

MICHIGAN STRATEGIC FUND BOARD MEETING
June 27, 2012
1:30 p.m.

Lansing Center
333 East Michigan Avenue
Room 201
Lansing, Michigan 48933

REVISED AGENDA

Call to Order

A. Adoption of May 23, 2012 Minutes [Action Item]

Public Comment [Please limit public comment to three (3) minutes]

Communication [Information – Ellen Graham]

B. Michigan Business Development Program

1. Barracuda Networks, Inc. [Action Item - Marcia Gebarowski, Regional Project Manager]
2. Brose New Boston, Inc. [Action Item – Joe Martin, Regional Project Manager]

C. 21st Century Jobs Fund Program – Pure Michigan Venture Development Fund [Action Item – Mike Flanagan]

D. Marketing – Official Pure Michigan Travel Guide Recommendation [Action Item – George Zimmerman]

E. Tribal Gaming MOU - [Action Item – Mark Morante]

F. CDBG – [Action Item – Deborah Stuart]

1. 2012 Downtown Infrastructure Grant [DIG] Project
2. 2012 Application Guide and Policies

New International Trade Crossing Agreement Public Comments

G. New International Trade Crossing Agreement– [Action Item – Mark Morante]

**MICHIGAN STRATEGIF FUND BOARD MEETING
MAY 23, 2012**

PROPOSED MEETING MINUTES

A meeting of the Michigan Strategic Fund [MSF] Board was held on Wednesday, May 23, 2012 at the Michigan Economic Development Corporation, Lake Michigan Conference Room, 300 N. Washington Square, Lansing, Michigan.

MEMBERS PRESENT: Andrew Lockwood [acting for and on behalf of Andy Dillon, designation attached], Michael Finney, Mike Jackson, Bill Martin, Howard Morris [via phone], Allan Pohl [acting for and on behalf of Steve Hilfinger, designation attached], Richard Rassel, Shaun Wilson

MEMBERS ABSENT: Paul Hodges, Sabrina Keeley, Jim Petcoff

CALL TO ORDER: The meeting was called to order at 1:30 p.m.

APPROVAL OF THE APRIL 25, 2012 MEETING MINUTES: Mr. Finney asked if there were any questions from the Board. There being none, **Mr. Lockwood motioned approval of the April 25, 2012 MSF Board meeting minutes. Mr. Rassel seconded the motion.** The motion carried – 8 ayes; 0 nays; 0 recused; 3 absent.

PUBLIC COMMENT: Mr. Finney asked if there was any public comment. There was none.

COMMUNICATION: Ellen Graham, Board Relations Liaison, advised the Board of the following:

- Due to a quorum issue at the April 25, 2012 MSF Board meeting, Hyundai America Technical Center, Inc. and Sakthi Automotive Group USA, Inc. are brought before the Board this month for approval.
- Revisions had been made to the Hyundai America Technical Center, Inc. Resolution to update Applicant milestones.
- Item E. - Delegation of Authority – a misprint had been corrected in the Resolution
- Howard Morris is participating by phone for this meeting.
- A recusal letter had been received from Richard Rassel for Item B. 1 and 2.
- A recusal letter had been received from Shaun Wilson for Item B.4.

MICHIGAN BUSINESS DEVELOPMENT PROGRAM

[Richard Rassel recused.]

Resolution 2012-52 – Hyundai America Technical Center, Inc.

Marcia Gebarowski, Regional Project Manager, provided the Board with information about this action item and introduced guests:

Ms. Gebarowski provided the Board with an overview of the project. The Applicant plans to expand an existing operation in Michigan, make investments and create jobs related to the research and development of automotive components. Ms. Gebarowski further advised that since the April 25, 2012 Board meeting, the milestones for the Applicant have changed and are reflected in the current Resolution.

Recommendation: Staff recommends approval of the Michigan Business Development Program [MBDP] proposal as outlined in the term sheet submitted by the applicant. Closing of the MBDP proposal is subject to available funding at the time of closing, completion of due diligence, finalization of

all MBDP transaction documents. The commitment will remain valid for 90 days with the approval for the MSF Fund Manager to extend the commitment an additional 30 days.

Board Discussion: Mr. Finney asked if there were any questions from the Board. There being none, **Mr. Martin motioned approval for Resolution 2012-52. Mr. Pohl seconded the motion.** The motion carried – 7 ayes; 0 nays; 1 recused; 3 absent.

Resolution 2012-53 – Sakthi Automotive Group USA, Inc.

Ms. Gebarowski provided the Board with information about this action item and introduced guests:

Ms. Gebarowski explained to the Board the Applicant plans to open a new operation in Michigan, make investments and create jobs related to the manufacturing of automotive components.

Recommendation: Staff recommends approval of the Michigan Business Development Program [MBDP] proposal as outlined in the term sheet submitted by the applicant. Closing of the MBDP proposal is subject to available funding at the time of closing, completion of due diligence, finalization of all MBDP transaction documents. The commitment will remain valid for 90 days with the approval for the MSF Fund Manager to extend the commitment an additional 30 days.

Board Discussion: Mr. Finney asked if there were any questions from the Board. There being none, **Mr. Wilson motioned approval for Resolution 2012-53. Mr. Jackson seconded the motion.** The motion carried – 7 ayes; 0 nays; 1 recused; 3 absent.

[Richard Rassel returns to the meeting.]

Resolution 2012-54 – Credit Acceptance Corporation

Ms. Gebarowski provided the Board with information about this action item and introduced guests: Rochelle Friedman; Mark Adams, Kenneth Booth; Jerry Bach

Mr. Booth provided the Board with an overview of the project. The Applicant plans to grow their employment at two existing company facilities in the City of Southfield in order to meet future staffing needs of the entire organization, make investments and create jobs related to the servicing of automotive consumer loans.

Recommendation: Staff recommends approval of the Michigan Business Development Program [MBDP] proposal as outlined in the term sheet submitted by the Applicant. Closing the MBDP program proposal is contingent upon availability of funding at the time of closing, completion of due diligence, and finalization of all MBDP transaction documents. Commitment will remain valid for 90 days with approval from the MSF Fund Manager to extend the commitment an additional 30 days.

Board Discussion: Mr. Finney asked if there were any questions from the Board. Mr. Rassel inquired regarding the competition of the site for this expansion. Ms. Friedman responded India, Puerto Rico and Nevada were in contention for this project, however, Southfield offered the most competitive package. Mr. Finney asked about the availability of a description of the tax abatement from the City of Southfield. Ms. Gebarowski responded this information was included in the Term Sheet, item #9. There being no further questions, **Mr. Lockwood motioned approval for Resolution 2012-54. Mr. Rassel seconded the motion.** The motion carried – 8 ayes; 0 nays; 0 recused; 3 absent.

[Shaun Wilson recused.]

Resolution 2012-55 – Access Business Group, LLC

Joshua Hundt, Senior Regional Project Manager, provided the Board with information regarding this action item and introduced guests: Teresa, Karen Hinkle; Business Development Manager; Rob Hunter, Vice President; George Haga, Ada Township Supervisor

Mr. Haga provided the Board with an overview of the project. Access Business Group LLC is the supply chain entity for Alticor and its affiliated companies, including Amway Corporation, a large multi-level marketing company. The company was formed in 2001 to focus on providing and executing global supply chain for the family of companies to distribute finished products throughout the world. The Applicant plans to open a new operation in Michigan, making investments and creating jobs related to the manufacture of nutritional products in the Township of Ada. The operation is planned to produce compressed tablets, hard shell tablets, and soft gel capsules. Approximately 75-80% of the volume will be exported to foreign markets.

Recommendation: Staff recommends approval of the Michigan Business Development Program [MBDP] proposal as outlined in the term sheet submitted by the Applicant. Closing the MBDP program proposal is contingent upon availability of funding at the time of closing, completion of due diligence, and finalization of all MBDP transaction documents. Commitment will remain valid for 90-days with the approval from the MSF Fund Manager to extend the commitment an additional 30 days.

Board Discussion: Mr. Finney asked if there were any questions from the Board. Mr. Russel asked the average wage of the nutritional tech positions. Mr. Hunter responded \$16.30/hour plus benefits. There being no further questions, **Mr. Jackson motioned approval for Resolution 2012-55. Mr. Pohl seconded the motion.** The motion carried – 7 ayes; 0 nays; 1 recused; 3 absent.

[Shaun Wilson returns to the meeting.]

PRIVATE ACTIVITY BOND PROGRAM

Resolution 2012-56 – The Gilbert Residence

Diane Cranmer, IDR Specialist, provided the Board with information on this action item and introduced guest – Derek McGill, CEO/Administrator, The Gilbert Residence.

Mr. McGill provided the Board with an overview of the project. Phase I of the project will include the refurbishing of the 29 assisted living units of the existing building. Phase II is the expansion of the New Memory Care “Grace Hall” unit. It will replace the existing 10 bed unit with a new 28 bed unit. The unit will be a licensed Home for the Aged, and will consist of 28 private rooms and will be entirely funded by private pay. Phase III will convert the existing Memory Care unit into a “main street” area with common spaces in providing new amenities for residents that will included a library, lounge, movie theatre, game room, wellness center and bistro-style dining.

Recommendation: Staff recommends the adoption of a Bond Authorizing Resolution for an amount not to exceed \$10,000,000.

Board Discussion: Mr. Finney asked if there were any questions from the Board. There being none, **Mr. Russel motioned approval for Resolution 2012-56. Mr. Lockwood seconded the motion.** Ellen Graham, MEDC, took a Roll Call Vote:

ROLL CALL:

Ayes: Michael Finney, Mike Jackson, Andrew Lockwood [acting for and on behalf of Andy Dillon, designation attached], Bill Martin, Howard Morris [via phone], Allan Pohl [acting for and on behalf of Steve Hilfinger, designation attached], Richard Rassel, Shaun Wilson]

Nays: None

Recused: None

The motion carried – 8 ayes; 0 nays; 0 recused; 3 absent.

TOOL AND DIE RECOVERY ZONE PROGRAM

Resolution 2012-57 – PCS Company Amendment

Karla Campbell, Manager, State Tax Incentives, provided the Board with information on this action item.

Ms. Campbell explained to the Board that the Tool & Die Recovery Zone has enabled PCS Company to commit to additional investment and job growth. Staff has received a new resolution passed by the City of Fraser supporting an MSF approved amendment of the original recovery zone to include an additional contiguous parcel for the remaining three years. Under MCL 125.2688d(7), the MSF may modify an existing Recovery Zone to add additional property under the same terms and conditions as the existing Recovery Zone if the additional real property is contiguous to the existing qualified tool and die business property, will become qualified tool and die business property once it is brought into operation and the City of Fraser has consented to the modification.

Recommendation: Staff recommends an amendment of the existing Recovery Zone and MOU to include the real property parcel 11-32-205-005 for PCS Company for the remaining three years with an expiration date of December 31, 2015.

Board Discussion: Mr. Finney asked if there were any questions from the Board. There being none, **Mr. Rassel motioned approval for Resolution 2012-57. Mr. Wilson seconded the motion.** The motion carried – 8 ayes; 0 nays; 0 recused; 3 absent.

DELEGATION OF AUTHORITY

Resolution 2012-58 – Delegation of Authority – SSBCI Loan Participation Agreement and SSBCI Cash Collateral Deposit Agreement

Liz Alexandrian, Capital Service Associate, provided the Board with information on this action item.

The MBGF-LPP Participation Agreement includes template “waterfall” language which provides for priority of payments to the Lender and the MSF in a collection situation after a borrower defaults. The waterfall language states that after an event of default, any proceeds collected by the lender in respect to any loans would be applied in the order that the loans closed – meaning that they would first pay for the cost of collection, then pay interest, fees, and principal with respect to the Prior loans, then pay on a pro-rata basis on the subject loan, and lastly pay on any coincidental and future loans. This waterfall language is not lien specific. Therefore, the MSF could potentially be paid off with proceeds from collateral that are not specifically tied to the loan that is participated in depending on the order of loans closed. This language could also work the opposite way, in that collateral specifically tied to the loan in which the MSF participates, could potentially be used to pay off other debt held by the lender if that debt closed prior the subject loan.

Recommendation: Staff recommends the MSF Board delegate to the MSF Fund Manager or MSF Chairperson, with only one required to act, the authority to revise the MBFG-CSP Agreement, MBFG-LPP Agreement, and all related and ancillary documents as may be necessary and appropriate, provided that the final terms and conditions of the MBFG Agreements are not otherwise materially adverse to the MSF, and to negotiate and execute all final documents on behalf of the MSF, subject to standard due diligence and the availability of funds.

Board Discussion: Mr. Finney asked if there were any questions from the Board. There being none, **Mr. Russel motioned approval for Resolution 2012-58. Mr. Martin seconded the motion.** The motion carried – 8 ayes; 0 nays; 0 recused; 3 absent.

The meeting adjourned at 1:55 p.m.

DRAFT



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

January 24, 2012

Ms. Ellen Graham
Board Relations Liaison
Michigan Strategic Fund Office
300 N. Washington Square
Lansing, Michigan 48913

Dear Ms. Graham:

I hereby designate Andrew Lockwood to represent me at Michigan Strategic Fund meetings I am unable to attend.

Sincerely,

A handwritten signature in cursive script that reads "Andy Dillon".

Andy Dillon
State Treasurer

cc: Andrew Dillon



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

STEVEN H. HILFINGER
DIRECTOR

DESIGNATION OF AUTHORITY

As Director of the Michigan Department of Licensing and Regulatory Affairs, I hereby designate Allan Pohl to serve as the LARA representative at the May 23, 2012, meeting of the Michigan Strategic Fund.



Steven H. Hilfinger, Director
Department of Licensing and Regulatory Affairs

Dated: 5-14-12



MEMORANDUM

TO: Michigan Strategic Fund (“MSF”) Board Members

FROM: Marcia Gebarowski, Regional Project Manager

DATE: June 27, 2012

SUBJECT: Approval of Michigan Business Development Request for \$1,200,000
Performance-based Grant to:

Barracuda Networks, Inc. (“Applicant” or “Company”)
3175 Winchester Boulevard
Campbell, California 95008
www.barracudanetworks.com

MBDP PROGRAM AND ITS GUIDELINES

On December 21, 2011, the MSF Board approved the Michigan Business Development Program (“MBDP”) and its guidelines. The primary intended objective of the MBDP is to provide incentives to businesses that create qualified jobs, make qualified investments, or a combination of both, in Michigan.

SOURCE OF INFORMATION

It is the role of the Project Management staff (“MEDC Staff”) to review for eligibility, completeness, and adherence to MBDP guidelines, the information provided by the applicant and to manage the MSF’s investment. Explanatory and background information is supplied in summary form to provide context for the request and is drawn exclusively from materials submitted by the applicant, and, as applicable, from other relevant third party sources utilized by MEDC staff.

HISTORY OF THE APPLICANT

Barracuda Networks, Inc. is the worldwide leader in email and Web security appliances. The Company also provides world-class IM protection, application server load balancing and message archiving appliances. Established in 2004, Barracuda Networks is a privately-held corporation with its international headquarters and manufacturing facility based in Campbell, California. Barracuda Networks has offices in eight international locations and distributors in more than 80 countries worldwide.

The Company received a Michigan Economic Growth Authority tax credit in 2008 and collected a small portion of that credit for two years. The Applicant has agreed to forego that incentive as part of this incentive request.

Michigan Economic Development Corporation

PROJECT DESCRIPTION

The Applicant plans to expand their footprint in the City of Ann Arbor to enable the Michigan office to capture future growth in employment versus HQ space in California, make investments and create jobs related to computer product engineering and innovation.

- a) The Applicant is a “Qualified Business”, as defined in MCL 125.2088r(9)(b), that is located and operates in Michigan.
- b) The project will be located in City of Ann Arbor. The City has offered a “staff, financial, or economic commitment to the project” in the form of a property tax abatement. The City of Ann Arbor will consider a 5 year PA 198, estimated value of approximately \$85,150.
- c) The Applicant has demonstrated a need for the funding based on the critical need to be located in downtown Ann Arbor to attract the right talent and competing with premium downtown lease rates compared to available office capacity at the headquarters building owned by the Company, as well as investing in additional space in the lease at the project site to accommodate future growth.
- d) The Applicant plans to create 174 Qualified New Jobs above a statewide base employment level of 148.
- e) The project meets the program guidelines as follows: the proposed project involves out of state competition with the Applicants headquarter facility in California, and the Applicant has indicated that both investment and job creation related to this project will commence in 2012.

INCENTIVE OPPORTUNITY

This project involves the creation of 174 Qualified New Jobs though the Company anticipates the project will create a total of 184 new jobs, and a capital investment of up to \$6.2 million in the City of Ann Arbor. The requested incentive amount from the MSF is \$1.2 million in the form of a performance-based grant. Please see below for more information on the recommended action.

RECOMMENDATIONS

MEDC Staff recommends (the following, collectively, “Recommendation”):

- a) Approval of the MBDP Proposal as outlined in the term sheet attached to the proposed Resolution (collectively, “MBDP Proposal”);
- b) Closing the MBDP Proposal, subject to available funding under the MBDP at the time of closing (“Available Funding”), satisfactory completion of due diligence, (collectively, “Due Diligence”), finalization of all MBDP transaction documents, and further subject to the following terms and conditions:

Commitment will remain valid for 90 days with approval for MSF Fund Manager to extend the commitment an additional 30 days.

The MSF Incentives Subcommittee has indicated its support of the Recommendation.

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

**APPROVAL OF A MICHIGAN BUSINESS DEVELOPMENT PROGRAM GRANT TO
BARRACUDA NETWORKS, INC.**

WHEREAS, the Michigan legislature passed legislation establishing the 21st Century Jobs Trust Fund initiative that was signed into law;

WHEREAS, the Michigan Economic Development Corporation (“MEDC”) provides administrative services to the Michigan Strategic Fund (“MSF”) for 21st Century Jobs Trust Fund programs;

WHEREAS, pursuant to MCL 125.2088r, the MSF shall create and operate the Michigan Business Development Program (“MBDP”) to provide grants, loans and other economic assistance to qualified businesses that make qualified investments or provide qualified new jobs in Michigan;

WHEREAS, on December 21, 2011, by Resolution 2011-184, the MSF (i) created the MBDP, (ii) adopted the guidelines for the MBDP (“Guidelines”), and (iii) approved the MSF Fund Manager to negotiate the final terms and conditions of the written agreements to be used to memorialize MBDP awards on the MSF’S behalf in accordance with the Guidelines (“Transaction Documents”);

WHEREAS, the Guidelines require that MBDP awards over \$1 million must be approved by the MSF Board;

WHEREAS, Barracuda Networks, Inc. (“Company”) has requested a performance based MBDP grant of up to \$1.2 million (“Grant Request”), along with other general terms and conditions which are outlined in the term sheet attached as Exhibit A (“Term Sheet”);

WHEREAS, the MEDC has recommended to the MSF Incentive Subcommittee that the MSF approve the Company’s Grant Request in accordance with the Term Sheet, subject to: (i) available funding, (ii) final due diligence performed to the satisfaction of the MEDC; and (iii) execution of the Transaction Documents within 90 days of the date of this Resolution (“Time Period”), or this Resolution shall have no effect; provided however, at the sole discretion of the MSF Fund Manager, the Time Period may be extended for up to an additional 30 days (“MBDP Award Recommendation”); and

WHEREAS, the MSF Incentive Subcommittee has indicated its support of the MBDP Award Recommendation.

NOW, THEREFORE, BE IT RESOLVED, the MSF Board approves the MBDP Award Recommendation.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

EXHIBIT A



**MICHIGAN BUSINESS DEVELOPMENT PROGRAM
Performance Based Grant - Term Sheet**

The following is a summary of the highlights of the project and basic terms for which the Company desires grant support from the Michigan Strategic Fund ("MSF") under the Michigan Business Development Program ("MBDP"). While the MBDP is operated and funded through the MSF, recommendation for approval of a MBDP incentive award is presented by the Michigan Economic Development Corporation ("MEDC") to the MSF.

Date: June 5, 2012

1. **Company Name:** Barracuda Networks, Inc. ("Company" or "Applicant")
2. **Company Address:** 3175 Winchester Boulevard
Campbell, California 95008
3. **Project Address ("Project"):** 317 Maynard Street
If different than above Ann Arbor, Michigan 48104
4. **MBDP Incentive Type:** Performance Based Grant
5. **Maximum Amount of MBDP Incentive:** Up to \$1,200,000 ("MBDP Incentive Award")
6. **Base Employment Level**

~~162~~
148
MEC/

The number of jobs currently maintained in Michigan by the Company based on data submitted by the Company to the MEDC reflecting the Company's statewide employment level in Michigan prior to the proposed project. The Base Employment Level, including identification of the Company data used to establish this level, shall be included in the final MBDP Incentive Award agreement ("Agreement") between the MSF and the Company.
7. **Total Qualified New Job Creation:** 174
*(above Base Employment Level)*The minimum number of total Qualified New Jobs the Company shall be required to create in Michigan (above the Base Employment Level), in addition to satisfying other milestones if applicable, to be minimally eligible to receive the full amount of the MBDP Incentive Award. Each Qualified New Job must be performed for consideration by a Michigan resident (whose Michigan income taxes are withheld as required),

and each Qualified New Job must be in excess of the Base Employment Level. The final terms and conditions of the requirements for the minimum number of Qualified New Jobs that must be created, including provisions addressing disbursements of portions of the MBDP Incentive Award, and the effects of short term layoffs, furloughs, or similar gaps in employment on the required minimum hours per week, shall be included in the final Agreement.

- a. **Start Date for Measurement of Creation of Qualified New Jobs:** May 17, 2012
- 8. **Company Investment:** Up to \$6 million including building lease costs or leasehold improvements, purchase of machinery and equipment, computers or furniture and fixtures.
- 9. **Municipality supporting the Project:** City of Ann Arbor
- b. **Municipality Support.** One of the conditions of execution of the final Agreement is the requirement that the municipality shall have committed to provide: a property tax abatement. The final terms and conditions demonstrating this support shall be included in the final Agreement.
- 10. **Pre-Closing Requirement:** In addition to all other requirements that must be met prior to the execution of a final agreement, the Company must provide a letter indicating that they are setting-aside and waiving all rights to claim a credit under the Michigan Economic Growth Authority Agreement #472 (September 28, 2008).
- 11. **Disbursement Milestones:** The final terms and conditions of each of the disbursements of any portion of the MBDP Incentive Award shall be included in the final Agreement, including that before any disbursement is made to the Company, the Company must have maintained: (i) the Base Employment Level (exclusive of the number of Qualified New Jobs then created) and (ii) any Qualified New Jobs created for which disbursements by the MSF have been made, and must otherwise be in compliance with all terms and conditions of the final Agreement, and further shall include:
 - a. **Disbursement Milestone 1:** Up to \$600,000 Upon demonstrated creation of 15 Qualified New Jobs above the Base Employment Level, demonstrated of executed lease agreement for the location of the project site and verification of final approval of municipality support by no later than December 31, 2012.
 - b. **Disbursement Milestone 2:** Up to \$200,000 Upon completion of Disbursement Milestone 1, and upon demonstrated creation of 58 additional Qualified New Jobs above the Base Employment Level, by

no later than December 31, 2013.

c. Disbursement Milestone 3:	Up to \$400,000	Upon completion of Disbursement Milestone 1 and Disbursement Milestone 2, and upon demonstrated creation of 101 additional Qualified New Jobs above the Base Employment Level, by no later than December 31, 2014.
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12. Term of Agreement: Execution of Agreement to December 31, 2016

13. Repayment Provisions:

Repayment provisions are required by law. The Repayment terms and conditions will be effective through the Term of the Agreement and shall be defined in the final Agreement. The final repayment provisions may require repayment of some or all of the disbursements made by the MSF, including if the Company moves 25% or more of their employees or operations for the Project out of Michigan, if the Company fails to maintain the Base Employment Level in Michigan, if the Company fails to maintain the Qualified New Jobs incited by this Award.

14. Reporting Requirements:

Periodic reporting will be required with this program. The detailed information needed from the Company will be included in the final Agreement, but will include Project reporting for such things as: amount of proposed incentive, amount of actual incentive received by Company; amount of proposed and actual investment made by Company for Project; the committed number of new jobs and the actual number of new jobs created as a result of the Project; the educational attainment of the employees hired; the number of new patents, copyrights, or trademarks applied for and issued to the Company; the number of licensing agreements by the Company and the number of such licensing agreements entered into by the Company with Michigan based firms; and any products commercialized by the Company.

15. Public Announcements:

The Company shall not make, or cause, any announcement of the proposed MBDP Incentive Award parameters outlined in this letter before the date of approval by the MSF of the MBDP Incentive Award, unless prior authorized and coordinated with the MEDC.

Any final MBDP Incentive Award is contingent upon several factors, including: (i) submission by the Company of a completed application and all other documentation required under the MBDP (ii) satisfactory municipality support (iii) available MSF funding (iv) completion of financial review, business integrity review, required background checks, and other business and legal review and due diligence as required, and the results of which must be satisfactory to the MEDC, the MSF, and as applicable, the Chief Compliance Officer, (v) approval of an award by the MSF, and (vi) execution of a final Agreement containing the established milestones, repayment terms, reporting requirements, and all other detailed terms and conditions, required by the MSF.

If the Company is interested in the MEDC pursuing a recommendation to the MSF for a possible MBDP Incentive Award for the Company along the above parameters, please sign and date this Term Sheet. If the MEDC does not receive the


signed Term Sheet from the Company by June 6, 2012; the MEDC may not be able to proceed with any recommendation to the MSK.

Barracuda Networks

By:

Its:

Dated:



David Fazio, CEO
6/6/12

Acknowledged as received by:

Michigan Economic Development Corporation

By:

Its:

Dated:



Regional Project Manager
6/6/12



MEMORANDUM

DATE: June 27, 2012

TO: Michigan Strategic Fund (“MSF”) Board Members

FROM: Joseph M Martin, Regional Project Manager

SUBJECT: Approval of Michigan Business Development Request for \$3,500,000
Performance-based Grant to:

Brose New Boston, Inc. (“Applicant” or “Company”)
23400 Bell Road
New Boston, Michigan 48164
<http://www.brose.com/ww/en/pub/home.htm>

MBDP PROGRAM AND ITS GUIDELINES

On December 21, 2011, the MSF Board approved the Michigan Business Development Program (“MBDP”) and its guidelines. The primary intended objective of the MBDP is to provide incentives to businesses that create qualified jobs, make qualified investments, or a combination of both, in Michigan.

SOURCE OF INFORMATION

It is the role of the Project Management staff (“MEDC Staff”) to review for eligibility, completeness, and adherence to MBDP guidelines, the information provided by the applicant and to manage the MSF’s investment. Explanatory and background information is supplied in summary form to provide context for the request and is drawn exclusively from materials submitted by the applicant, and, as applicable, from other relevant third party sources utilized by MEDC staff.

HISTORY OF THE APPLICANT

Brose New Boston, Inc., one of seven entities under the larger Brose North America Group (Brose North America Holding, LP), is a leading manufacturer of mechatronic components for vehicle bodies and interiors. The companies currently have two facilities in Michigan, Brose North America, Inc. located in Auburn Hills and Brose Jefferson, Inc. located in Warren. Brose International GMBH, the parent to the North American Group, is an international supplier to automotive markets worldwide.

The Applicant has not received any incentives from the MSF previously. Brose North America Group previously received employment tax credits through the Michigan Economic Growth Authority (MEGA) in 2002 for its facility in Auburn Hills and in 2008 for its facility in Warren. The estimated value of the 2002 credit for the Auburn Hills location was \$14,417,536. The 2008 MEGA for the Warren facility was never activated and will be forgone as part of this MBDP request.

PROJECT DESCRIPTION

The Applicant plans to open a new facility to expand its existing operations in Michigan, make investments and create jobs related to the manufacturing of high-technology mechatronic systems for automobiles. The project will supply Ford Motor Company and Chrysler with systems that include door modules that include power locks and latches and window regulators.

- a) The Applicant is a “Qualified Business”, as defined in MCL 125.2088r(9)(b), that is located and operates in Michigan.
- b) The project will be located in Huron Charter Township. Huron Charter Township has offered a “staff, financial, or economic commitment to the project” in the form of property tax abatement under P.A. 328 of 1998. The abatement will run for 12 years and has an estimated value of \$3.7 million.
- c) The Applicant has demonstrated a need for the funding based on a cost disadvantage of not leasing space next to the Chrysler Toledo Facility. The Ohio location would offer the Company a competitive package of tax incentives in combination with no personal property tax.
- d) The Applicant plans to create 350 Qualified New Jobs above a statewide base employment level of 513. As requirement of the performance based grant, the project will create or cause the creation of 100 additional jobs over the statewide base at the project site, or the Auburn Hills or Warren facility.
- e) The project meets the program guidelines as follows: the proposed project involves out-of-state competition with Ohio; has a net positive return to Michigan; reuses an existing facility; and has the prospect of near-term job creation.

INCENTIVE OPPORTUNITY

This project involves the creation of 350 Qualified New Jobs and a capital investment of up to \$61,773,500 in Huron Charter Township. The requested incentive amount from the MSF is \$3,500,000 in the form of a performance-based grant. Please see below for more information on the recommended action.

RECOMMENDATIONS

MEDC Staff recommends (the following, collectively, “Recommendation”):

- a) Approval of the MBDP Proposal as outlined in the term sheet attached to the proposed Resolution (collectively, “MBDP Proposal”);
- b) Closing the MBDP Proposal, subject to available funding under the MBDP at the time of closing (“Available Funding”), satisfactory completion of due diligence, (collectively, “Due Diligence”), finalization of all MBDP transaction documents, and further subject to the following terms and conditions:

Commitment will remain valid for 90 days with approval for MSF Fund Manager to extend the commitment an additional 30 days.

The MSF Incentives Subcommittee has indicated its support of the Recommendation.

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

**APPROVAL OF A MICHIGAN BUSINESS DEVELOPMENT PROGRAM GRANT TO
BROSE NEW BOSTON, INC.**

WHEREAS, the Michigan legislature passed legislation establishing the 21st Century Jobs Trust Fund initiative that was signed into law;

WHEREAS, the Michigan Economic Development Corporation (“MEDC”) provides administrative services to the Michigan Strategic Fund (“MSF”) for 21st Century Jobs Trust Fund programs;

WHEREAS, pursuant to MCL 125.2088r, the MSF shall create and operate the Michigan Business Development Program (“MBDP”) to provide grants, loans and other economic assistance to qualified businesses that make qualified investments or provide qualified new jobs in Michigan;

WHEREAS, on December 21, 2011, by Resolution 2011-184, the MSF (i) created the MBDP, (ii) adopted the guidelines for the MBDP (“Guidelines”), and (iii) approved the MSF Fund Manager to negotiate the final terms and conditions of the written agreements to be used to memorialize MBDP awards on the MSF’S behalf in accordance with the Guidelines (“Transaction Documents”);

WHEREAS, the Guidelines require that MBDP awards over \$1 million must be approved by the MSF Board;

WHEREAS, Brose New Boston, Inc. (“Company”) has requested a performance based MBDP grant of up to \$3.5 million (“Grant Request”), along with other general terms and conditions which are outlined in the term sheet attached as Exhibit A (“Term Sheet”);

WHEREAS, the MEDC has recommended to the MSF Incentive Subcommittee that the MSF approve the Company’s Grant Request in accordance with the Term Sheet, subject to: (i) available funding, (ii) final due diligence performed to the satisfaction of the MEDC; and (iii) execution of the Transaction Documents within 90 days of the date of this Resolution (“Time Period”), or this Resolution shall have no effect; provided however, at the sole discretion of the MSF Fund Manager, the Time Period may be extended for up to an additional 30 days (“MBDP Award Recommendation”); and

WHEREAS, the MSF Incentive Subcommittee has indicated its support of the MBDP Award Recommendation.

NOW, THEREFORE, BE IT RESOLVED, the MSF Board approves the MBDP Award Recommendation.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

EXHIBIT A



**MICHIGAN BUSINESS DEVELOPMENT PROGRAM
Performance Based Grant - Term Sheet**

The following is a summary of the highlights of the project and basic terms for which the Company desires grant support from the Michigan Strategic Fund ("MSF") under the Michigan Business Development Program ("MBDP"). While the MBDP is operated and funded through the MSF, recommendation for approval of a MBDP incentive award is presented by the Michigan Economic Development Corporation ("MEDC") to the MSF.

Date: 6/18/2012

- 1. Company Name:** Brose New Boston, Inc. ("Company" or "Applicant")

- 2. Company Address:** 3933 Automation Avenue
Auburn Hills, MI 48326

- 3. Project Address ("Project"):** 23400 Bell Road
If different than above New Boston, MI 48164

- 4. MBDP Incentive Type:** Performance Based Grant

- 5. Maximum Amount of MBDP Incentive:** Up to \$3,500,000 ("MBDP Incentive Award")

- 6. Base Employment Level** 513 The number of jobs currently maintained in Michigan by the Company and its affiliates based on data submitted by the Company to the MEDC reflecting the Company's statewide employment level in Michigan prior to the proposed project. The Base Employment Level, including identification of the Company data used to establish this level, shall be included in the final MBDP Incentive Award agreement ("Agreement") between the MSF and the Company.

- 7. Total Qualified New Job Creation:** 350 The minimum number of total Qualified New Jobs the Company shall be required to create in Michigan (above the Base Employment Level), in addition to satisfying other milestones if applicable, to be minimally eligible to receive the full amount of the MBDP Incentive Award. Each Qualified New Job must be performed for
(above Base Employment Level)

consideration by a Michigan resident (whose Michigan income taxes are withheld as required), and each Qualified New Job must be in excess of the Base Employment Level. The final terms and conditions of the requirements for the minimum number of Qualified New Jobs that must be created, including provisions addressing disbursements of portions of the MBDP Incentive Award, and the effects of short term layoffs, furloughs, or similar gaps in employment on the required minimum hours per week, shall be included in the final Agreement.

a. **Start Date for Measurement of Creation of Qualified New Jobs:** April 25, 2012

8. **Company Investment:** Up to \$61.7 million for the purchase of a building, machinery & equipment, furniture & fixtures, renovations or other expenses.

9. **Qualified Investment:** \$6,500,000 The total minimum amount of the required Company Investment in Michigan related to the project, which at a minimum must include the following: the acquisition of the facility located at 23400 Bell Road ("Qualified Investment"). The final terms and conditions of the Qualified Investment shall be included in the final Agreement.

10. **Municipality supporting the Project:** Huron Charter Township

a. **Municipality Support.** One of the conditions of execution of the final Agreement is the requirement that the municipality shall have committed to provide: property tax abatement under P.A. 328 of 1998. The final terms and conditions demonstrating this support shall be included in the final Agreement.

11. **Disbursement Milestones:** The final terms and conditions of each of the disbursements of any portion of the MBDP Incentive Award shall be included in the final Agreement, including that before any disbursement is made to the Company, the Company must have maintained: (i) the Base Employment Level (exclusive of the number of Qualified New Jobs then created) and (ii) any Qualified New Jobs created for which disbursements by the MSF have been made, and must have maintained the amount of then required amount of the Qualified Investment and otherwise be in compliance with all terms and conditions of the final Agreement, and further shall include:

a. **Disbursement Milestone 1:** Up to \$1,000,000 Upon demonstrated completion of \$6,500,000 in Qualified Investment and verification of final approval of municipality support by no later than October 1, 2012.

b. Disbursement Milestone 2:	Up to \$1,000,000	Upon completion of Disbursement Milestone 1, and upon demonstrated creation of 175 Qualified New Jobs above the Base Employment Level, by no later than December 31, 2013.
c. Disbursement Milestone 3:	Up to \$1,500,000	Upon completion of Disbursement Milestone 1 and Disbursement Milestone 2, and upon demonstrated creation of 175 (350 cumulative) additional Qualified New Jobs above the Base Employment Level, by no later than December 31, 2014. Further upon demonstration that Brose New Boston, Inc. created or caused the creation of an additional 100 jobs by Brose New Boston, Inc. at the project site; or Brose Jefferson, Inc. at 25295 Guenther Drive, Warren, MI 48091; or Brose North America, Inc. at 3933 Automation Avenue, Auburn Hills, MI 48236 by no later than December 31, 2014.

12. Term of Agreement: Execution of Agreement to December 31, 2016.

13. Repayment Provisions:

Repayment provisions are required by law. The Repayment terms and conditions will be effective through the Term of the Agreement and shall be defined in the final Agreement. The final repayment provisions may require repayment of some or all of the disbursements made by the MSF, including if the Company moves 25% or more of their employees or operations for the Project out of Michigan, if the Company fails to maintain the Base Employment Level in Michigan, if the Company fails to maintain the Qualified New Jobs incented by this Award.

14. Reporting Requirements:

Periodic reporting will be required with this program. The detailed information needed from the Company will be included in the final Agreement, but will include Project reporting for such things as: amount of proposed incentive, amount of actual incentive received by Company; amount of proposed and actual investment made by Company for Project; the committed number of new jobs and the actual number of new jobs created as a result of the Project; the educational attainment of the employees hired; the number of new patents, copyrights, or trademarks applied for and issued to the Company; the number of licensing agreements by the Company and the number of such licensing agreements entered into by the Company with Michigan based firms; and any products commercialized by the Company.

15. Public Announcements:

The Company shall not make, or cause, any announcement of the proposed MBDP Incentive Award parameters outlined in this letter before the date of approval by the MSF of the MBDP Incentive Award, unless prior authorized and coordinated with the MEDC.

16. Pre-Closing Requirements Jefferson MEGA (#415) and Auburn Hills MEGA (#187):

In addition to all the other requirements to execute a final Agreement, the Company agrees to forego the Jefferson MEGA, (#415), and will submit a letter stating the same prior to MSF approval of this MBDP Incentive. The Company must also enter into an agreement amending the Auburn Hills MEGA, (#187), indicating its agreement that the Qualified New Jobs counted under the MBDP will not count under the Auburn Hills MEGA, (#187), and vice versa..

Any final MBDP Incentive Award is contingent upon several factors, including: (i) submission by the Company of a completed application and all other documentation required under the MBDP (ii) satisfactory municipality support (iii) available MSF funding (iv) completion of financial review, business integrity review, required background checks, and other business and legal review and due diligence as required, and the results of which must be satisfactory the MEDC, the MSF, and as applicable, the Chief Compliance Officer, (v) approval of an award by the MSF, and (vi) execution of a final Agreement containing the established milestones, repayment terms, reporting requirements, and all other detailed terms and conditions, required by the MSF.

If the Company is interested in the MEDC pursuing a recommendation to the MSF for a possible MBDP Incentive Award for the Company along the above parameters, please sign and date this Term Sheet. If the MEDC does not receive the signed Term Sheet from the Company by June 8, 2012, the MEDC may not be able to proceed with any recommendation to the MSF.

Brose New Boston, Inc.

By:

S.M.C. [Signature]

Its:

Vice President - Finance

Dated:

6/20/2012

Acknowledged as received by:

Michigan Economic Development Corporation

By:

J. Martin (Signature)

Its:

Reg. Project Mgr.

Dated:

6/21/2012

MEMORANDUM

DATE: June 13, 2012

TO: MSF Board

FROM: Mike Flanagan – Manager, Equity Capital Programs

SUBJECT: Program Proposal - Pure Michigan Venture Development Fund

BACKGROUND

The table below illustrates the growth of the venture capital industry in Michigan from 2001 to 2012. The primary reason for this dramatic change has been Michigan’s efforts to expand the industry, which were started by Michigan Economic Development Corporation (“MEDC”) and the Michigan Strategic Fund (“MSF”) over a decade ago. These efforts included the Michigan Life Science Corridor, the Michigan Technology Tri-Corridor, the 21st Century Investment Fund, Venture Michigan Fund I & II, and Invest Michigan.

Year	Number of Venture Funds	of Capital Management	Under	Number of Venture Professionals
2001	7		\$500 million	18
2012	35		\$3 billion	82

Michigan’s efforts have been successful at attracting and creating a vital segment of the capital markets. Venture capital represents the only institutional risk capital for early stage companies with high-growth potential. Venture backed companies create roughly 10% of new jobs nationally, with a disproportionate amount in the high-wage, high-skill category, as well as over 15% of GDP nationally.

As of the most recent data from the Michigan Venture Capital Association (“MVCA”), Michigan ranks 18th nationally in venture capital deployed in state, up from 25th in 2006.

However, the state needs to continue to support the venture industry to be competitive regionally and nationally. Michigan still lags far behind states like California, Illinois, and Pennsylvania, which had \$12 billion, \$600 million, and \$540 million in venture investments respectively in 2010. Michigan by comparison had approximately \$215 million in venture investments in the same period. This is no surprise, as all of these other states had significant head-starts in building their respective venture industries through public efforts.

There is no reason that Michigan cannot be in the top tier of the venture industry nationally in the future. Michigan ranks 5th nationally in number of patents awarded, is in the top 15 in university innovation (the University of Michigan ranks 4th), is in the top 5 states for science and engineering doctorates, and ranks 2nd in industrial R&D spending. In other words, Michigan is near the top in most categories that are the critical drivers of good venture deals, but the venture industry needs to continue to grow in order to support and integrate with this critical foundation. If not, the State will continue to see innovative, growth-oriented companies find capital elsewhere, and we will surrender that economic growth to other states.

PROGRAM PROPOSAL

Staff proposes launching the Pure Michigan Venture Development Fund (“VDF”), which is modeled after the successful programs that were administratively served by the MEDC in the early 2000s. Those programs had the goal of helping to seed promising young venture firms to grow the industry in the state. Some of the state’s successful funds were originally seeded by those programs, including Arboretum Ventures I, North Coast Technology Investors, T-Gap, and Apjohn Ventures. The new VDF program hopes to help seed similarly promising young funds that will grow into larger funds in subsequent years.

The VDF will have all of the following goals:

- Increase the number of viable first and second time funds in the state
- Grow the venture industry in MI
- Increase the amount of venture investments in the state
- Increase the number of venture professionals in the state
- Create more and better jobs

A total of \$9 million is targeted at the VDF program over a two year period. The initial request for funding of \$5,000,000 million from the Jobs for Michigan Investment Fund (the “Investment Fund”) is expected to last approximately one year.

RESULTS OF THE PUBLIC HEARING

The MSF Act requires that a public hearing be held to provide the opportunity for the general public to comment on the proposed VDF Program Guidelines and the proposed resolution. MEDC Staff held a public hearing on May 9, 2012 at the Michigan Venture Capital Association (“MVCA”). Approximately 20 people attended the hearing and provided significant feedback that helped to gain confidence in the program’s viability and improve it in some respects. The minutes from the public hearing are attached as Exhibit A (“VDF Public Hearing Minutes”). In summary:

- The VDF Program received broad and significant support and was considered a valuable tool that will help to grow the venture industry and achieve the other goals outlined above.
- There were several comments on minor issues within the guidelines that were helpful in making small adjustments to the guidelines.
- One commenter suggested that the size of the MSF commitment to the awardee funds was too small to be a compelling draw for additional investors. That opinion was rebutted by several attendees that felt a \$2.25 million commitment was valuable and that it would offer the MSF, given the overall program allocation, the ability to diversify its investments.
- Another commented that requiring two managing partners/director in order to apply is not economical given the size of the funds, and suggested one partner is enough. Several other attendees disagreed and commented that smaller funds can support 2 partners, with multiple successful examples in Michigan. MEDC Staff feels that having at least 2 partners is critical in providing capacity and expertise to the funds, and is a key factor in attracting other limited partners to the funds.
- Several attendees commented that a cap on MSF returns under the VDF Program would not be a significant factor in attracting additional investors and may in fact create a complication to the process.

MEDC Staff incorporated several points from the public hearing into the final VDF Program Guidelines however, the Program in general has remained largely unchanged.

PROGRAM GUIDELINES

The VDF Program would operate under the following general guidelines. The complete guidelines are attached to the VDF Program approval resolution:

Eligibility

- Venture funds are required to have raised \$1 million in private capital at the time of application, from at least 3 unrelated investors, which must be evidenced by signed investor commitments. Funds that have raised more than \$25 million are not eligible to apply. Funds with target sizes greater than \$50 million will not qualify.
- The General Partners of applicant funds must have committed to invest in the fund a minimum of 1% of the total fund size.
- Venture funds seeking to apply must meet all of the following additional minimum criteria:
 - Must be headquartered in Michigan;
 - Must have a minimum of 2 managing partners/directors;
 - Must be a first or second generation fund (fund I or II; not required to be first time fund managers)
- Preference will be given to venture funds that are members of the MVCA.
- Preference will be given to venture funds that have strong advisory and/or mentorship relationships, especially in the case of first-time fund manager applicants.
- Preference will be given to venture funds that have not previously received investment(s) from the Michigan Strategic Fund or MEDC. Funds that have received previous investment from the MSF or MEDC which makes up more than 20% of the fund size will not qualify to receive additional state funding from the Venture Development Program.
- Applicants will be required to submit comprehensive information regarding the fund, including management team experience, track record, investment profile and philosophy, a financial plan, and references, among other information.
- All proposals will undergo a two-step evaluation process involving external review by an independent peer review expert and internal review by a Joint Evaluation Committee (“JEC”) appointed by the MSF.
- All awards will be subject to available funding and standard due diligence, including civil and criminal background checks.
- The program will charge an application fee of \$1,000.

Approved Funds

- The Program will invest as a limited partner up to \$2.25 million per qualified venture capital fund.

- Approved venture funds will receive a provisional commitment of \$2.25 million, which shall be fully committed in tranches contingent on the following milestones:
 1. **First Tranche = \$125,000:** contingent on execution of an agreement with the MSF, committing the fund to raise a total of \$8 million from other investors within 24 months. Funds may be used for, but are not limited to, operational expenses, including fund raising activities. These funds can be drawn during the fund raising period as an advance on the limited partner commitment.
 2. **Second Tranche = \$1 million:** contingent on fund receiving commitments totaling \$4 million from at least three (3) other unrelated investors within 12 months of the initial disbursement, which must be evidenced by signed commitment agreements. These funds must be drawn proportionately and concurrently to other limited partner funds.
 3. **Third Tranche = \$125,000:** committed concurrently with second tranche so long as fund continues to fund raise. Funds may be used for, but are not limited to, operational expenses, including fund raising activities. These funds can be drawn during the fund raising period as an advance on the limited partner commitment.
 4. **Fourth Tranche = \$1 million:** contingent on fund receiving commitments totaling \$8 million from at least three (3) other unrelated investors within 24 months from the initial disbursement, which must be evidenced by signed investor commitments. These funds must be drawn proportionately and concurrently to other limited partner funds.
 - Should an approved fund fail to meet any of the scheduled milestones, the MSF may, at its discretion, rescind subsequent tranches of its commitment and commit those funds to other qualified applicants.
 - Approved venture funds shall execute a Limited Partnership Agreement with the MSF.
- Approved funds shall also execute a side letter with the MSF, requiring, among other things, that the fund invest in Michigan companies, at minimum, an amount equal to the MSF investment into the fund.
- Approved venture funds shall be subject to periodic reporting requirements.

APPLICATION PROCESS

- Applications will be accepted starting June 28, 2012. All applications must be submitted by July 31, 2012.
- All applications will undergo a two-step evaluation process involving external review by an independent peer review expert and internal review by a JEC appointed by the MSF Fund Manager. The JEC will make final recommendations for awards to the MSF Board.
- Detailed information on the Venture Development Fund process and program requirements are attached as Exhibit A (“VDF Program Guidelines”)

PEER REVIEW

After extensive due diligence of qualified candidates, MSF Staff recommends the selection of Credit Suisse Asset Management, LLC (“Credit Suisse”) to conduct a peer review for the VDF Program. Credit Suisse is one of the world’s leading financial institutions and an industry leader in the management of

private equity fund of funds. Credit Suisse manages both the 21st Century Investment Fund and Venture Michigan Funds I & II for the State of Michigan, helping the State build its venture capital, private equity, and mezzanine markets over the last six years.

There are significant advantages in having Credit Suisse conduct the peer review as compared to other potential peer review candidates:

- Credit Suisse has indicated that it will conduct the peer review for the VDF Program at no charge to the Michigan Strategic Fund.
- Credit Suisse has also indicated that every fund awarded through the VDF Program will be considered for co-investment from the Venture Michigan Fund II program (managed by Credit Suisse), which would provide significant leverage on MSF dollars, and provide even greater opportunity for awardee funds to reach critical mass;
- At a minimum, all applicant funds will gain exposure to Credit Suisse for possible future investment, and hopefully learn from the process.

RECOMMENDATION

MEDC Staff recommends all of the following to the MSF Board:

- Approval of the Pure Michigan Venture Development Fund Guidelines as set forth in the VDF Program approval resolution;
- Allocation of funding in the amount of \$5,000,000 from the Investment Fund to the Pure Michigan Venture Development Fund;
- Selection of Credit Suisse as a peer reviewer to evaluate the proposals submitted in response to the Pure Michigan Venture Development Fund and subsequently recommends the MSF Board delegate to the MSF Fund Manager the authority to negotiate and execute a contract with Credit Suisse for this purpose;
- Delegation to the MSF Fund Manager of the authority to develop and approve the scoring and evaluation criteria and process to be used by the independent peer reviewer and the JEC in evaluating proposals received under the VDF program;
- That the MSF authorize the Fund Manager to appoint members of a JEC for the purpose of reviewing the results of the peer review and making final recommendation for award to the MSF;
- That the MSF Board delegate to the MSF Fund Manager the authority to negotiate and finalize all terms, conditions, investment agreements and all other related agreements for the VDF Program;
- That the MSF authorize the Fund Manager to revise the guidelines of the VDF program in consultation with the MSF Investment Subcommittee.

The MSF Investment Subcommittee has indicated its support of these recommendations.

Exhibit A

Pure Michigan Venture Development Fund Public Hearing Minutes May 9, 2012

The Michigan Economic Development Corporation held a public hearing to discuss the Pure Michigan Venture Development Fund on May 9, 2012 at the office of the Michigan Venture Capital Association at 115 West Huron Street, 3rd Floor, Ann Arbor, Michigan 48104.

MEDC State Employees Present: Mark Morante

MEDC Corporate Employees Present: Mike Flanagan, Emily Heintz, Paul Brown

- I. Call to Order
 - a. Meeting was brought to order by Mike Flanagan at 10:15am
- II. Program Overview
 - a. Staff proposes launching the Pure Michigan Venture Development Fund (“VDF”), which is modeled after the successful programs that were executed in the early 2000s by the Michigan Economic Development Corporation (MEDC). Those programs had the goal of helping to seed promising young venture firms to grow the industry in the state. Some of the state’s successful funds were originally seeded by those programs, including Arboretum Ventures I, North Coast Technology Investors, T-Gap, and Apjohn Ventures. The new VDF program hopes to help seed similarly promising young funds that will grow into larger funds in subsequent years.
 - b. The VDF will have all of the following goals:
 - i. Increase the number of viable first and second time funds in the state
 - ii. Grow the venture industry in MI
 - iii. Increase the amount of venture investments in the state
 - iv. Increase the number of venture professionals in the state
 - v. Create more and better jobs
 - c. A total of \$9 million is targeted at the VDF program over a two year period. An initial request for funding of \$5,000,000 million from the Jobs for Michigan investment fund (the “Investment Fund”) is expected to last approximately one year.
- III. General Discussion
 - a. Venture funds seeking to apply must have a minimum of 2 managing partners/directors and must be headquartered in Michigan. Sonali Vijayavargiya (Augment Ventures) commented that this criterion may hinder some venture funds. She asked if a fund could locate their headquarters in Michigan but have a partner/director who lives in another state.
 - i. Paul Brown responded that the Michigan Economic Development Corporation’s intent is to create a program that increases the amount of venture capital dollars and professionals in the state. Mr. Brown stated

- that the MEDC doesn't want to put unnecessary restrictions in the language of the program that may prevent this goal from being achieved. He posed the question about whether the group feels that this criterion would cause undue hardship for a new fund and new professionals.
- ii. Jason Townsend (Resonant Ventures) and Eric Green commented that they did not believe this criteria would cause undue hardship
 - iii. Ian Bund (Plymouth Venture Partners) mentioned that he thinks the effort and funding programs MEDC has should focus on Michigan
- b. The operational expenses dollars associated with the VDF will roll into the limited partnership as an equity investment under the MSF legislation. Chris Rizik (Renaissance Ventures) asked if this could be explained further.
- i. Mike Flanagan explained that the legislation in the investment act prohibits MEDC from making a separate grant for operational dollars.
 - ii. Chris Rizik mentioned that he could see the operational expense dollars being considered an advance on the MEDC's capital contribution. He also mentioned that it would be helpful if there was a definition in the program language of what expenses are considered "management expenses."
 - iii. Jason Townsend suggested that applicants be asked to explain their personal financial plan was for the next ten years. Chris Rizik agreed and stated that he thought the personal financial plan of the fund manager(s) was key to the viability of the fund.
- c. Ian Bund mentioned that, if the goal of the program is to create a program that increases the amount of venture capital dollars and professionals in the state, he feels this program will be successful in attracting younger venture capitalists that have insight into new industries that the more experienced venture capitalists are unfamiliar with. He further stated that many of these newer industries are less capital intensive and could really make an economic impact in Michigan. Ian stated that, in his experience, there are a few more recent funds that are currently raising money that he would really like to see be successful in completing their raise. He questioned whether the fact that preference will be given to venture funds that have not previously received investment(s) from the Michigan Strategic Fund or MEDC is too restrictive. Currently, funds that have received previous investment from the MSF or MEDC which makes up more than 20% of the fund size will not qualify to receive additional state funding from the Venture Development Program.
- i. Paul Brown posed the question to the group whether they felt that the 20% of the fund size threshold of investments from the MSF or MEDC should be higher.
 - ii. Andy McColm stated that he felt the MEDC should factor in the total size of the fund in this guideline. He gave the example that if the fund is \$100 million, this 20% investment by the MSF or MEDC is \$20 million which is quite a large sum of money and as a taxpayer he would feel uncomfortable with MEDC making an equity investment that large. However, if the fund size is \$5 million, the MEDC has only invested \$1

million and maybe this percentage should be increased to allow for additional dollars to be invested in promising funds.

- iii. Paul Brown posed the question to the group of whether the program should require first-time fund managers to have a partner or collaborator with more experience. The group consensus was that this should be a consideration when reviewing the applications but not a requirement of the applicants.
- d. Jason Townsend voiced concerns over how long the application period is. He mentioned that he is currently fundraising and is anxious to start deploying. An application period that is greater than 30 days he feels would delay his current timeline.
 - i. Chris Rizik countered that he believes a longer application period might encourage a greater number of new fund managers to participate which speaks more to the goals of the program.
 - ii. Ian Bund commented that he believes MEDC should make sure to widely market this program to encourage the underdeveloped capital markets in areas of great potential such as Grand Rapids and Traverse City. He also recommended that MEDC make it widely understood that this is a private sector focused program, not just an economic development program.
- e. Quantum Reach mentioned that he and his business partner have built relationships and have commitments and are interested in organizing their fund in Michigan. He thought it would be useful for funds like his if the \$2.25 million was used to attract private equity professionals from outside of the state and could be used as operation expense dollars.
 - i. Mike Flanagan responded that he would need additional information but it sounded as if Quantum Reach had a pledge fund and might benefit from a program that is aimed at pledge funds. MEDC currently does not have this type of program.

IV. Mike Flanagan went through the Pure Michigan Venture Development Fund Discussion Points handout:

- a. Program staff has received feedback that in the current fund raising environment, a \$2.25 million commitment will not be enough of a compelling draw for additional investors to invest in first or second time funds. Currently the program anticipates a \$9 million allocation, which could award 4 funds at \$2.25 million per fund. Mike Flanagan asked whether the program should consider making a larger investment into fewer funds, which may create a better chance of success for awarded funds? Should the program instead fund 3 funds at \$3 million per fund, or 2 funds at \$4.5 million per fund?
 - i. Feedback from the group indicated that merit could be seen in any of these options.
- b. Program staff has received feedback that in the current fund raising environment, a \$1,000 application fee may be too high for a new fund to afford. Mike Flanagan asked whether the program should consider reducing the application fee?

- i. Feedback from the group indicated that the application fee was not an impediment and this figure is comparable to what other private equity programs charge. The SBA was given as an example, their application fee is \$5,000.
- c. There may be applicants that have already raised significant funds over the \$1 million threshold at the time of application. Mike Flanagan asked whether the program should limit, in those cases, the amount of the commitment that can be used up front for fund raising expenses?
 - i. Feedback from the group indicated that the verbiage regarding the amount of the commitment from MEDC that can be used up front for fundraising expenses should not be changed.
- d. There is a \$1 million minimum raised threshold at the time of application. Mike Flanagan asked how many unrelated LP investors the group thought were appropriate to make up this minimum threshold.
 - i. The group consensus was that there should be a required minimum number of LP's at the time of application. Ian Bund mentioned that he believed three unrelated limited partners should be required. Jason Townsend agreed.
- e. Approved venture funds will receive a provisional commitment of \$2.25 million, \$250k of which will be for operational expenses, including fund raising activities. Mike Flanagan asked the group whether \$250k provided a sufficient run way for operations.
 - i. Eric Green stated that he believed \$250k was a generous amount even if it was split into two tranches. Jason Townsend agreed.
- f. If all milestones are achieved, the fund size will be \$10.25 million at a minimum. Mike Flanagan asked whether the MSF should require a larger minimum fund size to be "viable".
 - i. Ian Bund stated that many successful first funds have been smaller and have gone on to create larger funds that have had a significant impact on the Michigan economy. Jason Townsend agreed and suggested again that applicants be asked to explain their personal financial plan was for the next ten years because that spoke to the viability of the fund more than the amount of funds available for investment.
- g. Mike Flanagan questioned whether, given the difficult fund raising environment, MEDC should put a cap on returns to the program in order to draw for additional investors?
 - i. Eric Green said he did not believe that a cap on MEDC's returns would be much of an incentive to other LP's. Chris Rizik agreed.
 - ii. Ian Bund stated that he felt that this cap may be viewed as a complication to the fund and may create more suspicion than interest. Michael Godwin agreed.
- h. The structure of this program as proposed, would award funds a conditional commitment of \$2.25 million that can be earned-out through the completion of milestones. Mike Flanagan questions how, if at all, this structure might complicate the fund raising process?

- i. Michael Godwin and Jason Townsend commented that they did not feel this complicated the fund raising process at all.
 - ii. Ian Bund mentioned that he did not feel it complicated the fund raising process but suggested that maybe the first \$125k tranche be an allocation that can be drawn down at any time.
 - i. The operational expense dollars will have to roll into LP as an equity investment under the MSF legislation. Mike Flanagan asked whether this was manageable from an accounting perspective of the fund?
 - i. Jason Townsend mentioned this would be simple from an accounting perspective if the \$125k tranche was treated as being in the same bucket as the \$1 million tranche. Ian Bund agreed.
- V. **Adjournment:** The meeting was adjourned at 12:00pm by Mike Flanagan

These are the minutes of the May 9, 2012 Pure Michigan Venture Development Fund Public Hearing, respectively submitted, May 9, 2012 by Emily Heintz.

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

APPROVAL OF PURE MICHIGAN VENTURE DEVELOPMENT FUND

WHEREAS, Public Acts 215 and 225 of 2005 established the 21st Century Jobs Trust Fund initiative;

WHEREAS, MCL 125.2088k created the Strategic Economic Investment and Commercialization Board (“SEIC Board”) for the purposes of awarding grants and loans for basic research, applied research, university technology transfer, and commercialization of products, processes and services to encourage the development of competitive edge technologies to create jobs within the State of Michigan;

WHEREAS, pursuant to Executive Order 2010-8, the Governor ordered the SEIC Board abolished and all powers, duties, and functions of the SEIC Board transferred to the Michigan Strategic Fund (“MSF”), including those powers, duties, and functions provided under MCL 125.2088k;

WHEREAS, the Michigan Economic Development Corporation provides administrative services for the Michigan Strategic Fund (“MSF”) for 21st Century Jobs Fund programs (“21CJF Programs”);

WHEREAS, the MSF desires to create the Pure Michigan Venture Development Fund (the “Venture Development Fund”) to assist in the growth of the venture industry by increasing the number of viable venture funds, with the intent of increasing the number of venture investments in the State;

WHEREAS, the MSF has reviewed proposed guidelines and process for the Venture Development Fund (“Venture Development Fund Program Guidelines”), which includes provisions required by MCL 125.2088k and establishes a competitive proposal process for making awards to qualified venture funds. The Venture Development Fund Program Guidelines are attached to this Resolution; and

WHEREAS, the MSF desires to initiate the competitive process to make awards to qualified venture funds under the Venture Development Fund.

NOW, THEREFORE, BE IT RESOLVED, that the MSF approves the attached Venture Development Fund Program Guidelines and authorizes implementation of the Venture Development Fund; and

BE IT FURTHER RESOLVED, that the MSF authorizes the MSF Fund Manager to modify the Venture Development Fund Program Guidelines as may be necessary or appropriate, if the modifications are not materially adverse to the interests of the MSF.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

Michigan Strategic Fund Board
21st Century Jobs Fund

Pure Michigan Venture Development Fund

Program Application, Process & Guidelines

Release Date: June 28, 2012

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I. **IMPORTANT DATES and REMINDERS**

- **Applications will be accepted starting June 28, 2012**
- **All applications must be received by July 31, 2012 in order to be considered for award**
- Questions from potential applicants regarding the Pure Michigan Venture Development Fund (“Program”) will only be accepted via email sent to VDF@Michigan.org. Responses to all qualifying questions will be posted on the MEDC’s website:
 - www.michiganadvantage.org/PureMichiganVentureDevelopmentFund.
- Proposals must be submitted to the MEDC via email sent to VDF@Michigan.org. Once the MEDC has received the application you will be contacted on how to pay the application fee. Proposals will not undergo peer review until the application fee has been received.
- **Venture funds should not submit an application fee until they have received notice from program staff.** MEDC Staff will conduct an initial review of the application prior to requiring the fee to ensure the application meets the minimum criteria of the Program. MEDC Staff will provide instructions for payment of the application fee upon verifying that the application meets the minimum requirements of the Program.
- An independent peer review of the application will be conducted upon receipt of all qualified applications. Applicant funds should plan to be available for face to face interviews with the peer reviewers.
- Applications will not be accepted once available funding has been fully committed. If additional funding designated for the Program or previous investments have liquidity events that are returned to the Program the application process will be reopened and announced on www.michiganadvantage.org/PureMichiganVentureDevelopmentFund.
- Applicant proposals may not exceed 35 pages, utilizing ten (10) point font or greater, submitted as a single Portable Document Format (.pdf) file. Proposals in excess of 35 pages will be disqualified. Application format requirements can be found in Section VI of this document.
- Prior to final submission, please verify all of the specifications as described for Program as defined in this document are included.

II. INTRODUCTION

Public Act 215 of 2005, Section 88k(2) (“MSF Act”) allows the Strategic Economic Investment Commercialization (“SEIC”) Board to award grants, loans and investments from the 21st Century Jobs Fund for “...basic research, applied research, university technology transfer and commercialization of products, processes and services to encourage the development of competitive edge technologies to **create jobs in the State.**” Under Executive Order 2010-8, the Governor ordered the SEIC Board abolished and all powers, duties, and functions of the SEIC Board transferred to the Michigan Strategic Fund (“MSF”).

A. Program Overview

Under the 21st Century Jobs Fund Initiative, the MSF Board has been given the opportunity to foster the growth of innovative companies with the potential for high growth in Michigan. Early stage innovative companies often require venture capital in order to grow.

Recognizing that Michigan has a relatively small venture capital industry, the MSF has approved the Pure Michigan Venture Development Fund (“VDF” or “Program”) to assist in the growth of the venture industry by increasing the number of viable venture funds, with the intent of increasing the number of venture investments in the state. The program will ultimately encourage diversification of the state’s economy into competitive edge technology sectors, as defined in the MSF Act.

The Program, through a peer-reviewed competitive process, will award qualifying first and second generation venture funds up to \$2.25 million each. It is anticipated that the Program will award up to four venture funds based on current and future MSF funding.

B. Program Goals

The Program has all of the following goals:

- Increase the number of viable first and second time funds in the state
- Grow the venture industry in MI
- Increase the amount of venture investments in the state
- Increase the number of venture professionals in the state
- Create more and better jobs
- Return of and on capital

III. ELIGIBILITY, REQUIREMENTS AND OBLIGATIONS

A. Venture Fund Eligibility Criteria

- This Program is designed to invest in first and second generation funds in Michigan for the primary purpose of increasing their ability to raise additional funds and become viable entities.
- To qualify, applicant venture funds are required to have raised \$1 million in private capital from at least 3 unrelated investors at the time of application, which must be evidenced by signed

investor commitments. Funds that have raised more than \$25 million are not eligible to apply. Funds with target sizes greater than \$50 million will not qualify for this Program.

- Venture funds seeking to apply must meet all of the following additional minimum criteria:
 - Must be headquartered in Michigan
 - Must have a minimum of 2 managing partners/directors
 - Must be a first or second generation fund (fund I or II)
 - Fund managers do not need to be first time fund managers. Preference will be given to experienced fund managers.
- Preference will be given to venture funds that are members of the Michigan Venture Capital Association (“MVCA”)
- Preference will be given to venture funds that have strong advisory and/or mentorship relationships, especially in the case of first-time fund manager applicants.
- Preference will be given to venture funds that have not previously received investment(s) from the Michigan Strategic Fund or MEDC. Funds that have received previous investment from the MSF or MEDC which makes up more than 20% of the fund size will not qualify to receive additional state funding from the Venture Development Program.
- To qualify, venture funds must submit all information required under Section VI of this document.
- Program staff will perform additional due diligence of applicant funds at its discretion prior to making any award, including civil and criminal background checks. Funds shall provide information upon request to the satisfaction of program staff’s due diligence.
- All proposals will be evaluated by independent peer review experts.

B. Technology Sector Requirement

- Applicants of the Program must be able to show how they will create jobs and commercialize product(s) within one or more of the competitive edge technology sectors defined in Section 125.2088a of the MSF Act, as amended, and as determined by the MSF Board, including:
 1. Life Sciences Technology
 2. Advanced Automotive Manufacturing and Materials
 3. Homeland Security and Defense
 4. Alternative Energy
 5. Information Technology
 6. Agricultural Processing Technology
 7. and/or any other innovative technology as determined by the MSF Board

C. For-Profit Entity

- Only for-profit entities are eligible to receive funding through the Program.
- Eligible venture funds must be authorized to conduct business in the State of Michigan. For further details on eligibility requirements refer to *Legal Requirements, Appendix A*.

D. Application Fee

- A non-refundable application fee of \$1,000, payable to the MEDC, will be due upon notification from the MEDC. **The fee is not due at the time of application.** In cases where an application is disqualified prior to undergoing a peer review, no fee will be required. MEDC Staff will provide instructions on payment of the application fee if the application meets the minimum requirements of the Program.

E. Financial Contributions

- The MSF Board requires that applicants will have already received commitments of at least \$1 million from at least 3 unrelated investors at the time of application. Each proposal must include signed commitment agreements to evidence such commitments.
- General Partners of applicant funds are required to commit to invest at least 1% of the total fund size into the fund.

F. Awards, Agreements and Required Terms

- The Program will invest as a limited partner up to \$2.25 million per qualified venture capital fund. Awards will be distributed in the form of equity investments or convertible notes at the discretion of the MSF after the peer review has been completed.
- Approved venture funds will receive a provisional commitment of \$2.25 million, which shall be final committed in tranches contingent on the following milestones:
 1. First Tranche = \$125,000: contingent on execution of an agreement with the MSF, committing the fund to raise a total of \$8 million from other investors within 24 months. Funds may be used for, but are not limited to, operational expenses including fund raising activities. These funds can be drawn during the fund raising period as an advance on the limited partner commitment.
 2. Second Tranche = \$1 million: contingent on fund receiving commitments totaling \$4 million from at least three (3) other unrelated investors within 12 months of the initial disbursement, which must be evidenced by signed commitment agreements. These funds must be drawn proportionately and concurrently to other limited partner funds.
 3. Third Tranche = \$125,000: committed concurrently with second tranche so long as fund continues to fund raise. Funds may be used for, but are not limited to operational expenses including fund raising activities. These funds can be drawn during the fund raising period as an advance on the limited partner commitment.

4. Fourth Tranche = \$1 million: contingent on fund receiving commitments totaling \$8 million from at least three (3) other unrelated investors within 24 months from the initial disbursement, which must be evidenced by signed investor commitments. These funds must be drawn proportionately and concurrently to other limited partner funds.
- Should an approved fund fail to meet any of the above scheduled milestones, the MSF may at its discretion, rescind subsequent tranches of its commitment, and commit those funds to other qualified applicants.
 - Approved funds must execute a side letter with the MSF, requiring, among other things, that it invest in Michigan companies, at minimum, an amount equal to the MSF investment into the fund.
 - Approved venture funds shall be subject to periodic reporting requirements.
 - A total of \$9 million is targeted at the VDF program overall. The initial amount allocated to the Program by the MSF is \$5 million. The MSF may allocate additional funding to the VDF in the future. After investment awards have been officially announced, MEDC staff will contact each award recipient to set up a date and time to negotiate the contractual terms for the investment agreement and to structure a monitoring program. Successful applicants will also be informed of the requirements for progress reports.
 - All contracts approved by the MSF will contain a provision that the Auditor General has access to the books and records, including financial records and all other information and data relevant to the terms of the contract related to the use of the investment.
 - As a condition of receiving an investment from the Program, a venture fund must agree to maintain its principal operations in Michigan for a minimum of three years and execute a repurchase agreement with the MSF that provides for the repurchase of a qualified investment if the business voluntarily relocates out of Michigan prior to the third anniversary of the execution of the Program investment agreement.
 - Successful proposals approved for funding by the MSF Fund Manager are subject to the final execution of a legal agreement and successful completion of a due diligence review including, among other things, criminal and civil background checks of the applicant. Background checks will include, without limitation, affiliates, subsidiaries, officers, directors, managerial employees, and any person or entity which directly or indirectly holds a pecuniary interest in that business entity of 20% or more. Further details concerning this process are included in *Legal Requirements, Appendix A*.

G. Estimated Timeline

<u>June 27, 2012</u>	MSF Board final review and approval of the Program and Program Guidelines
<u>June 28, 2012</u>	Publication of the Program Guidelines at: www.michiganadvantage.org/PureMichiganVentureDevelopmentFund and opening of the Program to accept applications

<u>July 24, 2012</u>	Applicant questions due via e-mail
<u>July 27, 2012</u>	Responses to remaining questions posted on MEDC Website at www.michiganadvantage.org/PureMichiganVentureDevelopmentFund
<u>July 31, 2012</u>	Proposals in the form of a business plan must be received by the MEDC via email sent to VDF@Michigan.org
<u>Estimated 90 days from payment of the application fee</u>	Review Period; an independent peer review will be conducted. Applicants should plan to be available for face to face interviews with the peer review panel during this period.

IV. APPLICATION PROCESS

A. Submission

- Applications must be sent by email to VDF@Michigan.org.
- Proposals will be time stamped by the MEDC Staff. It is the sole responsibility of the applicants to submit proposals and application fees in a timely fashion.
- Applicants will be notified by the MEDC with instructions on how to pay the \$1,000 application fee after receipt of the Company application and verification that it meets the guidelines for submittal.
- All questions from applicants must be submitted via email to VDF@Michigan.org. Questions that are phoned, faxed, sent through regular mail, or emailed directly to MEDC staff or the MSF Board will not be accepted. Answers to qualifying questions will be posted periodically at www.michiganadvantage.org/PureMichiganVentureDevelopmentFund; applicants are encouraged to check this website frequently.
- Incomplete proposals will not be accepted or reviewed. **Any change or update to the acceptance of proposals will be posted on the MEDC website.** Such postings shall constitute constructive notice to the general public and to all applicants of any modifications or alterations of the deadline for proposals. Therefore, applicants are strongly encouraged to continuously check the MEDC website at:

www.michiganadvantage.org/PureMichiganVentureDevelopmentFund.

B. Confidentiality of Submitted Materials

- **All** proposal materials and materials generated throughout the competition, including, but not limited to, peer review materials, letters of commitment, biographical information, and due diligence information, submitted to the MEDC and State of Michigan through the MSF Board may be subject to public disclosure under Michigan's Freedom of Information Act ("FOIA"). For further details on confidentiality requirements refer to the *Legal and Policy Section, Appendix A*.

- *As provided in the Michigan Strategic Fund Act (“MSF ACT”), the applicants may request that “financial or proprietary information,” as defined in the MSF Act, contained within proposal submission materials be protected from disclosure under the Michigan FOIA. Such information **MUST** be identified directly within the material submitted by applicants and comply with the following requirements:*
 - *Identify each component and portion of the narrative for which you are requesting confidentiality. **Text, tables or graphics MUST be bolded and marked with asterisks and brackets (*[bold if text]*) within the narrative.***
 - *Identify the attachment and the portion of the document for which you are requesting confidentiality. **Text, tables or graphics MUST be bolded and marked with asterisks and for portions of a multi-page document, such as the Business Plan, you MUST also list the page numbers of all pages that contain information marked by asterisks and bold brackets.***
- Applicants understand that by failing to properly identify information that the applicant desires to be designated as confidential by the MSF Fund Manager, the applicant waives all rights and actions against the MEDC, the MSF Board, and the State of Michigan and its participants, officers, agents and employees regarding the release of information that could have otherwise been acknowledged as confidential but for the applicant’s failure to properly designate the information as provided in this section or take other necessary action to have information acknowledged as confidential. It is the applicant’s sole responsibility to identify information that it desires to be designated as confidential. Neither the MSF Board nor MEDC shall be liable for any inadvertent disclosure of any of the applicant’s information designated as confidential by the applicant.
- The MSF Fund Manager will determine and acknowledge information requested to be kept confidential on a case by case basis.

V. REVIEW PROCESS

- All applications will undergo a two-step evaluation process involving external review by an independent peer review expert and internal review by a Joint Evaluation Committee (“JEC”) appointed by the MSF Fund Manager. The JEC will make final recommendations for awards to the MSF Board.

DECISIONS BY THE MSF ARE FINAL AND NOT SUBJECT TO APPEAL

VI. APPLICATION FORMAT – BUSINESS PLAN

Proposals must be in the form of a business plan, not to exceed 35 pages, utilizing ten (10) point font or greater, submitted as a single Portable Document Format (.pdf) file attachment. Proposals in excess of 35 pages will be disqualified. This page limit does not include the cover page, required appendices for letters of collaboration and/or financial commitment(s) or policy on conflict management.

Proposals may only be submitted electronically via email to the MEDC at VDF@Michigan.org. **Proposals will not be accepted via U.S. mail or any other delivery method.** A non refundable application fee of \$1,000 will be due upon notification from the MEDC.

Applicants are asked to submit a business plan that should contain, at a minimum, the following items:

A. Executive Summary

1. Overview of venture fund and business plan
2. Significance to Michigan

B. Partnership Information

1. Inception / History
2. Funds organized to date along with respective vintage years and amounts of committed capital
3. Organizational structure
4. Descriptions of all entities associated / affiliated with the Partnership
5. Detailed contact information for all office locations (address, telephone and fax) and key due diligence contact (e-mail, telephone and fax)

C. Fund Raising Information

1. Target / maximum amount of capital to be raised
2. Expected date of initial and final close
3. Prior funds' schedule of LPs along with individual commitment amounts if applicable
4. Preliminary indications of interest for the new fund (if applicable), with expected commitment amounts
5. Investors not investing in new fund (if applicable) and reason(s) for non-participation
6. Amount of capital drawn down for the prior fund (if applicable) along with estimated reserves for fees, expenses and future rounds of financing
7. Briefly describe your policies to share/allocate investment opportunities between active fund(s) and the new fund to be raised

D. Investment Focus

1. Investment strategy / philosophy along with an in-depth discussion of the changes (if any) as compared to the prior fund (if applicable)
2. Areas of focus across various dimensions including geography, sector and transaction type
3. Competitive matrix showing the Firm's competitive positioning against potential competitors

4. The Firm's competitive advantages given the aforementioned strategy/areas of focus
5. Any affiliations and/or partnerships with research institutions, universities, companies, etc.

E. Investment Profile

1. Investment plan as determined by number of investments, average investment size and investment pace during the investment period
2. Target company profile
 - Size (revenues, enterprise value, total capitalization, etc)
 - Average equity investment
 - Target ownership stake
3. Transaction structure / type
4. Portfolio diversification across various dimensions including:
 - Geography
 - Sector and sub-sector
 - Company (i.e. maximum total investment – inclusive of add-on acquisitions / financing – per company)

F. Investment Process

1. Past deal flow log for the last five years (or less if applicable) along with statistics showing the number of deals undergoing preliminary screening, detailed due diligence and actual investments
2. Expertise in sourcing and evaluating overall deal flow
3. Discuss the investment decision-making process at each stage of deal flow (preliminary screening, detailed due diligence, final investment)
4. Describe the composition of the investment committee and any change(s) from the prior fund(s) if applicable
5. Post-investment activities to monitor and add value to investee companies:
 - Form and format of reporting required from portfolio companies for term of investment
 - Establishing and monitoring achievement of milestones and actions contemplated when milestones are missed
 - Assistance to be provided to portfolio companies needing follow-on funding
 - Plans to protect the Fund's ownership position in its portfolio companies

- Plans to assist portfolio companies with business, technology and management issues such as recruiting management team, introduction to partners or new customers, technology matchmaking activities, etc.

G. Milestones and Timing

1. Anticipated schedule of investing the bulk of the Award in portfolio companies
2. Anticipated exit schedules
3. Financial Objectives/Returns on investments

H. Financial Plan

1. Investment Forecast: Provide a five year cash-flow forecast for all investible funds, indicating how the Fund will allocate these dollars to each portfolio company
2. Five year Operating Budget for the Fund: Provide a detailed five-year Operating Budget for the Fund.
3. Personal Financial Plan: Provide evidence that fund managers have the personal financial means to commit to employment with the fund over the life of the fund.

I. Management Team

1. Total number of full-time professionals employed by the GP, broken down into investment professionals, accounting and finance professionals, and miscellaneous support staff
2. Breakdown of investment professionals by designation (Partner, Principal / Vice President, Associate, Analyst, etc)
3. Detailed biographies of all investment professionals along with relevant biographical information
4. Briefly describe any other professional responsibilities of management, including public funds, charitable activities, board responsibilities, etc.
5. Turnover of senior professionals (Vice President and above) since inception including reasons for departure and other relevant information
6. Describe the functional responsibilities of each investment professional along with approximate time allocation across various investment activities, including deal sourcing, structuring, execution, monitoring and exit management
7. Discuss expected staffing levels
8. Capital commitment by each professional
9. Carried interest split among investment professionals and the vesting schedule, along with comparison to the prior fund(s) if applicable

10. Attribution of all previous investments (if applicable) for all professionals employed by the fund, where applicable (see Summary Attribution Table referenced below)
11. Biographies of any fund advisors and/or mentors (if applicable) and approximate time and capacity working with the fund

J. Track Record

1. Historical investment track record in Excel showing:
 - Actual cash flows, by investment, for realized and unrealized investments
 - Actual LP cash flows (net of all expenses) for the prior fund(s)
2. Please provide Transaction Summaries for all investments made to date including the following information:
 - Company name, location and business description
 - Investment thesis
 - Existing investors in the company along with the respective investment amounts
 - Composition of the Board of Directors
 - Recent company developments
 - Initiatives taken by the Firm to improve company performance
 - Company outlook, including key milestones, progress on financial / operating parameters, etc
 - Exit plan (prospects for IPO, interest from strategic players, anticipated time frame for liquidity, etc) or if realized, mode of exit along with description of the exit process
3. Please provide the following financial information for all portfolio companies, both realized and unrealized, in Excel:
 - Relevant financial information – Revenues, EBITDA and Net Debt – historical (past three years), at the time of investment, most recent financial period as well as projected (at least three years)
 - Valuation multiples – Enterprise Value to Sales and Enterprise Value to EBITDA – at the time of investment as well as most recent financial period
 - Fully diluted ownership stake, both at the time of investment as well as current
4. Valuation policy
 - For financial reporting purposes
 - If different than above, the methodology used for calculating returns in the track record
5. Most recent quarterly and annual reports (including most recent audited financials) for each prior partnership
6. Co-investments
 - Have you provided co-investment opportunities to your LPs in the past five years?
 - Have you syndicated excess investment capacity to other GPs?
 - How have your co-investments provided to LPs performed relative to other investments?

K. Legal documents

- Please provide electronic copies of the following:
 - Offering memorandum

- Partnership Agreement
- Fund management and/or advisory agreements
- Subscription Agreement
- Legal/Tax opinion letter
- All side-letters
- Advisory Committee
 - Composition of the Committee
 - Criteria for selection of the members
 - Description of responsibilities

L. References

- Names and contact information (telephone and e-mail) for:
 - All portfolio company CEOs (including any replaced CEOs)
 - Former employees
 - All co-investors
 - All limited partners
 - Bankers and brokers
 - Law firms and auditors

M. A policy on conflict management

Reference: Summary Attribution Table

Fund	Company	Description	Location	Industry	Round(s)	Origination	Lead	Board Representation	Exit Involvement	Co-Investors
	Portfolio Company 1									
	Portfolio Company 2									
	Portfolio Company 3									
	Portfolio Company 4									
	Portfolio Company 5									
	Portfolio Company 6									
	Portfolio Company 7									

VII. GOVERNING BOARD AND ADMINISTRATION OF PROGRAM

The MSF Board is comprised of 11 members, including the Director of the Department of Licensing and Regulatory Affairs, the State Treasurer, the Chief Executive Officer of the MEDC and 8 additional members appointed by the Governor. A current list of MSF Board members can be found at the following internet link, www.michiganadvantage.org.

Under the 21st Century Jobs Fund initiative, the MSF Board sets the strategic direction for funding commercialization activity and authorizes funding decisions. The MSF Board has designated the MEDC staff to provide administrative services for the programs that fall under the Board’s responsibilities.

This program is subject to Michigan law. In the event of any conflicts that proceed to court, jurisdiction will be in a Michigan court of law. Nothing in this document shall be construed to limit the rights and remedies of the State of Michigan, the MSF Board, or the MEDC. As

provided by Michigan law, the MSF Board retains complete discretion to accept or reject any proposal. In accordance with PA 215 and in concert with the Chief Compliance Officer of the 21st Century Jobs Fund, the MSF Board has established a comprehensive conflict of interest policy.

Any award is subject to the availability of funds. Applicants acknowledge that the MSF Board's performance of its payment obligation is contingent upon the State Legislature's continued approval of funding for the 21st Century Jobs Fund initiative.

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Appendix A

Legal Requirements

A. Eligibility and Obligations

To receive funding under this program, the applicant organization must be a Michigan based venture fund at the time of the award. Approved venture funds must invest into Michigan based companies, at minimum, an amount equal to the MSF investment into the venture fund.

In addition, the Primary Contact must be located in Michigan for the duration of the project at the principal site at which, or from which, fund activities will be performed. If a Primary Contact relocates outside of Michigan during the award period, the recipient organization must identify an alternate Primary Contact who is located in Michigan or a Michigan-based collaborator to take over the direction of the award. An alternate Primary Contact is subject to the final written approval of the Portfolio Manager. If such arrangements are not feasible, the award will be rescinded.

The award cannot be assigned or transferred without written authorization of both the MEDC Portfolio Manager and the MSF Fund Manager

B. Collaboration

Applicants, entities and/or collaborators that have received a previous award from the 21st Century Jobs Fund or the former Michigan Technology Tri-Corridor (“MTTC”) or Michigan Life Sciences Corridor (“MLSC”) programs are eligible for an award, however, funds that have received previous investments from the MSF or that MEDC which make up more than 20% of the fund size are not eligible to receive additional state funding under this program. Applicants, entities, and/or collaborators must identify if they have received previous awards under these programs. Progress of previously funded proposals, including the status of any outstanding grants, investments or loans, will be evaluated as part of the review process

The 21st Century Jobs Fund sets high standards for collaboration and requires evidence of genuine, productive collaboration. Collaboration is encouraged and will be given preference, but is not required. All collaborators shall be identified in the designated area of the application. In general, collaborating entities should be Michigan-based, as one of the goals of the 21st Century Jobs Fund is to increase collaboration between or among Michigan for-profit companies and Michigan institutions of higher education, Michigan non-profit research institutions, and Michigan non-profit corporations. Collaboration with non-Michigan-based entities may be permitted **if** the applicant can demonstrate that the collaborator: (i) provides access to specialized resources, scientific, technical, and commercial expertise that are not readily available in Michigan; and (ii) ultimately benefits Michigan in a manner consistent with the intent of the 21st Century Jobs Fund.

C. Award Agreement

The MSF, or MEDC staff on behalf of the MSF (provided that there are no material changes to the budget approved by the MSF), may adjust the proposed budget or term of the award based on input from the review process. The MSF may also choose to partially fund a project based upon the availability of funds. Post-award contract development, due diligence site visits, and financial and legal document submissions, among other things, may also require adjustments to proposed budgets. Program investment agreements will contain further information on the procedure for adjusting proposed budgets and milestones for the term of the award agreement.

MEDC staff will review contractual terms for the award agreement and structure an award-monitoring program. The successful applicant will be informed of the requirements for investment monitoring and progress reports. The investment agreement will contain reporting requirements as stipulated in Public Act 215 of 2005, including, but not limited to, the following:

- Entities that received funding, the amount received, and the type of funding
- Valuation of the Company
- The number of new patents, copyrights, or trademarks applied for and issued to the Company
- The number of new jobs created and new jobs projected by the Company
- Amounts of other funds leveraged by the Company
- Money or other revenues or property returned to the Company
- The total number of new licensing agreements by institution and the number of new licensing agreements entered into by the Company
- Products commercialized and revenues generated by the Company
- State business taxes paid by the Company

All award agreements approved by the MSF Fund Manager will contain a provision that the MSF, the MEDC, the Auditor General and the Chief Compliance Officer have access to the books and records, including financial records and all other information and data relevant to the terms of the investment agreement, related to the use of the investment.

Prior to an investment being disbursed, the MEDC and the Office of the Chief Compliance Officer will conduct due diligence on the awardee, including, but not limited to, criminal and civil background checks of the applicant, and review of the organizational documentation and financial information of the applicant. The background checks will include, but may not be limited to, affiliates, subsidiaries, officers, directors and managerial employees. To facilitate these background checks, applicants will be required to provide as part of the required due diligence the complete names, addresses, and birthdates of all persons who fall within the above definition.

D. Required Disclosures and Conflicts of Interest

All proposals shall include disclosure statements signed by the Primary Contact of the official proposal and by any other stakeholder(s) or collaborating entity involved in the activities being proposed.

For as long as the application is pending and during the term of the investment agreement, if applicable, the disclosure statement must be updated any time a *significant financial interest*, as defined on the disclosure statement, arises.

E. Breach of Contract

A violation of any provision of the award agreement is grounds for any or all of the following, among other possible remedies: (i) rescission of the award; (ii) termination of all related underlying contractual agreements in which the MSF Board or MEDC is a party; or (iii) repayment by the recipient (s) of the award or any portion thereof, actually disbursed, either directly or indirectly, to the recipient.

If the MSF Board and/or the MSF Fund Manager has a reasonable belief that a breach of award agreement has occurred, the MSF Board or the MSF Fund Manager has the right to have the award recipient's annual financial statements separately audited by an independent certified public accountant. If

the audit reveals that a breach has occurred, the award recipient shall reimburse the MSF for the fees and expenses incurred to perform the audit in addition to other remedies available to the MSF Board at law or equity.

Naming a figurehead from Michigan as Primary Contact while the fund work is conducted by a non-Michigan-based organization or is substantially performed in another state is **not sufficient** for eligibility and, if discovered after an award has been made, will result in the termination or rescission of the award and subject the award recipient to any other remedies available to the MSF Board at law or equity. In addition to the requirements contained in this document and as provided by law, the contracts and policies of the MSF Board may provide for additional rights and remedies.

F. Notice of Proprietary Information Michigan Freedom of Information Act

Except as otherwise provided in these guidelines, all information in an applicant's proposal is subject to disclosure under Public Act No. 442 of 1976, known as the "Freedom of Information Act". This act also provides for complete disclosure of contracts, their attachments, due diligence materials, progress reports submitted throughout the term of the award agreement and financial documents submitted as required under the award agreements. Proposal information is furnished to the MEDC, independent peer review experts and the State of Michigan, through the MSF Board.

Proposal materials submitted by applicants may contain "financial or proprietary information", which is defined as "information that has not been publicly disseminated or which is unavailable from other sources, the release of which might cause competitive harm". Applicants are provided an opportunity to specifically designate such proprietary or financial information.

Applicants must be aware that, pursuant to MCL 125.2005(9), information the applicant deems confidential must be acknowledged by the Michigan Strategic Fund (MSF) Board or delegated authority as confidential to protect such information from disclosure under the Michigan Freedom of Information Act, MCL 15.243(1)(d). Information that is not acknowledged as confidential by the MSF Board or delegated authority may be subject to disclosure under the Michigan Freedom of Information Act. Unless considered proprietary in nature, routine financial information cannot be acknowledged as confidential. The MSF Fund Manager will make the final decision on whether information designated as confidential by the applicant will be acknowledged as confidential.

Applicants agree that by failing to properly identify information that the applicant desires to be designated as confidential by the MSF Board or delegated authority, the applicant waives all rights and actions against the MEDC, the MSF Board, and the State of Michigan and its participants, officers, agents and employees regarding the release of information that could have otherwise been acknowledged as confidential but for the applicant's failure to properly designate the information as provided in this section or take other necessary action to have information acknowledged as confidential. It is the applicant's sole responsibility to identify information that it desires to be designated as confidential.

The MEDC, the MSF Board, and the State of Michigan and its participants, officers, agents and employees shall not be liable for any inadvertent disclosure of any of the applicant's information designated as confidential by the applicant.

G. Submission Materials

Applicants may request confidential treatment for “financial or proprietary information” contained within proposal submission materials that meets the definition of “financial or proprietary information contained in the MSF Act. Such information **MUST** be identified directly within the material submitted by applicants by the following requirements:

*Identify each component and portion of the narrative for which you are requesting confidentiality. **Text, tables, or graphics MUST be bolded and marked with asterisks and brackets (*[bold if text]*) within the narrative.***

*Identify the attachment and the portion of the document for which you are requesting confidentiality. **Text, tables or graphics MUST be bolded and marked with asterisks and brackets (*[bold if text]*) on the attachment. If you are requesting confidentiality for portions of a multi-page document, such as the Business Plan, you MUST also list the page numbers on all pages that contain information marked by asterisks and bold brackets.***

Proposals that fail to differentiate truly proprietary information from public information by indiscriminately labeling large sections or entire proposals as proprietary cannot be properly protected and will be returned to the applicant without review and **may result in disqualification. Watermarks, footers and headers that state “Confidential” or similar general indications will be construed to be an indiscriminate labeling of confidential information and will not be acknowledged.**

Abstract/Executive Summary

The abstract or executive summary section required should not contain any confidential information. Applicants are advised that all information contained within the abstract or executive summary is subject to disclosure under the Michigan FOIA. By inserting confidential information in the abstract, applicants waive any and all rights and/or actions against the MEDC, the MSF Board and the State of Michigan for the release of information that otherwise would have been confidential information but for the applicant’s inclusion of the confidential information in the abstract.

H. Review Process

Names of review or interview panel members will not be available to applicants. Applicants and their representatives are NOT permitted to contact the peer review agency, reviewers, MSF Board members or the MSF Fund Manager regarding the applicant’s proposal. All communications regarding the proposal or review process should be conducted via the following email address: VDF@Michigan.org. Any attempt by an applicant to contact the above mentioned parties may result in proposal disqualification.

By submitting a proposal, the applicant acknowledges that the decision to award an investment is subject to the sole discretion of the MSF. The MSF’s decision is final and is not subject to appeal. Any attempt by an applicant, collaborating entity, or other party of interest to the proposed fund to appeal and/or take any action, including, but not limited to, legal action, regarding the proposal or awards process in general may result in the applicant’s proposal being eliminated from award consideration. If the applicant has already received an award, the award(s) may be revoked at the discretion of the MSF Board or MSF Fund Manager. However, this paragraph should not be construed in a manner that would prevent an applicant from taking action, including legal, to protect any rights bestowed on the applicant in the actual award agreement negotiated with successful applicants.

I. Due Diligence

Prior to the disbursement of a the Program investment, the MEDC and the Office of the Chief Compliance Officer will conduct due diligence on the awardee, including, but not limited to, criminal and civil background checks of the applicant, and review of the applicant's organizational documentation and financial information. The background checks will include, but not be limited to, affiliates, subsidiaries, officers, directors and managerial employees. To facilitate these background checks, applicants will be required to provide the complete names, addresses, and birthdates of all persons for whom a background check will be conducted prior to the execution of an award agreement. All items must be submitted by **within two weeks of announcement of awards by the MSF**. If due diligence items are not submitted **within two weeks of announcement of awards**, the MSF reserves the right to rescind the award.

The following information will be required of the awardee. All items must be timely submitted and deemed satisfactory prior to the release of any award funds.

Individuals and Entities

Please immediately provide us the following information regarding your fund and business entity.

Individuals: First, Middle, and Last Name for:

- Primary Contact
- Each Company Officer
- Each Company Director
- Each Management Employee

Entities (in addition to information on Individuals noted above):

- Legal Entity Name, Entity Location, and State and/or Country of Incorporation for:
- Applicant Business
- Each Affiliate of Applicant Business
- Each Subsidiary of Applicant Business
- If the Applicant Business conducts business with foreign countries, please list such countries.

Organization Registration:

To receive payment from the State of Michigan, Public Act 533 of 2004 requires that awardees be registered in the State of Michigan Vendor/Payee System, **and must** authorize payments to be made via electronic funds transfer (EFT). No awards will be finalized nor payments authorized until the required registration and authorization is complete.

If you have not registered with the State of Michigan, please initiate the process to do so. If you have already registered with the State of Michigan, please verify and update your information. If you have not authorized EFT payment, please initiate the process to do so.

Access the Vendor/Payee System, Contracts and Payment Express at www.michigan.gov/cpexpress. To speak with Vendor/Payee System staff for assistance, call (517) 373-6222. **REGISTRATION MUST BE COMPLETE AND UPDATED IN ORDER TO RECEIVE PAYMENT.**

Due Diligence Financial and Legal Documents:

Corporate Records, including but not limited to:

- Articles of Incorporation/Organization and Bylaws/Operating Agreement of the Company, as amended to date
- Certificate of Good Standing
- A copy of the most current organizational chart available for the Company, including all entities or investments in which the Company owns less than a 100% interest

Other Documents:

Copies of tax liens

Description of all pending or threatened litigation and unsatisfied judgments

Documents relating to any injunctions, consent decrees, or settlements to which the Company is a party

Submit a Disclosure and Conflict of Interest Statement. The Statement may be viewed by visiting www.michiganadvantage.org/PureMichiganVentureDevelopmentFund.

List of all State of Michigan awards

DRAFT

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

ALLOCATION FOR MICHIGAN VENTURE DEVELOPMENT FUND

WHEREAS, Public Acts 215 and 225 of 2005 established the 21st Century Jobs Trust Fund initiative;

WHEREAS, the Michigan Economic Development Corporation (“MEDC”) provides administrative services for the Michigan Strategic Fund (“MSF”) for 21st Century Jobs Fund programs;

WHEREAS, MCL 125.2088k created the Strategic Economic Investment and Commercialization Board (“SEIC Board”) for the purposes of awarding grants and loans for basic research, applied research, university technology transfer, and commercialization of products, processes and services to encourage the development of competitive edge technologies to create jobs within the State of Michigan;

WHEREAS, pursuant to Executive Order 2010-8, the Governor ordered the SEIC Board abolished and all powers, duties, and functions of the SEIC Board were transferred to the Michigan Strategic Fund (“MSF”), including those powers, duties, and functions provided under MCL 125.2088k;

WHEREAS, at its June 27, 2012 meeting, the MSF Board approved and authorized implementation of the Pure Michigan Venture Development Fund program (“Venture Development Fund”);

WHEREAS, as part of the 21st Century Jobs Trust fund initiative, and pursuant to MCL 125.2088h(1), the Jobs for Michigan investment fund was created as a permanent fund authorized by the state constitution (“Investment Fund”);

WHEREAS, pursuant to MCL 125.2088h(3) and MCL 125.2088h(7), the MSF Board shall direct the investment and reinvestment of the Investment Fund as provided under Chapter 8A of the MSF Act (“Chapter 8A”);

WHEREAS, pursuant to MCL 125.2088h(5)(b) and (c), the Investment Fund consists of, among other things, return on investments, return on principal, payments made, or other money received by or payable to the MSF under agreements related to loans or investments by the MSF under Chapter 8A;

WHEREAS, the MEDC recommends that the MSF fund the Venture Development Fund using \$5,000,000 from the Investment Fund and that repayments to the MSF from awards authorized under the Venture Development Fund be returned to the Venture Development Fund for future use under the Venture Development Fund; and

WHEREAS, the MSF Board desires to approve using \$5,000,000 from the Investment Fund and that repayments to the MSF from awards authorized under the Venture Development Fund be returned to the Venture Development Fund for future use under the Venture Development Fund.

NOW, THEREFORE, BE IT RESOLVED, the MSF hereby directs funding of the Venture Development Fund using \$5,000,000 from the Investment Fund and that repayments to the MSF from awards authorized under the Venture Development Fund be returned to the Venture Development Fund for future use under the Venture Development Fund.

Ayes:

Nays:

Recused

Lansing, Michigan
June 27, 2012

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

**DELEGATION OF AUTHORITY
JOINT EVALUATION COMMITTEE, APPLICATION AND
EVALUATION PROCESS AND SCORING CRITERIA**

WHEREAS, Public Acts 215 and 225 of 2005 (the “Act”) established the 21st Century Jobs Trust Fund initiative;

WHEREAS, the Michigan Economic Development Corporation (“MEDC”) provides administrative services to the Michigan Strategic Fund (“MSF”);

WHEREAS, MCL 125.2088k created the Strategic Economic Investment and Commercialization Board (“SEIC Board”) for the purposes of awarding grants and loans for basic research, applied research, university technology transfer, and commercialization of products, processes and services to encourage the development of competitive edge technologies to create jobs within the State of Michigan;

WHEREAS, pursuant to Executive Order 2010-8, the Governor ordered the SEIC Board abolished and all powers, duties, and functions of the SEIC Board transferred to the MSF, including those powers, duties, and functions provided under MCL 125.2088k;

WHEREAS, at its June 27, 2012 meeting, MSF Board approved the Pure Michigan Venture Development Fund (“Venture Development Fund”) and the Pure Michigan Venture Development Fund Guidelines (“Venture Development Fund Guidelines”) to assist in the growth of the venture industry by increasing the number of viable venture funds, with the intent of increasing the number of venture investments in the State;

WHEREAS, the MSF is required to establish a competitive process to award grants, as set forth in the Act;

WHEREAS, the Act requires that applications be reviewed by a joint evaluation committee as determined by the MSF Board;

WHEREAS, the MEDC recommends that the MSF engage Credit Suisse Asset Management LLC (“Credit Suisse”) to assist in the review of applications received in response to the Venture Development Fund;

WHEREAS, under Section 125.2005(7) of the Act, the MSF Board may delegate to its president, vice-president, staff or others those functions and authority the MSF Board deems necessary or appropriate; and

WHEREAS, the MEDC recommends and the MSF desires to delegate the authority to (1) negotiate final contract terms and execute contracts with Credit Suisse to assist in the review of proposals received under the Venture Development Fund; (2) appoint a JEC to review proposals and to make recommendations to the MSF Board for awards under the Venture Development Fund; and (3) to develop and approve the application and evaluation process under the Venture Development Fund, each in accordance with the program guidelines and the MSF Act, to be used by Credit Suisse and the JEC in reviewing applications and making award recommendations under the Venture Development Fund (the “Delegation of Authority”).

NOW, THEREFORE, BE IT RESOLVED, the MSF Board approves the use of Credit Suisse to assist in the review of applications received under the Venture Development Fund; and

BE IT FURTHER RESOLVED, the MSF Board approves the Delegation of Authority for the Venture Development Fund.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

**APPROVAL OF THE DECISION DOCUMENT FOR THE
PURE MICHIGAN VENTURE DEVELOPMENT FUND**

WHEREAS, Public Acts 215 and 225 of 2005 (collectively, the “Act”) established the 21st Century Jobs Trust Fund initiative;

WHEREAS, the Michigan Economic Development Corporation (“MEDC”) provides administrative services for the Michigan Strategic Fund (“MSF”) for 21st Century Jobs Fund programs;

WHEREAS, on April 25, 2012, the MSF authorized the public notice of a public hearing to be held regarding the proposed Pure Michigan Venture Development Fund (“Venture Development Fund”);

WHEREAS, pursuant the public notice, a public hearing was held on May 9, 2012 as required by MCL 125.2088c(5), and the MSF Board offered the public an opportunity to present data, views, questions and arguments regarding the Venture Development Fund;

WHEREAS, the MSF has had an opportunity to consider the data, views, questions, and arguments regarding the proposed Venture Development Fund;

WHEREAS, on June 27, 2012, the MSF approved the Venture Development Fund; and

WHEREAS, consistent with the requirements of MCL 125.2088c(5), the MSF Board desires to produce a final decision document which describes the basis for its decision approving the Venture Development Fund.

NOW, THEREFORE, BE IT RESOLVED, the MSF Board approves the attached final Decision Document and authorizes the MSF Chairperson to sign it.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

MSF Decision Document

Issue

Approval of the Pure Michigan Venture Development Fund

Background

As provided for in MCL 125.2088k(2), the Strategic Economic Investment and Commercialization Board (“SEIC Board”) shall award grants and loans from the 21st Century Jobs Trust Fund to encourage competitive edge technologies to create jobs in the State of Michigan. Pursuant to Executive Order 2010-8 the Governor ordered the SEIC Board abolished and all powers, duties, and functions of the SEIC Board were transferred to the Michigan Strategic Fund (“MSF”), including those powers and duties and functions provided under MCL 125.2088k. The MSF Board desires to allocate up to \$5 million, disbursed over 2 to 3 years, to qualified venture funds.

Public Hearing

A public hearing was held on May 9, 2012 to allow interested persons the opportunity to express data, views, questions, and arguments regarding the proposed Pure Michigan Venture Development Fund. Twenty people attended the public hearing and one written comment was received. Comments at the public hearing centered on the size and structure of the awards and the eligibility criteria for qualifying venture funds. Minutes of the public hearing were presented to the MSF Board at its June 27, 2012 meeting.

Decision

At its June 27, 2012 meeting, the MSF Board considered the comments received at the public hearing, and agreed that there was a need for the Pure Michigan Venture Development Fund. On June 27, 2011, the MSF Board approved the Pure Michigan Venture Development Fund.

Michael A. Finney, Chairperson
Michigan Strategic Fund Board



MEMORANDUM

Date: June 27, 2012
To: MSF Board Members
From: George Zimmerman, Vice President, Travel Michigan
Subject: Official State of Michigan Travel Guide Recommendation

Background

At its March 28, 2012, meeting, the Michigan Strategic Fund (“MSF”) issued an Official State of Michigan Travel Guide Request for Proposal (“Travel Guide RFP”) and authorized the MSF Fund Manager to appoint a Joint Evaluation Committee (“JEC”) to review the proposals.

There were three proposals received in response to the Travel Guide RFP. Responses to the RFP were evaluated based upon a two-step selection process. The first step was an evaluation of which bids satisfactorily met the requirements of the RFP. Bids were graded on three criteria for this purpose. The JEC determined that all three proposals met these criteria and were considered for evaluation in Step II. To be considered for Step II, each bidder must have submitted a complete proposal in response to the RFP using the format specified in the attached evaluation and scoring summary. The JEC evaluated all proposals and ranked the proposal received from Meredith Corporation for *Midwest Living* the highest among the three proposals.

The *Midwest Living* proposal was very thorough and well laid-out. The overall design aspect and concepts clearly represent the Pure Michigan brand. It also includes exciting new ideas and opportunities. The database options and direct mail opportunities are a key element of this proposal. One of the options is the polybagging of the Travel Guide with *Midwest Living* magazine to over 650,000 consumers in target markets. In addition, Meredith Corporation, the parent of *Midwest Living* has 282 employees based in Michigan. Starting in 2013, the Travel Guide will be printed in Michigan.

Recommendation

The MEDC recommends that the MSF award and enter into a contract for the Travel Guide to Meredith Corporation for *Midwest Living*, for the period of approximately August 1, 2012 to July 31, 2015, with an initial amount of \$1,598,500.00 and two one-year additional extensions.

Applicant	<p>Technical Proposal 1 Stated the full name, address phone and fax number of the organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work hereunder. Indicated whether it operates as an individual partnership, or corporation; if as a corporation included the state in which it is incorporated. If appropriate, the proposal stated whether the organization is licensed to operate in the State of Michigan.</p>	<p>Technical Proposal 2 Stated in succinct terms their understanding of the problem(s) presented in the RFP.</p>	<p>Technical Proposal 3 Included a narrative summary description of the proposed effort and of the service(s) /product(s) that will be delivered.</p>	<p>Technical Proposal 4 Provided a detailed research outline and timeline for accomplishing the work. Included a Project Evaluation Review Technique (PERT)-type display, time related, showing each event, task and decision point in the work plan</p>	<p>Technical Proposal 5 Described the prior experience of the organization which they consider relevant to the successful accomplishment of the project defined in the RFP. Included sufficient detail to demonstrate the relevance of such experience. Proposal included a description of qualifying experience to include project descriptions, costs and starting and completing dates of projects successfully completed; also included the name, address and phone number of the responsible official of the client organization who may be contacted.</p>	<p>Technical Proposal 6 Identified a project manager and staff assigned by name and title. Included biographies, experience and work team's qualifications for this initiative. Indicated staff turnover rates. Showed where the project team will be physically located during the time they will be engaged in the work. Indicated the amount of dedicated management time for the bidder's project manager and other key individuals.</p>	<p>Technical Proposal 7 Listed all subcontractors that will be engaged to accomplish the project described in the RFP; included firm name, address, contact person and complete description of work to be subcontracted. Included descriptive information concerning subcontractor's organization and abilities. Also, the information provided in response to #5, above, should include detailed information about each potential subcontractor.</p>	Score	Avg
Hour Media	67	25	21	28	95	75	49	360	72
Midwest Living	96	25	25	41	140	92	39	458	91.6
Pitch Black	20	15	2	14	20	35	5	111	22.2

Joint Evaluation Committee Members

- Robin Peebles
- Angela Sharps
- Kelly Wolgamott
- Ken Yarsevich
- George Zimmermann

MICHIGAN STRATEGIC FUND

RESOLUTION

2012-

SELECTION OF VENDOR FOR OFFICIAL STATE OF MICHIGAN TRAVEL GUIDE

WHEREAS, on March 28, 2012, the Michigan Strategic Fund (“MSF”) issued a Request for Proposals for the Official State of Michigan Travel Guide (“Travel Guide RFP”) and authorized the MSF Fund Manager to appoint a Joint Evaluation Committee (“JEC”) to review the proposals;

WHEREAS, the JEC has evaluated all proposals and ranked the proposal by Meredith Corporation highest among all travel guide proposals;

WHEREAS, the MSF designated the Michigan Economic Development Corporation (“MEDC”) to provide administrative services for the MSF;

WHEREAS, the MEDC recommends and the MSF desires to select the firm Meredith Corporation as the vendor for the Official State of Michigan Travel Guide; and

WHEREAS, the MSF also desires to make an initial allocation of \$1,598,500 to fund the Official State of Michigan Travel Guide.

NOW, THEREFORE, BE IT RESOLVED, that, subject to State Administrative Board approval, the MSF Board approves the selection of Meredith Corporation as the vendor for the Official State of Michigan Travel Guide for an initial term of three years with the option to renew the contract for two additional one year terms at the sole discretion of the MSF Fund Manager;

BE IT FURTHER RESOLVED, that the MSF authorizes an initial allocation of \$1,598,500 for the Official State of Michigan Travel Guide; and

BE IT FURTHER RESOLVED, that the Board authorizes the MSF Fund Manager to negotiate final contract terms and to execute the Official State of Michigan Travel Guide contract on the MSF Board’s behalf so long as the final contract terms and conditions are not materially adverse to the interest of the MSF.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF ATTORNEY GENERAL
AND
THE GOVERNOR'S LEGAL DIVISION, THE MICHIGAN STRATEGIC FUND, AND
THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION

Purpose:

This Memorandum of Understanding between the Department of Attorney General, and the Governor's Legal Division, the Michigan Strategic Fund (MSF), and the Michigan Economic Development Corporation (MEDC), specifies the legal services to be provided by the Department of Attorney General related to Indian casino gaming, and the costs to be paid by the MSF, for those legal services. These legal services will be provided to support efforts to preserve and enhance economic incentive payments from Indian casino gaming made pursuant to gaming compacts with the State of Michigan. These payments - \$51 million in 2011 - are currently paid to the MSF and the MEDC.

Payments and Services:

The Department of Attorney General will provide legal consultation and representation as required by the Governor's Legal Division in matters involving Indian gaming referred to the Department of Attorney General by the Governor's Legal Division. These matters include enforcement of federal and state laws governing Indian gaming, enforcement of gaming compacts, negotiations relating to those compacts, and defense of litigation involving Indian gaming. These services will be provided by the equivalent of 1.25 full-time attorneys and related support staff, on a priority basis, at an annual cost not to exceed \$195,000, including salary, fringe benefit costs, computer and related equipment, and supplies. The Department of Attorney General will provide quarterly billings for these services to the MSF and the MEDC and will be reimbursed by inter-agency transaction. For the period from May 31, 2012 to September 30, 2012 the annual cost will be prorated.

The Department of the Attorney General agrees to provide the Governor's Legal Division, the MSF and the MEDC with annual reports due on October 31, 2012 and 2013. The annual report shall document the use of the funds and report the status of Indian gaming cases and issues referred to the Department of Attorney General by the Governor's Legal Division. Reports shall be submitted to:

David Murley
Deputy Legal Counsel
Governor's Legal Division
P.O. Box 30013
Lansing, MI 48909
murleyd@michigan.gov
517-335-7864

Jennifer Nelson
Chief of Staff and General Counsel
Michigan Economic Development Corp.
300 N. Washington Square
Lansing, MI 48913
jennifer@michigan.org
517-241-1400

Michael Pohnl
MSF Fund Manager
300 N. Washington Square
Lansing, MI 48913
pohnlm@michigan.org
517-373-6567

Amounts required for court reporters, expert witnesses, transcripts, travel, or other related items will be discussed as the need arises and appropriate arrangements made on a case-by-case basis.

Assignments will be made through the Division Chief of the Environment, Natural Resources, and Agriculture Division and priorities determined by the Governor's Legal Division in coordination with the Division Chief. The attorney position will be physically housed in the Environment, Natural Resources, and Agriculture Division of the Department of Attorney General.

Agreement Period:

This agreement is in full force and effect for services rendered from May 31, 2012 to September 30, 2013. Either party may terminate this agreement by giving sixty (60) days written notice to the other party, stating the reasons for termination and its effective date.

DEPARTMENT OF ATTORNEY GENERAL

By: _____
Carol L. Isaacs, Chief Deputy Attorney General

Dated: _____

By: _____
James Selleck, Director, Office of Fiscal Management

Dated: _____

GOVERNOR'S LEGAL DIVISION

By: _____
David Murley, Deputy Legal Counsel
Dated: _____

MICHIGAN STRATEGIC FUND

By: _____
Michael Pohnl, MSF Fund Manager
Dated: _____

MICHIGAN ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jennifer Nelson, Chief of Staff and General Counsel
Dated: _____

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MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

**MEMORANDUM OF UNDERSTANDING FOR LEGAL SERVICES
RELATED TO TRIBAL GAMING MATTERS**

WHEREAS, the Michigan Strategic Fund (“MSF”) and the Michigan Economic Development Corporation (“MEDC”) receive economic development and incentive payments from tribal casino gaming pursuant to gaming compacts with the State of Michigan;

WHEREAS, in order to support and preserve those economic development and incentive payments from tribal casino gaming to the MSF and the MEDC, the Department of Attorney General (“AG”) has agreed to provide legal services to the MSF and the MEDC related to tribal casino gaming; and

WHEREAS, to that end, the AG, the Governor’s Legal Division (“Legal Division”), the MSF, and the MEDC desire to enter into the attached Memorandum of Understanding (“MOU”) to delineate the rights and responsibilities of the AG, the Legal Division, the MSF, and the MEDC with respect to legal services related to tribal casino gaming and the costs to be paid by the MSF for those legal services;

NOW, THEREFORE, BE IT RESOLVED, the MSF approves the attached MOU and authorizes the MSF Fund Manager to sign the MOU on behalf of the MSF.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

MEMORANDUM

Date: June 27, 2012

To: Michigan Strategic Fund Board Members

From: Deborah Stuart, CDBG Manager

SUBJECT: Community Development Block Grant Program
2012 Downtown Infrastructure Grant (DIG) Project

Background: The Community Development Block Grant (CDBG) program announced a competitive round of CDBG funding in November 2011. Eligible communities could submit Pre-Applications for Downtown Infrastructure Grants (DIG). This was the second offering of the Downtown Infrastructure Grants since the program was introduced.

The purpose of the DIG program is to assist low and moderate income communities seeking to improve the infrastructure quality of their downtown district. The program is restricted to providing funding for public infrastructure improvements for low and moderate income communities in areas located in a traditional downtown. Generally, a traditional downtown is defined as a grouping of 20 or more commercial parcels of property that include multi-story buildings of historical or architectural significance. The area must have been zoned, planned or used for commercial development for 50 or more years. Eligible infrastructure included such activities as: streets and roads, sidewalks, parks, curbs, gutters, sewer, water, lighting, parking facilities, street furniture, landscaping and wayfinding signs. In order to meet the CDBG requirements, the activities must benefit the entire low and moderate income community.

The MSF received 48 Pre-Application forms requesting a total of \$19,688,475, with a total of \$6,168,976 in matching funds identified. Shortly before the deadline for the Pre-Applications, we program staff realized that the projects in our Pipeline were moving faster than anticipated, and we needed to delay funding for this program until the MSF received an additional allocation of funding. The communities were notified if they ranked high enough to be recommended for approval, and it was confirmed that their projects could be delayed until July 1, 2012. The projects recommended have completed a full application and majority of their environmental review. This allows them to start construction immediately following the grant agreement being signed.

National Objective: In order to qualify for CBDG funding, populations of communities or program areas must be at least 51 percent low and moderate income as determined by census data provided by the U.S. Department of Housing and Urban Development or an income survey. It has been determined that all of the recommended applicants meet this criterion.

Eligible Activity: All of the projects being recommended involve eligible activities identified in Section 105(a)(2) of Title I of the Housing and Community Development Act of 1974, as amended.

Screening Guidelines: All of the projects being recommended demonstrated that they are located in a traditional downtown; the community provided a cash match of at least ten percent; the community had not received a 2010 DIG grant; the community did not apply for a 2011 Farm to Food grant; the community has a maintenance plan for the proposed projects; and the project is able to be completed within one year of the grant agreement sign date.

Please note since we have changed the timeline of the availability of funds and the construction season will be half way complete prior to the projects being able to commence, we are allowing the communities to complete their projects within one and half years of the grant agreement sign date. This will allow them to have an entire construction season, and the recommended applicants have confirmed they can complete their projects within that timeframe.

The projects being recommended were scored and given priority based on the community providing matching funds above ten percent; the community not having any open grants that have not been drawn down; the project being located in a DDA, or PSD/BID/BIZ, or similar; and the incorporation of innovative design elements.

Recommendation: A list of the eight recommended projects is attached as Exhibit A to the resolution and totals \$3,340,614. The list includes the CBDG applicants, project description, percentage of low and moderate income people living in the community, amount requested, match commitment, the score they received, and a description of the proposed project. Staff recommends that grant agreements totaling \$3,340,614 be authorized for the eight projects listed in Exhibit A of the resolution. Grant agreements will be signed after July 1, 2012, and will be contingent on funding from HUD for the 2012 Program Year.

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

FALL 2012 DOWNTOWN INFRASTRUCTURE GRANTS (DIG)

WHEREAS, Executive Order 1999-1, issued pursuant to Article V of the Michigan Constitution of 1963 and the laws of the State of Michigan, consolidated the State's economic development functions and programs and their accompanying powers in the Michigan Strategic Fund ("MSF");

WHEREAS, Executive Order 1999-1 transferred from the Michigan Jobs Commission to the MSF all authority, powers, duties, functions, grants, and responsibilities, including the functions of budgeting, procurement, personnel, and management related functions, of the Community Development Block Grant ("CDBG") program;

WHEREAS, the CDBG program has policies, criteria, and parameters which are enumerated in the 2012 Program Guidelines (the "Criteria"). Included in those Criteria are guidelines for Downtown Infrastructure Capacity Enhancement competitive grants which the MSF authorized with Resolution 2012-028 approving the Consolidated Plan;

WHEREAS, the recommended communities listed in Exhibit A (the "Communities") have submitted individual applications requesting funding to be used to improve the infrastructure quality in their downtown districts (the "Projects") for approval;

WHEREAS, CDBG program staff reviewed the applications and proposed Projects in light of the Criteria and concluded the Projects are eligible for funding, are not speculative in nature, are economically sound, are ready to proceed, and at least 51 percent of the project beneficiaries are low and moderate income persons; and

WHEREAS, staff recommends that separate grant agreement be authorized and entered into with the Communities for funds from the CDBG program for the reasons set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED, that the MSF Board authorizes separate grant agreement be entered into with each community not to exceed the respective amounts listed in Exhibit A for the payment or reimbursement of costs associated with the Projects. The MSF allocates funds from the Michigan CDBG program for the purpose of funding the Communities' proposed Projects contingent upon the MSF's continued receipt of CDBG funds and availability of adequate funds;

BE IT FURTHER RESOLVED, staff is directed to negotiate the terms of a grant agreement for each Project. The Fund Manager or MSF President is authorized to execute, on behalf of the MSF, all documentation necessary to effectuate the proposed projects; and

BE IT FURTHER RESOLVED, if a community fails to execute and return a grant agreement to staff within 90 days of the date this Resolution is adopted, then as to that specific community only this Resolution shall be of no further force and effect and shall be void. Based upon a showing of good cause, staff may extend the time period for executing and returning a grant agreement for an additional 30 day period.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012

Exhibit A

Downtown Infrastructure Grants

Recommended Projects

Program Year 2012

Applicant	Project Description	Percent Low/Mod	CDBG Request	Total Match
City of Albion	Streetscape (includes Charging Stations for Electrical Cars and Speaker System)	55.8	\$ 470,000.00	\$ 105,000.00
City of Boyne City	Water and Sewer Replacement, Streetscape Improvements	68.1	\$ 503,440.00	\$ 215,760.00
City of Ishpeming	Gateway Enhancement (includes Rain Gardens) and Streetscape Improvements	61.8	\$ 399,043.00	\$ 300,000.00
City of Ithaca	Parking Lot and Alleyway Improvements	51	\$ 178,209.00	\$ 40,000.00
City of Manistique	Water and Sewer Replacement	56.6	\$ 231,170.00	\$ 140,000.00
City of Mt. Pleasant	Parking Lot Improvements	58.6	\$ 583,000.00	\$ 287,000.00
City of Norway	Park Enhancements (includes Water and Electrical) and Alleyway Improvements	56	\$ 225,752.00	\$ 60,000.00
City of Three Rivers	Decorative LED Streetlights and Streetscape Improvements	52.6	\$ 750,000.00	\$ 190,000.00
Total			\$ 3,340,614.00	\$ 1,337,760.00

MEMORANDUM

Date: June 27, 2012

To: Michigan Strategic Fund Board Members

From: Deborah Stuart, CDBG Manager

SUBJECT: Community Development Block Grant Program
2012 Application Guide

Program Background:

The U.S. Department of Housing and Urban Development (“HUD”) allocates Community Development Block Grant (“CDBG”) funding to the State of Michigan, through the Michigan Strategic Fund, for further distribution to eligible Units of General Local Government to carry out State approved activities.

The State’s responsibilities include ensuring the State’s and their Grantee’s compliance with the statute, HUD regulations, and the Consolidated Plan. On March 28, 2012, the Michigan Strategic Fund approved the 2012 Consolidated Plan for the CDBG Program. The attached documented is the Application Guide for potential applicants based on the requirements within the Consolidated Plan, Federal regulations and policies developed by staff to ensure consistency with grantees. This document has been significantly updated from the last guidance that was implemented in 2009. These updates are based on conversations with grantees and internal staff that work with the program. In the future, the MSF will approve this document annually, to ensure that it is up to date with the changes to the Consolidated Plan and improvements to the program’s process.

Recommendation:

Staff recommends MSF approval of the attached Application Guide and Policies for Program Year 2012.

MICHIGAN STRATEGIC FUND

RESOLUTION 2012-

**APPROVAL OF COMMUNITY DEVELOPMENT BLOCK GRANT 2012 APPLICATION
GUIDE**

WHEREAS, Executive Order 1999-1, issued pursuant to Article V of the Michigan Constitution of 1963 and the laws of the State of Michigan, consolidated the State's economic development functions and programs and their accompanying powers in the Michigan Strategic Fund ("MSF");

WHEREAS, Executive Order 1999-1 transferred from the Michigan Jobs Commission to the MSF all authority, powers, duties, functions, grants, and responsibilities, including the functions of budgeting, procurement, personnel, and management related functions, of the Community Development Block Grant ("CDBG") program;

WHEREAS, the CDBG program desires to adopt the policies, criteria, and parameters which are enumerated in the attached 2012 Application Guide (the "Guide");

WHEREAS, CDBG program staff reviewed the Guide and concluded that the policies meet the enabling legislation, federal regulations, and the requirements of the Consolidated Plan which the MSF authorized with Resolution 2012-028; and

WHEREAS, CDBG program staff recommends that the MSF adopt the attached Guide to update the current Application Guide adopted in 2009 and to ensure consistency in the CDBG program.

NOW, THEREFORE, BE IT RESOLVED, that the MSF Board adopts the attached Guide as the policies, criteria, and parameters for projects being considered and funded with 2012 Program Year funds; and

BE IT FURTHER RESOLVED, that the MSF Board authorizes the Fund Manager to make minor modifications to the document, if needed, and to take any action necessary to effectuate the terms of this Resolution.

Ayes:

Nays:

Recused:

Lansing, Michigan
June 27, 2012



STATE OF MICHIGAN
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

Application Guide

For eligible activities administered by the Michigan Strategic Fund (MSF)
with the assistance of the Michigan Economic Development Corporation (MEDC)

This Application Guide may be accessed at: www.michiganadvantage.org/CDBG. The electronic version on the website is the most recent version, and is the only official version, of the document. Revisions are made periodically. If the user is consulting a version date differing from the version date of the official version on the website, then changes have been made and you should only reference the official version.

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GENERAL REQUIREMENTS

The U.S. Department of Housing and Urban Development (“HUD”) allocates Community Development Block Grant (“CDBG”) funding to the State of Michigan, through the Michigan Strategic Fund (“MSF”) with assistance from the Michigan Economic Development Corporation (“MEDC”), for further distribution to eligible Units of General Local Government (“UGLGs”) to carry out MSF approved activities. The federal statutory authority for the CDBG program is the Housing and Community Development Act of 1974, as amended (“HCDA”).

Eligible Applicants

Small cities, townships, and villages of less than 50,000 in population, and non-urban counties generally are eligible to apply for grants under the MSF CDBG Program. There are over 1,600 eligible general-purpose, local governments, and these governments are referred to as “non-entitlement jurisdictions”.

Ineligible Applicants

The following counties and their respective units of local governments are not eligible to directly apply or directly receive MSF CDBG funds, unless they can provide documentation that they have opted out of their direct HUD allocation and were accounted for in the MSF’s PY 2012 formula allocation:

- Genesee County (Except for the Cities of Clio, Davison, Flushing and Lennon)
- Kent County
- Macomb County
- Oakland County (Except for the Townships of Novi and Southfield)
- Wayne County
- Washtenaw County and the following units of government within the county are not eligible for Michigan CDBG funds:
 - Ann Arbor City
 - Ann Arbor Township
 - Bridgewater Township
 - Northfield Township
 - Pittsfield Township
 - Scio Township
 - Salem Township
 - Superior Township
 - York Township
 - Ypsilanti City
 - Ypsilanti Township

The following Michigan cities are not eligible to directly apply or directly receive Michigan CDBG funds:

- Battle Creek
- Bay City
- Benton Harbor
- East Lansing
- Holland
- Jackson
- Kalamazoo
- Lansing
- Midland
- Monroe
- Muskegon
- Muskegon Heights
- Niles
- Norton Shores
- Portage
- Port Huron
- Saginaw

Indian tribes eligible for assistance under Section 107(a)(7) of the HCDA are not eligible to directly apply for or directly receive MSF CDBG funds, but an eligible county or township may apply for MSF CDBG funds for projects located on Indian reservations if the unit of general local government has the legal authority to fund such projects on Indian reservations and Indian preference is not provided.

National Objective Requirements

Under the MSF CDBG Program, all projects must meet one of the following national objectives and the attending statutorily mandated requirements to be considered for funding:

- The activities will benefit persons of low and moderate income(LMI), as defined by Section 104(b)(3) of the Housing and Community Development Act and 24 CFR 570.483;
- The activities will aid in the prevention or elimination of slums or blight, as defined by 24 CFR 570.483; or
- The activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, where the community is unable to finance the activity on its own and where other financial resources are not available to meet such needs, as defined by 24 CFR 570.483.

LMI area benefit projects must provide benefit to the entire unit of general local government identified as LMI Communities, where over 51 percent of the residents are low and moderate income persons, by HUD or through local survey efforts as approved by MSF.

LMI position creation projects must result in position creation or retention where at least 51 percent of the positions are made available to, or held by, LMI persons. Very low, low, and moderate-income limits are defined each year by HUD, and identify household income levels by household size. Typically the moderate-income level is 80 percent of the county median family income and is based on the income level of the household and not the individual filling the position. For position creation projects, the very low, low, and moderate-income requirement is applied at the time of hire.

For position retention, the eligibility requirement is applied at the time of application for CDBG funds. In unique instances of position retention, the eligibility requirement may apply to a portion of the positions that are anticipated to turnover, for which the position requirement would be applied at the time of the new person being hired. Turnover cannot account for more than 10% of the position retention requirement. To consider positions retained as a result of CDBG assistance there must be “clear and objective” evidence that positions will be lost:

- Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- Analysis of relevant financial records which clearly and convincingly show that the business is likely to have to cut back employment in the near future without the planned intervention.

For both position retention and position creation, the business must also provide a hiring plan which details the number of positions to be created, the number of positions held or to be filled by LMI persons, the type of position, average wage, any special skills or training required, the timetable for hiring, and whether or not health care will be provided for the position. The plan must indicate who will be responsible for hiring and collecting required data.

Positions are defined as full-time and full-time equivalent (FTE) permanent positions, which do not include construction positions, temporary positions, or layoff recalls. HUD defines a FTE position as one that has 2080 hours of paid employment or is paid for 40 hours a week. Seasonal positions may be considered to be permanent only if the season is long enough for the position to be considered as the employees' principal occupation. Only those positions, which are created, or retained, within the grant project period, will be considered in meeting the national objective and screening guidelines. The MSF will make a final determination of the actual number of positions created, or retained, and the actual number of positions available to, or held by very low, low, or moderate-income people at the time the project is officially closed out by the MSF and will be based on documentation provided by the local government grant recipient.

Blight elimination projects must provide certification from a Licensed Building Inspector that the project site meets the definition of blight as defined in the Brownfield Redevelopment Financing Act 381 of 1996, MCL 125.2652 (e)(i-iv) and (vii), the reasoning for that determination, and how the proposed project will eliminate the blight causing elements.

Urgent need projects are generally not supported by the MSF.

All grantees will be required to comply with all current and newly adopted reporting requirements, including all items necessary to meet Integrated Disbursement and Information System (IDIS) project needed to justify compliance with the national objective requirements.

“Anti-Pirating” of Jobs

Section 588 of the Quality Housing and Work Responsibility Act of 1998 prohibits States and local governments from using CDBG funds for employment relocation activities or “job pirating”. Job pirating refers to the use of federal funds to lure or attract a business and its positions from one community to another community. CDBG funds may not be used to assist for-profit businesses, including expansions, as well as infrastructure improvement projects or business incubators which are designed to facilitate business relocation IF:

- The funding will be used to assist directly in the relocation of a plant, facility or operation; and
- The relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs.

The following are definitions that will assist in determining if a business location falls under these provisions:

Labor Market Area (LMA): An economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Operation: A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity or product line of the business.

Significant Loss of Jobs: A loss of jobs is significant if

- The number of jobs to be lost in the LMA in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that LMA; OR in all cases
- The loss of jobs is 500 or more.

A job is considered to be lost due to the provision of CDBG assistance if the position is relocated within three years of the provision of assistance to the business. Notwithstanding the above definition, a loss of 25 positions or fewer does not constitute a significant loss of positions.

Before directly assisting a business with CDBG funds, in the form of a grant to the UGLG, the MSF shall obtain a written certification from the assisted business. The certification shall include:

- A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one LMA to another, and, if so, the number of jobs that will be relocated from each LMA.
- If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs at the time the grant agreement is signed with the UGLG that would result in a significant job loss as defined in this rule; and
- The grant agreement with the UGLG shall provide for reimbursement of any assistance provided to, or expanded on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

Eligible Activities

Activities cited in Section 105(a) of Title I of the HCDA are eligible for assistance. The MSF has the following policies regarding these specific eligible activities:

Contingency: Funds providing for contingencies must be related to construction activities. A contingency must be identified in the specific budget line item for which it is intended and must be reasonable in amount (no more than 20%).

CDBG Administrative Costs: CDBG funds may not be used to reimburse costs of preparing grant applications. CDBG funds may be available to assist grantees with the cost associated with the management of their CDBG Grant Agreement. The community must be able to document that it has sufficient management abilities and skills to meet the program requirements.

CDBG funded administrative costs should not exceed two percent of the CDBG project activity costs, excluding administrative costs and engineering costs, with a \$10,000 maximum. In the case of a complicated project or small project scope or other extenuating circumstances, the MSF will consider allowing up to five percent of the CDBG-funded project activity costs (excluding administrative and engineering costs). A written request must be submitted to with the application documents justifying the need for the additional administrative costs. In the case of Revolving Loan Funds (RLF), administrative costs should not exceed 18% of the program income they receive that

Program Year. For RLFs, all funds generated from CDBG funded activities are considered program income.

All reimbursement requests for CDBG funded administrative costs, that involve a third party, must be procured and the contract must outline the specific activities that will be performed and the justification for the costs. Local or other funds must be used for additional administrative costs. CDBG funds may not be used to administer other federal or state grant programs which may be conducted in conjunction with a CDBG project.

Federal regulations do not allow CDBG funds to be used to supplant funds otherwise available to UGLGs. Typically, local governments that administer their own grants, provide the administration as in-kind leveraging (above the required local cash match). However, local governments that wish to charge costs or an employee's time for administration of the CDBG project to the CDBG budget must first submit a certification that the use of federal grant funds for a portion of the employee's salary will not supplant available local funds. Depending on the circumstance, the MSF may require a contract between the employee and the UGLG for the additional time dedicated to the grant administration, in addition to their regular hours.

Any costs and time funded by CDBG or CDBG funded Revolving Loan Fund (RLF) Program Income must be documented through the appropriate means (i.e., invoices from local newspapers for advertisements placed for hearings, postage, time sheets indicating work performed for the particular project, etc.). The documentation must be kept on file, and will be reviewed when requesting payment or during the monitoring visit.

Please refer to Program Specific Requirements for eligible detail for other activities. Please note that the MSF will not administer activities and projects related to eligible housing and neighborhood projects, as those projects are administered through the Michigan State Housing Development Authority.

Funding Cycle, Proposal Review, and Project Limitations

Proposals are considered on a continuous basis and applications for economic development, downtown development, planning, and blight elimination projects will be accepted following approval of the application. The application is a form submitted by a UGLG providing basic information on the proposed project, project activities, and a summary of the project budget including grant funds being requested and other funds supporting the proposed project. Grants will be awarded as funding availability allows.

Applications for competitive infrastructure allocations will be preceded with announcements to potential applicants, which will identify specific selection criteria that are outlined in the Action Plan. The competition will be publicly announced and potential grantees will be notified. Approved projects will include only those activities identified in the Action Plan and will be awarded as funding availability allows, as determined in the sole discretion of the MSF.

The MSF reserves the right to prescribe revisions in project proposals if activities prove to be CDBG ineligible, do not address program initiatives, or are not necessary project components; if proposed project costs are determined to be unacceptable, e.g., costs exceed CDBG requirements; or if there is

not enough funding available to fully fund the request. Additionally, projects should not be submitted for consideration if there is local controversy regarding the activities or proposed outcomes.

If it is determined that the proposed project has adequately met the screening guidelines, selection criteria, and there is available funding, the local government will be authorized to execute a grant or loan agreement. A conditional grant award or commitment may be issued in the event there is a delay in receiving the state's allocation from HUD.

Screening Guidelines and Selection Criteria

In considering project funding, a system based on screening guidelines and selection criteria is used to evaluate and invite applications and approve funding. The screening guidelines are considered to be thresholds that must be met or exceeded for a particular project to receive funding. If these thresholds are met by a proposed project, a positive funding decision may be made depending on the availability of funds, quality of positions, project sustainability and compliance with all other program requirements. The selection criteria are used to weigh the viable aspects of projects when a competitive award is to be determined. *NOTE: Administration and compliance of current and previous grant awards will be considered during funding evaluation to establish capacity of the grantee.*

Communities identified as LMI Communities by HUD, or through local survey efforts as approved by the MSF, may choose to request consideration for the elimination of a singular screening guideline requirement in their efforts to qualify for a project. The elimination of the cost per position criteria is not eligible for this special consideration.

Cost Per Position: The total "CDBG cost per position" is then calculated by dividing:

- The total dollar amount of CDBG funds to be spent for the activity (including administrative costs), by
- The total number of positions to be created or retained as a result of each facility/improvements by all of the businesses for which the project is principally being undertaken.

Economic Development Underwriting (Financial Viability): The CDBG regulations contain Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. The MSF shall consider the guidelines provided as an appendix to the CDBG regulations at 24 CFR Part 570 for basic financial underwriting of projects being considered for all businesses that will receive funding under economic development. The level to which the guidelines will be implemented is project and circumstance specific. Note that these guidelines only apply to projects that assist a private business entity. There are six criteria:

1. Project Costs are Reasonable: A breakdown of all costs associated with the project (including working capital requirements) will be evaluated to determine the reasonableness of each cost. Applicants can assist in this review in the following ways:
 - Receive project quotes from independent, third parties
 - Receive multiple estimates for a project, typically three

- Look at costs of comparable projects
- Use guaranteed contracts, performance bonds or letters of credit

Note: Businesses that are selecting their own contractors will be required to show costs are reasonable either by documenting project quotes from independent, third parties or providing multiple estimates for the project activities.

2. Sources Are Committed: The business should verify that sufficient sources of funds have been identified to finance the project (including debt and equity). To fulfill this requirement, the MSF requires a written verification affirming the various funding parties' intentions to make funds available, and, depending on the nature of the funding party, a showing of their capacity to actually provide such funds.
3. CDBG Funds Are Not Substituted for Non-Federal Funds: In general, the recipient should clearly establish that there is a need for the investment of public resources. This is typically done by identifying that total funding for the project has a financing gap or a rate of return gap. The level of analysis will vary with the nature and complexity of the project.
4. Financial Feasibility: The public benefit expected from the investment of CDBG funds is the creation and maintenance of LMI positions. That benefit will not materialize if the project is not financially feasible. The financial viability can be evaluated based on assumptions about the project's market share, sales levels, growth potential, revenue projections, project expenses, and debt service to determine if the project will at least break even.
5. Owner's Equity Return is Not Unreasonably High: CDBG should not provide more than a reasonable return on investment to an owner, given industry rates of return, local conditions, and the risk of the project.
6. CDBG Funds Disbursed Pro Rata: As a general rule, CDBG funds should be disbursed proportional to the percentage of the project they fund. CDBG money should not be the first money into a project, but rather should flow into a project in proportion to other project funding sources. For example, if CDBG funds are 20 percent of the project, CDBG funds should not exceed 20 percent of the aggregate proceeds disbursed. Exceptions may be made if funds are allocated for acquisition that must occur first or that funds must be dispersed pro rata for the required cash match of an infrastructure project, but not for the required private investment rate.

Background Checks: The MSF has established requirements to ensure that funds awarded are not provided to any person that has been convicted of a criminal offense or held liable in civil proceedings that negatively reflects on the business integrity of the person 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, or as otherwise required by law. Any businesses or individuals benefitting from CDBG funds will be subject to the same policy and procedure that the MSF has designated for the 21st Century Positions Trust Fund programs.

Excluded Parties List and HUD's Limited Denials of Participation List: Before a project is recommended to the MSF, it will be verified that any business benefitting from the project is not on

these federal lists. Any contractors or consultants associated with the project, after the signing of the grant agreement, will also be verified as they are selected.

Development Agreements: The MSF will require Development Agreements between the UGLG and business prior to approval, if the project involves high risk that may result in repayment or project failure. Generally, position creation projects that exceed \$500,000 for an individual business will be considered high risk. UGLGs must consider obtaining security (in the form of liens, guarantees, mortgages, etc.) for the performance of obligations in any high risk project, and must maintain appropriate levels of security, if obtained. UGLGs must ensure that businesses are aware that the development agreement obliges both the UGLG and the business to grant terms and conditions, including but not limited to position creation or retention requirements. The MSF is not a party to the development agreement between the UGLG and business.

Maximum Project Period

Projects must usually be completed within twenty-four (24) months from the date the funding is awarded. Funds not disbursed within the specified time limit may be recaptured by the appropriate State administering agency for reallocation to eligible CDBG projects. All grant agreements will incorporate timelines to assure the project is on track to have successful completion within the grant term.

The MSF may make exceptions to grant/loan amount limits and project periods based on the significance of the project's impact on the community and the economy, the number of positions created, the needs of the community, level of benefits to LMI people and other considerations permitted under federal law. Exceptions will be considered as part of the funding decision and will be considered by the MSF on a case by case and circumstance by circumstance basis.

Applicants, benefited businesses, and contractors must be aware at the outset of the existence of the federal statutes and regulations that have scheduling, cost, and substantial paperwork implications when CDBG funding is used for projects. Businesses must be prepared to accept delays and other requirements and should not harbor unrealistic expectations about the speed with which a project may develop. The following listing is by no means comprehensive, but applicants should be aware that the average due diligence time prior to MSF consideration ranges from three to six months. This list simply highlights three areas that are commonly applicable:

Environmental Review: Federal statutes (the National Environmental Policy Act and HCDA) and HUD implementing regulations (24 C.F.R. Part 58) require that CDBG-assisted projects must have an appropriate environmental review process completed prior to costs for the project being incurred. This process must be documented with an appropriate environmental review record. The environmental review process and its documentation are the responsibility of the UGLG. The entire project often referred to in these contexts as the entire "footprint" of the project—not just the portion of the project involving CDBG-funded activities—must be aggregated when reviewing the project's environmental impact. The time required to complete the entire process

of environmental review varies considerably depending on the facts and circumstances of each project. The process can take as little as a few days to as much as several months. The time requirement for this process is often underestimated by businesses and UGLGs.

Generally, in order for a project application to be viewed as complete for consideration to the MSF Board, the environmental review must be complete. Specific discussion of the environmental review requirements, including flowcharts and forms are available in the Grant Administration Guide.

Davis-Bacon Act (and related acts): These federal statutes and their implementing regulations require that federally-assisted construction work in excess of \$2,000 must have prevailing wage rates (determined by the U.S. Department of Labor) paid to all employees working on such construction work. If CDBG funds assist even just a portion of the construction work, then Davis-Bacon becomes applicable to the entire construction work. Note however, that CDBG funds can finance activities other than construction work, without triggering Davis-Bacon requirements, even though CDBG funds are part of an overall project which may involve construction work (i.e. purchase of Machinery and Equipment).

Reporting Requirements (HUD Required Employee Reporting, Business Financial Reporting, and Other Record Keeping Requirements): The benefited business and the UGLG have various, periodic, employment and financial reporting and record keeping requirements pursuant to CDBG regulations. Quarterly employment reporting may be required, and all information on CDBG assisted activities must be retained until the MSF notifies the UGLG.

Overview of Requirements Related to Incurring Costs: Incurring costs; including CDBG, local, and private costs prior to authorization and/or completion of the environmental review could jeopardize the proposed CDBG funding. Incurring costs includes but is not limited to signing option/purchase/easement/lease agreements, signing purchase orders for equipment, and signing consultant and construction contracts. The following provides for timing of procurement for engineering & architecture, construction, and purchases. However, all potential grantees must also follow all other CDBG requirements and should contact the CDBG office prior to signing any contract or incurring any cost related to the project. There are three types of costs:

1. Preliminary Costs – These are costs incurred prior to the grant agreement such as preparing the application documents and providing preliminary cost estimates. Please keep the following in mind:
 - This is not considered incurring project costs as long as any and all contracts are for these preliminary activities only. If a contract for these costs includes other costs associated with specific grant activities (i.e. design and construction engineering, architectural work, administration, etc.), then this would be considered incurring costs (see #2 below).
 - These costs must be paid for by the community and/or private match. Therefore, the CDBG procurement requirements do not apply.

- These costs cannot be included in the project activities/budget and they cannot be counted toward the local and/or private match.
2. Exempt (soft) project costs – These are costs for administration contracted by a third party, design, construction/oversight engineering, architectural work, and other soft costs necessary to carry out the project activities. The timing and procurement requirements for these activities depend on who is paying for these costs. Please keep the following in mind:
- If these costs are to be paid for with all non-CDBG funding:
 - This is considered incurring exempt costs so the community must submit a written request to the CDBG staff requesting to incur these costs that includes the dollar amounts of these costs.
 - This can be done prior to the grant agreement being executed and prior to the completion of the environmental review.
 - One hundred percent (100%) of these costs must be paid for with non-CDBG funds. Therefore, the CDBG procurement requirements do not apply.
 - The MSF must provide written authorization to incur these costs.
 - The contract must be signed after written authorization has been provided by the MSF.
 - These costs must be included in the project activities/budget and can be counted toward the local match.
 - If these costs are to be paid for in whole or in part with the CDBG grant funds:
 - This would also be considered incurring exempt costs so the community must submit a written request to the CDBG staff requesting to incur these costs that includes the dollar amounts of these costs.
 - Since CDBG is paying for a portion of this expense, this cannot be done until the grant agreement is executed.
 - The MSF must provide written authorization to incur the costs.
 - The community may need to follow the appropriate CDBG procurement requirements. These requirements depend on the activity and who is engaging the consultant, contractor, etc.
 - The contract must be signed after the grant agreement executed and written authorization has been provided by the MSF.
 - These costs must be included in the project activities/budget.
3. Non-Exempt (hard) project costs - These costs include but are not limited to signing purchase/easement/lease agreements, ordering materials/machinery/equipment, and signing construction contracts. The timing and procurement requirements for these activities depend on who is paying for these costs. Please keep the following in mind:
- If these costs are to be paid in whole with private funds:
 - This is considered incurring non-exempt costs so the community must submit a written request to the CDBG staff requesting to incur specific private costs that includes the dollar amounts for those costs.
 - This can be done prior to the grant agreement, but the environmental review and any other applicable CDBG requirements must be complete.
 - One hundred percent (100%) of these costs must be paid for with private funds. Therefore, the CDBG procurement requirements do not apply.
 - The MSF must provide written authorization to incur these costs.

- The purchase/easement/lease agreement, purchase order, construction contract, etc., must be signed after the environmental review has been completed and written authorization has been provided by the MSF.
- If these costs are to be paid for in whole or in part with CDBG funds:
 - This would also be considered incurring non-exempt costs so the environmental review and all other applicable CDBG requirements must be completed.
 - The grant agreement must be executed.
 - The MSF must provide written authorization to incur these costs.
 - The community must follow the appropriate procurement requirements.
 - The purchase/easement/lease agreement, material/machinery/equipment purchase order, construction contract, etc. must be signed after the environmental review has been completed, the grant agreement is in place, and written authorization has been provided by the MSF.

ECONOMIC DEVELOPMENT PROGRAM SPECIFIC REQUIREMENTS

All economic development projects must be financially viable and able to document that the business has sufficient management abilities and skills to successfully operate. Please refer to the Economic Development Underwriting (Financial Viability) section for guidance on that evaluation process.

1. Economic Development: Direct Assistance to Business

Eligible under this activity would be assistance to private, for-profit entities as identified in Section 105(a)(17) of Title I of the HCDA. There are five subcategories of projects eligible for direct assistance to private and for-profit businesses: machinery and equipment, job training, rail enhancement, small business expansion and utility/ pipeline projects.

Screening Guidelines: Direct Assistance to Business projects will be evaluated on the following criteria:

National Objective: Proposed projects are expected to result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Proposed projects are expected to create and/or retain the largest number of positions with the least amount of CDBG investment.

Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 1:1 or greater.

Position Creation: Priority will be given to projects creating ten or more permanent full-time positions that pay an average hourly rate of at least \$9.00 or 75% of the average hourly wage rate of the applicable county.

Minimum Local Participation: Proposed projects are expected to demonstrate local government support.

Economic Impact: Proposed projects are evaluated on their economic impact including the diversification of the economic base of the local and State economies. This includes the significance of added value the project carries, including financial value added through sales, use of existing local and state suppliers and secondary positions created.

Project Type: The following are Project Type specific criteria:

Machinery and Equipment

- These projects are generally supported by the CDBG Revolving Loan Program or other incentive programs available at the MEDC or MSF.

Job Training

- Up to 50% of grant proceeds may be used for On the Job Training (OJT), but not more than 50% of the company's OJT expenses may be reimbursed per person. OJT expenses for individual

trainees must be completed within 6 months of their hiring date. Employees trained with CDBG funds must be retained for 90 days after conclusion of training.

- Vendor training expenses must have a minimum of 20% match from the employer. Up to 100% of grant funds may be used for vendor training costs. There is no reimbursement for company trainers or out of state training expenses.
- Grant proceeds can only be used for Michigan residents.
- All positions must meet the average wage thresholds in the applicable Wage/HR category below to obtain the corresponding CDBG Assistance per Position.

Wage/HR	CDBG Assistance Per Position
\$9.00-\$11.99	up to \$4,000/position
\$12.00-\$14.99	up to \$6,000/position
\$15.00-\$16.99	up to \$8,000/position
\$17.00 & up	up to \$10,000/position

Rail Enhancement

- CDBG portion may not exceed more than 50% of total cost of necessary rail improvement.
- The project must provide a minimum of 25 positions.
- MDOT must support rail enhancement projects (minimum 10% MDOT rail funds if available or letter of support if MDOT rail funds are not available).
- All positions must meet the average wage thresholds in the applicable Wage/HR category below to obtain the corresponding CDBG Assistance per Position.

Wage/HR	CDBG Assistance Per Position
\$9.00-\$11.99	Up to \$4,000/position
\$12.00-\$14.99	Up to \$6,000/position
\$15.00-\$16.99	Up to \$8,000/position
\$17.00 & up	Up to \$10,000/position

Small Business Expansion

- These projects do not have any additional criteria for consideration.

Utility and Pipeline Projects

- Funds for this type of project may be used where:
 - existing service placement impedes development and requires relocation

- a significant case can be made for the extension or enhancement of service delivery, including inability of the service provider to fund the necessary cost using a five year recuperation schedule.
- The project must provide a minimum of 25 positions.
- All positions must meet the average wage thresholds in the applicable Wage/HR category below to obtain the corresponding CDBG Assistance per Position.

Wage/HR	CDBG Assistance Per Position
\$9.00-\$11.99	Up to \$4,000/position
\$12.00-\$14.99	Up to \$6,000/position
\$15.00-\$16.99	Up to \$8,000/position
\$17.00 & up	Up to \$10,000/position

Maximum Grant Amount: None.

2. Economic Development – Infrastructure: Business Development

Communities may request grants to provide public infrastructure improvements necessary for the location, expansion, and/or retention of a specific for-profit business firm(s) which is engaged in an economic base activity (e.g. - manufacturing, point-of-destination tourism, headquarter operations, major multi-state distribution facility). A tourism point of destination is an entity with multiple amenities (more than three) that provide hospitality services such as accommodations, foods and beverages, tours and souvenirs, in or near a community or region known for its attraction of tourists. A tourism point of destination can also be an attraction (built attraction), or other area (natural attraction) that is dependent to a significant extent on the revenues accruing from tourism. A tourism point of destination must have the emphasis on promoting a particular region for the purpose of increasing commerce through exporting goods and services to non-local residents. Eligible under this activity would be public improvements, as identified in Section 105(a)(2) of Title I of the HCDA.

Screening Guidelines: Business Development Infrastructure projects will be evaluated on the following criteria:

Minimum Local Participation: Proposed public infrastructure projects are expected to have local government funding for public infrastructure activities. A minimum of ten (10%) percent local government cash match is required.

Economic Impact: Proposed projects are evaluated on their economic impact, including the diversification of the economic base of the local and State economies. This includes the significance of added value the project carries, including financial value added through sales, use of existing local and state suppliers and secondary positions created.

Project Type: Examples of eligible public infrastructure projects include the following items: public water or sanitary sewer lines and related facilities, streets, roads, bridges, sidewalks, parking facilities, pedestrian malls, alleys, drainage systems, waterways, publicly-owned utilities and systems, and projects designed to reduce, eliminate or prevent the spread of identified soil or groundwater contamination.

- Category A:
 - National Objective: Proposed projects are expected to result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Proposed projects are expected to create and/or retain the largest number of positions with the least amount of CDBG investment. Funding priority will be given to projects where the amount of CDBG funds per position created and/or retained is \$10,000 or less.
 - Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 1:1 or greater.
 - Position Creation: Priority will be given to projects creating ten or more permanent, full-time positions that pay an average hourly rate of at least \$9.00 or 75% of the average hourly wage rate of the applicable county.
- Category B:
 - National Objective: Proposed projects are expected to result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Proposed projects are expected to create and/or retain the largest number of positions with the least amount of CDBG investment. Funding priority will be given to projects where the amount of CDBG funds per position created and/or retained is \$20,000 or less.
 - Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 2:1 or greater.
 - Position Creation: Priority will be given to projects creating 25, or more, permanent, full-time positions that pay an average hourly rate of at least \$11.00 or 85% of the average hourly wage rate of the applicable county.
- Category C:
 - National Objective: Proposed projects are expected to result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Proposed projects are expected to create and/or retain the largest number of positions with the least amount of CDBG investment. Funding priority will be given to projects where the amount of CDBG funds per position created and/or retained is \$35,000 or less.
 - Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 3:1 or greater.

- Position Creation: Priority will be given to projects creating 50, or more, permanent, full-time positions that pay an average hourly rate of at least \$14.00 or 95% of the average hourly wage rate of the applicable county.

Maximum Grant Amount: None.

3. Economic Development: Revolving Loan Funds and Regional Revolving Loan Funds

During program year 2012, the MSF will seek to finalize the regionalization of all existing local CDBG funded revolving loan funds (RLFs). The intent of the RLFs is to provide CDBG eligible loans to businesses within the identified regional territory. Repayments of the loans back to the RLF with interest generates “program income” that is used to cover fund administrative expenses and provides additional funding for additional CDBG eligible loans to businesses. As of December 31, 2011, over 75% of the existing funds had been inactive for over 12 months.

The MSF intends to support the formation or identification of no more than nine regional entities, identified as eligible within HCDA 105(a)15. These entities will operate in non-entitlement areas within the state and will coordinate with county governments and UGLG based funds within the region to centralize cash and program income as well as potentially play a role in assisting with the management of loan portfolios in accordance with MSF and HUD requirements. Regionalization will create opportunities for greater access to available capital for the issuance of CDBG eligible loans, gain efficiency through increased underwriting expertise and streamline the MSF approval process. The MSF may also make additional CDBG funds available to UGLG, or RRLF, for the purpose of providing capital for the issuance of CDBG eligible loans to small businesses whose projects meet a national objective.

Eligible under the RLF activity would be assistance to private, for-profit entities as identified in Section 105(a)(17) of Title I of the HCDA. RLFs will provide loans, loan guarantees, collateral enhancement, working capital, and other allowable mechanisms through either existing RLFs based within a specific UGLG or through newly established Regional Revolving Loan Funds (“RRLF”) acting through a Joint Agreement between county governments, MSF and designated Regional Revolving Loan Fund Managers (“RRLFM”).

Screening Guidelines: Proposals and applications are considered on a continuous basis when funded with existing Program Income maintained at, or transferred to, an UGLG or RRLF. Only a RRLF or UGLG is eligible to apply for new CDBG funds. Existing UGLG based funds which require additional grant dollars from the MSF for an eligible project in order to meet the Continuing Activity definition may be eligible to receive grant dollars provided that 1) they exhaust their cash balance first and 2) the proportion of program income equal to the proportion of total project funding associated with new grant dollars be returned to the state and not retained by the UGLG based RLF.

National Objectives: Proposed projects are expected to result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Proposed projects are expected to create and/or retain the largest number of positions with the least amount of

RLF investment. When determined to be reasonable by the MSF, applicants may also utilize Area Wide Benefit standards.

Proposed projects may also result in the Elimination of Slum and Blight if the RLF or RRLF, or its contractor, have allowed for the Elimination of Slum and Blight as an approved National Objective within their Uniform Reuse and Administration Plan or Reuse Plan.

Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 1:1 or greater.

Project Type: Eligible project types are located within the Uniform Reuse and Administrative Guide of a RRLF or within an UGLG based RLF's Reuse Plan. All plans must be approved by the MSF. Typically, projects are loans or other commercial credit extensions to for-profit businesses located within the funds service area. The RLF must carry out specific activities outlined below which, in turn, generate payments to the RLF.

Only a UGLG or RRLF that meets the MSF's definition of a Continuing Activity is eligible to apply for CDBG Grants. The MSF defines a "Continuing Activity" as the successful funding of a CDBG eligible loan or extension of commercial credit in the preceding twelve months or, in cases in which the RLF had insufficient funds to advance on a proper loan request, a request for assistance was made of the MSF and a loan/grant was approved, with a loan/grant agreement having been signed. Additionally, the MSF includes within its definition of Continuing Activity that the fund must perform such activity as described above such that normal monitoring of the Fund resulted in no major findings or issues which remain unresolved.

RLFs shall have 12 months to become compliant with the Continuing Activity definition beginning with the approval of this document by the MSF.

The proceeds of loans made under this program are for eligible activities under Section 105(a) of Title 1 of the HCDA and are limited to the following:

- Project based land acquisition
- Construction of a building and other improvements
- Renovation of an existing building to accommodate a business
- Purchase of Capital Equipment
- Purchase an existing building for a known business
- Finance accounts receivables and inventory
- Improve a site for a known business concern
- Assistance to micro-enterprises
- Some specific workforce training projects (seek additional info from State Program)
- Business Acquisition (highly situational-see additional info from State Program)

The Uniform Reuse and Administration Plan (URAP) describe ineligible uses of loan proceeds under this program. RLFs that have not approved the URAP are not subject to its prohibitions but are otherwise subject to the current MSF approved Reuse Plan in place at the time the project is approved.

Financial Viability: In addition to the Financial Viability guidance provided in this document, proposed projects are expected to demonstrate a reasonable expectation of repayment, with the expectation having been supported by meaningful and prudent due diligence on the part of the UGLG based RLF or RRLF, or its contractor.

In addition to project viability, on a no less than annual basis the MSF will review the books and records of all RLFs and RRLF to ensure that each RLF and RRLF is compliant with all state and federal laws and policies as well as operating under sound risk management and financial accounting practices. This will include a review of the UGLG's annual audit documents for either the RLF or RRLF. The MSF reserves the right to decline a project if it is determined that an applicant has not provided accounting and reporting of RLF activities to the standards requested by the MSF, and/or has failed to act, in the judgment of the MSF, prudently with respect to applicable loan decision making or due diligence practices.

Non Program Income loans made by RLFM's: Loans utilizing certain repaid CDBG funds pursuant to and compliant with HCDA Section 105(a)(15) are no longer Program Income but are subject to MSF oversight via the URAP as amended from time to time. The MSF will monitor and review these transactions in accordance with the URAP.

Maximum Grant Amount: None.

4. Economic Development: Unique Business Development Grants

Innovative and creative funding requests may be considered by the MSF based on special and/or unique needs or situations requiring innovative program approaches not specifically provided for in regular economic development, downtown development, planning, blight elimination, and infrastructure programs. This may include, but is not limited to, brownfield site redevelopment, targeted industry development, position training, general public infrastructure, building and building rehabilitation activities, CDBG Section 108 loan guarantees, activities and services listed in the above categories which do not meet identified screening or selection criteria and/or projects associated with other State or Federally funded initiatives.

Selection guidelines, project periods, and grant amounts will be determined and tailored for each specific project proposal, but will always take into account the national objective, leverage ratio, position creation, local participation and financial viability. All funding considerations shall be subject to the approval and oversight authority of the MSF and must be made in compliance with federal CDBG regulations and requirements and other applicable laws.

Maximum Grant Amount: None.

DOWNTOWN DEVELOPMENT PROGRAM SPECIFIC REQUIREMENTS

For Downtown Development Projects, the term “**traditional downtown**” is defined as a grouping of 20 or more commercial parcels of property that include multi-story buildings of historical or architectural significance. The area must have been zoned, planned or used for commercial development for 50+ years. The area must consist of, primarily, zero-lot-line development; have pedestrian friendly infrastructure, and an appropriate mix of business and services.

All Downtown Development Projects benefiting a business must be financially viable and the UGLG must be able to document that the business has sufficient management abilities and skills to successfully operate. Please refer to the Economic Development Underwriting (Financial Viability) section for guidance on that evaluation process.

1. Downtown Development- Infrastructure: Downtown Position Creation

The Downtown Infrastructure Program enables a community to improve the downtown’s infrastructure quality and reduce redevelopment costs to make a project feasible. This program is restricted to downtown infrastructure improvements tied to new commercial/mixed-use development activities that require additional infrastructure to create new economic opportunities and position creation activity. Eligible under this activity would be public improvements, as identified in Section 105(a)(2) of Title I of the HCDA. Public infrastructure includes items located on public property, such as: parking facilities, streetscape, public water or sanitary sewer lines and related facilities, demolition as part of a larger project, streets, roads, bridges, private utilities and public utilities.

Screening Guidelines: Downtown infrastructure projects will be evaluated on the following criteria:

National Objective: Proposed projects are expected to result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Proposed projects are expected to create and/or retain the largest number of positions with the least amount of CDBG investment. Funding priority will be given where the funds per position created is up to \$25,000 based on the number of positions created or retained.

Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 1:1 or greater.

Project Type: Projects will be located in a traditional downtown, should be located in a Downtown Development Authority or other like-district. Projects will be evaluated on completeness of project and must have local organizational capacity to successfully complete this project.

Position Creation: Priority will be given to projects creating the greatest amount of permanent full-time positions.

Minimum Local Participation: Proposed projects are expected to have local government funding participation. A minimum of ten (10%) percent local government cash match is required. Funding priority will be given to projects with the highest percentage of local matching funds.

Maximum Grant Amount: The maximum individual grant award will not exceed \$750,000.

2. Downtown Development- Façade Improvements

Grants are available for communities that seek to target areas of traditional downtowns for facade improvements which will have a significant impact on the downtown/community. The Downtown Façade Program is structured to provide commercial/mixed-use building façade improvements to sustain and minimize deterioration of traditional downtowns. This program is based on the premise that the exterior improvements will stimulate additional private investment in the buildings and the surrounding area, attract and increase additional customers, thereby resulting in additional downtown economic opportunities. Eligible under this activity would be rehabilitation and reconstruction of buildings, as identified in Section 105(a)(4) of Title I of the HCDA.

Screening Guidelines: Downtown Façade projects will be evaluated on the following criteria:

National Objective: Proposed projects are expected to meet the national objective of either benefiting a population of individuals of whom at least 51% reside in LMI households, or projects that will result in the creation of full-time equivalent (FTE) positions of which at least 51% of the created positions will be held by LMI persons. Preference will be given to projects with position creation commitments. For position creation or retention projects, funding priority will be given to projects creating five or more permanent, full-time equivalent positions and where the amount of CDBG funds per position created is \$25,000 or less.

Communities that are qualified as LMI communities with a population over 15,000 must include at least five properties to meet the area wide benefit national objective for this initiative. Those communities under 15,000 must have at least two properties to meet the area wide benefit national objective.

Minimum Leverage Ratio: None required for this program.

Project Type: Projects will be located in a traditional downtown, should be located in a Downtown Development Authority or other like-district and all projects must meet the Secretary of Interior's Standards for Rehabilitation. Projects will be evaluated on completeness of project and must have local organizational capacity to successfully complete this project. Priority will be given to communities based on the following:

- Category A: Higher Priority
 - Within traditional downtown
 - Located in a highly visible location
 - Located in a DDA or other like district
 - Prior use of downtown development incentives (TIFs, abatements, etc.)
 - Local organizational capacity to successfully complete this project

- Have a full-time downtown development professional or community staff member able to administer the project
- The project will consist of four or more buildings that have the following characteristics:
 - Multi-story Building
 - Mixed-use components
 - Projects with façade only scope (no interior)
 - Main Street Communities
 - Currently has a local façade program
 - Completed the Main Street Façade Design Program
 - Eligible for Historic or Contributing Designation
 - Partially or completely vacant building being returned to active use
- The community has adopted a downtown development plan.
- Category B: Lower Priority
 - Within traditional Downtown
 - Located in a highly visible location
 - Located in a DDA or other like district
 - Prior use of downtown development incentives (TIFs, abatements, etc.)
 - Local organizational capacity to successfully complete this project
 - Have a full-time downtown development professional or community staff member able to administer the project
 - The project will consist of two or more buildings that have the following characteristics:
 - Multi-story Building
 - Single use buildings
 - Not eligible for Historic or Contributing Designation
 - The community has adopted a downtown development plan.

Position Creation: Priority will be given to projects creating the greatest amount of permanent full-time positions.

Minimum Local Participation: Funding priorities will be given to communities with the highest percentage of private matching funds (committed funds only), but all projects must have a contribution of at least 25% of the total project costs. Preference will also be given to communities that provide additional local support either through tax abatement, direct grant or other financial assistance to the project. Communities that do not request administrative costs or use administrative costs as match will also be considered as providing additional local support.

Maximum Grant Amount: The maximum individual grant award will not exceed \$400,000 and must be for a minimum amount of \$30,000.

3. Signature Building

Grants are available for communities seeking acquisition of vacant, partially vacant or substantially underused buildings located in traditional downtowns for rehabilitation into a commercial/mixed use building that will result in position creation. CDBG funding can only be utilized for property acquisition activities.

The CDBG funding allows the community and/or the developer to acquire property that a developer would not typically purchase and redevelop due to the substantial amount of money required to rehabilitate, that its current owners are experiencing challenges with developing and/or maintaining, and it is currently being underused. Therefore, this program gives the community availability/accessibility to funding to stimulate economic opportunity within a traditional downtown. Eligible under this activity would be acquisition of real property, as identified in Section 105(a)(1) of Title I of the HCDA. Ineligible activities for this initiative include exclusively residential structures; government owned buildings, except for Land Bank properties, in-kind donations, renovation of building, appraisals, and structural analysis or other soft costs.

Screening Guidelines: Downtown Signature Building projects will be evaluated on the following criteria:

National Objective: Proposed projects are expected to meet the national objective of creating positions and 51% of the created positions will be held by LMI persons. For position creation or retention projects, funding priority will be given to projects creating five or more permanent, full-time equivalent positions and where the amount of CDBG funds per position created is \$25,000 or less.

Minimum Leverage Ratio: Proposed projects are expected to leverage private and other public funds. Funding priority will be given to projects when the leverage ratio of all other private and public funds to CDBG funds is 1:1 or greater.

Project Type: Projects will be located in a traditional downtown, should be located in a Downtown Development Authority or other like-district, and the project must be accompanied by at least one appraisal, along with the current SEV, documentation that all taxes are current, as well as verification that non-mortgage liens have not been placed on the property. Projects will be evaluated on completeness of project and must have local organizational capacity to successfully complete this project. Priority will be given to communities based on the following:

- Category A: Higher Priority
 - The project is a signature, troubled building in the downtown that has the following characteristics:
 - Multi-story building
 - Mixed use
 - Reuse will address an underserved market
 - Zero lot line building
 - Significant structure within the downtown district
 - The property is in a historic district or is historically registered.
 - Vacant for three years or more
 - The property has sufficient parking for a rehabilitated building or the parking will be created as part of the project
 - Structural analysis has been completed for the building
 - A full time downtown development professional or community staff member able to administer the project
- Category B: Lower Priority
 - The project is a signature, troubled building in the downtown
 - single-story building

- Significant structure within the downtown district
- The property is in a historic district or is historically registered.
- Vacant, partially vacant or underused for three years or more;
- The property has sufficient parking for a rehabilitated building or the parking will be created as part of the project
- Structural analysis has been completed for the building
- A full time downtown development professional or community staff member able to administer the project

Position Creation: Priority will be given to projects creating the greatest amount of permanent full-time positions.

Minimum Local Participation: Funding priorities will be given to communities with the highest percentage of private and/or public matching funds (committed funds only), but all projects must have a contribution of at least 25% of the total acquisition costs. Preference will also be given to communities that provide additional local support either through tax abatement, direct grant or other financial assistance to the project.

Financial Viability: The business must be financially viable and able to document that it has sufficient management abilities and skills to rehabilitate the building and create positions. The business may be subject to a background check.

Maximum Grant Amount: The maximum individual grant award will not exceed \$500,000.

4. Unique Downtown Development Grants

Innovative and creative funding requests may be considered by the MSF based on special and/or unique needs or situations requiring innovative program approaches not specifically provided for in regular economic development, downtown development, planning, blight elimination, and infrastructure programs. This may include, but is not limited to, incubator/entrepreneur development, rural community development, brownfield site redevelopment, general public infrastructure, building and building rehabilitation activities, CDBG Section 108 loan guarantees, activities and services listed in the above categories which do not meet identified screening or selection criteria and/or projects associated with other State or Federally funded initiatives.

Selection guidelines, project periods, and grant amounts will be determined and tailored for each specific project proposal, but will always take into account the national objective, leverage ratio, position creation, local participation and financial viability. Funding considerations shall be subject to the approval and oversight authority of the MSF and must be made in compliance with federal CDBG regulations and requirements and other applicable laws.

Maximum Grant Amount: None.

PLANNING PROGRAM SPECIFIC REQUIREMENTS

Economic and downtown development planning grants may be available to help communities accomplish project specific planning and design work which is likely to lead to an eligible economic development implementation project. Eligible under this activity would be planning and capacity building, as identified in Section 105(a)(12) of Title I of the of the HCDA. CDBG Planning funding cannot be utilized to create, update, or provide information solely for a community to meet legislatively mandated community planning requirements, including Downtown Development Authority plans.

1. Planning: Economic Development Planning

Projects will only be considered that can demonstrate that the planning grant will likely lead to an eligible implementation project. The planning study must be specific, with identified goals and outcomes.

Screening Guidelines: Economic development planning proposals will be evaluated on the following criteria:

National Objective: Proposed projects are expected to meet the national objective of likelihood for near term position creation where at least 51 percent of the positions are held by LMI persons.

Minimum Leverage Ratio: None required for this program.

Minimum Local Participation: Funding priorities will be given to communities with a higher percentage of matching funds (committed funds only), but a cash match equal to the awarded CDBG funds is required.

Financial Viability: Evaluation not required for this program.

Maximum Grant Amount: The maximum individual grant award will not exceed \$100,000.

2. Planning: Downtown Planning

The Downtown Planning Program enables a community to identify and determine what activities the community could do to increase the viability/accessibility of economic opportunities to revitalize and stimulate position creation within the downtown area. Planning projects will only be considered that can demonstrate that the planning grant will likely lead to an eligible implementation project. The planning study must be building or area specific, with identified goals and outcomes. Ineligible activities for this initiative include activities that create, update, or provide information solely for a community to meet legislatively mandated requirements (DDA, TIF, Master Plans) and/or engineering and design work for a specific project.

Screening Guidelines: Downtown development planning grant proposals will be evaluated based on the following criteria:

National Objective: Proposed projects are expected to meet the national objective of likelihood for near term position creation where at least 51 percent of the positions are held by LMI persons.

Project Type: Projects will be evaluated on completeness of project and must have local organizational capacity to successfully complete this project. Funding priority will be given to projects that demonstrate the following:

- Within traditional downtown, in a highly visible location (see definition under Downtown Development Programs).
- Located in a DDA or other like district
- Two/four years potential with 51% low/mod position creation
- High impact on downtown

Minimum Leverage Ratio: None required for this program.

Minimum Local Participation: Funding priorities will be given to communities with a higher percentage of matching funds (committed funds only), but a cash match equal to the awarded CDBG funds is required.

Financial Viability: Evaluation not required for this program.

Maximum Grant Amount: The maximum individual grant award will not exceed \$100,000.

BLIGHT ELIMINATION PROGRAM SPECIFIC REQUIREMENTS

The Michigan CDBG Program for blight elimination is allowable anywhere within the community that is designated a slum or blighted area. Eligible under this activity would be property acquisition, clearance/demolition, historic preservation, and building rehabilitation (only to the extent necessary to eliminate specific conditions detrimental to public health and safety), as identified in Section 105(a) of Title I of the HCDA. Ineligible activities for this initiative include privately owned structures (unless related to renovation), exclusively residential structures, demolition of historic structures and state owned buildings, except for Land Bank Properties.

Screening Guidelines: Blight Elimination grants will be evaluated on the following criteria.

National Objective: Proposed projects must meet the national objective of elimination or prevention of slums and blight on a spot or area wide basis. For a property to be eligible, it must meet the definition of blight as defined in the Brownfield Redevelopment Financing Act 381 of 1996, MCL 125.2652 (e)(i-iv) and (vii).

Minimum Leverage Ratio: None required for this program.

Project Type: Funding priority will be given to the demolition of vacant, deteriorated and abandoned buildings which are considered to be detrimental to public health and safety. Projects will be evaluated on completeness of project and must have local organizational capacity to successfully complete this project.

- Category A: Higher Priority
 - Within traditional Downtown or neighborhood or high pedestrian areas
 - Meets multiple definitions for blight
 - Eligible for minimum match of 25%
- Category B: Lower Priority
 - Outside of traditional Downtown, but still located in pedestrian oriented area
 - Tax foreclosed properties
 - May require higher match amount than 25%.

Minimum Local Participation: Proposed projects are expected to have local funding participation. A minimum of 25% committed cash match is required. Funding priority will be given to projects with the highest percentage of local matching funds.

Project Viability: The community must be able to demonstrate that their proposed project is clearly eliminating objectively determinable signs of blight and is strictly limited to eliminating specific instances of blight (spot blight).

Maximum Grant Amount: The maximum grant amount shall not exceed \$1,000,000.

INFRASTRUCTURE (AREA BENEFIT) PROGRAM SPECIFIC REQUIREMENTS

Infrastructure grants are available to help communities upgrade existing public infrastructure systems either by replacing deteriorating, obsolete systems or by adding capacity to existing public infrastructure services in need of upgrade will be given priority. Public infrastructure includes items located on public property, such as: parking facilities, streetscape, public water or sanitary sewer lines and related facilities, streets, roads, bridges, privately owned utilities and publically owned utilities. Eligible under this activity would be public facilities and improvements and privately owned utilities, as identified in Section 105(a)(2) of Title I of the of the HCDA.

1. Infrastructure Grants: Downtown Infrastructure Grants

Downtown Infrastructure Grants (DIG) are available for public infrastructure projects that upgrade existing public infrastructure systems in a traditional downtown. Announcement of this activity will be made to eligible communities as funding becomes available. Competitive ranking of projects will be based on the Proposals received and awards will be based on the availability of funds.

Screening Guidelines: Downtown infrastructure projects will be evaluated based on the following criteria:

National Objective: Proposed projects are expected to meet the national objective of providing benefit to a population of individuals of whom at least 51 percent reside in low to moderate-income households.

Minimum Leverage Ratio: Projects with the higher combined matching funds (all matching funds including local-committed funds only) will be given priority.

Project Type: Eligible projects will demonstrate that:

- they are located in a traditional downtown;
- the community has not received a 2010 DIG grant;
- the community did not apply for a 2011 Farm to Food grant;
- the community has a maintenance plan for the proposed projects; and
- the project is able to be completed within one year of the grant agreement sign date.

Priority will be given to communities that demonstrate:

- the community does not have any open grants that have not been drawn down;
- the project is in a DDA, or PSD/BID/BIZ, or similar; and
- the community has incorporated innovative design elements.

Minimum Local Participation: Proposed projects are expected to have local government funding participation. A minimum of ten (10%) percent local government committed cash match is required. Funding priority will be given to projects with the highest percentage of local matching funds.

Financial Viability: Evaluation not required for this program.

Maximum Grant Amount: The maximum individual grant award will not exceed \$750,000. Applications will be accepted and grants awarded as funding availability allows.

2. Infrastructure Grants: Infrastructure Capacity Enhancement

Grants are available for public works projects that upgrade existing public infrastructure systems either by replacing deteriorating or obsolete systems or by adding capacity to existing systems. Announcement of this activity will be made to eligible communities as funding becomes available. Competitive ranking of projects will be based on the Proposals received and awards will be based on the availability of funds.

Screening Guidelines: Infrastructure Capacity Enhancement projects will be evaluated based on the following criteria:

National Policy Objective: Proposed projects are expected to meet the national objective of providing benefit to a population of individuals of whom at least 51 percent reside in low to moderate-income households.

Project Type: While community and recreational facilities are eligible as are new infrastructure projects, public infrastructure projects that address necessary improvements to existing public infrastructure services in need of upgrade will be given priority. Priority will be given to communities that demonstrate:

- the project will commence within the current calendar year;
- the project has the highest combined matching funds; and
- the project has a low cost per resident rate. Minimum Local Participation: Funding priority will be given to communities with the higher percentage of local matching funds (committed funds only) and all other matching funds from other sources (committed funds only) for the applicant's proposed project.

Maximum Grant Amount: The maximum individual grant award will not exceed \$1,000,000. Applications will be accepted and grants awarded as funding availability allows.

CROSSING AGREEMENT

Initial Execution Date: June 15, 2012

Parties:

Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport (“Canada”).

-and-

Crossing Authority (“Crossing Authority”), an entity to be established by Canada pursuant to and subject to the Laws of Canada after the Initial Execution Date.

-and-

State of Michigan (“Michigan”), in its own right, as represented by its Governor, and by and through, the Michigan Department of Transportation (“MDOT”), a department of Michigan and the Michigan Strategic Fund (“MSF”), a public body corporate and politic and public agency of Michigan (individually referred to as a “Michigan Party” and collectively referred to as the “Michigan Parties”).

Synopsis:

The Crossing Agreement provides a framework for a Crossing Authority established by Canada to design, construct, finance, operate and maintain a new International Crossing between Canada and Michigan, under the oversight of a jointly established International Authority with three members appointed by Canada and the Crossing Authority and three members appointed by the Michigan Parties, and with funding approved by Canada, but with no funding by the Michigan Parties. The Michigan Parties are not obligated to pay any of the costs of the new International Crossing.

CROSSING AGREEMENT

Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport; Crossing Authority, an entity to be established by Canada pursuant to and subject to the Laws of Canada after the Initial Execution Date; and the State of Michigan, in its own right, as represented by its Governor, and by and through, the Michigan Department of Transportation, and the Michigan Strategic Fund hereby agree as follows:

I HISTORY

In 2001, Transport Canada, the United States Federal Highway Administration, the Ontario Ministry of Transportation and the Michigan Department of Transportation formed the Canada-United States-Ontario-Michigan Border Transportation Partnership (the “**Partnership**”) to identify and evaluate trans-border infrastructure improvements in the Detroit-Windsor trade corridor, with a focus on the long term studies needed to support this work.

In May 2001, the Partnership launched a Planning, Needs and Feasibility Study (“**P/NF**”) to assess the existing transportation network and long-range transportation plans in southeast Michigan and southwest Ontario. The P/NF study was completed in 2004 and included a broad range of recommendations including that a new or expanded international crossing be constructed and connected to highway networks on both sides of the border. The P/NF also recommended that formal environmental assessment processes be initiated.

Following the completion of the P/NF, the formal environmental assessment process was launched to develop a new or expanded Detroit-Windsor crossing. A coordinated environmental study process was developed to meet the legislative requirements of each jurisdiction.

Through the environmental assessment process, the location for a new Detroit-Windsor crossing, and associated border inspection facilities and freeway connection was selected in both Canada and the United States of America. The necessary environmental approvals were obtained under the *Canadian Environmental Assessment Act* (Canada), the *Environmental Assessment Act* (Ontario) and the *U.S. National Environmental Policy Act*.

II PURPOSE

This Agreement is to provide a framework for the Crossing Authority established by Canada to, with the assistance as necessary, but not funding by, Michigan:

- (a) design, construct, finance, operate and maintain the International Crossing through the life cycle of the International Crossing and design, construct

and finance the Michigan Interchange prior to the International Crossing Opening Date, under the oversight of the International Authority established by this Agreement with three members appointed by Canada and the Crossing Authority and three members appointed by the Michigan Parties, with funding as approved by Canada, through one or more Public-Private Agreements with one or more private sector Concessionaires procured through one or more competitive procurement processes; and

- (b) design, construct, finance and/or maintain the US Federal Plaza, with the agreement and funding as approved by US Federal Agencies and with any funding as approved by Canada, through one or more US Federal Plaza Public-Private Agreements with one or more private sector Concessionaires procured through one or more competitive procurement processes;

in order to facilitate international trade and the efficient movement of legitimate goods and travelers between Canada and the United States of America; support the economies of Ontario and Canada and Michigan and the United States of America; and benefit the communities in and around Detroit and in and around Windsor.

III PARTIES

Section 1. Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport (herein referred to as “**Canada**”), has the sovereign power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 2. An entity (herein referred to as the “**Crossing Authority**”) shall be established by Canada pursuant and subject to the Laws of Canada after the Initial Execution Date for the purpose of entering into and carrying out its obligations as a Party to this Agreement and shall have the power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 3. The State of Michigan (herein referred to as “**Michigan**”) has the power and constitutional authority under Section 5 of Article 3 of the *Michigan Constitution of 1963* and authority under other Michigan Law, subject to the requirements of Section 10 of Article 1 of the *US Constitution*, to enter into and carry out its obligations as a Party to this Agreement, in its own right and by and through either or both MDOT and MSF, subject to the terms and conditions of this Agreement.

Section 4. The Michigan Department of Transportation (herein referred to as “**MDOT**”), a department of Michigan, has the power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 5. The Michigan Strategic Fund (herein referred to as “MSF”), a public body corporate and politic and a public agency of Michigan, has the power and authority to enter into and carry out its obligations as a Party to this Agreement, subject to the terms and conditions of this Agreement.

Section 6. Michigan, MDOT and MSF (herein individually referred to as a “Michigan Party” and collectively referred to as the “Michigan Parties”) shall, collectively or by or through one or more of the Michigan Parties, as determined by the Michigan Parties, be responsible for the obligations of the Michigan Parties pursuant to this Agreement.

IV INTERPRETATION

Section 1. When used in this Agreement the following words and terms have the following meanings:

- (a) “**Agreement**” or “**Crossing Agreement**” means this Crossing Agreement including any recitals and schedules, as amended, supplemented or restated from time to time.
- (b) “**Applicable Law**” means, in respect of any Person, property, transaction, event or other matter, as applicable, all present or future (except as otherwise specifically provided in this Agreement) Law relating or applicable to that Person, property, transaction, event or other matter.
- (c) “**Auditor**” means a qualified professional accountant who deals at arms-length with all of the Parties, licensed to practice public accountancy, and who is authorized by Applicable Law and practice to express audit opinions.
- (d) “**Business Day**” means any day other than a Saturday, a Sunday or a statutory holiday in the State of Michigan or the Province of Ontario.
- (e) “**Canadian Contributions**” means, at any particular time, all monies (in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date paid or provided) and all real or personal property or services provided (at the fair value as at the date provided in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date provided), which monies or monies for such property or services, have been appropriated by the Parliament of Canada and have been paid by Canada or provided by Canada to the Crossing Authority and paid by the Crossing Authority, before or after the Initial Execution Date and prior to such particular time, for International Crossing Costs, Michigan Interchange Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs.

- (f) **“Canadian Contributions Recoupment Date”** means any calendar year end at which the Unrecouped Canadian Contributions are zero.
- (g) **“Canadian Crossing”** means the bridge, plaza and approach in Canada included in the International Crossing Alignment, but not including the Windsor-Essex Parkway.
- (h) **“Canadian Crossing Facilities”** means all structures, facilities and improvements related to the Canadian Crossing owned or to be owned by Canada.
- (i) **“Canadian Crossing Lands”** means all land, rights-of-way, property, rights, easements and interests for the Canadian Crossing owned or to be owned by Canada.
- (j) **“Canadian Crossing Land Activities”** means all activities of Canada or the Crossing Authority associated with the Canadian Crossing Lands.
- (k) **“Canadian Crossing Project Activities”** means all activities of Canada or the Crossing Authority associated with the Canadian Crossing Facilities, other than the Canadian Crossing Land Activities.
- (l) **“Canadian Crossing Tolls”** means all tolls, fees or other charges for use of the Canadian Crossing.
- (m) **“CBP”** means the US Customs and Border Protection.
- (n) **“Claims”** means any third party claim, action, suit, proceeding, demand or assessment.
- (o) **“Coast Guard Permit Application Activities”** means activities associated with the application to the US Coast Guard for a Bridge Permit for the construction, operation and maintenance of the Michigan Crossing, as contemplated in this Agreement.
- (p) **“Concessionaire”** means a Private Entity that is party to a Public-Private Agreement or US Plaza Public-Private Agreement authorized by this Agreement.
- (q) **“Crossing Authority Costs”** means all costs and expenses paid by the Crossing Authority related to overhead and administration, including costs and expenses related to dispute resolution and litigation, and all costs and expenses paid by the Crossing Authority related to Taxes, and associated with the International Crossing, the Michigan Interchange or the US Federal Plaza, and related obligations under this Agreement, any Public-Private Agreement and any US Federal Plaza Public-Private Agreement.

- (r) **“Crossing Authority Revenue”** means all revenue received by the Crossing Authority (other than monies received from Canada, except pursuant to Section 1 of Article X, and US Federal Agencies Contributions) related to the International Crossing, the Michigan Interchange prior to the International Crossing Opening Date, and the US Federal Plaza, including: the Canadian Crossing Tolls; revenue arising from any Public-Private Agreement or any US Federal Plaza Public-Private Agreement; interest or other money on account of investments by the Crossing Authority; and proceeds of insurance in the event of damage or destruction of any portion of the International Crossing, the Michigan Interchange prior to the International Crossing Opening Date, or the US Federal Plaza.
- (s) **“Effective Date”** means the later of the date upon which this Agreement has been executed by all of Canada, the Crossing Authority and the Michigan Parties and the date upon which this Agreement has been approved by the U.S. Secretary of State.
- (t) **“Fairness Monitor”** means a Person engaged in accordance with this Agreement to perform the usual functions of a fairness monitor in a public private partnership procurement process for a comparable public private partnership transaction, to report on any failure to comply with the fairness requirements of the RFQ and RFP, and to produce the further reports specified in Parts III and IV of Section 5 of Article VI.”
- (u) **“Federal Aid Eligibility Requirements”** means all requirements under US federal Law, as provided in the Stewardship and Oversight Agreement dated November 29, 2011 between FHWA and MDOT, as amended from time to time, necessary for expenditures on a project to be eligible as the non-federal share for federal aid matching purposes under the FHWA’s Federal Aid Highway Program; provided that, (a) in replacement of the “Buy America” provisions otherwise applicable under the FHWA’s Federal Aid Highway Program, it shall be required that all iron and steel used in Federal Aid Highway Project Activities must be produced in only the US and Canada and (b) there shall be no discrimination in favour of the US over Canada or in favour of Canada over the US with respect to any products, materials, supplies, labour or services under any of the Federal Aid Eligibility Requirements.
- (v) **“Federal Aid Highway Project Activities”** means Michigan Crossing Land Activities, Michigan Interchange Land Activities, Michigan Crossing Project Activities and Michigan Interchange Project Activities.
- (w) **“FHWA”** means the US Federal Highway Administration.

- (x) “**GAAP**” means, in respect of Canada or Michigan, as the case may be, those accounting principles which are recognized as being generally accepted and which are in effect from time to time.
- (y) “**Governmental Authority**” means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government, agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, such government.
- (z) “**GSA**” means the US General Services Administration.
- (aa) “**Imputed Cost of Unrecouped Canadian Contributions**” means, at each calendar year end, the aggregate amount accrued on Unrecouped Canadian Contributions in Canadian dollars, during such calendar year, calculated at a rate per annum equal to the Government of Canada benchmark long-term bond yield effective on the last business day of the previous calendar year end, as published by the Bank of Canada (Weekly Financial Statistics, series V39056), plus 100 basis points, and compounded annually.
- (bb) “**Initial Execution Date**” means the date as of which Canada, as represented by the Minister of Transport, and Michigan, as represented by its Governor, have executed this Agreement.
- (cc) “**International Authority**” means a public body corporate and legal entity established by this Agreement.
- (dd) “**International Authority Costs**” means all costs and expenses paid by the International Authority and funded by the Crossing Authority related to overhead and administration, including costs and expenses related to dispute resolution and litigation, and associated with the International Authority Oversight.
- (ee) “**International Authority Oversight**” means the oversight by the International Authority in accordance with the provisions of Section 5 of Article VI of this Agreement.
- (ff) “**International Crossing**” means the Canadian Crossing and the Michigan Crossing.
- (gg) “**International Crossing Alignment**” means the location of the Canadian Crossing in Canada and the location of the Michigan Crossing, the Michigan Interchange and the US Federal Plaza in Michigan substantially consistent with the Detroit River International Crossing Environmental Assessment Study, Environmental Assessment Report W.O. 04-33-002, dated December, 2008, approved by the Ontario Minister of Environment August 11, 2009 and substantially consistent with the Record of Decision

for the Proposed Detroit River International Crossing, Wayne County, Michigan FHWA-MI-EIS-05-01-R, dated January 14, 2009.

- (hh) “**International Crossing Costs**” means all costs and expenses paid by Canada or the Crossing Authority associated with the International Crossing and the International Crossing Lands, including costs of the International Crossing Land Activities and costs of the International Crossing Project Activities, and related obligations under this Agreement and any Public-Private Agreement including payments to a Concessionaire, other than the Crossing Authority Costs and other than International Authority Costs.
- (ii) “**International Crossing Lands**” means the Canadian Crossing Lands and the Michigan Crossing Lands.
- (jj) “**International Crossing Land Activities**” means the Canadian Crossing Land Activities and the Michigan Crossing Land Activities.
- (kk) “**International Crossing Opening Date**” means the date the International Crossing is open to transportation by the public.
- (ll) “**International Crossing Project Activities**” means Canadian Crossing Project Activities and the Michigan Crossing Project Activities.
- (mm) “**Law**” means all laws (including common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, rules, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies and other requirements of any Governmental Authority, having the force of law, and shall include, with respect to the applicability of state law to the internal operations of the International Authority, the legal doctrine and principles developed in judicial decisions involving entities formed under an agreement entered into pursuant to Section 10 of Article I of the *US Constitution*.
- (nn) “**Michigan Crossing**” means the bridge and approach, including the plaza, in Michigan included in the International Crossing Alignment, but not including the Michigan Interchange and the US Federal Plaza.
- (oo) “**Michigan Crossing Facilities**” means all structures, facilities and improvements related to the Michigan Crossing owned or to be owned by Michigan.
- (pp) “**Michigan Crossing Lands**” means all land, rights-of-way, property, rights, easements and interests for the Michigan Crossing owned or to be owned by Michigan.
- (qq) “**Michigan Crossing Lands Activities**” means all activities of the Michigan Parties upon request of the Crossing Authority and all activities

of Canada or the Crossing Authority, associated with the Michigan Crossing Lands.

- (rr) “**Michigan Crossing Project Activities**” means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority, associated with the Michigan Crossing Facilities, other than the Michigan Crossing Land Activities.
- (ss) “**Michigan Interchange**” means the interchange between Interstate 75 and the Michigan Crossing or the US Federal Plaza, included in the International Crossing Alignment.
- (tt) “**Michigan Interchange Costs**” means all costs and expenses paid by Canada or the Crossing Authority associated with the Michigan Interchange and the Michigan Interchange Lands, including the costs of the Michigan Interchange Land Activities, the costs of the Michigan Interchange Project Activities and related obligations under this Agreement and any Public-Private Agreement, including payments to a Concessionaire, other than the Crossing Authority Costs and other than International Authority Costs.
- (uu) “**Michigan Interchange Facilities**” means all structures, facilities and improvements related to the Michigan Interchange owned or to be owned by Michigan.
- (vv) “**Michigan Interchange Lands**” means all land, rights-of-way, property, rights, easements and interests for the Michigan Interchange owned or to be owned by Michigan.
- (ww) “**Michigan Interchange Land Activities**” means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority prior to the International Crossing Opening Date, associated with the Michigan Interchange Lands.
- (xx) “**Michigan Interchange Project Activities**” means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority associated with the design and construction of the Michigan Interchange Facilities prior to the International Crossing Opening Date, other than the Michigan Interchange Land Activities.
- (yy) “**Ontario**” means Her Majesty the Queen in Right of Ontario.
- (zz) “**Parties**” means Canada and Michigan upon and after the Initial Execution Date and Canada and Michigan and each of the Crossing Authority, MDOT and MSF upon and after execution of this Agreement by the Crossing Authority, MDOT and MSF, respectively.

- (aaa) **“Permitted Encumbrances”** means, with respect to lands or any interests therein of any Person, licences, easements, rights-of-way and rights in the nature of easements (including, without limitation, licences, easements, rights-of-way and rights in the nature of easements for public-ways, sewers, drains, gas, steam, water mains, electric light and power, or telephone conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (bbb) **“Person”** means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any Governmental Authority or any incorporated or unincorporated entity or association of any nature.
- (ccc) **“Presidential Permit Application Activities”** means activities associated with the application to the US Department of State for a Presidential Permit for the construction, connection, operation and maintenance of the Michigan Crossing, as contemplated in this Agreement.
- (ddd) **“Private Entity”** means any non-governmental business entity.
- (eee) **“Public-Private Agreement”** means any agreement between the Crossing Authority and a Concessionaire (i) prior to the International Crossing Opening Date providing for any one or more of the design, construction, financing, operation and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date providing for any one or more of the design and construction of the Michigan Interchange; or (iii) after the International Crossing Opening Date providing for any one or more of the improvement, operation and maintenance of the International Crossing.
- (fff) **“Public-Private Agreement Requirements”** means the Public-Private Agreement Requirements in Section 3 of Schedule B to this Agreement.
- (ggg) **“RFP”** means a request by the Crossing Authority to potential Concessionaires (i) prior to the International Crossing Opening Date requesting proposals for any one or more of the design, construction, financing, operation and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date requesting proposals for any one or more of the design and construction of the Michigan Interchange; or (iii) after the International Crossing Opening Date requesting proposals for any one or more of the improvement, operation and maintenance of the International Crossing; and providing for the process of evaluation and selection of the Concessionaire, in compliance with the RFP Process Requirements.
- (hhh) **“RFP Process Requirements”** means the RFP Process Requirements in Section 2 of Schedule B to this Agreement.

- (iii) **“RFQ”** means a request by the Crossing Authority to potential Concessionaires (i) prior to the International Crossing Opening Date requesting qualifications to undertake any one or more of the design, construction, financing, operation and maintenance of the International Crossing; (ii) prior to the International Crossing Opening Date requesting qualifications to undertake any one or more of the design and construction of the Michigan Interchange; or (iii) after the International Crossing Opening Date requesting qualifications for any one or more of the improvement, operation and maintenance of the International Crossing; and providing for the process of evaluation and selection of a short-list of potential Concessionaires to respond to an RFP, in compliance with the RFQ Process Requirements.
- (jjj) **“RFQ Process Requirements”** means the RFQ Process Requirements in Section 1 of Schedule B to this Agreement.
- (kkk) **“Tax”** or **“Taxes”** means all taxes, charges, fees, levies, imports and other assessments and payments in lieu of tax, including income, sales use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes and any other taxes, customs duties, fees, assessments, royalties, duties, deductions, compulsory loans or similar charges in the nature of tax, including pension plan contributions, employment insurance payments and workers compensation premiums, together with any installments, and any interest, fines and penalties, imposed by any Governmental Authority, whether disputed or not.
- (lll) **“Unrecouped Canadian Contributions”** means, at each calendar year end, the amount, if any, by which the aggregate of the International Crossing Costs, the Michigan Interchange Costs, the US Federal Plaza Costs, the Crossing Authority Costs, the International Authority Costs prior to such time and the aggregate amount of Imputed Cost of Unrecouped Canadian Contributions compounded at any calendar year end at and prior to such time, exceeds the aggregate of the Crossing Authority Revenue and the US Federal Agencies Contributions prior to such time, all amounts in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date paid or received as the case may be.
- (mmm) **“US”** means the United States of America.
- (nnn) **“US Coast Guard”** means United States Coast Guard.
- (ooo) **“US Federal Agencies”** means CBP, GSA and any other US federal government agency as applicable in the context.

- (ppp) **“US Federal Agencies Contributions”** means all monies (in Canadian currency or converted into Canadian currency at conversion rates prevailing as at the date paid or provided) paid or provided by one or more US Federal Agencies to the Crossing Authority for the US Federal Plaza Costs.
- (qqq) **“US Federal Plaza”** means the plaza in Michigan for use by one or more US Federal Agencies included in the International Crossing Alignment.
- (rrr) **“US Federal Plaza Costs”** means all costs and expenses paid by Canada or the Crossing Authority associated with the US Federal Plaza and the US Federal Plaza Lands, including the costs of the US Federal Plaza Land Activities, the costs of the US Federal Plaza Project Activities and related obligations under this Agreement and any US Federal Plaza Public-Private Agreement, including payments to a Concessionaire, other than the Crossing Authority Costs and other than International Authority Costs.
- (sss) **“US Federal Plaza Facilities”** means all structures, facilities and improvements related to the US Federal Plaza owned or to be owned by one or more of the Michigan Parties or one or more of the US Federal Agencies as determined by the Crossing Authority, in consultation with the appropriate Michigan Parties, and the appropriate US Federal Agencies.
- (ttt) **“US Federal Plaza Lands”** means all land, rights-of-way, property, rights, easements and interests, if any, determined by the Crossing Authority (in consultation with Michigan) and the appropriate US Federal Agencies, to be necessary for the US Federal Plaza, and owned or to be owned by one or more of the Michigan Parties or one or more of the US Federal Agencies as determined by the Crossing Authority (in consultation with the appropriate Michigan Parties) and the appropriate US Federal Agencies.
- (uuu) **“US Federal Plaza Lands Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority, associated with the US Federal Plaza Lands.
- (vvv) **“US Federal Plaza Project Activities”** means all activities of the Michigan Parties upon request of the Crossing Authority and all activities of Canada or the Crossing Authority, associated with the US Federal Plaza Facilities, other than the US Federal Plaza Land Activities.
- (www) **“US Federal Plaza Public-Private Agreement”** means any agreement between the Crossing Authority and a Concessionaire (i) prior to the International Crossing Opening Date providing for any one or more of the design, construction, financing and maintenance of the US Federal Plaza; or (ii) after the International Crossing Opening Date replacing a prior US

Federal Plaza Public-Private Agreement and providing for any one or more of the improvement and/or maintenance of the US Federal Plaza.

Section 2. **Headings.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

Section 3. **Number.** Words importing the singular include the plural and vice versa and words importing gender include all genders.

Section 4. **Including.** The term “including” shall be interpreted to mean “including without limitation”.

Section 5. **Responsible for.** The term “responsible for” shall be interpreted to mean to undertake or cause to be undertaken, the relevant activities and be liable for all costs and expenses in respect thereof; in the case of Canada, subject to all procedures and approvals required by Canada for the payment of funds, including appropriation by the Parliament of Canada, to pay for such costs and expenses; in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue or Canadian Contributions to pay for such costs and expenses and US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable; and in the case of the Michigan Parties, subject to availability of the Canadian Contributions to pay for such costs and expenses.

Section 6. **Costs and Expenses.** The term “costs and expenses” shall be interpreted to mean amounts paid by a Party to third parties on a cost recovery basis.

Section 7. **Fund/Funding.** The terms “fund” and “funding” shall be interpreted to mean to provide all monies required to pay for the costs and expenses incurred in respect of the relevant activities without any requirement for reimbursement (except for recoupment of the Canadian Contributions and for US Federal Agencies Contributions, as provided in this Agreement); in the case of Canada, subject, to all procedures and approvals required by Canada for the payment of funds, including appropriation by the Parliament of Canada; and in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue or Canadian Contributions to pay for such costs and expenses and US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable. The terms “fund” and “funding” shall also be interpreted to mean “to provide real or personal property or services in lieu of monies in respect of the relevant activities without any requirement for reimbursement (except for recoupment of the Canadian Contributions as provided in this Agreement), subject to all procedures and approvals required by Canada, for the gift, contribution or delivery of real or personal property or services.

Section 8. **Requirements.** The term “Requirements” in the context of RFP Process Requirements, RFQ Process Requirements and Public-Private Agreement Requirements and substantial compliance therewith shall not be interpreted to preclude other provisions, not inconsistent with those “Requirements”.

Section 9. **Calculation of Time Periods.** When a time is expressed herein to begin or end at, on or within a specified day, or to continue to or within a specified day, the time period includes that day. When a time period is expressed herein to begin after or to be from a specified day, the time period does not include that day. Where anything is to be done within a time period expressed hereinafter, from or before a specified day, the time period does not include that day. If the last day of a time period is not a Business Day, the time period shall end on the next Business Day.

Section 10. **References to Law.** Any reference to any Michigan Law, or to any section of or any definition in any Michigan Law, in respect of the power or authority, and all procedures and approvals required by Michigan Law related thereto, of any Michigan Party to enter into and carry out its obligations as a Party to this Agreement, shall be deemed to be reference to such Law or section or definition in effect as at the date the Michigan Party became a Party. Any other reference to any Law, or to any section of or any definition in any Law, shall be deemed to be reference to such Law or section or definition as amended, supplemented, substituted, replaced or re-enacted from time to time.

Section 11. **Schedules.** The following schedules are attached to and form part of this Agreement:

Schedule A	Post Canadian Contributions Recoupment Date
Schedule B	Procurement Requirements for International Crossing

V CROSSING AUTHORITY

Section 1. **Creation and Mandate.** Canada shall establish the Crossing Authority as an entity under and subject to the Laws of Canada.

Section 2. **Capacity and Powers.** The Crossing Authority shall have the capacity, rights, and powers of a natural person, may carry on its activities throughout Canada and shall have the capacity to carry on its activities, conduct its affairs and exercise its powers in Michigan to the extent that the Laws of Michigan and the US permit.

Section 3. **Structure, Organization & Governance.** The members of the Crossing Authority shall consist of Canada and, at the discretion of Canada, Ontario. The directors of the Crossing Authority shall be appointed by Canada and, at the discretion of Canada, Ontario.

Section 4. **Consultation with International Authority and Michigan Parties.** The Crossing Authority shall consult with individual members of the International Authority and with staff, attorneys, and consultants of the Michigan Parties as designated by the Governor of Michigan, in development of the RFQ, the RFP, the draft of the Public-

Private Agreement to be included in the RFP, and the process for selection of the Fairness Monitor.

Section 5. **Selection of Fairness Monitor.** The Crossing Authority, jointly with the Michigan Parties as designated by the Governor of Michigan, shall select the Fairness Monitor to perform the monitoring role over the public-private partnership procurement process provided for in Section 5 of Article VI and to be responsible to the Crossing Authority and the International Authority for producing the reports required to be delivered pursuant to Parts III and IV of Section 5 of Article VI. The Crossing Authority, jointly with the Michigan Parties as designated by the Governor of Michigan, shall present the selected Fairness Monitor to the International Authority for approval.

Section 6. **Engagement of Fairness Monitor.** Upon approval by the International Authority of the Fairness Monitor, the Crossing Authority shall engage the Fairness Monitor to perform its monitoring role over the public-private partnership procurement process provided for in Section 5 of Article VI and to be responsible to the Crossing Authority and the International Authority for producing the reports required to be delivered pursuant to Parts III and IV of Section 5 of Article VI. The terms of engagement shall require the Fairness Monitor to be free of any conflict of interest throughout the period of the engagement.

VI INTERNATIONAL AUTHORITY

Section 1. **Creation and Mandate.** The International Authority is hereby established as a public body corporate and legal entity pursuant to this Agreement, in accordance with Applicable Law, including Section 10 of Article 1 of the *US Constitution*, Section 5 of Article 3 of the *Michigan Constitution of 1963* and the *Urban Cooperation Act of 1967 Act 7 of 1967 (Ex. Sess)* (Michigan).

Section 2. **Capacity and Powers.**

The International Authority shall be a legal entity separate and distinct from the Parties. The International Authority shall have the capacity, rights and powers of a natural person, including, in its own name to make and enter into contracts, to employ agents or employees, to acquire, hold or dispose of property, to incur debts, liabilities or obligations, provided that such debts, liabilities or obligations do not constitute debts, liabilities or obligations of any of the Parties, and to cooperate with Canada, the Crossing Authority and the Michigan Parties. The International Authority may sue and be sued in its own name. The International Authority shall not be operated for profit. The International Authority may not condemn property in Michigan. The International Authority shall not impose any Taxes.

The internal governance, activities and operations of the International Authority, including meetings, deliberations and decisions of the International Authority, and all information related thereto, shall be subject to and governed by Applicable Law,

including, but not limited to, Section 10, of Article 1 of the *US Constitution* and judicial interpretations thereof. The International Authority shall adopt such by-laws, rules and regulations with respect to the conduct of its affairs, not inconsistent with this Agreement or Applicable Law, as it may deem necessary or proper, including by-laws, rules and regulations to ensure that information provided by the Crossing Authority or the Michigan Parties to the International Authority shall remain confidential and shall not be disclosed to any third party, except as permitted by the Crossing Authority or the Michigan Parties, respectively.

Section 3. **Structure, Organization & Governance.**

Appointment and Term

The International Authority shall have a board consisting of six (6) members. Within one (1) month after the Effective Date, Canada shall appoint two (2) members and the Crossing Authority shall appoint one (1) member and the Michigan Parties shall appoint three (3) members, in accordance with Applicable Law. Members appointed prior to the International Crossing Opening Date shall be appointed for a term ending on the date one (1) year after the International Crossing Opening Date. Members appointed after the date one (1) year after the International Crossing Opening Date shall be appointed for a term of three (3) years. Members may be re-appointed upon expiration of a term.

Qualifications

It shall be a condition of qualification that members, at the time of appointment and throughout their term:

- (a) shall be at least eighteen (18) years of age and a citizen and resident of Canada or a citizen of the United States and resident of Michigan;
- (b) shall not owe a duty under Applicable Law as an elected or public official to any Governmental Authority, that would conflict with the duty that the member would owe to the best interests of the International Crossing under this Agreement; and
- (c) shall not directly or indirectly engage in providing goods to or services in respect of the International Crossing and shall not directly or indirectly compete in respect of the International Crossing.

Removal and Vacancies

A member may only be removed by the Party or Parties that appointed the member and prior to the date one (1) year after the International Crossing Opening Date only if the member ceases to comply with the qualifications provided for in this Section 3 or as otherwise provided by Applicable Law. A member shall be removed by the Party or Parties that appointed the member if the member ceases to comply with the qualifications provided for in this Section 3 or as otherwise provided by Applicable Law. A vacancy

arising out of resignation, death or removal of a member shall be filled expeditiously by the Party or Parties that appointed the member.

Duties

Members shall act honestly and in good faith with a view to the best interests of the International Crossing, and exercise the care, diligence and skill a reasonably prudent person would exercise in comparable circumstances. Members shall at all times act in good faith and in a diligent and timely manner, and a vote in favour of approval by the International Authority shall not be unreasonably withheld.

Chair

Canada shall designate a member as the chairperson of the International Authority within one (1) month after the Effective Date and from time to time thereafter during the period to the date five (5) years after the International Crossing Opening Date. The Michigan Parties shall designate a member as the chairperson of the International Authority, from time to time, during the five (5) year period commencing on the date five (5) years after the International Crossing Opening Date and the chairperson of the International Authority shall alternate thereafter every five (5) years between a member designated, from time to time, by Canada and a member designated, from time to time, by the Michigan Parties.

Section 4. Decisions of the International Authority.

Meetings

The chairperson shall call a meeting of the International Authority at least once in each calendar year, within three (3) Business Days after receipt of a request by the Crossing Authority for approval pursuant to Section 5 of this Article VI, and within three (3) Business Days after receipt of a request by any member, by delivering written notice of the meeting to each of the members. The notice of the meeting shall specify the date of the meeting, which shall not be earlier than ten (10) Business Days and not later than fifteen (15) Business Days after the date of the notice of meeting, and the time, place and agenda for the meeting.

Notwithstanding the foregoing, the chairperson shall call a meeting of the International Authority within two (2) Business Days after receipt of language from a sole arbitrator pursuant to C (iv) of Part I of Section 5 of this Article VI. The notice of the meeting shall specify the date of the meeting, which shall not be earlier than two (2) Business Days and not later than three (3) Business Days after the date of the notice of the meeting, and the time, place and agenda of the meeting. Notice of a meeting may be waived by all the members.

Meetings shall be held either in Detroit, Michigan or Windsor, Ontario, except as otherwise agreed by all the members. Meetings may be conducted by telephone conference call, video-conferencing or other means of communication which may become available through technological advancement, if and to the extent permitted by

Applicable Law, and members participating in such meetings by such means shall be deemed to be present at such meetings. Meetings shall be open to the public, if and to the extent required by Applicable Law.

Quorum

At least four (4) members must be present in a meeting to constitute a quorum. If there is no quorum, the meeting may be adjourned to the same place at a date and time established by the chairperson of the International Authority not earlier than four (4) Business Days nor later than ten (10) Business Days thereafter. Written notice of the date, time and place of the adjourned meeting, which states that the quorum at the adjourned meeting shall be deemed to consist of the members present at the meeting, shall be delivered to each of the members and to the Parties not later than three (3) Business Days prior to the date of the adjourned meeting. If there is no quorum at the adjourned meeting, the members present shall be deemed to constitute a quorum at the adjourned meeting.

Notwithstanding the foregoing, if there is no quorum at a meeting called to consider language from a sole arbitrator pursuant to C (iv) of Part 1 of Section 5 of this Article VI, the meeting may be adjourned to the same place at a date and time established by the chairperson of the International Authority not earlier than three (3) Business Days nor later than five (5) Business Days thereafter. Written notice of the date, time and place of the adjourned meeting, which states that the quorum at the adjourned meeting shall be deemed to consist of the members present at the meeting, shall be delivered to each of the members and to the Parties not later than two (2) Business Days prior to the date of the adjourned meeting. If there is no quorum at the adjourned meeting, the members present shall be deemed to constitute a quorum at the adjourned meeting.

If there are no current members appointed by Canada and the Crossing Authority, or no current members appointed by the Michigan Parties, in either case for a period of at least thirty (30) days, at least three (3) members present shall be deemed to constitute a quorum at any meeting thereafter until at least one of the vacancies is filled by Canada or the Crossing Authority if there are no current members appointed by Canada and the Crossing Authority, or by the Michigan Parties if there are no current members appointed by the Michigan Parties, as the case may be.

Decisions

Except as otherwise provided in this Section 4, all decisions of the International Authority shall be passed by a vote for approval by a majority of members present including a vote for approval by at least one member appointed by Canada or the Crossing Authority and a vote for approval by at least one member appointed by the Michigan Parties. Any member present and not voting shall for all purposes in this Section 5 be deemed to have voted against approval.

If there is no quorum at the adjourned meeting, and therefore the members present are deemed to constitute a quorum; or if there are no current members appointed by Canada and the Crossing Authority or no current members appointed by the Michigan Parties, for a period of at least thirty (30) days, and therefore three (3) members are deemed to constitute a quorum: then, all decisions of the International Authority shall be passed by a majority of the members present and without the requirement for a vote for approval of at least one member appointed by Canada or the Crossing Authority, if there is no member appointed by Canada or the Crossing Authority present; and a vote for approval of at least one member appointed by the Michigan Parties, if there is no member appointed by the Michigan Parties present.

Except as otherwise provided in this Section 4, a tie vote or a vote for approval by a majority of members present without a vote for approval of at least one of the members appointed by Canada or the Crossing Authority and a vote for approval of at least one of members appointed by the Michigan Parties, shall be deemed to be a deadlock (in this Article VI and in Article XIV, a “**deadlock**”).

Notwithstanding the foregoing, if, at any time prior to one (1) year after the International Crossing Opening Date, all three members appointed by the Michigan Parties have been removed, whether or not replaced, and there is a deadlock (in this Article VI and in Article XIV, a “**post member removal deadlock**”), all decisions of the International Authority shall be passed by a majority of the members present and voting and without the requirement for a vote for approval of at least one member appointed by Canada or the Crossing Authority and a vote for approval of at least one member appointed by the Michigan Parties, and the chairperson shall have a second and decisive vote in the case of a tie vote.

If there is a deadlock (except a post member removal deadlock) the dispute giving rise to the deadlock may be submitted to dispute resolution in accordance with the procedure set out in Article XIV. If there is a deadlock (except a post member removal deadlock), the chairperson shall, within two (2) Business Days after the date of the deadlock, issue a written report to the members and the Parties describing the dispute giving rise to the deadlock and the position of each of the members on the dispute.

Section 5. **International Authority Approvals and Oversight.**

Approvals.

Michigan Lands Acquisitions

The Crossing Authority shall submit requests to acquire the Michigan Crossing Lands, the Michigan Interchange Lands and the US Federal Plaza Lands to the International Authority for approval, as required by Section 1 of Article VIII. The International Authority shall approve such requests unless the International Authority determines, acting reasonably and in the best interests of the International Crossing, that such acquisition is not necessary for the Michigan Crossing, the Michigan Interchange or the US Federal Plaza, respectively.

Michigan Lands Leases, etc.

The Crossing Authority shall submit requests to lease, licence or otherwise grant a property interest in the Michigan Crossing Lands to the Crossing Authority or the US Federal Plaza Lands to the Crossing Authority or one or more of the US Federal Agencies, for approval, as required by Section 2 of Article VIII. The International Authority shall approve such requests unless the International Authority determines, acting reasonably and in the best interests of the International Crossing, that such lease, licence or other grant of a property interest is not appropriate for and not in the best interests of the International Crossing.

RFQ, RFP & Concession Agreement

With respect to any RFQ, RFP or Public-Private Agreement prior to the International Crossing Opening Date and with respect to any Public-Private Agreement that is likely to extend the Canadian Contribution Recoupment Date or extend beyond the Canadian Contribution Recoupment Date, the Crossing Authority shall present the RFQ, RFP, Public-Private Agreement and the selection of the Fairness Monitor to the International Authority for approval in accordance with the following provisions:

Part I. Each of the RFQ, RFP and the final draft form of the Public-Private Agreement shall be presented to the International Authority for approval. With respect to approval by the International Authority of the RFQ or RFP, such approval shall constitute authority for implementation of the public private partnership procurement process in a manner that is materially consistent with the RFQ and RFP approved by the International Authority. All members of the International Authority shall have discretion in voting for or against any approval under this Part I, subject to compliance with the following:

A. Members shall at all times act in good faith and in a diligent and timely manner, and a vote in favour of approval shall not be unreasonably withheld.

B. Each member voting against approval of a document must indicate which terms (or lack of what terms) in the document proposed for approval has caused that member to vote against approval, provided that a member shall not vote against approval of a document based upon any terms in the document proposed for approval that were

included in a previous draft of the document that was approved by the International Authority, unless other terms in the proposed document have changed from the prior document in a manner that impacts the effect of the terms that have caused the member to vote against approval. Each member voting against approval of a document must provide at or before the time of the vote alternative language (or additional language) which that member would approve. Any such language (or additional language) shall be consistent with each of the following:

i. The framework agreed upon in the Crossing Agreement to implement the International Crossing, the Michigan Interchange and the U.S. Federal Plaza and the previous draft of the RFQ, RFP and Public-Private Agreement approved by the International Authority;

ii. Market requirements, and predominant public private partnership procurement best practices as established in public private partnership transactions of similar size and scope that have closed;

iii. Affordability, financial viability and cost effective implementation of the International Crossing, the Michigan Interchange and the U.S. Federal Plaza; and

iv. The requirements of Schedule B of this Crossing Agreement.

C. Deadlocks are subject to expedited arbitration pursuant to Article XIV. The Dispute to be resolved by binding arbitration shall be whether each member who voted against approval complied with A and B of this Part I of Section 5. If (a) a member voted against approval and provided alternative or additional language in respect of more than one term or lack of more than one term, or (b) more than one member voted against approval and provided alternative language or additional language in respect of one or more terms or lack of one or more terms, then the sole arbitrator shall resolve all of the Disputes in one arbitration.

i. If the sole arbitrator determines that any such member did not comply with A and B of this Part I, such member shall be deemed to have voted for approval and the vote of the International Authority on the matter in Dispute shall be revised accordingly.

ii. If the sole arbitrator determines that any such member has complied with A and B of this Part I of Section 5, the sole arbitrator shall determine whether the language in the document proposed for approval, or the language provided by any such member, or any alternative language submitted by one or both of the Crossing Authority and the Executive Office of the Governor of Michigan to the sole arbitrator during the arbitration is most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5.

iii. If the language determined by the sole arbitrator to be most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5 is the

language in the document proposed for approval or the language provided by any such member, such language shall remain or shall be included in such document proposed for approval, as the case may be, and such document shall be deemed to be approved by the International Authority.

iv. If the language determined by the sole arbitrator to be most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5 is the alternative language submitted by one or both of the representatives of the Parties to the sole arbitrator during the arbitration, the sole arbitrator shall submit such language to the International Authority for approval.

v. If the International Authority fails to approve the alternative language submitted by the sole arbitrator for approval within three (3) Business Days after submission by the sole arbitrator pursuant to C (iv) of this Part I of Section 5, the sole arbitrator shall submit the language in the document proposed for approval or the language provided by any such member as determined by the sole arbitrator to be most consistent, in all material respects, with B (i) through (iv) of this Part I of Section 5, to the International Authority within ten (10) Business Days after submission by the sole arbitrator pursuant to C (iv) of this Part I of Section 5, and such language shall remain or shall be included in such document proposed for approval, as the case may be, and such document shall be deemed to be approved by the International Authority.

Part II. The International Authority shall approve the Fairness Monitor presented for approval, unless the Fairness Monitor is not qualified based on the following standards:

A. Demonstrated, industry-recognized experience over a minimum of ten years in a minimum of five public-private partnership transactions of similar size and scope;

B. References from public-private partnership procurement agencies, participants, proponents and consultants in comparable public-private partnership transactions; and

C. No conflict of interest.

Each member voting against approval of the Fairness Monitor must state in writing at or before the time of the vote the reasons for determining that the Fairness Monitor is not qualified, based solely on the standards expressed in A through C of this Part II of Section 5. Deadlocks are subject to expedited arbitration pursuant to Article XIV. The "Dispute" to be resolved by binding arbitration shall be whether each member who voted against approval complied with A through C of this Part II of Section 5. If the sole arbitrator determines that any such member did not comply with A through C of this Part II of Section 5, such member shall be deemed to have voted for approval and the vote of the International Authority on the matter in Dispute shall be revised accordingly.

Part III. After completion of the RFQ and RFP process, the winning proposal shall be presented to the International Authority for approval. The International Authority shall approve the winning proposal if it has received a report from the Fairness Monitor, previously approved by the International Authority under Part II of this Section 5, confirming compliance with the fairness requirements of the RFQ/RFP process and confirming that the process resulting in the selection of the winning proposal was consistent with the RFQ and RFP previously approved by the International Authority, and with the Crossing Agreement.

Part IV. Following approval of the winning proposal under Part III of this Section 5, a substantially final Public-Private Agreement (the "Substantially Final Agreement") shall be presented to the International Authority for approval. The International Authority shall approve the Substantially Final Agreement if it has received a report from the Fairness Monitor previously approved by the International Authority that the Substantially Final Agreement presented to the International Authority for approval is materially consistent with the draft of the Public-Private Agreement last approved by the International Authority and with the winning proposal approved by the International Authority. Such approval shall constitute authority for execution of the final Public-Private Agreement, substantially in the form as approved, but with such further changes which are not substantially inconsistent with this Crossing Agreement, including Schedule B, or the winning proposal approved by the International Authority.

Oversight. The International Authority shall maintain on-going monitoring of compliance by the Crossing Authority with the Crossing Agreement and the Concessionaire with Public-Private Agreement. The Crossing Authority shall report at least annually as to such compliance, including remediation taken for any failure to comply. The Crossing Authority at all times shall consider any advice given by the International Authority.

Information. Each of the Crossing Authority and the Michigan Parties shall provide the International Authority with information necessary for the International Authority to properly exercise the International Authority Oversight.

VII CANADIAN CROSSING LANDS

Section 1. Canada shall be responsible for the acquisition of the Canadian Crossing Lands and shall be responsible for the lease, licence or other grant of a property interest in the Canadian Crossing Lands to the Crossing Authority for the term of this Agreement for nominal consideration.

Section 2. Canada hereby agrees that, for the term of this Agreement, it shall not (a) sell or otherwise dispose of all or any part of the Canadian Crossing Lands or any interest therein, except for Permitted Encumbrances in respect of Canadian Crossing Project Activities, or (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Canadian Crossing Lands, except in accordance with this Agreement or except as otherwise agreed by Canada and the Michigan Parties.

Section 3. The Crossing Authority hereby agrees that, for the term of this Agreement, it shall not (a) sell or otherwise dispose of all or any part of the Canadian Crossing Lands or any interest therein, except in respect of the Canadian Crossing Project Activities, or (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Canadian Crossing Lands, except in respect of the Canadian Crossing Project Activities or except as otherwise agreed by the Crossing Authority and the Michigan Parties.

VIII MICHIGAN CROSSING LANDS, MICHIGAN INTERCHANGE LANDS & US FEDERAL PLAZA LANDS

Section 1. The Michigan Parties, subject to approval by the International Authority and subject to funding by the Crossing Authority, shall be responsible for the acquisition, including by condemnation, if necessary, of the Michigan Crossing Lands and the Michigan Interchange Lands, except as otherwise agreed by the Crossing Authority and the Michigan Parties. The Michigan Parties, subject to approval by the International Authority and subject to funding by one or more US Federal Agencies, or to the extent not funded by US Federal Agencies, to funding by the Crossing Authority, shall be responsible for the acquisition, including by condemnation, if necessary, of the US Federal Plaza Lands, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 2. The Michigan Parties, subject to approval of the International Authority, shall be responsible for the lease, licence or other grant of a property interest in the Michigan Crossing Lands to the Crossing Authority, for the term of this Agreement for nominal consideration, in form and substance satisfactory to the Crossing Authority. The Michigan Parties, subject to approval by the International Authority, shall be responsible for the lease, licence, or other grant of a property interest in the US Federal Plaza Lands owned by a Michigan Party to the Crossing Authority or to a US Federal Agency, as determined by the Crossing Authority (in consultation with the appropriate Michigan Parties) and the appropriate US Federal Agencies, for such term and for such consideration, as the Crossing Authority shall determine in its sole discretion, and in form and substance satisfactory to the Crossing Authority. The Michigan Parties shall sell or otherwise dispose of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands, the US Federal Plaza Lands or any interest therein for Permitted Encumbrances at the request of the Crossing Authority in respect of Michigan Crossing Project Activities, Michigan Interchange Project Activities and US Federal Plaza Project Activities

Section 3. The Michigan Parties hereby agree that, for the term of this Agreement, they shall not (a) sell or otherwise dispose of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands, the US Federal Plaza Lands or any interest therein except at the request of the Crossing Authority for Permitted Encumbrances in respect of Michigan Crossing Project Activities, Michigan Interchange Project Activities and US Federal Plaza Project Activities, or (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Michigan Crossing Lands, the

Michigan Interchange Lands or the US Federal Plaza Lands, except in accordance with the provisions of this Agreement or except as otherwise agreed by the Crossing Authority and the Michigan Parties.

IX
INTERNATIONAL CROSSING, MICHIGAN INTERCHANGE &
US FEDERAL PLAZA

Section 1. The Crossing Authority shall be responsible for International Crossing Project Activities and shall be responsible for the design, construction, financing, operation and maintenance of the International Crossing, in compliance with Applicable Law, pursuant to Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority, subject to International Authority Oversight, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 2. The Crossing Authority shall be responsible for the improvement, operation and maintenance of the International Crossing in compliance with Applicable Law after the termination of the Public-Private Agreement(s) during the term of this Agreement, directly or pursuant to Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 3. The Crossing Authority shall be responsible for Michigan Interchange Project Activities and shall be responsible for the design and construction of the Michigan Interchange prior to the International Crossing Opening Date, in compliance with Applicable Law, pursuant to Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority, subject to the International Authority Oversight, except as otherwise agreed by the Crossing Authority and the Michigan Parties.

Section 4. The Crossing Authority shall enter into discussions with the appropriate US Federal Agencies to determine whether and the extent to which US Federal Agencies or the Crossing Authority shall be responsible for one or more of the design, construction, finance and maintenance of the US Federal Plaza. Except to the extent that US Federal Agencies agree to be responsible for the design, construction, finance and maintenance of the US Federal Plaza, the Crossing Authority shall be responsible for the design, construction, finance and maintenance of the US Federal Plaza, subject to agreement with the appropriate US Federal Agencies, in compliance with Applicable Laws, pursuant to US Federal Plaza Public-Private Agreement(s) with Concessionaire(s) procured by the Crossing Authority.

Section 5.

(a) Unless the Governor of Michigan expressly waives this requirement in writing, the Crossing Authority and the Michigan Parties shall be responsible for working together, using their combined efforts in a cooperative manner consistent with the RFQ Process Requirements, RFP Process Requirements and Public-Private Agreement Requirements and the framework established in this Agreement, to ensure that, subject to

subsection (d) of this Section 5, all Canadian Contributions expended on Federal Aid Highway Project Activities prior to the International Crossing Opening Date comply with any and all applicable Federal Aid Eligibility Requirements. This joint responsibility shall be implemented as follows:

(i) The Michigan Parties shall be responsible for complying with all Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities for which the Michigan Parties are responsible under this Agreement.

(ii) Prior to the Crossing Authority undertaking any particular Federal Aid Highway Project Activity for which the Crossing Authority is responsible under this Agreement, the Crossing Authority shall request and MDOT shall be responsible for identifying and providing to the Crossing Authority (with the specificity and detail reasonably requested by the Crossing Authority) the specific Federal Aid Eligibility Requirements applicable to such Federal Aid Highway Project Activity. Subject to subsection (e) below, the Crossing Authority shall be responsible for complying with the Federal Aid Eligibility Requirements identified and provided by MDOT upon such request by the Crossing Authority.

(iii) As part of the consultation with the Michigan Parties pursuant to Article V, Section 4 of this Agreement, MDOT shall, upon request by the Crossing Authority, provide assistance in the development of the specific provisions to be included in the RFQ, RFP and Public-Private Agreement as necessary to comply with Federal Aid Eligibility Requirements or confirm that the specific provisions developed by the Crossing Authority are sufficient to comply with the Federal Aid Eligibility Requirements. Subject to subsection (e) below, the Crossing Authority shall be responsible for enforcing all provisions related to Federal Aid Eligibility Requirements that are included in the final RFQ, RFP and Public-Private Agreement after approval by the International Authority in accordance with Article VI, Section 5.

(iv) MDOT shall perform oversight activities consistent with the Stewardship and Oversight Agreement, dated November 29, 2011, between FHWA and MDOT, as amended from time to time, as necessary to assure FHWA of compliance with Federal Aid Eligibility Requirements, including all environmental, administrative, financial, procurement and contracting process requirements, in accordance with this Agreement. MDOT shall promptly inform the Crossing Authority of any change in US federal Law regarding Federal Aid Eligibility Requirements. MDOT shall provide the Crossing Authority a copy of any proposed amendment to the Stewardship and Oversight Agreement, dated November 29, 2011, between FHWA and MDOT which could affect Federal Aid Eligibility Requirements applicable to Federal Aid Highway Project Activities promptly after receipt of the proposed amendment from FHWA or promptly after such amendment is proposed by MDOT, as applicable. The Crossing Authority shall be responsible to supply or, to the extent applicable, to enforce the obligation of a Concessionaire to supply pursuant to a Public-Private Agreement, all

information reasonably requested by MDOT, whether before or after the International Crossing Opening Date, as necessary to comply with its responsibilities under this Section 5(a)(iv).

(b) There shall be no obligation that the Canadian Crossing Land Activities or Canadian Crossing Project Activities comply with any Federal Aid Eligibility Requirements applicable to Federal Aid Project Highway Activities. Nevertheless, the RFP and the Public-Private Agreement shall require that all iron and steel used in the bridge component of the Canadian Crossing, not including the plaza and approach, shall be produced in only the US and Canada, unless the Governor of Michigan has expressly waived this requirement or the requirements of subsection (a) of this Section 5 in writing. The Crossing Authority shall be responsible for enforcing this requirement in the RFP and the Public-Private Agreements. The Crossing Authority shall be responsible to supply or, to the extent applicable, to enforce the obligation of a Concessionaire to supply pursuant to a Public-Private Agreement, all information reasonably requested by MDOT, whether before or after the International Crossing Opening Date, as necessary to demonstrate compliance with this Section 5(b).

(c) If a Federal Aid Eligibility Requirement is not met due to the failure of the Crossing Authority to perform its obligations under this Section 5, the Crossing Authority shall not be liable for monetary damages or lost federal aid and specific performance of such obligations of the Crossing Authority shall be the exclusive remedy, unless otherwise agreed by the Crossing Authority. If a Federal Aid Eligibility Requirement is not met due to the failure of a Concessionaire to perform its obligations under a Public-Private Agreement, the Concessionaire shall not be liable for monetary damages or lost federal aid and specific performance of such obligations of the Concessionaire shall be the exclusive remedy, unless otherwise agreed by the Crossing Authority.

(d) Notwithstanding any other provision in this Agreement, all obligations under this Section 5 shall be deemed to have been met for all purposes if US \$550 million expended on Federal Aid Highway Project Activities prior to the International Crossing Opening Date are eligible as the non-federal share for federal aid matching purposes under the FHWA's Federal Aid Highway Program, except that the Parties shall remain obligated to perform their respective obligations under this Section 5 to the extent necessary for such US \$550 million to remain eligible as the non-federal share for federal aid matching purposes under the FHWA's Federal Aid Highway Program.

(e) Any Dispute with respect to this Section 5 of Article IX shall be subject to expedited arbitration pursuant to Article XIV, which arbitration shall not be commenced by any Party more than 5 years after the International Crossing Opening Date. If such Dispute is over whether something is a Federal Aid Eligibility Requirement or whether there has been compliance with a Federal Aid Eligibility Requirement, arbitration shall not be commenced unless the FHWA has been requested to make a determination and been provided sufficient opportunity to make such determination. A determination by the FHWA shall be given significant deference by the arbitrator. If the FHWA has determined that something is a Federal Aid Eligibility Requirement or that there has not

been compliance with a Federal Aid Eligibility Requirement, the arbitrator shall not make a decision contrary to the determination by the FHWA unless the arbitrator determines both (i) that something is not a Federal Aid Eligibility Requirement or that there has been compliance with a Federal Aid Eligibility Requirement and (ii) that compliance with the FHWA determination would be inconsistent in all material respects with B(i) through (iv) of Part I of Section 5 of Article VI.

Section 6. The Michigan Parties, subject to Applicable Law, shall be responsible for the Presidential Permit Application Activities. The Michigan Parties, subject to funding by the Crossing Authority and Applicable Law, shall be responsible for the Coast Guard Permit Application Activities and shall comply with all its obligations in respect of a presidential permit arising out of any such Presidential Permit Application Activities and all its obligations in respect of a bridge permit arising out of any such Coast Guard Permit Application Activities. The Crossing Authority shall be responsible for complying, and for causing the Concessionaire to comply, with the terms and conditions of such presidential permit applicable to activities for which the Crossing Authority is responsible under this Agreement. The Michigan Parties shall be responsible for complying with the terms and conditions of such presidential permit applicable to activities for which the Michigan Parties are responsible under this Agreement.

Section 7. The Michigan Interchange shall be part of the Interstate System in Michigan and shall be maintained as required by Applicable Law.

Section 8. The Michigan Parties, upon request of the Crossing Authority and subject to funding by the Crossing Authority and Applicable Law, shall be responsible for anything necessary or appropriate for the Michigan Crossing and the US Federal Plaza during the term of this Agreement and for the Michigan Interchange prior to the International Crossing Opening Date, to the extent the Crossing Authority determines that it is not in the best interests of the International Crossing for the Crossing Authority to be responsible for any such thing or to the extent that the Crossing Authority is not permitted by Applicable Law to be responsible for any such thing.

X

CROSSING AUTHORITY REVENUE, CANADIAN CONTRIBUTIONS & US FEDERAL AGENCIES CONTRIBUTIONS

Section 1. If Canada or any of the Michigan Parties receives any amounts that if received by the Crossing Authority would be Crossing Authority Revenue, Canada or any of the Michigan Parties, as the case may be, shall receive such amounts in trust for the Crossing Authority and shall promptly pay such amounts to the Crossing Authority.

Section 2. The Crossing Authority shall be entitled to set rates for and to collect, or cause to be collected, the Canadian Crossing Tolls for payment of costs referred to in Section 5 of this Article X, subject to Applicable Law.

Section 3. The Crossing Authority shall provide the means whereby users accessing the International Crossing from Michigan and returning to Michigan without leaving the International Crossing may do so without paying any Canadian Crossing Tolls.

Section 4. No Party may establish or collect tolls, fees or other charges for use of the Michigan Crossing or the Michigan Interchange.

Section 5. The Crossing Authority shall apply the Crossing Authority Revenue and the US Federal Agencies Contributions received in any calendar year to the payment of:

- (a) the International Crossing Costs, the Michigan Interchange Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs; and
- (b) all costs of anything necessary or appropriate for the Michigan Crossing, the Michigan Interchange or the US Federal Plaza, requested by the Crossing Authority, and undertaken by any of the Michigan Parties, in such calendar year.

Section 6. The Crossing Authority shall fund in any calendar year, subject to funding by Canada, the payment of:

- (a) the International Crossing Costs, the Michigan Interchange Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs; and
- (b) all costs of anything necessary or appropriate for the Michigan Crossing, the Michigan Interchange or the US Federal Plaza requested by the Crossing Authority, and undertaken by any of the Michigan Parties,

in such calendar year, to the extent that such costs are not funded by the Crossing Authority Revenue and US Federal Agencies Contributions, or any other source, in such calendar year.

Section 7. The Crossing Authority shall be permitted to fund the costs described in Section 6 by any means permitted under Applicable Law, including, without limitation, by gifts, grants, grants-in-aid, assistance funds, bequests, or contributions or pursuant to any other method or arrangement.

Section 8. To the extent Michigan, MDOT or MSF receives funding from the Crossing Authority or monies from any other source specifically for or in aid of the Michigan Crossing Lands Activities, the Michigan Interchange Lands Activities, the US Federal Plaza Land Activities, the Michigan Crossing Project Activities, the Michigan Interchange Project Activities or the US Federal Plaza Project Activities, each of Michigan, MDOT and MSF shall deploy such funding or monies strictly as specified,

designated or restricted by the Crossing Authority or any such source, as the case may be, and in compliance with Applicable Law.

Section 9. Without limiting the generality of Section 8, to the extent MDOT receives funding from the Crossing Authority or monies from any other Party specifically for or in aid of the Michigan Crossing Lands Activities, the Michigan Interchange Land Activities, the US Federal Plaza Lands Activities, the Michigan Crossing Project Activities, the Michigan Interchange Project Activities or the US Federal Plaza Project Activities, MDOT hereby commits to contribute such funding or monies, respectively, in furtherance of such activities and irrevocably pledges such funding or monies, respectively, in satisfaction of such commitment for the maximum fixed period of time permitted by Applicable Law.

Section 10. An escrow agent, paying agent, trustee or custodian may be retained for the purpose of receiving, holding, disbursing or paying any funding or monies by or on behalf of the Crossing Authority or any other source, respectively, in accordance with this Agreement.

Section 11. The Michigan Parties shall not be required to fund any International Crossing Costs, Michigan Interchange Costs, US Federal Plaza Costs, Crossing Authority Costs or International Authority Costs.

XI LIABILITIES

Section 1. Canada shall not be liable for acts or omissions of the Crossing Authority (except as otherwise specifically agreed by Canada in its sole discretion) or the Michigan Parties. The Crossing Authority shall not be liable for acts or omissions of Canada or the Michigan Parties. The Michigan Parties shall not be liable for acts or omissions of Canada or the Crossing Authority.

Section 2. All liabilities of the Crossing Authority to third parties arising out of any one or more of the design, construction and financing of the International Crossing, the Michigan Interchange or US Federal Plaza shall be satisfied by the Crossing Authority.

Section 3. All liabilities of the Crossing Authority to third parties arising out of any one or more of the administration, operation, maintenance and improvement of the International Crossing or the US Federal Plaza shall be satisfied by the Crossing Authority.

Section 4. Any Claim by a third party against the Crossing Authority arising out of any one or more of the design, construction and financing of the Canadian Crossing shall be made in Ontario courts having jurisdiction over the Claim.

Section 5. Any Claim by a third party against the Crossing Authority arising out of any one or more of the administration, operation, maintenance and improvement of the Canadian Crossing shall be made in Ontario courts having jurisdiction over the Claim.

Section 6. Any Claim by a third party against the Crossing Authority arising out of any one or more of the design, construction and financing of the Michigan Crossing, the Michigan Interchange or the US Federal Plaza and any Claim by a third party against the Crossing Authority arising out of any one or more of the administration, operation, maintenance and improvement of the Michigan Crossing or the US Federal Plaza shall be made in Michigan courts having jurisdiction over the Claim or in federal courts sitting in Michigan having jurisdiction over the Claim, as the case may be.

XII INSURANCE

The Crossing Authority shall be responsible for insurance coverage necessary to protect against damage to International Crossing. The Crossing Authority shall be responsible for such other insurance coverage as may be necessary for the benefit of itself, Canada, the Michigan Parties and the International Authority and their members and employees to protect against claims or liabilities arising out of the performance of this Agreement. Canada, the Crossing Authority, the Michigan Parties and the International Authority and their successors, members and employees shall be named as insured parties in those insurance policies to protect against claims or liabilities arising out of the performance of this Agreement, to the extent that such insurance is available at a commercially reasonable cost. Any claims or liabilities in excess of available insurance proceeds shall not be a responsibility of Canada (except as otherwise agreed by Canada in its sole discretion) or the Michigan Parties.

XIII RECORDS AND AUDITS

Section 1. The Crossing Authority shall be responsible for the maintenance of proper, complete and accurate books and records, inter alia, for Crossing Authority Revenue, US Federal Agencies Contributions, International Crossing Costs, Michigan Interchange Costs, US Federal Plaza Costs, Crossing Authority Costs, Canadian Contributions and Unrecouped Canadian Contributions.

Section 2. Canada shall be responsible for the appointment of the Auditor for the Crossing Authority.

Section 3. The Crossing Authority shall be responsible for the preparation and delivery to Canada and to the Michigan Parties, within three months after each calendar year end, of financial statements of the Crossing Authority for the applicable calendar year, including, as applicable, a balance sheet, a statement of earnings and retained earnings, and a statement of source and application of funds, as at such calendar year end, prepared in accordance with GAAP and audited by the Auditor appointed by the Crossing Authority. The Crossing Authority shall also be responsible for the preparation and delivery to Canada and to the Michigan Parties, within three months after each calendar year end, of a statement of Canadian Contributions and statement of Unrecouped

Canadian Contributions, prepared in accordance with the provisions of this Agreement and audited by the Auditor appointed by the Crossing Authority.

Section 4. The International Authority shall be responsible for the maintenance of proper, complete and accurate books and records for International Authority Costs, which shall be open to the public as required by Applicable Law.

Section 5. The chairperson of the International Authority shall be responsible for the appointment of the Auditor for the International Authority.

Section 6. The International Authority shall be responsible for the preparation and delivery to Canada and to the Michigan Parties, as soon as reasonably possible after each calendar year end, of financial statements of the International Authority for the applicable calendar year, including, as applicable, a balance sheet, a statement of earnings and retained earnings, and a statement of source and application of funds, prepared in accordance with GAAP and audited by the Auditor appointed by the International Authority.

XIV DISPUTE RESOLUTION

Any dispute, controversy or claim (including a dispute giving rise to a deadlock, other than a post member removal deadlock) arising out of or relating to this Agreement or the breach, termination or invalidity of this Agreement (in Article VI, Article IX (Section 5), and in this Article XIV, a “**Dispute**”), shall be resolved by binding arbitration. Arbitration shall be settled in accordance with the UNCITRAL Arbitration Rules in effect on the Initial Execution Date, except as provided in this Agreement or otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan. The Executive Office of the Governor of Michigan shall represent the Michigan Parties in all respects in any arbitration. All Parties consent to any Disputes being so resolved.

The UNCITRAL Arbitration Rules can currently be found at:

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html

Appointment of Arbitrators

Within thirty (30) days after the Effective Date, the Crossing Authority shall designate two (2) arbitrators and the Executive Office of the Governor of Michigan shall designate two (2) arbitrators (“**Designated Arbitrators**”). The Designated Arbitrators shall agree in writing to accept such appointments and to abide by the provisions of this Article XIV.

Within sixty (60) days after the Effective Date, the four (4) Designated Arbitrators shall designate three (3) neutral arbitrators (“**Neutral Arbitrators**”). Neutral Arbitrators shall agree in writing to accept such appointments and to abide by the provisions of this Article XIV.

The Crossing Authority and the Executive Office of the Governor of Michigan may remove its Designated Arbitrators at any time. Within thirty (30) days after any resignation by or removal of a Designated Arbitrator, the Crossing Authority and the Executive Office of the Governor of Michigan shall replace its Designated Arbitrator and give notice to the other Parties. The Crossing Authority and the Executive Office of the Governor of Michigan may remove a Neutral Arbitrator by mutual agreement. Within thirty (30) days after any resignation or removal of a Neutral Arbitrator, the four (4) Designated Arbitrators shall replace the Neutral Arbitrator.

Standard Dispute Arbitration Procedures

Except as otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, and except as otherwise provided below with respect to expedited dispute resolution, the following dispute arbitration procedures shall apply to any Dispute.

An arbitration under the standard dispute resolution procedures shall be commenced by the Crossing Authority or by the Executive Office of the Governor of Michigan giving Notice of a Dispute to the other. The Notice shall state the basis upon which the standard dispute resolution procedures apply pursuant to the provisions of this Article XIV.

The arbitration shall be conducted by a three-arbitrator panel. Within forty-eight (48) hours following the commencement of an arbitration, each of the Crossing Authority and the Executive Office of the Governor of Michigan must send notice to the other of their choice of a Designated Arbitrator to serve on the panel, and the Crossing Authority and the Executive Office of the Governor of Michigan shall by lot choose which of the Neutral Arbitrators shall act as the third arbitrator and chair of the arbitral panel, and if the Neutral Arbitrator so chosen is not available to act as the third arbitrator, which of the remaining two Neutral Arbitrators shall act as the third arbitrator and chair of the arbitral panel. If neither Neutral Arbitrator chosen by lot is available to act as the third arbitrator, the third Neutral Arbitrator shall act as the third arbitrator and chair of the arbitral panel.

Unless otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, the arbitration shall be held in Windsor, Ontario, if the Executive Office of the Governor of Michigan initiates the arbitration, and in Detroit, Michigan, if the Crossing Authority initiates the arbitration. The arbitral panel shall have the power to establish any procedures that are not inconsistent with this Agreement or the UNCITRAL Arbitration Rules.

The arbitrators shall have the power to proceed with the arbitration and deliver the award notwithstanding the default by any Party in respect of any procedural order made by the arbitrators.

The arbitral panel may grant such remedy or relief that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 of Article IX. The arbitral panel shall not award any remedy or relief other than a declaration, an injunction, or specific performance of a contract, unless

a declaration, an injunction, or specific performance of a contract would not provide adequate relief or would be otherwise impractical, in which case the arbitral panel may award any other relief or remedy that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 of Article IX.

The arbitrators' decision shall be by majority.

The decision of the arbitral panel shall be final and binding and no appeal shall lie therefrom. The Parties waive their right to any form of recourse against any award rendered by the arbitral panel to any court or other competent authority, insofar as such waiver can validly be made under Applicable Law. Subject to Applicable Law, judgment upon the award rendered by the arbitral panel may be entered in any court having jurisdiction.

Expedited Dispute Resolution Procedures

Except as otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, expedited dispute resolution procedures shall apply to any Dispute with respect to Articles V (Sections 4 through 6), VI, VII, VIII or IX of this Agreement until the International Crossing Opening Date and shall apply to any other Dispute when agreed by the Crossing Authority and the Executive Office of the Governor of Michigan. The Crossing Authority and the Executive Office of the Governor of Michigan expressly agree to waive an Oral Hearing and agree that the expedited dispute resolution procedure shall be conducted solely on the basis of written submissions.

An arbitration under the expedited dispute resolution procedures shall be commenced by the Crossing Authority or by the Executive Office of the Governor of Michigan giving Notice of a Dispute to the other. The Notice shall state the basis upon which the expedited dispute resolution procedures apply pursuant to the provisions of this Article XIV.

The arbitration shall be conducted by a sole arbitrator. Within forty-eight (48) hours following receipt of the commencement of the arbitration, the Crossing Authority and the Executive Office of the Governor of Michigan shall by lot choose which of the Neutral Arbitrators shall act as the sole arbitrator under the expedited dispute resolution procedures, and if the Neutral Arbitrator so chosen is not available to act as the sole arbitrator, which of the two remaining Neutral Arbitrators shall act as sole arbitrator. If neither Neutral Arbitrator chosen by lot is available to act as sole arbitrator, the third Neutral Arbitrator shall act as sole arbitrator.

The sole arbitrator shall have power to establish any procedures that are not inconsistent with this Agreement or the UNCITRAL Arbitration Rules, including limits on the length of any submissions under the expedited dispute resolution procedures.

Except as otherwise agreed by the Crossing Authority and the Executive Office of the Governor of Michigan, the following timetable shall apply sequentially, following the selection of the sole arbitrator:

Notice of claim and remedies sought	Two (2) Business Days
Statement of defence and counterclaims (including any alternative language pursuant to Article VI, Section 5, Part I., C.ii.)	Two (2) Business Days
Response to counterclaims and statement of affirmative defences (including any alternative language pursuant to Article VI, Section 5, Part I, C ii)	Two (2) Business Days
Voluntary exchange of relevant non-privileged documents and information to be used in support of claims and defences	Three (3) Business Days
Submission of concise statement of position, including summary of facts and statement of applicable law and the basis of the relief sought and supporting exhibits	Seven (7) Business Days
Oral Hearing	None
Final Award	Seven (7) Business Days

For greater certainty, the expedited dispute resolution procedures shall be undertaken and completed within twenty-one (21) Business Days, unless a counterclaim is made, when the process shall be undertaken and completed within twenty-three (23) Business Days.

The sole arbitrator shall have the power to proceed with the arbitration and deliver the award notwithstanding the default by any Party in respect of any procedural order made by the arbitrator.

The sole arbitrator may grant such remedy or relief that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 of Article IX. The sole arbitrator shall not award any remedy or relief other than a declaration, an injunction, or specific performance of a contract, unless a declaration, an injunction, or specific performance of a contract would not provide adequate relief or would be otherwise impractical, in which case the sole arbitrator may award any other relief or remedy that is just and equitable and within the scope of this Agreement and available under Applicable Law, except as otherwise provided in Section 5 or Article IX.

The decision of the sole arbitrator shall be final and binding and no appeal shall lie therefrom. The Parties waive their right to any form of recourse against any award rendered by the sole arbitrator to any court or other competent authority, insofar as such waiver can validly be made under Applicable Law. Subject to Applicable Law, judgment upon the award rendered by the sole arbitrator may be entered in any court having jurisdiction.

Exclusive Remedy

The provisions of this Article XIV shall be the sole and exclusive remedy of the Parties with respect to any Dispute. The Parties agree not to bring, or cause to be brought, in a court of law any action, proceeding, or cause of action whatsoever with respect to any Dispute, other than as necessary to enforce the award or decision of the arbitral panel or the sole arbitrator acting under this Agreement.

XV GOVERNING LAW

The provisions of this Agreement with respect to the authorization and execution of this Agreement by the Michigan Parties, the establishment of the International Authority and the interpretation of any provisions of the Laws of Michigan and the Laws of the United States of America shall be governed by and construed in accordance with the Laws of Michigan and the Laws of the United States of America. All other provisions of this Agreement shall be construed in accordance with the Laws of the Province of Ontario and the Laws of Canada. No provision of this Agreement shall be construed as a waiver of governmental or sovereign immunity by Canada or Michigan.

XVI EFFECTIVE DATE; TERM AND TERMINATION

Section 1. **Initial Execution Date.** After the Initial Execution Date, each Party shall cooperate with the other Parties in good faith, and shall use commercially reasonable efforts, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, advisable or convenient to carry out the intent and purpose of this Agreement in accordance with and subject to the terms and conditions of this Agreement.

Section 2. **Effective Date.** This Agreement shall not be effective and binding on the Parties until the Effective Date.

Section 3. **Term.** This Agreement shall remain in effect until and shall expire on the later of (a) one hundred (100) years after the Effective Date, and (b) the first Canadian Contributions Recoupment Date, unless otherwise terminated in accordance with the provisions of this Agreement prior to the expiration of the term of this Agreement. This Agreement may be extended upon agreement by all Parties.

Section 4. **Rights of Termination.**

The Parties may terminate this Agreement by mutual agreement.

Canada and the Crossing Authority, in their sole discretion, may terminate this Agreement at any time prior to commencement of construction of the bridge component of the International Crossing.

The Michigan Parties, in their sole discretion, may terminate this Agreement if the Crossing Authority has not entered into this Agreement within one (1) year after the Initial Execution Date or if the Crossing Authority has not entered into a Public-Private Agreement within ten (10) years after the Effective Date.

Canada and the Crossing Authority, in their sole discretion, may terminate this Agreement at any time after the occurrence of an event or a circumstance, other than an event or circumstance within the sole control of Canada or the Crossing Authority, that (i) renders a Party unable to carry out all or substantially all of its then current obligations pursuant to this Agreement so as to frustrate the overall purpose and intent of this Agreement; (ii) results in the termination of any Public-Private Agreement or US Federal Plaza Public-Private Agreement and in the sole opinion of Canada and the Crossing Authority it would be commercially unreasonable for the Crossing Authority to enter into another Public-Private Agreement or another US Federal Plaza Public-Private Agreement, as the case may be; or (iii) causes damage or destruction to the International Crossing, the Michigan Interchange or the US Federal Plaza or a substantial part of any thereof to such extent that in the sole opinion of Canada and the Crossing Authority it would be commercially unreasonable to repair and restore the International Crossing, or if Michigan has not agreed to expeditiously repair and restore the Michigan Interchange at its sole cost and expense, or if the US Federal Agencies have not agreed to expeditiously repair and restore the US Federal Plaza at their sole cost and expense, as the case may be, to the condition immediately before the damage or destruction.

Section 5. Rights and Obligations on Termination and Expiration.

Upon expiration of the term of this Agreement or upon termination of this Agreement in accordance with the provisions of this Agreement, in addition to any other rights and remedies provided for under this Agreement, any lease or licence of the Michigan Crossing Lands to the Crossing Authority shall terminate; the Crossing Authority shall retain all assets, liabilities and obligations of the Crossing Authority in respect of the Canadian Crossing; except as otherwise provided in this Section 5, the Michigan Parties shall assume all liabilities and obligations of the Crossing Authority in respect of the Michigan Crossing; and all assets net of liabilities of the International Authority shall be distributed equally to the Crossing Authority and collectively to the Michigan Parties, and the International Authority shall thereupon be deemed dissolved.

Upon termination of this Agreement in accordance with the provisions of this Agreement, notwithstanding any other provisions of this Agreement, the Parties shall negotiate in good faith an agreement with respect to the disposition of the Michigan Crossing Lands, the Michigan Interchange Lands, and the US Federal Plaza Lands, and, until the Parties agree upon the disposition of the Michigan Crossing Lands, the Michigan Interchange Lands and the US Federal Plaza Lands, the Michigan Parties shall not (a) sell or otherwise dispose of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands, the US Federal Plaza Lands or any interest therein, (b) use or permit the use of all or any part of the Michigan Crossing Lands, the Michigan Interchange Lands or the US Federal Plaza Lands, or (c) mortgage, hypothecate, pledge or otherwise create a security interest in all or any part of the Michigan Crossing Lands, the Michigan

Interchange Lands or the US Federal Plaza Lands, except (i) a use of US Federal Plaza Lands by US Federal Agencies or a disposition of an interest in US Federal Plaza Lands to US Federal Agencies, each as provided for and in accordance with a lease or licence of the US Federal Plaza Lands to US Federal Agencies or (ii) as otherwise agreed by the Crossing Authority and the Michigan Parties.

Upon termination of this Agreement in accordance with the provisions of this Agreement, notwithstanding any other provisions of this Agreement, the Michigan Parties shall reimburse all unexpended monies funded by the Crossing Authority to any of the Michigan Parties for any Michigan Crossing Land Activities, Michigan Interchange Land Activities and US Federal Plaza Land Activities, provided that unless Canada and the Crossing Authority shall have terminated this Agreement upon the occurrence of an event or circumstance, within the control of one or more of the Michigan Parties, that renders a Party unable to carry out all or substantially all of its then current obligations pursuant to this Agreement so as to frustrate the overall purpose and intent of this Agreement, the Crossing Authority shall reimburse the Michigan Parties for all costs and expenses incurred by any of the Michigan Parties arising from actions taken by any of the Michigan Parties prior to the termination of this Agreement upon the request of the Crossing Authority and in accordance with Applicable Law, for any Michigan Crossing Land Activities, Michigan Interchange Land Activities and US Federal Plaza Land Activities.

XVII CONFIDENTIALITY

Section 1. **Confidential Information to International Authority.** The Parties agree that all confidential information provided to the International Authority, including information provided under Sections 4 and 5 of Article V and under Parts I to IV of Section 5 of Article VI, shall remain confidential to the maximum extent permitted by Applicable Law. Before any confidential information is delivered or made available to the International Authority, the provider of the information and the International Authority shall agree to a process or method for maintaining confidentiality of all confidential information provided to the maximum extent permitted by Applicable Law.

Section 2. **Confidential Information to the Parties.** The Parties agree that all confidential information provided to any Party, including information provided under Sections 4 and 5 of Article V, shall remain confidential to the maximum extent permitted by Applicable Law. Before any confidential information is delivered or made available to any Party, the provider of the confidential information and the recipient of the confidential information shall agree to a process or method for maintaining confidentiality of all confidential information provided to the maximum extent permitted by Applicable Law.

Section 3. **Confidential Information in Arbitration Proceedings.** The Parties agree that, to the maximum extent permitted by Applicable Law, the Parties, the International Authority and the arbitrators shall keep confidential any arbitration proceeding and

Canada, the Crossing Authority and the Executive Office of the Governor of Michigan shall keep confidential all materials and information delivered to or maintained by it related to any such arbitration proceeding, including any decision of the arbitrators. All materials and information related to any arbitration proceeding shall be exchanged and maintained exclusively by and through Canada, the Crossing Authority and the Executive Office of the Governor of Michigan.

Section 4. **Confidential Information to Others.** The Parties agree that a recipient's obligation of confidentiality shall include all staff, attorneys and consultants of the recipient who may receive such information.

XVIII GENERAL PROVISIONS

Section 1. **Notices.** All notices given under this Agreement ("Notice") shall be in writing and shall be delivered personally or by courier addressed:

- (a) in the case of either of Canada and the Crossing Authority to

Minister of Transport
Transport Canada
Place de Ville, Tower C
330 Sparks Street
Ottawa, Ontario
K1A 0N5

and

Crossing Authority
c/o Minister of Transport
Transport Canada
Place de Ville, Tower C
330 Sparks Street
Ottawa, Ontario
K1A 0N5

or to such other address or addressed in such other manner as the Minister of Transport may from time to time designate in writing to the Michigan Parties; and

- (b) in the case of any of the Michigan Parties to

Governor of Michigan
State of Michigan
Romney Building
111 South Capitol Avenue

Lansing, Michigan 48933

With copy to:
Michigan Department of Attorney General
G. Mennen Williams Building
525 West Ottawa Street
Lansing, Michigan 48090
Attention: Attorney General

and

Michigan Department of Transportation
Van Wagner Building
425 West Ottawa Street
Lansing, Michigan 48909
Attention: Director

and

Michigan Strategic Fund
200 North Washington Square
Lansing, Michigan 48913
Attention: President and Chair

or to such other address or addressed in such other manner as the Governor of Michigan may from time to time designate in writing to Canada and the Crossing Authority.

Any Notice shall be considered to have been received on the date of delivery.

Section 2. **No Assignment.** No Party may assign this Agreement or any of its rights, duties or obligations thereunder and any attempt by a Party to assign this Agreement or any of its rights, duties or obligations under this Agreement shall be null and void.

Section 3. **Amendments.** This Agreement may be amended, supplemented or restated by a written agreement signed by all Parties. No amendment, supplement, or restatement to or of this Agreement shall have any force or effect unless it is in writing and unless signed by all Parties and, except as otherwise permitted by Applicable Law, approved by the U.S. Secretary of State.

Section 4. **Waiver.** The failure of any Party to insist in any one instance upon the strict performance by any other Party of its obligations under this Agreement shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect. No covenant or condition of this Agreement may be waived by any Party except by written consent of that Party, and forbearance or indulgence of that Party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition until performed or waived in

writing, and that Party shall be entitled to invoke any remedy available to that Party under this Agreement or by Applicable Law, despite the forbearance or indulgence.

Section 5. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties in respect of the subject matter and supersedes and revokes all negotiations, arrangements, letters of intent, representations and information conveyed, whether oral or in writing, between the Parties or their representatives or any other Person purporting to represent one or more of the Parties.

Section 6. **No Partnership.** Except as specifically provided to the contrary, each of the Parties expressly disclaims any intention to create an agency, partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that, except as specifically provided to the contrary, nothing contained in this Agreement nor any acts of any of the Parties shall constitute or be deemed to constitute any of the Parties as partners, joint venturers or principal and agent in any way or for any purpose. None of the Parties shall hold itself out to be a partner of or joint venturer with any other Party. Except as specifically provided to the contrary, no Party shall have the authority to act for or to assume any obligations or responsibility on behalf of any other Party.

Section 7. **No Delegation.** Except as specifically provided to the contrary, nothing contained in this Agreement shall constitute or be construed or be deemed to constitute or be construed as a delegation by Canada of any of the powers, duties or functions of Canada to the Crossing Authority or a delegation by Michigan of any of its sovereign or constitutional powers to either of Canada or the Crossing Authority.

Section 8. **No Rights of Third Parties.** Nothing in this Agreement is intended or shall be construed to confer or give any Person, other than the Parties and their respective successors and the International Authority, any rights or remedies under or by reason of this Agreement.

Section 9. **Severability.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction or in respect of any Party, the illegality, invalidity or unenforceability of that provision in that jurisdiction or in respect of that Party shall not affect:

- (a) the legality, validity or enforceability of that provision in any other jurisdiction or in respect of the other Parties, or
- (b) the legality, validity or enforceability of the remaining provisions of this Agreement.

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in respect of the International Authority, the Parties shall negotiate in good faith to replace the provisions of this Agreement in respect of the International Authority with provisions that provide substantially the same rights and obligations for the Parties as the current provisions in respect of the International Authority.

To the extent necessary or appropriate for this Agreement or any provision thereof to be enforceable under Applicable Law, this Agreement shall be considered and deemed to be a separate agreement by and among Canada and the Crossing Authority, on the one hand, and each of Michigan, MDOT and MSF, on the other hand, with respect to any power, privilege, or authority that Canada and the Crossing Authority, on the one hand, and each of Michigan, MDOT and MSF, on the other hand, share in common and that each might exercise separately.

Section 10. **Time of Essence.** Time shall be of the essence of this Agreement.

Section 11. **Further Assurances.** Each Party shall, from time to time, promptly execute and deliver and take all further action as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated in this Agreement.

Section 12. **Counterparts.** This Agreement and any amendment, supplement, restatement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

Section 13. **Survival.** The provisions of Articles III; IV; XI in respect of acts or omissions prior to the expiration or termination of this Agreement; XIV; XV; XVI, Section 5; XVII and XVIII, in each case as and to the extent such provision has been modified or superceded through Schedule A having become effective prior to the expiration or termination of this Agreement for any reason whatsoever, shall survive the expiration or termination of this Agreement for any reason whatsoever.

Section 14. **Post Canadian Contributions Recoupment Date.** Schedule A shall not be effective and apply to this Crossing Agreement until satisfaction of the requirements specified in Section 1 of Schedule A. The Parties do not anticipate that the first Canadian Contributions Recoupment Date will occur until at least fifty (50) years after the Effective Date. After Schedule A is effective and applies to this Crossing Agreement, if any provision of Schedule A conflicts with any other provision of this Agreement, the provision of Schedule A shall prevail and the provisions of this Agreement shall be modified or superceded accordingly.

Section 15. **Michigan Secretary of State.** After the Initial Execution Date, Michigan shall cause an original executed copy of this Agreement to be filed with the Michigan Secretary of State, Office of the Great Seal and with the Clerk of Ingham County, in the State of Michigan.

EXECUTED by Canada and Michigan on this 15th day of June, 2012.

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA, as
represented by the Minister of
Transport**

By: _____
Name: The Honourable Denis Lebel
Title: Minister of Transport

STATE OF MICHIGAN

By: _____
Name: Richard D. Snyder
Title: Governor

EXECUTED by the Crossing Authority on this _____ day of _____, 20__

By: _____

Name:

Title: Chair & President

EXECUTED by the Michigan Department of Transportation on this _____ day of _____, 20__

**MICHIGAN DEPARTMENT OF
TRANSPORTATION**

By: _____

Name:

Title: Director

EXECUTED by the Michigan Strategic Fund on this _____ day of _____, 20__

MICHIGAN STRATEGIC FUND

By: _____

Name:

Title: President & Chair

SCHEDULE A
CROSSING AGREEMENT
POST CANADIAN CONTRIBUTIONS RECOUPMENT DATE

Section 1. **Effectiveness.** This Schedule shall be effective and apply to this Crossing Agreement as at and from the time that

- (a) the Michigan Legislature (unless otherwise authorized under Michigan Law) shall have sanctioned the collection by the Crossing Authority of International Crossing Tolls in accordance with this Agreement and the funding by the Michigan Parties of 50% of the amount, if any, by which the aggregate of International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and the International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, exceeds the aggregate of Crossing Authority Revenue and US Federal Agency Contributions; and
- (b) within six (6) months after
 - i. any Canadian Contributions Recoupment Date, the Michigan Parties shall have agreed with Canada and the Crossing Authority, in form and substance satisfactory to Canada and the Crossing Authority acting reasonably, to the collection by the Crossing Authority of International Crossing Tolls in accordance with this Agreement and to the funding by the Michigan Parties of fifty percent (50%) of the amount, if any, by which the aggregate of International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, exceeds the aggregate of Crossing Authority Revenue and US Federal Agency Contributions; or
 - ii any calendar year end, the Michigan Parties shall have paid the Crossing Authority an amount equal to fifty percent (50%) of the Unrecouped Canadian Contributions as at such calendar year end and the Michigan Parties shall have agreed with Canada and the Crossing Authority, in form and substance satisfactory to Canada and the Crossing Authority acting reasonably, to the collection by the Crossing Authority of International Crossing Tolls in accordance with this Agreement and to the funding by the Michigan Parties of fifty percent (50%) of the amount, if

any, by which the aggregate of International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, exceeds the aggregate of the Crossing Authority Revenue and the US Federal Agency Contributions.

Section 2. **Paramountcy.** If any provision of this Schedule A conflicts with any provision of this Crossing Agreement (other than this Schedule A), the provision of this Schedule A shall prevail and the provisions of the Crossing Agreement shall be modified or superceded accordingly.

Section 3. **Interpretation.** When used in this Crossing Agreement as amended by this Schedule A, the following words and terms have the following meanings unless the context clearly indicates a different meaning or intent:

- (a) **“International Authority Oversight”** means the oversight by the International Authority in accordance with the provisions of Section 5 of Article VI of this Agreement together with oversight by the International Authority to monitor the improvement, operation, maintenance and use of the International Crossing and to approve rates for the International Crossing Tolls.
- (b) **“Crossing Authority Revenue”** means all revenue received by the Crossing Authority (other than a payment by the Michigan Parties pursuant to Section 1(b)(ii) of this Schedule A and other than US Federal Agencies Contributions), including monies received from Canada or the Michigan Parties, related to the International Crossing or the US Federal Plaza including International Crossing Tolls, all revenue received arising from any Public-Private Agreement or any US Federal Plaza Public-Private Agreement, interest or other money on account of investments by the Crossing Authority, and proceeds of insurance in the event of damage or destruction of any portion of the International Crossing or the US Federal Plaza.
- (c) **“Imputed Cost of Unrecouped Party Contributions”** means, at each calendar year end, the aggregate amount accrued on Unrecouped Party Contributions in Canadian dollars, during such calendar year, calculated at a rate per annum equal to the Government of Canada benchmark long-term bond yield effective on the last business day of the previous calendar year end, as published by the Bank of Canada (Weekly Financial Statistics, series V39056), plus 100 basis points, and compounded annually, or at such other rate as shall be agreed upon, from time to time, by the Parties.

- (d) **“International Crossing Tolls”** means the tolls, fees or other charges for use of the International Crossing.
- (e) **“Unrecouped Party Contributions”** means an amount equal to the Unrecouped Canadian Contributions as at the calendar year end immediately prior to the date this Schedule becomes effective and means, at each calendar year end thereafter, such amount plus the aggregate amount of Imputed Cost of Unrecouped Party Contributions compounded at any calendar year thereafter minus any surplus applied or paid equally to the Crossing Authority and to the Michigan Parties pursuant to Section 4(f)(iv) of this Schedule A.

Responsible for. The term **“responsible for”** shall be interpreted to mean to undertake or cause to be undertaken, the relevant activities and be liable for all costs and expenses in respect thereof; in the case of Canada, subject, to all procedures and approvals required by Canada for the payment of funds, including appropriation by the Parliament of Canada, to pay for such costs and expenses; in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue to pay for such costs and expenses and US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable; and, in the case of the Michigan Parties, subject to all procedures and approvals required by Michigan for the payment of funds, including appropriation by the Michigan Legislature, to pay for such costs and expenses.

Fund/Funding. The terms **“fund”** and **“funding”** shall be interpreted to mean to provide all monies required to pay for the costs and expenses incurred in respect of the relevant activities without any requirement for reimbursement (except for US Federal Agencies Contributions as provided for in this Agreement); in the case of Canada and the Michigan Parties, subject to all procedures and approvals required by Canada or Michigan, as the case may be, for the payment of funds, including appropriation by the Parliament of Canada or the Michigan Legislature, respectively; and, in the case of the Crossing Authority, subject to availability of Crossing Authority Revenue or US Federal Agencies Contributions to pay for US Federal Plaza Costs, as applicable. The terms **“fund”** and **“funding”** shall also be interpreted to mean to provide real or personal property or services in lieu of monies in respect of the relevant activities without any requirement for reimbursement, subject to all procedures and approvals required by Canada or Michigan, as the case may be, for the gift, contribution or delivery of real or personal property or services.

Section 4. **Crossing Authority Revenue.**

- (a) Any Canadian Contributions during the period described in Section 1(b)(i) or (ii) of this Schedule A shall be deemed International Crossing Costs.
- (b) If Canada or any of the Michigan Parties receives any amounts that if received by the Crossing Authority would be Crossing Authority Revenue,

Canada or any of the Michigan Parties, as the case may be, shall receive such amounts in trust for the Crossing Authority and shall immediately pay such amounts to the Crossing Authority.

- (c) The Crossing Authority shall be entitled to set rates for and to collect, or cause to be collected, International Crossing Tolls, subject to approval of the rates by the International Authority, and subject to Applicable Law.
- (d) The International Authority shall approve rates for the International Crossing Tolls estimated to be sufficient, together with other Crossing Authority Revenue and US Federal Agencies Contributions, to satisfy all ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs, subject to any increase or decrease approved by the International Authority in any reserves reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs, and International Authority Costs, and the amortization approved by the International Authority of any Unrecouped Party Contributions, without recourse to Canada, the Crossing Authority, or the Michigan Parties, provided that the Parties may agree, from time to time, upon another standard upon which the International Authority shall approve rates for International Crossing Tolls.
- (e) No Parties may establish or collect International Crossing Tolls, except as otherwise provided in this Agreement.
- (f) The Crossing Authority shall apply the Crossing Authority Revenue and the US Federal Agencies Contributions received in any calendar year to or to the payment of:
 - i. the International Crossing Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs;
 - ii. all costs of anything else necessary or appropriate for the Michigan Crossing or the US Federal Plaza requested by the Crossing Authority, and undertaken by any of the Michigan Parties;
 - iii. any increase in any reserves as approved by the International Authority reasonably required for ongoing and projected International Crossing Costs, US Federal Plaza Costs, Crossing Authority Costs and International Authority Costs; and
 - iv. any surplus equally to the Crossing Authority and to the Michigan Parties,in each calendar year.

- (g) The Crossing Authority, subject to funding by Canada and the Michigan Parties shall fund, equally, in any calendar year, the payment of:
- i. the International Crossing Costs, the US Federal Plaza Costs, the Crossing Authority Costs and the International Authority Costs;
 - ii. all costs of anything else necessary or appropriate for the Michigan Crossing or the US Federal Plaza requested by the Crossing Authority, and undertaken by any of the Michigan Parties; and
 - iii. any increase in any reserves as approved by the International Authority reasonably required for ongoing and projected International Crossing Costs, Crossing Authority Costs and International Authority Costs,
- in such calendar year, to the extent such costs are not funded by the Crossing Authority Revenue and the US Federal Agencies Contributions in such calendar year.

Section 5. Liabilities.

- (a) All liabilities of the Crossing Authority to third parties arising out of the design or construction of the International Crossing, the Michigan Interchange or the US Federal Plaza shall be satisfied by the Crossing Authority or by one or more third parties, other than Canada (except as otherwise specifically agreed by Canada in its sole discretion) and other than the Michigan Parties.
- (b) All liabilities of the Crossing Authority to third parties arising out of administration, operation, maintenance or improvement of the International Crossing or the US Federal Plaza shall be satisfied solely by the Crossing Authority or by one or more third parties, other than Canada (except as otherwise specifically agreed by Canada in its sole discretion) and other than the Michigan Parties.

Section 6. Books and Audit. The Crossing Authority shall be responsible for the maintenance of proper, complete and accurate books and records, inter alia, for Crossing Authority Revenue, International Crossing Costs, US Federal Plaza Costs and Crossing Authority Costs.

SCHEDULE "B"
CROSSING AGREEMENT
PROCUREMENT REQUIREMENTS FOR INTERNATIONAL CROSSING

Section 1. RFQ Process Requirements. The following are specific requirements for the RFQ process:

- (a) Selection of a short-list of Private Entities to respond to the RFP, with or without negotiations.
- (b) The following shall be considered in evaluating an RFQ submission:
 - i. Criteria based on general reputation, qualifications, industry experience, safety record, experience related to development and execution of community benefits plans and community consultations, technical and financial capacity, or any combination of these, without discrimination on the basis of nationality.
 - ii. Evidence that the Private Entities have the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omission insurance.

Section 2. RFP Process Requirements. The following are specific requirements for the RFP process:

- (a) The solicitation of proposals for the selection of a Concessionaire for the International Crossing shall follow a competitive bidding process.
- (b) Before the RFP is issued, there shall be at least 1 public meeting in Michigan on the selection process.
- (c) The following shall be considered in evaluating an RFP proposal:
 - i. The proposed value for money for the Crossing Authority including the proposed cost of and financial plan for the International Crossing and the Michigan Interchange.
 - ii. The proposed design, financing, construction, repair, maintenance, and/or operation of the International Crossing and the proposed design and/or construction of the Michigan Interchange.
 - iii. The proposed plan of the proponent to hire legal residents and citizens of Canada and legal residents and citizens of the United States of America for work relating to the International Crossing and the Michigan Interchange,

without discrimination on the basis of nationality, to the extent permitted by Applicable Law.

- iv. The proposed community benefits plans, as described in the RFP, covering both Canada and Michigan, which includes, in relation to both the construction and operation of the International Crossing: (A) the manner in which stakeholders and community are to continue to be involved; (B) the manner in which host community input relating to community benefits and stakeholder involvement are to be factored; (C) the manner in which bidders plan to work with local institutes of higher learning, unions and others; and (D) the manner in which job training and local job development will be encouraged.
- v. The proposed plan for compliance with the Federal Aid Eligibility Requirements as specifically set forth in the RFP in accordance with Article IX, Section 5 of the Crossing Agreement.

Section 3. Public-Private Agreement Requirements. The following are specific requirements for any Public-Private Agreement:

(a) General requirements for any Public-Private Agreement and procedures relating thereto:

- i. A Public-Private Agreement must be consistent with Applicable Law and the Crossing Agreement.
- ii. A Public-Private Agreement must state that Michigan is not liable, either directly or indirectly, under the Public-Private Agreement.
- iii. A Public-Private Agreement must provide for the efficient, safe and financeable construction and operation of the International Crossing.
- iv. A Public-Private Agreement must state that there will be no discrimination on the basis of nationality as between Canada and the United States of America.

(b) Specific provisions to be included in a Public-Private Agreement:

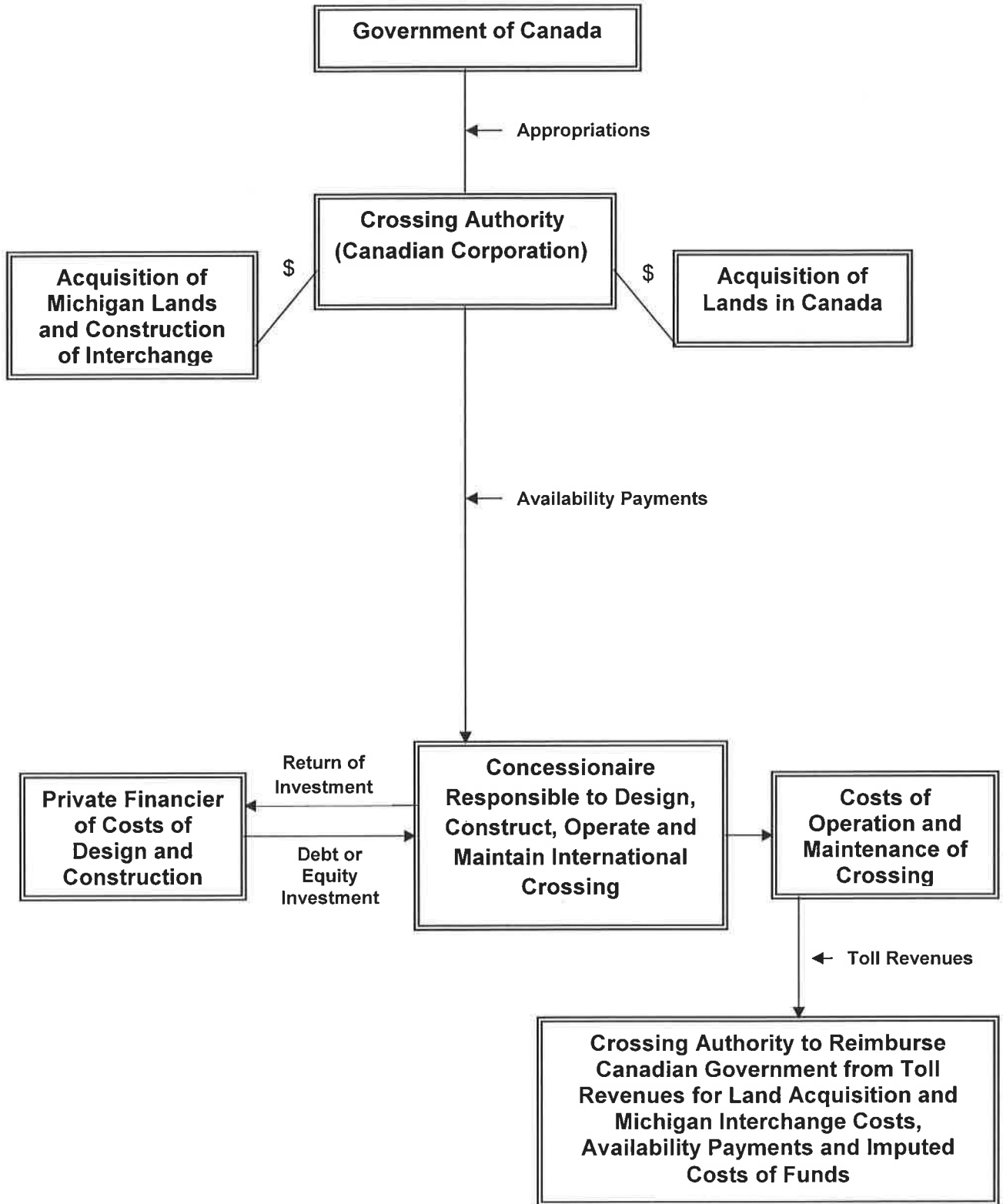
- i. A requirement that to the extent control of the International Crossing is granted to the Concessionaire, such control shall revert from the Concessionaire to the Crossing Authority at the end of the Public-Private Agreement.
- ii. A provision that ownership of the Michigan Crossing and the Michigan Interchange is vested in the State of Michigan and the ownership of the Canadian Crossing is vested in Canada.

- iii. A requirement that the Concessionaire cooperate with all appropriate public agencies on all matters concerning the security of the International Crossing or disaster recovery for the International Crossing.
- iv. A requirement that the Concessionaire submit to all appropriate public agencies written plans for the security of the International Crossing and disaster recovery for the International Crossing.
- v. A provision that the Concessionaire maintain the International Crossing in accordance with the standards specified in the Public-Private Agreement.
- vi. A provision that Michigan, MDOT, MSF, or any political subdivision of Michigan, and the International Authority are not liable for the acts or omissions of the Concessionaire.
- vii. The Public-Private Agreement shall require sufficient security to fulfill the purposes of payment and performance bonds, which may include payment or performance bonds, a letter of credit, parent corporation guarantees or other security from the Concessionaire or from private entities other than the Concessionaire so long as the purposes of payment and performance bonds are fulfilled.
- viii. A provision that when the Public-Private Agreement is final and effective, the Crossing Authority shall transmit a copy to the Parties, excluding any trade secrets, proprietary commercial or financial information, or other confidential information exempted from disclosure in accordance with the RFP, the Public Private Agreement or Applicable Law.
- ix. A provision that Michigan, MDOT, MSF and any political subdivision of Michigan are not liable for the acts or omissions of the International Authority or the Crossing Authority in connection with the Public-Private Agreement.
- x. A provision that the Michigan Crossing and the Michigan Interchange must comply with the mitigation and enhancement measures included in the Green Sheet of the Final Environmental Impact Assessment as contained in the Record of Decision for the Michigan Interchange and the Michigan Crossing.
- xi. A provision that the Concessionaire is not authorized to condemn property in Michigan.
- xii. A provision that the Concessionaire is not authorized to levy taxes.
- xiii. Provisions requiring the Concessionaire to comply with the Federal Aid Eligibility Requirements and provisions for the enforcement of those requirements, each as specifically set forth in the Public-Private

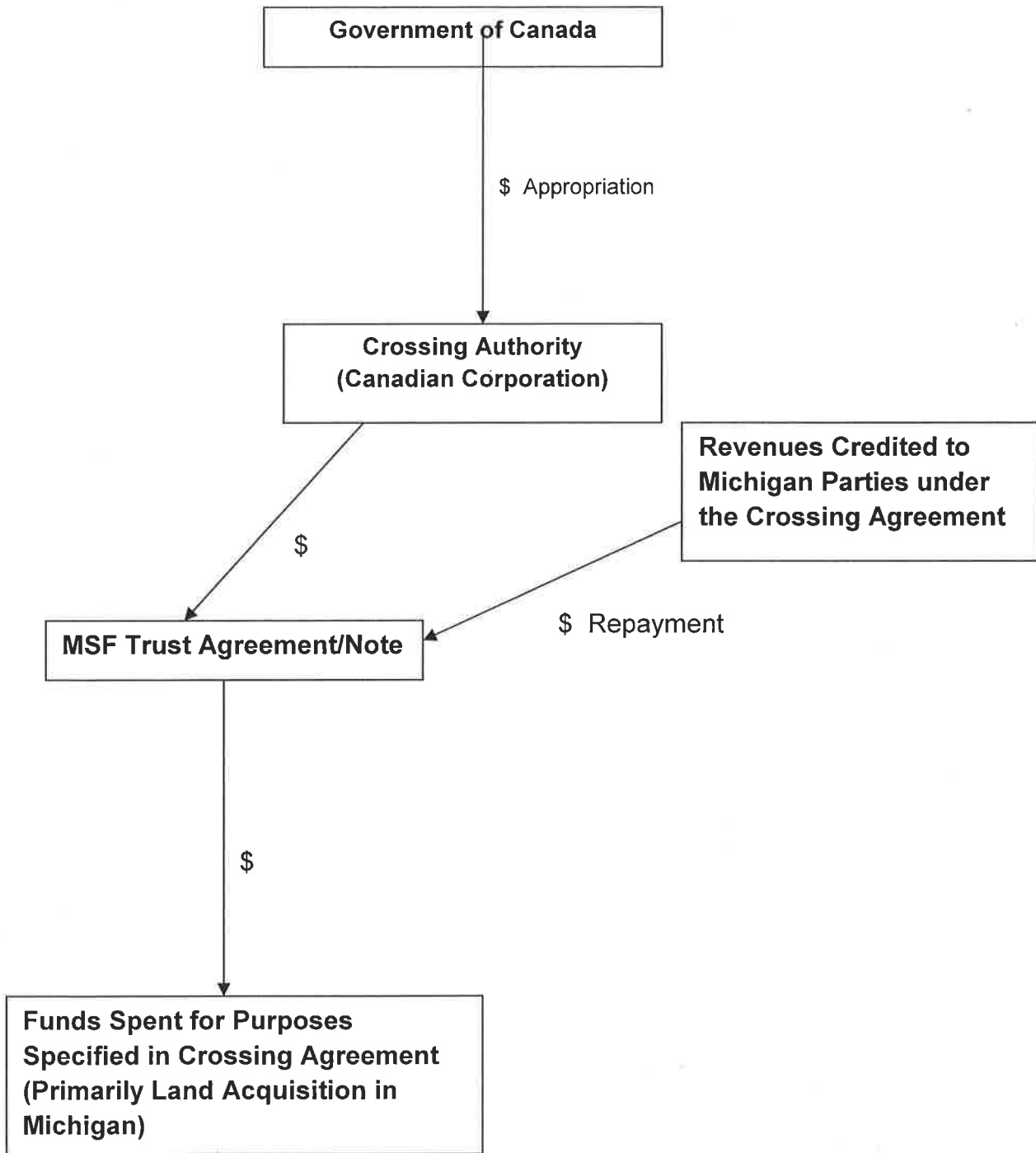
Agreement in accordance with Article IX, Section 5 of the Crossing Agreement.

- (c) Specific provisions that shall not be included in a Public-Private Agreement:
- i. Any provision that the public would be deprived of the use and benefit of the International Crossing except as necessary to implement tolls, user fees or other charges authorized or permitted by Applicable Law and this Agreement, to regulate the level or character of permissible uses of the International Crossing to ensure safe and efficient operation of the International Crossing, to address issues of public safety or security, or to maintain, repair, or improve the International Crossing.
 - ii. Any prohibition against MDOT, any public agency in Michigan, or a private entity in Michigan, researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in Michigan that is included in MDOT's long-range plan in effect on the date that proposals for the Public-Private Agreement are submitted.
 - iii. Any prohibition against a private entity in Michigan researching, planning, procuring, designing, financing, constructing, maintaining, operating, improving, or repairing a transportation project or facility in Michigan that is otherwise authorized by Law of Michigan.
 - iv. Any provision that Michigan, any of its political subdivisions, MDOT, MSF or an agency or authority of Michigan, are obligated to use Michigan state funds to make any payment to the Concessionaire or any third party.

Crossing Agreement Financial Structure



MSF PARTICIPATION



NO OBLIGATION OF STATE OR GENERAL OBLIGATION OF MSF TO REPAY MONEYS ADVANCED BY CROSSING AUTHORITY. THE NOTE IS A LIMITED OBLIGATION OF THE MSF, REPAYABLE SOLELY FROM CANADIAN REVENUES CREDITED TO THE MICHIGAN PARTIES UNDER THE CROSSING AGREEMENT.

Responsibilities among the Michigan parties under the Crossing Agreement will be determined among the parties themselves. Lands acquired with respect to the NITC for the Michigan portion of the project will be owned in the name of the State of Michigan and not the MSF as is the normal process for land acquired by MDOT. Although both MDOT and MSF have the power of condemnation, it is anticipated that MDOT will undertake the condemnation activities on behalf of the Michigan parties.

II. MSF Board Approval

MSF's board needs to authorize this transaction. Authorization requires the adoption of a resolution which would approve the agreement with Canada and MDOT, approve the entry into the trust indenture and the note, and at a subsequent meeting appoint the member to the International Authority.

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CHINA: Shanghai

MEXICO: Monterrey

POLAND: Gdynia
Warsaw • Wrocław

June 21, 2012

Re: Michigan Strategic Fund Participation in NITC

This memorandum addresses (i) the limited participation of the Michigan Strategic Fund (“the MSF”) as currently envisioned and (ii) the initial steps necessary for MSF involvement.

I. MSF Participation

It is anticipated that MSF’s participation in the New International Trade Crossing Project will be limited to (i) issuing a note that evidences the MSF’s obligation to repay funds contributed by Canada or the Crossing Authority pursuant to the Crossing Agreement (as defined below) with Canada from a limited and discrete source of funds derived from Canadian revenues and (ii) expending the note proceeds pursuant to the Crossing Agreement for authorized purposes under that agreement. Under Crossing Agreement between the State, MDOT, MSF, Canada and the Crossing Authority (the “Crossing Agreement”), MSF will have no obligation to advance its own funds or any funds of the State of Michigan.

MSF’s board is permitted to authorize and issue obligations in furtherance of acquiring a project or a portion of a project. MCL 125.2007(c), 125.2023. To effectuate certain parts of the Crossing Agreement, a note will be issued which will bear interest at a rate specified in the Crossing Agreement. These note proceeds will be deposited into an account pursuant to a trust indenture where such funds will be expended as needed for permitted purposes under the Crossing Agreement. The note will be issued as a “draw down” note with a not to exceed amount of \$550,000,000. The Canadian Crossing Authority will deposit funds as such funds are needed for permitted purposes under the Crossing Agreement. The MSF is only obligated to repay the amount funded and drawn on the note and the note will only be funded pursuant to an approved requisition process. The note is solely repayable from Crossing Authority revenues to be credited to the Michigan parties as shall be specified in the note.

The role for MSF is similar to the role MSF has in many other projects where it is simply the funding entity to accomplish the project. MSF issues debt, which is repaid with Canadian revenue under the Crossing Agreement.

RESOLUTION TO APPROVE THE CROSSING AGREEMENT, APPROVE A TRUST
INDENTURE AND NOTE ISSUANCE, AND AUTHORIZE ACTIONS OF CERTAIN
OFFICIALS

Resolution 2012 –

Background

A. The proposed Crossing Agreement attached as Exhibit A hereto (the “Crossing Agreement”) between Canada, the Crossing Authority, the State of Michigan (the “State”), the Michigan Department of Transportation (“MDOT”) and the Michigan Strategic Fund (the “Fund”) was initially executed by Governor Snyder on behalf of the State of Michigan, and by Canada, as represented by the Minister of Transport on June 15, 2012. Pursuant to the Urban Cooperation Act, 1967 (1st Ex Session) PA 7, as amended (“Act 7”), the Attorney General of the State of Michigan has advised the Governor that the Crossing Agreement is consistent with Act 7. Further, as required by Act 7, the Governor has approved the Crossing Agreement.

B. The Crossing Agreement provides for the construction, design and operation of a bridge between Canada and Michigan and for the design and construction of an interchange to the bridge from I-75 (referred to herein as the “New International Trade Crossing” or the “NITC”), and the Crossing Agreement specifically states that “[t]he Michigan Parties are not obligated to pay any costs of the new International Crossing.” The Fund is defined in the Crossing Agreement as a Michigan Party.

C. The Fund is a public agency under Act 7 and is therefore authorized to enter into the Crossing Agreement, which creates the International Authority, a public body separate and distinct from the signatories to the Crossing Agreement (the “International Authority”), to provide oversight of the NITC. The Fund is a party to the agreement primarily to facilitate the acquisition of the Michigan lands necessary for the interchange and bridge. The Crossing Agreement will not be effective until Michigan receives any necessary approvals of the United States Secretary of State and the Presidential Permit to build the bridge is granted.

D. The construction and operation of the NITC:

- Create a demand for thousands of jobs related to the NITC project.
- Open new global markets for farmers, entrepreneurs and manufacturers across Michigan.
- Allow Michigan to maximize federal matching funds for use on highway projects across the state.
- Provide additional capacity to meet long-term demands as the economy grows.
- Minimize the likelihood of an economic disaster should the other crossings sustain a lengthy shutdown.

- Attract new investment to Michigan.
- Reduce costs to job providers, especially the auto industry.
- Provide a direct connection between I-75 in Michigan and Highway 401 in Canada, reducing the amount of truck traffic that goes through residential communities.
- Help to establish southeast Michigan as a global transportation hub.

E. The Fund is authorized by 1984 PA 270, as amended (the “Act”), to undertake a project (as defined in the Act), pursuant to the Act.

F. The Fund desires to approve and authorize the execution of the Crossing Agreement.

G. The Fund shall issue a draw-down note in an amount not to exceed \$550,000,000 (the “Note”) to finance certain activities required by the Crossing Agreement and to evidence the Fund’s obligations under the Crossing Agreement, all pursuant to this resolution (the “Resolution”) and a trust indenture (the “Indenture”) between the Fund and a bank or trust company, duly authorized to act as a trustee under the laws of this State (the “Trustee”), in order to obtain funds from Canada which will be used to undertake activities required by the Crossing Agreement, with the draw-down note being a limited obligation of the Fund, solely repayable from Crossing Authority revenues to be credited to the Michigan parties as shall be specified in the Note and Indenture. The Crossing Agreement, the Indenture, and the Note do not obligate or allow the Fund to spend any state appropriated moneys nor does the Fund’s actions in approving the Crossing Agreement, the Note and the Indenture obligate the State of Michigan to expend any funds of the State.

H. The Note will be purchased by the Crossing Authority or Canada (collectively, the “Canadian Entities” or individually, a “Canadian Entity”) pursuant to a purchase agreement between the Canadian Entities or a Canadian Entity and the Fund (the “Purchase Agreement”).

NOW, THEREFORE, Be It Resolved by the Board of the Fund:

SECTION 1. NITC is a Project. Based on the recitals above and other factors considered by the Board, the Fund finds that the NITC constitutes a Project under the Act.

SECTION 2. Approval of the Crossing Agreement; Execution of the Crossing Agreement. The Fund hereby approves the Crossing Agreement and directs the execution of the Crossing Agreement. The Crossing Agreement shall be executed by the chairperson of the Fund’s Board of Directors (the “Chairperson”). The Chairperson is also authorized to direct the Fund staff to carry out the activities required by the Crossing Agreement.

SECTION 3. Issuance of Note; Limited Obligation. For the purpose of undertaking activities required by the Crossing Agreement, the issuance of the Note and sale of that Note to a Canadian Entity or the Canadian Entities is authorized. The Note shall evidence the Fund’s obligations under the Crossing Agreement.

The Note shall be in the form and substance approved by a member of the Fund's Board of Directors (a "Member") or a person authorized by Board resolution to sign bond documents on behalf of the Fund (an "Authorized Officer"), with the approval of the Attorney General of the State of Michigan. The Note shall be secured by the terms of the Indenture in the form and substance approved by a Member with the approval of the Attorney General of the State of Michigan. The Note shall bear the manual or facsimile signature of a Member or an Authorized Officer, and the official seal of the Fund (or a facsimile of the seal) shall be impressed or imprinted on the Note. **The Note and the Trust Indenture are not, and the Note and the Trust Indenture shall each include a statement that it does not constitute, a debt or obligation of the State of Michigan or a general obligation of the Fund within the meaning of any constitutional or statutory limitation. Each document shall include a statement that it does not constitute a charge against the credit or taxing powers of the State of Michigan or the general funds or assets of the Fund (including funds relating to other Fund loans or activities) and that it shall be a limited obligation of the Fund, solely repayable from Crossing Authority revenues to be credited to the Michigan parties as shall be specified in the Note and Indenture. The Note and Trust Indenture shall also provide that neither any Member or officer of the Fund, nor any person executing the Note or Trust Indenture is subject to personal liability or accountability by reason of approval or execution of such document.**

SECTION 4. Terms of the Note. The Note shall be issued as a draw-down note pursuant to which as the Fund incurs costs associated with obligations under the Crossing Agreement, the Fund shall draw funds from the Note to pay for such costs. The funds drawn shall only be used for the purposes and in the manner permitted by the Note and the Indenture. The Note shall bear interest at a rate equal to the Imputed Cost of Canadian Contributions (as defined in the Crossing Agreement). The Note shall have a maturity date that is not later than the maximum term permitted by law.

SECTION 5. Approval of Documents. A Member or an Authorized Officer is authorized to execute and deliver other documents, certificates, opinions and papers as may be required by the Crossing Agreement, the Indenture or the Note; provided, however, that any such document shall specifically state that it is not a debt or obligation of the State of Michigan or a general obligation of the Fund within the meaning of any constitutional or statutory limitation and does not constitute a charge against the credit or taxing powers of the State of Michigan or the general funds or assets of the Fund (including funds relating to other Fund loans or activities). Further, each document shall specifically state that it shall be a limited obligation of the Fund, solely repayable from Crossing Authority revenues to be credited to the Michigan parties as shall be specified in the Note and Indenture.

SECTION 6. Designation of Certain Parties. A Member or an Authorized Officer is authorized and directed to select a qualified bank or trust company to act as Trustee under the Indenture and other service providers as may be required to carry out the transactions contemplated by this Resolution.

SECTION 7. Execution of Documents. A Member or an Authorized Officer is authorized to execute the Indenture, the Purchase Agreement and any other document contemplated and approved by this Resolution.

SECTION 8. Authorization of Filings, Submissions, and Other Documents. Any Member or Authorized Officer, as well as the Attorney General of the State of Michigan, is authorized to apply for or submit, execute, and deliver the other certificates, documents, opinions, and papers to any party or governmental agency as may be required by the Crossing Agreement, the Indenture or the Purchase Agreement or as may be necessary to effectuate the valid issuance, sale and delivery of the Note.

SECTION 9. Conflict and Effectiveness. All resolutions or other proceedings of the Fund in conflict with this Resolution are repealed to the extent of the conflict. This Resolution shall become effective upon adoption.

Adopted.

Ayes:

Nays:

June 27, 2012 Meeting
Lansing, Michigan

Exhibit A - Crossing Agreement

[See Attached]

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