

**SECOND AMENDMENT TO AGREEMENT
FOR
PROFESSIONAL SERVICES BETWEEN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
AND
SWAP FINANCIAL GROUP, LLC**

THIS SECOND AMENDMENT OF AGREEMENT FOR PROFESSIONAL SERVICES, made and entered into as of **February 28, 2019**, by and between the MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY ("Authority"), and SWAP FINANCIAL GROUP, LLC ("Contractor"). The Authority and the Contractor in this Amendment are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the Parties entered into a Professional Services Contract No. 17-49-FI dated August 14, 2017 ("Contract"), where the Contractor agreed to determine if the Authority's derivative instruments ("Swaps") result in an effective hedge in accordance with Governmental Accounting Standards Board (GASB) No. 53, as more particularly set forth in the Contract; and

WHEREAS, the Parties agreed to the First Amendment to Contract No. 17-49-FI dated October 31, 2018, to amend contract terms and insert a disclosures exhibit.

NOW THEREFORE, the Parties mutually agree to amend the terms of the Contract as follows:

- A. Page 1 Introductory Paragraph the Contractor address originally reading 135 W. 50th Street, 20th Floor, New York, NY 10020 is hereby replaced with **555 Madison Avenue, 11th Floor, Suite D, New York, NY 10022.**
- B. Section 3.a is hereby replaced in its entirety with the following:
 - a. The total amount to be paid by the Authority to the Contractor under this Agreement shall not exceed **One Hundred Seventy-Five Thousand Dollars (\$175,000).**
- C. Section 11 First Paragraph the Contractor address originally reading 135 W. 50th Street, 20th Floor, New York, NY 10020 is hereby replaced with **555 Madison Avenue, 11th Floor, Suite D, New York, NY 10022.**
- D. Insertion of the following, in its entirety, as a new Exhibit D:

[continued]

EXHIBIT D

SCOPE OF WORK ISDA AGREEMENTS

I. Overview

The Authority is contracting with a financial service provider to assist in the negotiation of swap legal documents, called an ISDA Agreement, which will allow the Authority to enter into interest rate swaps in the future with new counterparties (i.e. banks). These services are necessary to diversify the Authority's counterparty exposure on the ongoing swap portfolio and ensure that pricing and terms remain competitive as new counterparties should promote competition among eligible providers.

II. Objectives & Tasks

Objective

To successfully perform the service described in Section I above, the Contractor must meet the following objective:

1. Successfully negotiate (to the satisfaction of the Authority) and facilitate the final execution of new ISDA documents with a group of eligible (approved by the Authority) interest rate swap counterparties. Contractor shall also assist, if asked, with all required regulatory documentation (as of the date of the executed ISDA) in order to enter into a new interest rate swap.

Tasks

To achieve the above objective, the Contractor shall perform tasks including, but not limited to, the following:

1. A complete review of the Authority's current ISDAs along with a summary of comparative terms; and
2. A review of the swap counterparty landscape, the recent experience of such counterparties, and relevant credit ratings of such counterparties; and
3. A summary of proposed credit terms, based on Contractor's experiences with similarly situated State Housing Finance Agencies that are clients of Contractor's, that can be used as a basis of negotiations with the Authority's prospective new swap counterparties; and
4. A recommendation of what swap counterparties shall be prioritized during negotiations of new ISDA documents; and
5. If asked, coordinate with the prospective for initial first drafts of ISDA documents; and
6. Assistance, along with the Authority's counsel and/or other financial service providers, in the review and comments of received draft ISDA documents; and
7. Facilitation with negotiations of the ISDA documents until such ISDAs are fully executed by both parties and the process is deemed completed.

IT IS LASTLY AGREED by and between the Parties that the Contract 17-49-FI executed on August 14, 2017, and the First Amendment executed on October 31, 2018, excepting the portions amended hereby, together with this amendatory instrument and the revised provisions herein, constitute the entire agreement of the Parties and that, except as expressly modified in this Second Amendment, the terms and conditions expressed within the original Contract 17-49-FI, as amended by the First Amendment, will remain in full force and effect.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

By: 

Earl Poleski, Executive Director
or
Brian Mills, Chief of Staff

SWAP FINANCIAL GROUP, LLC

By: 

James Murphy, Managing Director

**FIRST AMENDMENT TO AGREEMENT
FOR
PROFESSIONAL SERVICES BETWEEN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
AND
SWAP FINANCIAL GROUP, LLC**

THIS FIRST AMENDMENT OF AGREEMENT FOR PROFESSIONAL SERVICES, made and entered into as of **October 31, 2018**, by and between the MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY ("Authority"), and SWAP FINANCIAL GROUP, LLC ("Contractor"). The Authority and the Contractor in this Amendment are collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the Parties entered into a Professional Services Contract No. 17-49-FI dated August 14, 2017 ("Contract"), where the Contractor agreed to determine if the Authority's derivative instruments ("Swaps") result in an effective hedge in accordance with Governmental Accounting Standards Board (GASB) No. 53, as more particularly set forth in the Contract; and

NOW THEREFORE, the Parties mutually agree to amend the terms of the Contract as follows:

- A. Section 2 is hereby replaced in its entirety with the following:
 - 2. Term. TIME IS OF THE ESSENCE to this Agreement in connection with the delivery of the products or services or both ("Products and Services") described in the Scope of Work attached and incorporated into this Agreement as Exhibit A. The performance of Products and Services shall begin on or after the execution of this Agreement by the Authority and shall be completed no later than **October 31, 2020**.
- B. Section 3.a is hereby replaced in its entirety with the following:
 - a. The total amount to be paid by the Authority to the Contractor under this Agreement shall not exceed **One Hundred Thousand Dollars (\$100,000)**.
- C. Exhibit A Section I.B is hereby replaced in its entirety with the following:
 - B. The Contractor will conduct Swap Valuation services for **four (4)** year-end periods - **June 30th of 2017, 2018, 2019, and 2020**. The Contractor will provide a year-end market value change of the effective hedges for each year-end period to determine how much will be recognized in the year to which they relate. This determination requires a number of tests, including a regression analysis to compare the actual market performance against the index related to the individual Swaps.
- D. Exhibit A Section I.C is hereby replaced in its entirety with the following:
 - C. These services are necessary to assist in the completion of the **2017, 2018, 2019, and 2020** annual audit processes.

E. Insertion of the following, in its entirety, as new items in Exhibit A Section II.C:

For 2019:

Contractor shall perform the tasks, and complete the objective, no later than October 18, 2019.

For 2020:

Contractor shall perform the tasks, and complete the objective, no later than October 16, 2020.

F. Insertion of the following, in its entirety, as a new Exhibit C:

EXHIBIT C DISCLOSURES

Required MSRB Disclosures and Representations for Municipal Advisors

The Agreement includes specific disclosures and representations in connection with MSRB Rule G-42, which establishes core standards of conduct for municipal advisors that engage in municipal advisory activities. Pursuant to Municipal Securities Rulemaking Board Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- Swap Financial Group, LLC is currently registered as a Municipal Advisor with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board.
- Within the Municipal Securities Rulemaking Board (“MSRB”) website at www.msrb.org, Client may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.”

Fiduciary Duty

Swap Financial Group, LLC is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board (“MSRB”). As such, Swap Financial Group, LLC has a Fiduciary duty to Client and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- a) exercise due care in performing its advisory activities;
- b) possess the degree of knowledge and expertise needed to provide Client with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to Client’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to Client; and
- d) undertake a reasonable investigation to determine that SFG is not forming any recommendation on materially inaccurate or incomplete information; SFG must have a reasonable basis for:
 - o any advice provided to or on behalf of Client;

- any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by Client; and
- any information provided to Client or other parties involved in the transaction.

Duty of Loyalty:

SFG must deal honestly and with the utmost good faith with Client and act in Client's best interests without regard to the financial or other interests of SFG. SFG will eliminate or provide full and fair disclosure to Client about each material conflict of interest (as applicable). SFG will not engage in advisory activities with Client, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in Client's best interests.

Conflicts of Interest and Other Matters Requiring Disclosures

- As of the date of the Agreement, there are no actual or potential conflicts of interest that SFG is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If SFG becomes aware of any potential conflict of interest that arise after this disclosure, SFG will disclose the detailed information in writing to Client in a timely manner.
- SFG does not act as principal in any of the transaction(s) related to this Agreement.
- During the term of the advisory relationship, this agreement will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this agreement and the revised writing will be promptly delivered to Client.
- SFG has not made any payments directly or indirectly to obtain or retain Client's advisory business;
- SFG has not received any payments from third parties to enlist SFG's recommendation to Client of its services, any securities transaction or any finance product;
- The fee due to SFG under this agreement may be contingent upon the closing of the contemplated transaction. While this form of compensation is customary in the municipal securities market, this may present a conflict because it could create an incentive for SFG to recommend unnecessary financings or financings that are disadvantageous to Client. This conflict of interest is mitigated by the general mitigations described above, and the Fiduciary Duty standard that SFG will undertake.
- SFG does not have any other engagements or relationships that might impair SFG's ability either to render unbiased and competent advice to or on behalf of Client or to fulfill its fiduciary duty to Client, as applicable; and
- SFG does not have any legal or disciplinary event that is material to Client's evaluation of the advisory assignment or the integrity of its management or advisory personnel.

Legal Events and Disciplinary History

SFG does not have any legal events or disciplinary history on its Form MA and Form MAI, which include information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. Client may electronically access SFG's most recent Form

MA and each most recent Form MA-I filed with the Securities and Exchange Commission ("SEC") at the following website:
www.sec.gov/edgar/searchedgar/companysearch.html.

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Record Retention

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, SFG is required to maintain in writing, all communication and created documents between SFG and Client for 5 years.

IT IS LASTLY AGREED by and between the Parties that the Contract 17-49-FI executed on August 14, 2017, excepting the portions amended hereby, together with this amendatory instrument and the revised provisions herein, constitute the entire agreement of the Parties and that, except as expressly modified in this First Amendment, the terms and conditions expressed within the original Contract 17-49-FI, will remain in full force and effect.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

By:  _____
Earl Poleski, Executive Director
or
Brian Mills, Chief of Staff

SWAP FINANCIAL GROUP, LLC

By:  _____
James Murphy, Managing Director

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
AGREEMENT FOR PROFESSIONAL SERVICES
WITH
SWAP FINANCIAL GROUP, LLC

THIS AGREEMENT is made and entered into as of **August 14, 2017**, by and between the **MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**, a public body corporate and politic, located at 735 E. Michigan Avenue, Lansing, Michigan 48912 ("**Authority**") and **SWAP FINANCIAL GROUP, LLC**, a foreign for-profit company, located at 135 W. 50th St., 20th Floor, New York, New York 10020 ("**Contractor**") to determine if the Authority's derivative instruments ("Swaps") result in an effective hedge in accordance with Governmental Accounting Standards Board (GASB) No. 53. (The Authority and the Contractor are collectively referred to as the "Parties").

WITNESSETH THAT:

The Authority and the Contractor do mutually agree as follows:

1. **Services Rendered/Scope of Work.** The Contractor shall, in a satisfactory and proper manner as determined by the Authority, render the services described in *Scope of Work* ("Exhibit A"), which is attached and made a part of this Agreement.
2. **Term.** TIME IS OF THE ESSENCE to this Agreement in connection with the delivery of the products or services or both ("Products and Services") described in the *Scope of Work* attached and incorporated into this Agreement as Exhibit A. The performance of Products and Services shall begin on or after the execution of this Agreement by the Authority and shall be completed no later than October 31, 2018

3. **Contract. Price and Payment.**

- a. The total amount to be paid by the Authority to the Contractor under this Agreement shall not exceed **Fifty Thousand Dollars (\$50,000)**.
- b. Out-of-pocket expenses are to be reimbursed at the regular State of Michigan per diem rate and Authority policy in effect when Products and Services are rendered.
- c. Payment will be made upon presentation of invoices submitted after work has been performed. Invoices should be submitted to the Authority's Contract Administrator and must include the following:
 - i. The Authority's contract number as shown above.
 - ii. Invoice number and total amount due.
 - iii. Details regarding the specific service(s) performed.
 - iv. Amount paid to date on this Agreement.
 - v. Verification that deliverable assets produced during the billing period, including but not limited to electronic, printed and other produced materials have been delivered to the Authority.

Final payment shall be made upon the satisfactory completion and submission of all required work and documents.

- d. **WORK PERFORMED OR PROVIDED PRIOR TO THE TERMS OF THIS AGREEMENT SHALL NOT BE ELIGIBLE FOR PAYMENT.**
- e. **EXPENDITURES THAT THE AUTHORITY CONSIDERS TO BE OVERHEAD COSTS (I.E., FIXED AND ORDINARY OPERATING COSTS) SHALL NOT BE ELIGIBLE FOR PAYMENT.**

4. **Permits and Licenses.** The Contractor shall be responsible for obtaining any and all permits, licenses, and other proper authorization or permission-related documents required for the performance of this Agreement.

5. **Insurance.** The Contractor shall maintain professional liability insurance sufficient in the amount to provide coverage for any errors or omissions arising out of the performance of this Agreement. If, during the term of this Agreement, changed conditions should, in the judgment of the Authority, render inadequate the Contractor's current insurance limits, the Contractor will furnish to the Authority proof of additional insurance as may be required. All insurance required under this Agreement shall be acquired at the Contractor's expense, under valid and enforceable policies, issued by insurers of recognized responsibility. The Authority reserves the right to reject as unacceptable any insurer.

6. **Record Keeping.** The Contractor and the Authority shall maintain such personnel records as are deemed necessary by the Authority to assure a proper account for all engagement costs. These records will be made available for audit purposes to the Authority and the Auditor General of the State of Michigan, or any authorized representative, and will be retained for three years after the expiration of the Agreement unless permission to destroy them is granted by both the Authority and the State of Michigan.

7. **Reports.** The Contractor shall promptly submit to the Authority's Contract Administrator/designated project representative (see Section 11) any reports prescribed in Exhibit A attached and incorporated into this Agreement.

8. **Nondiscrimination.** In accordance with Acts No. 220 and 453 of the Public Acts of 1976, as amended, the Contractor hereby agrees in connection with the performance of Products and Services under this Agreement not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status, familial status, or

disability. Breach of this covenant may be regarded as a material breach of this Agreement.

9. **Failure to Perform.** In the event the Contractor fails to perform Products and Services required under this Agreement or performs Products and Services in an improper manner, the Parties agree that the damage that the Authority will sustain as a result thereof will be substantial and difficult, if not impossible, to ascertain. Therefore, the Parties agree that in the event the Contractor either fails to completely perform Products and Services or performs Products and Services in an improper manner, the Authority shall be entitled to a credit against the Contractor's current unpaid billings for amounts previously paid to the Contractor after the Contractor's non-performance or improper performance. For the purposes of the foregoing, the Parties agree that the Authority shall have sole discretion in determining the adequacy of the Contractor's performance and the amount of credit to be taken. The damages for the Contractor's inadequate or improper performance, as provided in this Agreement, shall not be exclusive but shall be in addition to any other damages which the Authority may be entitled to for the Contractor's default under this Agreement.

10. **Assigned Personnel.** The Contractor warrants that the personnel it will assign to perform the Products and Services under this Agreement shall possess the requisite education, competence and experience. The Contractor further acknowledges and agrees that such personnel may be subject to the evaluation and approval of the Authority, who shall retain the right to determine the sufficiency of the education, competence and experience of the personnel assigned to perform the Products and Services identified in *Project Personnel* ("Exhibit B") attached and incorporated into this Agreement.

11. **Project Representatives.** The Contractor designates the following individual as project representative for all matters concerning this Agreement:

James Murphy, Managing Director
135 W. 50th St., 20th Floor, New York, New York 10020
Phone: 212.478.3700
Email: jmurphy@swapfinancial.com

The Authority designates the following individual as **Contract Administrator**/project representative to be the initial point of contact for all matters concerning this Agreement:

Dace Koenigsknecht, Authority Buyer
735 East Michigan Avenue, Lansing, Michigan 48912
Phone: 517.241.4491
Email: KoenigsknechtD1@michigan.gov

The Contractor shall contact only the designated Contract Administrator with any Authority-related questions, work requests, etc., as described in this Agreement, as well as any Authority-related questions, work requests, etc., falling outside the scope of this Agreement.

Except for changes to the performance schedule (not including the project's completion date), the designated project representatives shall have no authority to make promises or binding obligations on behalf of the Authority, as such authority rests with the duly authorized persons executing this Agreement.

12. **Employees of Contractor or Project Persons.**

- a. Definition of Project Persons. "Project Persons" shall be defined in this Agreement as individuals performing the Products and Services pursuant to this Agreement and (a) have signed this Agreement on behalf of the Contractor and/or (b) are listed in Exhibit B, attached and incorporated into this Agreement. Project Persons include the names of all employees, agents and independent contractors

of the Contractor who perform or render Products and Services pursuant to this Agreement.

- b. Performance of Products and Services. The Contractor acknowledges that only Project Persons shall perform the Products and Services under this Agreement.
- c. Exhibit B – Project Personnel. Prior to executing this Agreement, the Contractor shall provide to the Authority the names of all Project Persons by completing Exhibit B, which is the Certificate Verifying Project Persons of the Contractor or a Subcontractor, if applicable (“Certificate”). In the event the Contractor fails to provide to the Authority the names of any Project Persons, the Parties shall consider the signatory for the Contractor to be the sole Project Person for the Contractor. **If the Contractor (or Subcontractor) wishes to add an agent, employee, or independent contractor as Project Persons during the term of this Agreement, the Contractor shall complete and submit to the Authority an additional or revised Certificate for that employee, agent, or independent contractor.** (See Section 12a of this Agreement.)
- d. 2007 PA 95, MCL 38.68c. The Contractor and its employees, agents, and independent contractors acknowledge 2007 PA 95, MCL 38.68c, as amended, requires retirees of the State Employees Retirement System (i.e., former state employees who have pensions with the State of Michigan) (“Pensioned Retirees”) who become employed by the State, either directly or indirectly through a contractual arrangement with another party, on or after October 1, 2007, to forfeit their state pension for the duration of their reemployment. Effective October 2, 2010, “employed by the state” includes engagements of pensioned retirees as independent contractors.

Pensioned retirees who provide or render Products and Services under this Agreement as key persons must forfeit their pensions during the term of this Agreement if the pensioned retiree (a) is employed by the State, (b) is employed by the Contractor, (c) is a holder of an ownership interest in the Contractor, (d) is a subcontractor of the Contractor, or (e) is an employee of a subcontractor.

The Contractor acknowledges and agrees to secure the Authority's prior written consent before retaining, employing or subcontracting with a pensioned retiree to perform Products and Services under this Agreement. Retaining, employing or subcontracting with a pensioned retiree to perform Products and Services under this Agreement without the Authority's prior written consent shall be (a) a material breach of this Agreement and (b) grounds for the Authority to terminate this Agreement and provide notice to the Office of Retirement Services that the retiree has received pension payments and payments directly or indirectly through this Agreement.

If the Contractor employs or retains a pensioned retiree as Project Persons or subcontracts with a pensioned retiree, the Contractor must submit a copy of the pensioned retiree's directions to the Office of Retirement Services ("ORS") to withhold the retiree's pension payments during the term of this Agreement. Find more information on the ORS website: <http://michigan.gov/ORS>.

The Contractor and the pensioned retirees it employs acknowledge and agree that neither the State, nor the Authority, nor its employees, directors, agents nor board

shall be liable to the Contractor or pensioned retiree for the forfeiture of the retiree's pension payments during or after the term of this Agreement. The Contractor and pensioned retiree acknowledge that the Authority has no responsibility to confirm whether the ORS has or will forfeit the retiree's pension.

13. **Conflicts of Interest.** The Contractor acknowledges that its employees, members, shareholders, agents, or independent contractors, or subcontractors and their employees, members, shareholders and agents, prior to or during the term of this Agreement are not employees of the State of Michigan or its units. Prior to the execution of this Agreement, the Contractor acknowledges and confirms that it has delivered to the Authority a written list of all interests of the Contractor, or its officers and employees, which may create conflicts between the interests of those entities or parties and the interests of the Authority. Should a constructive or actual conflict of interest arise during the term of this Agreement, the Contractor shall contact the Authority's Director of Legal Affairs immediately and describe in detail the conflict of interest.

14. **Prohibited Methods and Procedures.** The Contractor and its agents, subcontractors, employees, and representatives, in the course of the performance of Products and Services under this Agreement, shall not specify, recommend, use, or permit the use of any system, method, plan, design, process, procedure, patent, or copyright which, if used, infringes upon a proprietary interest or necessitates the payment of any royalty, fee, or commission. The Contractor shall not use or permit the solicitation for or securing of any agreement or employment in connection with this Agreement upon an agreement or arrangement for payment, either directly or indirectly, of a commission, percentage, brokerage, or contingent fee.

If Federal funds are used to pay the Contractor under this Agreement, no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to members of Congress on the request of any member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business. 18 U.S.C. § 1913 (2002).

15. **Participation in Other Authority Programs.** With the exception of providing Products and Services to the Authority as described in Exhibit A of this Agreement, neither the Contractor nor the Contractor's employees, agents, officers, directors, shareholders, members or subcontractors will participate in Authority housing programs or do business with the Authority under any program in which the Authority has a direct or indirect relationship without securing approval from the Authority's Director of Legal Affairs.

16. **Indemnity and Non-Limitation. Mich. Const. art. IX, § 18.** The Contractor agrees to defend, indemnify and hold harmless the Authority from any claims, damages or expenses, including reasonable attorneys' fees, arising or alleged to arise in whole or in part from damage or injury caused by or resulting from any action or inaction of the

Contractor, its agents or employees, or sustained in connection with the violation of any law, statute, ordinance or regulation by the Contractor, its agents or employees, or sustained in connection with the performance of this Agreement by the Contractor, its agents or employees, or sustained as a result of any breach of this Agreement by Contractor.

In any and all claims against the Authority or any of its officers, agents, or employees by an employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation in the amount or type of damages, compensation, or benefits payable by or for the Contractor or by or for any subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

17. Nonassignability and Delegation.

- a. The Contractor shall not assign or otherwise transfer any interest in this Agreement or in the project in any manner not provided for in this Agreement.
- b. The Contractor shall not delegate any duties or obligations under this Agreement to a subcontractor or independent contractor unless the Authority's Contract Administrator and Director of Legal Affairs has given written consent to the delegation. When submitting the request to subcontract, the Contractor shall include the following information about the subcontractor:
 - i. Name of Subcontracting Firm;
 - ii. Work that will be subcontracted;
 - iii. Names of individuals who will perform the subcontracted work;
 - iv. Subcontractors project representative and/or Project Persons (See Section 12); and
 - v. List any and all Authority programs through which the subcontractor or the subcontractor's employees, officers, directors, members, shareholders or officeholders participate.

- c. In the event the Contractor retains a subcontractor in accordance with Section 17b above, the Contractor shall insert into each subcontract executed in connection with this Agreement appropriate and enforceable provisions requiring compliance with this Agreement by the subcontractor and the persons acting for it. Throughout the performance of any subcontracts, the Contractor shall monitor and verify the compliance of all subcontractors and persons acting for them and shall immediately take any affirmative or remedial measures prescribed by the Authority or otherwise deemed necessary in the opinion of the Contractor for enforcing compliance under such subcontracts.
- d. **Delegation of duties or obligations under this Agreement to a subcontractor or independent contractor without the prior written consent of the Authority's Contract Administrator or Director of Legal Affairs shall be a material breach of this Agreement.** In the event a subcontractor is approved by the Authority's Contract Administrator and Director of Legal Affairs, the Project Persons for the subcontractor shall be subject to the requirements set forth in Section 12 of this Agreement, including, but not limited to, the restrictions on pension payments if a pensioned retiree is a Project Person of the subcontractor or an independent contractor retained by the Contractor.

Subcontracting work to be performed under this Agreement without the prior written consent of the Authority's Contract Administrator and Director of Legal Affairs shall be a material breach of this Agreement.

- 18. **Suspension and Debarment.** Pursuant to 1980 PA 278; MCL 423.322 *et seq.*, the Contractor, in performing this Agreement, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name has been listed in the register maintained by the State of Michigan, Department of Licensing and Regulatory Affairs, of

employees who have been found in contempt of court by a federal court of appeals, on not less than three occasions involving different violations during the preceding seven years, for failing to correct an unfair labor practice as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 U.S.C § 158.

The Authority may void this Agreement if the name of the Contractor or the name of a subcontractor, manufacturer, or supplier used by the Contractor in performing this Agreement subsequently appears in the register during the period of this Agreement.

The Contractor certifies, by signing this Agreement, that it possesses business integrity and that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in grants or contracts by any federal, state, or local department or agency.

The suspension of the Contractor by the State of Michigan, an agency of the State or a department of the Federal Government, shall be at the option of the Authority, a material breach and grounds for the immediate termination of this Agreement.

19. **Independence of Contractors.** The Authority shall retain the Contractor as an independent contractor, and the Contractor hereby accepts such independent contractor relationship, upon the terms and conditions set forth in this Agreement. Nothing in this Agreement shall be construed to create the relationship of employer and employee between the Authority and the Contractor or any of its employees or agents. **The Contractor, its employees and subcontractors, shall be deemed at all time and for**

all purposes to be independent contractors. The Contractor acknowledges and agrees that all payments by the Authority to the Contractor shall be made without deduction for federal, state or local income taxes, social security taxes and similar items, and that the Contractor shall be solely responsible to report income under this Agreement to the Internal Revenue Service and other appropriate taxing authorities and to pay such taxes (including, without limitation, being solely responsible to make periodic estimated payments of such taxes in accordance with applicable law). The Contractor further acknowledges and agrees that all payments under this Agreement to the Contractor by the Authority shall be reported to the Internal Revenue Service and other appropriate taxing authorities on Form 1099 (or equivalent or replacement forms). Finally, the Authority acknowledges that the manner and means of producing the Products and Services described in Exhibit A are under the control and at the discretion of the Contractor.

20. **Ownership of Documents, Reports and Other Products.** All documents, reports and any other products developed and/or delivered to the Authority under this Agreement shall become and be the property of the Authority.
21. **Disclosure of Information.** Other than as contemplated by this Agreement, the Contractor, its agents, and subcontractors, without the prior consent of the Authority shall not:
- a. disclose information or documents created or maintained in connection with this Agreement to anyone;
 - b. use information or documents created or maintained in connection with this Agreement to further any private interest.

Use or disclosure of documents or information without the prior written consent of an authorized officer of the Authority shall be a material breach of this Agreement.

22. **Modifications.** The Authority or the Contractor may request modification of the scope of work, products, budget, or project work schedule to be performed by the Contractor. Modifications shall comport with the intent and purpose of this Agreement and shall be consistent with applicable state and federal regulations, limitations, guidelines, policies, and interpretations prescribed by the Authority pursuant to law. All requests for modification shall be submitted in written form by the duly authorized representative, as specified in Section 11, of the party requesting modification prior to modification implementation. Failure to obtain prior approval will result in the disallowance of expenditures.

No verbal representation, understanding, agreement, or interpretation of any officer, agent, employee of the Authority or Contractor, either before or after execution of this Agreement, shall modify any of the terms of this Agreement, unless such representation, understanding, agreement, or interpretation is expressly stated in this Agreement or an amendment to this Agreement executed by both parties.

23. **Termination of Agreement.** Termination is the cancellation of this Agreement, in whole or in part, at any time prior to the date of completion.
- a. Termination for cause. The Authority may terminate this Agreement, in whole or in part, at any time before the date of completion, whenever it is determined that the Contractor has failed to comply with the terms and conditions of this Agreement. The Authority will promptly notify the Contractor in writing of the termination and the

reasons for the termination, together with the effective date. Payments made to the Contractor or recoveries by the Authority under this Agreement when it is terminated for cause will be in accordance with the legal rights and liabilities of the parties.

b. Termination for convenience. The Authority or the Contractor may terminate this Agreement in whole or in part when the Parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The Parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. An amendment of the terms of this Agreement is required for all terminations for convenience.

c. Termination by Contractor. At any time prior to the first payment on the Agreement, the Contractor may, with written notification to the Authority, unilaterally cancel this Agreement. Once initiated, no Product or Services financed with Authority assistance shall be terminated by the Contractor prior to satisfactory completion without approval of the Authority. After the first payment, the Product or Services may be terminated, modified, or amended by the Contractor only by mutual agreement of the Parties. Termination requests prior to completion of the Product or Services must fully explain the reasons for the action and detail the proposed disposition of the uncompleted Product or Services.

d. Termination of Agreement for Unavailability of Authority or Federal Funds.

It is the intent and understanding of the Parties that this Agreement is contingent upon the availability of Authority or Federal funds or the receipt by the Authority of Federal funds. If Authority funds or Federal funds approved or obligated by the Authority in connection with this Agreement are at any time rendered unavailable, the Authority shall then have the right to terminate this Agreement by the giving of a

written notice, the basis, and the effective date of the termination to the Contractor. Should this Agreement be terminated by reason of the unavailability of Authority or Federal funds for the purposes of this Agreement, all finished or unfinished documents, data, studies, reports, and other materials prepared by the Contractor under this Agreement prior to the effective date of the termination shall be delivered in a format specified by the Authority.

In the event of termination under this section for lack of Authority or Federal funds, the Contractor shall be entitled to receive payment for Products and Services incurred under this Agreement prior to the effective date of termination.

- e. Commitments. If this Agreement is terminated, the Contractor will not incur new obligations for the terminated portion after the effective termination date. The Contractor will at its own expense cancel any outstanding obligations. Costs incurred after the effective date of the termination will be disallowed. In the event of termination, all finished or unfinished documents, data, studies, reports, and other materials prepared by the Contractor under this Agreement prior to the effective date of termination shall become the property of the Authority. The Contractor will provide all finished and unfinished material as previously described within 30 days of terminating. However, the Contractor will be entitled to retain copies. The Contractor, in the event of termination under this provision, is entitled to receive reimbursement for Products and Services satisfactorily performed under this Agreement prior to the effective date of such termination. Notwithstanding the foregoing, the Contractor shall not be relieved of its liability to the Authority for the damages sustained by the Authority as the result of any breach of this Agreement until the Authority so releases the Contractor and has determined for the purpose


of set-off the exact amount of damages due the Authority.

24. **Severability of Provisions.** It is declared to be the intent of the parties that if any provision of this Agreement executed by both parties or its application to any persons or circumstances is adjudged by any court of competent jurisdiction to be invalid, the court's judgment shall not affect or invalidate the remainder of this Agreement nor its application to other persons or circumstances, unless so provided by the court or unless the severance of the invalid provision alters the basic intent or purpose of this Agreement, would cause an increase of the Authority's financial obligation, or renders impossible the compliance with any applicable statute, regulation, limitation, guideline, policy.
25. **Michigan Law.** This Agreement shall be governed by the laws of the State of Michigan and shall be binding upon the Contractor's successors, assigns, and legal representatives. All records pertinent to this Agreement are subject to public disclosure under the Michigan Freedom of Information Act; 1976 PA 442; MCL 15.231 *et seq.* The Contractor shall insert the provisions of this section into any subcontract entered into to accomplish the terms of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the Authority and the Contractor have executed this Agreement as of the date first above written.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

By:  _____

**Earl Poleski, Executive Director
OR
Brian Mills, Chief of Staff**

SWAP FINANCIAL GROUP, LLC

By:  _____

James Murphy, Managing Director

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

AGREEMENT FOR PROFESSIONAL SERVICES

WITH

SWAP FINANCIAL GROUP, LLC

EXHIBIT A

SCOPE OF WORK

I. Overview

- A. The Authority is contracting with a financial service provider to determine if the Authority's derivative instruments ("Swaps") result in an effective hedge in accordance with Governmental Accounting Standards Board (GASB) No. 53.
- B. The Contractor will conduct Swap Valuation services for two (2) year-end periods - June 30, 2017 and June 30, 2018. The Contractor will provide a year-end market value change of the effective hedges for each year-end period to determine how much will be recognized in the year to which they relate. This determination requires a number of tests, including a regression analysis to compare the actual market performance against the index related to the individual Swaps.
- C. These services are necessary to assist in the completion of the 2017 and 2018 annual audit processes.

II. Objectives, Tasks, and Deadlines

A. **Objective**

To successfully perform the service described in Section I above, the Contractor must meet the following objective:

- 1. Provide information, reports, data, and schedules to assist the Authority to determine compliance with GASB No. 53. This standard is used to determine whether a derivative instrument will result in an effective hedge.

B. **Tasks**

To achieve the above objective, the Contractor shall perform tasks including, but not limited to, the following:

- 1. Regression analyses; and
- 2. Valuations for the Authority's Swap portfolio.

C. Deadlines

For 2017:

Contractor shall perform the tasks, and complete the objective, no later than October 20, 2017.

For 2018:

Contractor shall perform the tasks, and complete the objective, no later than October 19, 2018.

CONTRACT NO. 17-49-FI

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

AGREEMENT FOR PROFESSIONAL SERVICES

WITH

SWAP FINANCIAL GROUP, LLC

EXHIBIT B

PROJECT PERSONNEL

APPENDIX B

CERTIFICATE VERIFYING PROJECT PERSONNEL OF THE
CONTRACTOR/SUBCONTRACTOR

The Contractor/Subcontractor acknowledges that the following personnel are Project Personnel of the Contractor/Subcontractor:

(1) Name James Murphy
(Print or type name above line)

Title with Contractor/Subcontractor Managing Director

Is this person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ / No X

(2) Name Peter Shapiro
(Print or type name above line)

Title with Contractor/Subcontractor Senior Managing Director

Is the person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ / No X

(3) Name Nathaniel Singer
(Print or type name above line)

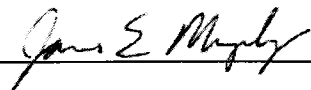
Title with Contractor/Subcontractor Senior Managing Director

Is the person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ / No X

Name of Signatory for Contractor/Subcontractor:

Printed Name: James E Murphy
(Print or type name above line)

Its: Managing Director

Signature: 

Federal Identification Number: 22-3560888

APPENDIX B

CERTIFICATE VERIFYING PROJECT PERSONNEL OF THE CONTRACTOR/SUBCONTRACTOR

The Contractor/Subcontractor acknowledges that the following personnel are Project Personnel of the Contractor/Subcontractor:

(1) Name Lillian Chern, Gerri Magie, Peter Clerc
(Print or type name above line)

Title with Contractor/Subcontractor Managing Directors

Is this person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ /No X ("No" for all names above.)

(2) Name David Wheeler
(Print or type name above line)

Title with Contractor/Subcontractor Analyst

Is the person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ /No X

(3) Name _____
(Print or type name above line)


Title with Contractor/Subcontractor _____

Is the person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ /No _____

Name of Signatory for Contractor/Subcontractor:

Printed Name: James E Murphy
(Print or type name above line)

Its: Managing Director

Signature: 

Federal Identification Number: 22-3560888