LOCAL COMMUNITY STABILIZATION AUTHORITY
Authority Council

RESOLUTION 2017-19

Approve Administrative Services Agreement between Local Community Stabilization Authority and the Michigan Municipal Services Authority

The Local Community Stabilization Authority (the "**LCSA**") wants to utilize the Michigan Municipal Services Authority (the "**MMSA"**) as its provider of administrative services, effective October 1, 2017.

The MMSA wants to provide administrative services to the LCSA.

The authority council of the Local Community Stabilization Authority therefore resolves:

- that the following administrative services agreement between the Local Community Stabilization Authority and the Michigan Municipal Services Authority is hereby approved:

"ADMINISTRATIVE SERVICES AGREEMENT

This administrative services agreement is between the LOCAL COMMUNITY STABILIZATION AUTHORITY, a Michigan metropolitan authority (the "**LCSA**"), and the MICHIGAN MUNICIPAL SERVICES AUTHORITY, a Michigan public body corporate (the "**MMSA**").

The LCSA is a metropolitan government for the metropolitan areas of the state of Michigan established under section 7 of the Local Community Stabilization Act, 2014 PA 86, as amended, MCL 123.1347 (the "**LCSA Act**"), and section 27 of article 7 of the Michigan Constitution of 1963.

The MMSA is a Michigan public body corporate created under the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, as amended, MCL 124. 501 to 124.512, pursuant to an interlocal agreement between the City of Grand Rapids, Michigan and the City of Livonia, Michigan.

Both the LCSA and the MMSA are "political subdivisions" as defined under 1967 (Ex Sess) PA 8, as amended, MCL 124.531 to 124.536 ("**Act 8**").

In addition to exercising certain functions, and responsibilities under the LCSA Act, the LCSA also exercises certain functions, and responsibilities of the former Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (the "**METRO Authority**") pursuant to section 3 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, as amended, MCL 484.3103 (the "**METRO Act**").

The LCSA seeks the expertise of the MMSA in performing administrative functions and responsibilities for the LCSA under the METRO Act and the LCSA and to transfer certain administrative functions and responsibilities to the MMSA pursuant to Act 8.

The MMSA wants to perform those administrative functions and responsibilities for the LCSA.

The parties therefore agree as follows:

1. **Functions and Responsibilities.** (a) As permitted by Act 8, the LCSA hereby transfers to the LCSA the administrative functions and responsibilities specified in schedule 1 (the "**Services**"). The MMSA shall perform the Services during the fiscal year beginning on October 1, 2017 and ending on September 30, 2018, and during each of the next four fiscal years through the fiscal year ending on September 30, 2022.

(b) Functions and responsibilities vested exclusively in the authority council of the LCSA are not transferred to the MMSA under this agreement. The MMSA shall not exercise functions or responsibilities vested exclusively in the authority council of the LCSA (the "**LCSA Council**") under the LCSA Act or the METRO Act, but may assist the LCSA Council with LCSA Council's exercise of its functions or responsibilities.

(c) The parties acknowledge that both the MMSA and the LCSA are independent contractors under this agreement, that no partnership or joint venture is created by this agreement for any purpose, and that this agreement creates no employer-employee relationship between the MMSA and the LCSA or the LCSA and the MMSA's employees.

(d) Except as otherwise provided in this agreement, the LCSA has the responsibility, authority, and right to manage and direct on behalf of the public the functions and responsibilities transferred to the MMSA under this agreement.

2. **Employees.** (a) The MMSA will function as the employer of personnel and staff needed for the transfer of functions and responsibilities under section 1. The MMSA shall assign employees on a part-time basis as necessary to provide the Services to the LCSA consistent with the requirements of this agreement. The LCSA acknowledges that employees of the MMSA assigned to the LCSA by the MMSA also will perform other functions and responsibilities for the MMSA.

(b) Employees assigned by the MMSA to provide Services under this agreement shall do both of the following:

(1) use Reasonable Efforts to provide the Services in a timely, effective, and competent manner; and

(2) comply with all laws and regulations applicable to the provision of Services and the performance of the MMSA's obligations under this agreement.

(c) The MMSA will retain responsibility for administering the day-to-day supervision of employees assigned by the MMSA to provide Services to the LCSA

under this agreement. The MMSA also shall perform all of the following functions with regard to MMSA employees assigned to perform Services to the LCSA under this agreement:

(1) conduct performance evaluations;

(2) handle payroll and benefits in accordance with applicable MMSA policies and procedures;

(3) maintain official personnel files for employees performing Services under this agreement with other MMSA personnel files;

(4) direct the handling of all labor and employee relations, including negotiations, counseling, and discipline, after consultation with the LCSA;

(5) manage, investigate, and make determinations regarding claims for prohibited discrimination or harassment;

(6) use MMSA forms and handbooks for all employment-related transactions;

(7) handle requests for leaves of absence, after consultation with the LCSA, using MMSA policies, procedures, and forms in making leave of absence determinations;

(8) manage any unemployment related matters;

(9) handle subpoenas and requests for information under the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 to 15.246 (**"FOIA**"), relating to the MMSA employees; and

(10) manage workers' compensation issues.

(d) When providing Services under this agreement, employees assigned by the MMSA to provide Services to the LCSA will use computers and other office space and equipment assigned or provided by the MMSA consistent with policies and procedures of the MMSA.

(e) If the LCSA receives a report of unlawful discrimination or harassment involving an MMSA employee assigned to provide Services to the MMSA under this agreement, the LCSA shall provide the report to the MMSA for investigation and determination by the MMSA.

(f) The MMSA shall designate an individual to act as the primary liaison between the MMSA and the LCSA with respect to provision of Services to the LCSA.

(g) For purposes of this section 2, "**Reasonable Efforts**" means, with respect to a given obligation, the efforts, consistent with the practice of local governmental employees with respect to provision of administrative services comparable to the Services, that a reasonable person in the MMSA employee's position would use to comply with that obligation as promptly as possible.

3. **Compensation.** The LCSA shall pay the MMSA $150,000.00 each fiscal year for the Services provided by the MMSA under this agreement. The MMSA shall invoice the LCSA in quarterly installments of $37,500.00. The LCSA shall pay each invoice within 45 days of receipt. If this agreement is terminated before the end of a fiscal year, the LCSA shall pay the MMSA an amount for the Services prorated based on the number of days between the first day of that fiscal year and the effective date of the termination.

4. **Term.** Except as provided in sections 5, 6, or 7, this agreement is for the fiscal year beginning on October 1, 2017 and ending on September 30, 2018, and for each of the next four fiscal years through the fiscal year ending on September 30, 2022.

5. **Termination.** (a) This agreement may be terminated by joint action of the parties. The LCSA may terminate this agreement by giving notice to the MMSA, effective 1 year after receipt unless the notice specifies a later date. The MMSA may terminate this agreement by giving notice to the LCSA, effective 1 year after receipt unless the notice specifies a later date.

(b) Promptly after termination of this agreement, the LCSA shall pay the MMSA any amounts owed for Services provided to the MMSA, if any, under this agreement before termination.

(c) Promptly after termination of this agreement, the MMSA shall return all records of the LCSA to the LCSA at no cost to the LCSA and refund any amounts prepaid by the LCSA and unearned by the MMSA, except with respect to any Services that in accordance with this agreement remain to be provided after termination.

6. **Audits.** In connection with an audit of the LCSA, the MMSA shall provide the LCSA or its authorized representative full and complete access during normal business hours to the MMSA's records relating to this agreement and the MMSA will use Reasonable Efforts to assist the LCSA or its authorized representative in performing an audit of the LCSA. Upon receipt of a written request from the LCSA, the MMSA shall use Reasonable Efforts to rectify any discrepancies or deficiency found during an audit. The obligations of the MMSA under this section 6 will survive the term of this agreement. For purposes of this section 6, "**Reasonable Efforts**" means, with respect to a given obligation, the efforts, consistent with the practice of other local governmental agencies with respect to resolution of comparable audit discrepancies or deficiencies, that a reasonable person in the MMSA's position would use to comply with that obligation as promptly as possible.

7. **Nondisclosure.** (a) Except as provided in subsection (b), if during the term of this agreement the MMSA receives information relating to the LCSA or its functions and responsibilities that the MMSA either knows or has reason to believe is confidential or proprietary, the MMSA shall use Reasonable Efforts to do both of the following:

(1) protect and hold the information in confidence and prevent its disclosure to a nonparty unless; andrestrict its use to those purposes consented to in writing by the LCSA.The MMSA is not required to protect or hold in confidence any information if the information is one or more of the following:

(1) available to the public or becomes available to the public for a reason other than action or inaction by the MMSA;

(2) independently developed by the MMSA;

(3) disclosed to the MMSA by a nonparty known to the MMSA not to be under any duty of confidentiality to the LCSA with respect to the information;

(4) required to be disclosed by law.

(c) The obligations of the MMSA under this section 7 shall survive the term of this agreement.

(d) For purposes of this section 7, "**Reasonable Efforts**" means, with respect to a given obligation, the efforts, consistent with the practice of other local governmental agencies with respect to resolution of comparable information, that a reasonable person in the MMSA's position would use to comply with that obligation as promptly as possible.

8. **Catastrophic Event.** (a) If a Catastrophic Event occurs, the party that is prevented by that Catastrophic Event from performing any one or more obligations under this agreement (the "**Nonperforming Party**") will be excused from performing those obligations, if (1) the Nonperforming Party used Reasonable Efforts to perform those obligations, (2) the Nonperforming Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the Catastrophic Event, and (3) the Nonperforming Party complies with its obligations under section 8(b).

(b) Upon occurrence of a Catastrophic Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Catastrophic Event, its effect on performance, and how long that party expects it to last. Thereafter, the Nonperforming Party shall use Reasonable Efforts to update that information. During a Catastrophic Event, the Nonperforming Party shall use Reasonable Efforts to limit damages to the other party and to resume its performance under this agreement.

(c) For purposes of this section 8, "**Catastrophic Event**" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this agreement, except that a Catastrophic Event will not include a strike or other labor unrest that affects only one party, an increase in prices, or a change in law.

(d) For purposes of this section 8, "**Reasonable Efforts**" means, with respect to a given obligation, the efforts, consistent with the practice of other governmental agencies with respect to a Catastrophic Event, that a reasonable person in the party's position would use to comply with that obligation as promptly as possible.

9. **Funding.** The parties acknowledge that the ability of the LCSA to pay for the Services and for the MMSA to perform the Services is dependent upon the authorization of the LCSA to expend a portion of local community stabilization share revenue under

the LCSA for implementing and administering the LCSA Act, the appropriation of the state money to the LCSA under section 17(1)(b) of the LCSA Act, or other provision of money to the LCSA or authorization for the LCSA to spend money for implementing and administering the LCSA Act and the METRO Act provided for in Michigan law.

10. **Non-assignment.** Neither party may assign any of its rights or delegate any of its obligations under this agreement without the prior written consent of the other party.

11. **Modification; Waiver.** No amendment of this agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation. To be valid, any document signed by a party under this section 11 must be signed by an officer of the party authorized to do so by the party.

12. **Notices.** (a) For a notice or other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company with all fees prepaid, (3) by registered or certified mail, return receipt requested and postage prepaid, or (4) by email.

(b) Subject to section 12(d), a valid notice or other communication under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:

(1) if it is delivered by hand, delivered by a national transportation company with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt;

(2) if the party to which it is addressed rejects or otherwise refused to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver;

(3) if it is delivered by email and the sender does not use RPost, when the recipient, by an email sent to the email address for the sender stated in section 12(c) or by a notice delivered by another method in accordance with this section 12, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section 12; and

(4) if it is delivered by email and the sender uses RPost, when the authorized electronic mail agent of the recipient accepted that email message, with the delivery status of at least "delivered to mail server," as stated in the RPost "Registered Receipt" received by the sender with respect to that email message.

(c) For a notice or communication to a party under this agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this section 12.

To the LCSA: Mary Ann Jones
Chairperson, Local Community Stabilization Authority
1231 E Beltline Ave NE
Grand Rapids, MI 49525
Email: MaryAnne.Jones@priorityhealth.com

To the MMSA: Robert J. Bruner, Jr.
CEO, Michigan Municipal Services Authority
P.O. Box 12012
Lansing, MI 48909
Email: rbruner@michiganmsa.org

(d) If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

13. **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want a court to interpret this agreement as follows:

(1) with respect a provision it holds unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;

(2) if an unenforceable provision is modified or disregarded in accordance with this section 13, by holding that the rest of the agreement will remain in effect as written;

(3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable;

(4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

14. **Nonparties.** No beneficiary rights for any person or entity other than a party (a "**Nonparty**") are created under this agreement. A Nonparty may not rely on this agreement. Only the LCSA and the MMSA may rely on this agreement.

15. **Counterparts.** If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.

16. **Governing law.** The laws of the state of Michigan, without giving effect to its principles of conflicts of law, govern any adversarial proceeding arising out of this agreement.

17. **Entire Agreement.** This agreement constitutes the entire understanding between the parties as to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties.

18. **Effectiveness; Date.** This agreement will become effective when all parties have signed it and the signed agreement is filed with the secretary of state of the state of Michigan pursuant to Act 8. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

Each party is signing this agreement on the date stated opposite that party's signature.

LOCAL COMMUNITY STABILIZATION AUTHORITY

Date: September ___, 2017 By: _____
Mary Anne Jones
Chairperson

MICHIGAN MUNICIPAL SERVICES AUTHORITY

Date: September ___, 2017 By: _____
Robert J. Bruner, Jr.
Chief Executive Officer

SCHEDULE 1
Administrative Functions and Responsibilities

The MMSA shall provide the LCSA with the following administrative services under this agreement:

(a) **METRO Act**. Assist the LCSA Council with administrative functions related to the performance by the LCSA Council of its powers, duties, functions and responsibilities under the METRO Act, including recommending the amount of the annual maintenance fee to the LCSA Council, notifying providers of annual assessments, collecting annual assessments, scheduling disbursements of annual maintenance fees, and disbursement of annual maintenance fees to municipalities consistent with Section 8 of the METRO Act.

(b) **LCSA Act.** Assist the LCSA Council with administrative functions related to the performance by the LCSA Council of its powers, duties, functions and responsibilities under the LCSA Act**.**

(c) **Reports**. Prepare reports required to be produced by the LCSA under the METRO Act, the LCSA Act, or other state law for approval by the LCSA and transmit on behalf of the LCSA reports approved by the LCSA as required by law.

(d) **FOIA Coordination**. Act as the LCSA's FOIA coordinator under FOIA.

(e) **Record Management**. Manage the records of the LCSA in a manner consistent with the LCSA's record management policy and applicable law.

(f) **LCSA Council Support**. Assist the LCSA Council in managing the day-to-day responsibilities of the LCSA, including:

(1) preparing and posting notices of meetings required under the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275;

(2) identifying and preparing facilities for meetings;

(3) preparing draft agendas and materials for board members for use at authority council meetings in consultation with the LCSA's legal counsel;

(4) preparing minutes of meetings and maintaining a record of all meeting minutes;

(5) maintaining a record of LCSA bylaws and resolutions adopted of the LCSA Council;

(6) maintaining a record of LCSA contracts and a list of LCSA vendors with contact information;

(7) attending LCSA Council meetings and updating LCSA Council members on administrative activities of the LCSA;

(8) assisting LCSA Council members with needs relating to the attendance of members of the public at LCSA Council meetings;

(9) cooperating with legal counsel, accountants, auditors, and other vendors retained by the LCSA in the provision of services to the LCSA Council; and

(10) implementing all administrative decisions of the LCSA Council;

(11) attending to other administrative matters as requested by the LCSA Council and as necessary to assure compliance with applicable law.

(g) **Asset Management**. Manage any assets of the LCSA, including inventory, maintenance, and security.

(h) **Budgeting**. Assist the LCSA Council and its vendors in preparing an annual budget, holding a public hearing on the budget, monitoring expenditures for compliance with the annual budget, and preparation of budget amendments.

(i) **Communications**. Manage day-to-day communications with the public, other governmental entities, and providers under the METRO Act, including mail correspondence, e-mail, and telephone calls.

(j) **Website**. Manage the LCSA's website, including updated information about the LCSA Council, the LCSA Act, the METRO Act, notices of LCSA Council meetings, minutes of LCSA Council meetings, LCSA Council meeting agendas, resolutions adopted by the LCSA Council, and other information required by law to be included on the LCSA's website.";

- that the chairperson is authorized on behalf of the Local Community Stabilization Authority to sign this agreement with the Michigan Municipal Services Agreement;

- that the secretary of the Local Community Stabilization Authority is directed to enter the text of the agreement in the minutes of the Local Community Stabilization Authority; and

- that the secretary of the Local Community Stabilization Authority is authorized to file with the Michigan secretary of state an agreement signed on behalf of both the Local Community Stabilization Authority and the Michigan Municipal Services Authority.

***Secretary's Certification*:**
I certify that this resolution was duly adopted by the authority council of the Local Community Stabilization Authority at a properly-noticed open meeting held with a quorum present on September 15, 2017.

By: _____
Megan Crandall
Secretary

4842-8031-4191.2