GRANTEE] ("Company") and delivered to the Marquette Downtown Development Authority, (the "DDA") pursuant to Section 3.11 of the Grant Agreement dated as of December 18, 2018 (the "Grant Agreement"), by and between the Michigan Strategic Fund (the "MSF"), and the DDA, Case No. 252642. Capitalized terms in this Certificate and not otherwise defined in this Certificate shall have the meanings ascribed to them in the Grant Agreement.

The undersigned has the authority from, and in the name of and on behalf of, the Company, hereby certifies, represents and warrants to the DDA and the MSF:

1. **Prohibited Use.** The Company shall not use any funds received from the DDA under the DDA Program for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088c(3)(a) and (b)), or to induce a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the US, as prohibited by the Act (see MCL 125.2088c(4)(c) and (d)).

2. **Organization.** The Company is not incorporated or organized in a tax haven country.

3. **Certain Standards.**

(a) The Company's Façade Project shall comply with the DDA Program grant terms and conditions, and all applicable historic preservation guidelines and standards.

(b) The Company will not use any Grant Disbursements or DDA Program funds to improve federal, state, county, locally owned or other buildings owned by the public; and

(c) At least 50% of the funding to complete the Company's Façade Project shall be derived from private and local funding; provided that while the source of such private and local funding may include donation based crowd-funding, such sources may not include the proceeds of any investment based crowd-funding.

4. **Criminal or Civil Matters.** The Company affirms that to the best of its knowledge that its officers, directors, managerial employees, and if applicable, any person who, directly or indirectly, holds a pecuniary interest in the Company of 20% or more: (i) do not have any criminal convictions incident to the application for or performance of a state contract or subcontract; and (ii) do not have any criminal convictions or have not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes.

5. **Progress Reports.** No later than October 1 of each year during the Term, the Company shall submit to the DDA the information set forth below which is necessary for the DDA to provide to the MSF in order for the MSF to provide reports under the Act relative to the FRI and the Façade Projects. The information shall encompass the preceding twelve (12) months ending September 30, and submission of all data required for the MSF to comply with its annual reporting

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requirements to the Michigan legislature under the Act (see MCL 125.2009); including reporting for the previous twelve (12) months ending September 30:

- (a) the amount of financial support for the Company's Façade Project other than State resources;
- (b) the actual number of new jobs created relative to the Company's Facade Project that are not temporary employees, and the average annual salary of those new jobs;
- (c) the actual number of retained jobs relative to the Company's Facade Project that are not temporary employees, and the average annual salary of those retained jobs; and
- (d) the total actual amount of square footage revitalized or added by the Façade Project.

6. **Confidentiality**. In connection with the Company's Façade Project, the MSF, the MEDC or their representatives may obtain, or have access to all information or data concerning the business, operations, assets or liabilities of the Company. Under MCL 125.2005(9), the MSF Board has authority, upon the Company's request, to acknowledge financial or proprietary Company information as confidential. If the MSF acknowledges Company information as confidential (the "Confidential Information"), the MEDC and the MSF agree that they and their representatives will use the Confidential Information solely for the purpose of administering the FRI, and that the Confidential Information will be kept strictly confidential and that neither the MEDC, the MSF, nor any of their representatives will disclose any of the Confidential Information in any manner whatsoever. However, the MSF or the MEDC may disclose Confidential Information: (i) to such of its representatives who need such information or data for the sole purpose of administering the Act and the transactions contemplated by this Agreement; (ii) to the extent required by applicable law (including, without limitation, the Michigan Freedom of Information Act); (iii) if, before the Effective Date, such information or data was generally publicly available; (iv) if after the Effective Date, such information or data becomes publicly available without fault of or action on the part of the MSF, the MEDC or its representatives; and (v) in all other cases, to the extent that the Company gives its prior written consent to disclosure. This Section shall survive indefinitely.

7. **Access to Records and Inspection Rights**. During the Term, there will be frequent contact between the DDA and the Company, which may also include the MSF, the MEDC, or representative of the State, including possible site visits. In addition, to enable the Auditor General, the Chief Compliance Officer, the MSF, or the MEDC to monitor and ensure compliance with FRI, the Company shall permit the Auditor General, the Chief Compliance Officer, the MSF, or the MEDC to visit the Company, and any other location where books and records of the Company are normally kept, to inspect the books and records, including financial records and all other information and data relevant to the terms of the DDA Program grant with the Company and the FRI, including the expenditure of the DDA Match and Grant Disbursements; provided, however, that such audit right shall survive the end of the Term by three (3) years. In connection with any such audit, the Company shall cooperate with the Chief Compliance Officer, if contacted, as provided in MCL 125.2088i(6)(h). At such visits, the Company shall permit the Auditor General, the Chief Compliance Officer, the MSF, or any member, employee or agent of the MSF, the MSF Fund Manager or any employee or agent of the MEDC to make copies or extracts from information and to discuss the affairs, finances and accounts of the Company related to this Agreement with its officers, employees or agents. Notwithstanding anything to the contrary, any information and data that the Company reasonably determines is Confidential Information shall be reviewed by the Auditor General, the Chief Compliance Officer, the MSF, and

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the MEDC at the offices of the Company and the Auditor General, the Chief Compliance Officer, the MSF, or the MEDC shall have the right to remove, photocopy, photograph or otherwise record in any way any part of such books and records with the prior written consent of the Company, which consent shall not be unreasonably withheld.

8. **Non-Discrimination and Unfair Labor Practices.** In connection with the DDA Program grant, the Company agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The Company further agrees that every subcontract entered into for its performance under its DDA Program grant will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach thereof may be regarded as a material breach of this Agreement.

Under 1980 PA 278, MCL 423.321, *et seq.*, the State shall not invest in a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information. The Company shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, subsequent to the Grant Agreement, the name of the DDA or the Company as an employer, or the name of a subcontractor, manufacturer, or supplier of the DDA or the Company appears in the register.

9. **Indemnification and Hold Harmless.** Except for their respective obligations to process or disburse the funds under the Grant Agreement and the DDA Program grant, as applicable, the MSF, the State, the Chief Compliance Officer, the MEDC, its Executive Committee, and the DDA, and their respective directors, participants, officers, agents and employees (collectively, the "Indemnified Persons") shall not be liable to the Company for any reason. To the extent permitted by law, the Company shall indemnify and hold the Indemnified Persons harmless against all claims asserted by or on behalf of any individual person, firm or entity (other than an Indemnified Person), arising or resulting from, or in any way connected with this Certificate, the Company's DDA Program grant or any act or failure to act by the Company under this Certificate, or its DDA Program grant, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. The Company shall also indemnify the Indemnified Persons from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of the Company under this Certificate or the Company's DDA Program grant.

The Company shall have no obligation to indemnify an Indemnified Person under this Section if a court with competent jurisdiction finds that the liability in question was solely caused by the willful misconduct or gross negligence of the Indemnified Person, unless the court finds that despite the adjudication of liability, the Indemnified Person is fairly and reasonably entitled to indemnity for the expenses the court considers proper. The MSF, the MEDC and the Company agree to act cooperatively in the defense of any action brought against the MSF, the MEDC or another Indemnified Person arising therefrom to the greatest extent possible.



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Performance of the Company's obligations contemplated under this Certificate and the Company's DDA Program grant is within the sole control of the Company and its employees, agents and contractors, and an Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or failures to act, products and processes of the Company, its employees, agents or contractors. This Section shall survive indefinitely.

10. **Termination of Funding.** In the event that the State Legislature or the State government fails to provide or terminates the funding necessary for the MSF to fund the Grant, the MSF may terminate the Grant Agreement by providing notice to the DDA not less than thirty (30) calendar days before the date of cancellation provided, however, that in the event the action of the State Legislature or State government results in an immediate absence or termination of funding, the Grant Agreement may be terminated effective immediately upon delivery of written notice to the DDA. In the event of termination of funding, the MSF has no further obligation to make Grant Disbursements to DDA for the DDA Program, or otherwise, beyond the date of termination of the Grant Agreement.

The undersigned has the authority, and sign this Certificate, on behalf of the Company as of

\_\_\_\_\_.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_