

**AGREEMENT BY AND AMONG HOWELL MAIN STREET, INC. AND THE  
DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF HOWELL TO  
PROVIDE ECONOMIC DEVELOPMENT, HISTORIC  
PRESERVATION, AND PROMOTION OF DOWNTOWN HOWELL**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and among the Downtown Development Authority of the City of Howell, 118 W. Clinton Street, Howell, MI 48843 (hereinafter "DDA"), and Howell Main Street, Inc., 118 W. Clinton Street, Howell, MI 48843, a Michigan non-profit corporation (hereinafter "HMS").

WITNESSETH

WHEREAS, DDA is obligated to operate to halt property value deterioration, eliminate the causes of that deterioration, increase property tax valuation where possible in the business district of the City of Howell, and promote economic growth, pursuant to Act 197 of the Public Acts of Michigan, 1975, as amended, and has funds available for these objectives and purposes; and

WHEREAS, HMS is a Michigan nonprofit corporation created to, among other things, achieve a vibrant, strong and viable downtown; preserve downtown buildings and their historic integrity; and lessen the financial burdens on the City of Howell government, and these activities are directly related to the City of Howell's strategic goals; and

WHEREAS, the parties hereto mutually desire to create a contracted public-private Agreement, to promote and further the accomplishment of their mutual objectives.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. **TERM.** The term of this Agreement shall be from July 1, 2022 for (four (4) years) ending June 30, 2026. After June 30, 2026, it is the intention of the parties that this Agreement shall automatically renew on an annual basis unless terminated by either party as provided herein.

2. **SERVICES.** HMS shall coordinate and administer all volunteer-led activities and events, both new and those currently coordinated and administered by the DDA, including but not limited to all those types of events that in the sole opinion and strategic vision of HMS, fulfill its goals and the goals identified above and in relation to paragraph 8 (Main Street Model).

3. **FISCAL SUSTAINABILITY.** HMS is fiscally self-sustaining through grants, donations, fundraising, and other forms of revenue including this contract for services.

a) HMS shall seek sponsorships and other contributions (e.g. membership contributions, fundraising events, grants and donations) to assist with its own organizational expenses as well as for HMS contributions towards events and community

development projects. Any funds received by HMS from grants, donations, fundraising, or other independent sources shall remain the property of HMS.

4. **PAYMENT FOR SERVICES.** Payment for HMS's services will be \$90,000 total yearly and shall be payable in advance, with funds being available and paid from the DDA budget to cover HMS services and projects July 1 and December 1 or each fiscal year (Or the following Monday should these dates fall on a weekend). Half of the year's agreed upon contract for services shall be paid no later than July 31, with the remaining half paid on December 30.

5. **DDA EMPLOYEES.** The DDA Director shall remain at all times a full-time, paid position with the DDA, but the DDA Director shall also assist HMS with its responsibilities for services provided to the DDA.

6. **USE OF OFFICE SPACE.** The DDA shall provide sufficient office space in the DDA building located at 118 W. Clinton Street, Howell, MI 48843 for HMS to carry out the services contemplated by this Agreement at no charge to HMS.

7. **COOPERATION AND REPORTING.** It is intended that a "high level of communication" between DDA and HMS shall include the following:

a) HMS shall submit to the DDA an annual report for the length of time that a contract for services exists between the DDA and HMS. HMS will provide financial reports to the DDA Board for only those services outlined in the contract.

b) DDA shall notify HMS of any and all proposed projects in the downtown area, so that HMS has the opportunity to provide input or collaborate in their implementation.

8. **MAIN STREET MODEL.** HMS is committed to the National Main Street model as its organizational structure and has achieved the Master Level Main Street designation. Parties acknowledge that HMS will continue to operate under the National Main Street model and maintain certification. Annually, each Team will adopt specific work programs with measurable tasks, and undertake activities designed to implement the National Main Street approach.

9. **FINANCIAL ACCOUNTABILITY.** HMS at its own expense shall annually engage a Certified Public Accountant to review all of its financial activities in order to promptly file IRS Form 990 and to create an annual financial summary for HMS consisting at minimum of an annual Income Statement and a Balance Sheet. Furthermore, the DDA at its own expense for the term of this Agreement shall have the right to annually audit the books and records associated with the revenues and the expenditures of funds for the programs, projects, and services specified in this Agreement.

10. **INSURANCE REQUIREMENTS.** HMS, at HMS's own cost and expense, shall procure and maintain, for the duration of this Agreement, insurance policies with the following minimum insurance coverages and limits:

Comprehensive General Liability	\$2,000,000
Excess Umbrella Liability	\$1,000,000
Automobile Liability (non-owned & hired)	\$1,000,000
Worker's Compensation/Employer's Liability	\$500,000
Directors & Officers	\$1,000,000

Prior to the DDA payment for Services under this Agreement, HMS shall furnish the DDA with proof of such insurance, and the policy(s) will require a 30-day notice of cancellation to be given to the DDA while this Agreement is in effect. These policies will be in effect at the time HMS commences work under this Agreement.

11. **PARTIES RESPONSIBLE FOR OWN AGENTS / INDEMNIFICATION.** The Organization shall indemnify any person who was or is a party to any civil, criminal, administrative, or investigative action, suit, or proceeding by reason of the fact that he/she is or was a Director or officer of the Organization, or is or was serving at the request of the Organization as a Director or officer of another Organization, against expenses including actual and reasonable attorneys' fees, judgments, fines, and amounts paid in settlement actually and necessarily incurred by him or her in connection with such action, suit, or proceeding. The Board may, at any time, approve indemnification of any other person which the Organization has the power to indemnify under the Michigan Non-Profit Corporation Act. The indemnification allowed for in this Article is available only to a person who acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Organization or its members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe that conduct was unlawful.

**a. Suits by or in the right of the organization.** The organization shall indemnify any person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the organization to procure a judgment in its favor by reason of the fact that the person is or was a director or officer, of the Organization, or is or was serving at the request of the organization as a director or officer of another organization against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with the action or suit. The Board may, at any time, approve indemnification of any other person, which the organization has the power to indemnify under the Michigan Non-Profit Corporation Act. The indemnification allowed for in this article is available only to a person who acted in good faith and in a manner the person reasonably believed

to be in or not opposed to the best interests of the organization or its shareholders or members. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the organization unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for expenses which the court considers proper

- b. Former Directors and Officers.** The indemnification provided in this article continues for a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of that person.
- c. Changes in Michigan Law.** If there are any changes in the Michigan statutory provisions applicable to the corporation and relating to the subject matter of this article, then the indemnification to which any person shall be entitled shall be determined by such changed provisions, but only to the extent that any such change permits the corporation to provide broader indemnification rights than such provisions permitted the corporation to provide before any such change.
- d. Indemnification Insurance.** The organization may purchase and maintain indemnification insurance for any person to the extent permitted by applicable law.

**12. INDEPENDENT CONTRACTOR STATUS.** It is understood and agreed that HMS, in the performance of the Services to be performed pursuant to this Agreement, shall act as and be an independent contractor and shall not act as an agent or employee.

**a.** None of the employees or agents of HMS shall be considered employees or agents of the DDA. HMS and its employees shall obtain no retirement benefits or other benefits that accrue to the employees and HMS hereby expressly waives any claim it may have to any such rights, with the exception of the DDA Director per Paragraph 6.

**b.** Nothing in this Agreement shall create or be construed as creating a partnership, joint venture or any other relationship between the DDA and the HMS other than an independent contractor relationship.

**13. CONFLICT OF INTEREST.**

**Purpose.** The purpose of the conflict-of-interest policy is to protect the interests of the HMS. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to this type of Organization.

**Conflict Defined.** A conflict of interest may exist when the interests or activities of any

director, may be seen as competing with the interests or activities of the HMS, or the director, has a financial or other material interest as a result of a direct or indirect relationship.

**Interested Person Defined.** Any director, with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

**Financial Interest Defined.** A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

- 10.4.1 A compensation arrangement with the organization or with any entity or individual with which the organization has a transaction or arrangement;
- 10.4.2 An ownership or investment interest in any entity with which the organization has a transaction or arrangement;
- 10.4.3 A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the organization is negotiating a transaction or arrangement; or
- 10.4.4 The potential to realize a financial benefit that cannot be characterized as a potential ownership or investment interest but that nevertheless benefits a person as a result of a transaction or arrangement into which the organization enters. Compensation includes direct and indirect remuneration both for services rendered and for duties performed. Compensation also includes gifts or favors that are not insubstantial.

**Disclosure Required.** Any possible conflict of interest must be disclosed to the Board of Directors by the person concerned, if that person is a board member or the President of the organization. If that person is a member of the staff, the staff member must disclose any possible conflict of interest to the President, or to such person or persons as the President may designate.

**Determining Whether a Conflict of Interest Exists.** When there is doubt as to whether a conflict of interest exists, the matter must be resolved by a vote of the Board of Directors.

**Action Taken in the Event of a Conflict of Interest.** Upon determining that a conflict of interest exists, the Board of Directors may nevertheless decide to enter into a transaction or arrangement that might benefit the private interest of an officer or director of the organization so long as the following protocol is observed:

***Abstinance from Vote.*** When any conflict of interest is relevant to a matter requiring action by the Board of Directors, the interested person must call it to the attention of the Board of Directors and may not vote on the matter; provided however, any director disclosing a possible conflict of interest may be counted in determining the presence of a quorum at a meeting of the Board of Directors.

***Absence from Discussion.*** Unless requested to remain present during the meeting, the person having a conflict (and any related persons under the definition in section 10.3) must leave the room allowing the Board to complete its discussions.

***Exploration of Alternative Arrangements or Transactions.*** After exercising due diligence, the Board of Directors will determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

***Evaluation of Transaction or Arrangement.*** If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors must determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable.

***Record of Proceedings.*** The Minutes of the meeting of the board or committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. The minutes of any meeting of the HOWELL DOWNTOWN DEVELOPMENT AUTHORITY board shall be prepared and provided to all Members for their review prior to the next regularly scheduled meeting and to each Member of the City Council. Minutes of closed meetings shall be maintained in conformity with ad shall be subject to the provisions of the Open Meetings Act.

***Annual Review.*** A copy of this conflict-of-interest bylaw shall be furnished each director, officer and senior staff member who is presently serving the Organization, or who may hereafter become associated with the Organization. This policy shall be reviewed annually for the information and guidance of directors, officers and staff members. Any new directors, officers or staff members shall be advised of this policy upon undertaking the duties of such office.

14. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement at any time.

a) The DDA may terminate this Agreement at any time by giving HMS sixty (60) days prior written notice of termination. HMS may also terminate this Agreement at any time by giving the DDA sixty (60) days prior written notice of termination. Termination by any party shall be effective on the 61 st day after the date of such written notice.

b) If the DDA terminates this agreement without cause, the DDA shall, on or before the 61st day after the date of written notice, pay to HMS those remaining funds which were payable in the fiscal year in which notice was given. Additionally, regardless of cause, if the DDA terminates this agreement, the DDA shall agree to pay the contract amount for the next fiscal year, including any facade grant commitments. Half of the year's agreed upon contract for services shall be paid no later than July 31, with the remaining half paid on December 30.

For the second fiscal year following contract termination, the DDA agrees to pay the contract amount to HMS, not including facade grant funds. Half of the year's agreed upon contract for services shall be paid no later than July 31, with the remaining half paid on December 30.

c) Upon termination for cause, any unspent funds paid to HMS by the DDA pursuant to this Agreement shall be refunded to the DDA after the costs of dissolution and wind up of HMS. All other unspent funds shall remain the property of HMS or benefit another nonprofit organization within Livingston County in accordance with the Articles of Incorporation of HMS.

d) "Cause" pursuant to this section is defined as limited to, embezzlement, criminal activity, or a material breach of the terms of this agreement.

i. a material breach of the terms of this agreement; or

ii. illegal activity by a director, employee, or agent of HMS related to the performance of this Agreement, such as fraud, embezzlement, or misuse of public funds.

15. **NOTICES.** All notices herein required shall be in writing and shall be sent by certified mail, postage prepaid, addressed as follows:

Howell Main Street Inc.	Howell Downtown Development Authority
118 W. Clinton St.	118 W. Clinton St.
Howell, MI 48843	Howell, MI 48843
Attn: President & C.O.O.	Attn: President

16. **CONFORMANCE TO APPLICABLE LAWS.** HMS shall comply with all applicable federal, state, and local laws, rules, and ordinances. No discrimination shall be made by HMS in the employment of persons to work under this Agreement because of race, color, national origin, ancestry, sex or gender identity, religion, marital status, sexual orientation, height, weight, or disability of such person.

17. **DISPUTE RESOLUTION.** Any dispute arising out of this Agreement shall first be referred to the DDA Director and/or their delegees. In the event that the dispute is not satisfactorily

resolved, either party may commence arbitration proceedings pursuant to the Uniform Arbitration Act, with each party appointing an arbitrator and those arbitrators selecting a neutral arbitrator. Any arbitration award shall be enforceable in a court of competent jurisdiction.

18. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which is not embodied in the Agreement and no other agreement, statement or promise shall be valid or binding.

19. **INVALIDITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

20. **AMENDMENT.** No change, amendment or modification of the Agreement shall be valid unless the same be in writing and signed by the parties hereto.

21. **ASSISTANCE.** DDA will cooperate with and support, to the extent feasible, HMS in the promotion of the Main Street Program including without limitation its applications for grant funding and awards. DDA's agreement of cooperation and support under this paragraph carries no additional financial commitment by the DDA; rather it is a statement of general support of the Main Street Program and its efforts consistent with the provisions of this Agreement.

22. **AGREEMENT BINDING ON SUCCESSORS.** The terms of this Agreement shall be binding upon the successors of the parties, in the event that the DDA is dissolved.

(signatures on next page)



IN WITNESS WHEREOF, the parties hereto have on the dates set hereunto set their hands and seals as duly authorized by their respective board of directors.

WITNESSES: HOWELL DOWNTOWN DEVELOPMENT AUTHORITY

\_\_\_\_\_ By: \_\_\_\_\_  
Chairman of the Board of Directors

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

WITNESSES: HOWELL MAIN STREET INC.

\_\_\_\_\_ By: \_\_\_\_\_  
Treasurer of the Board of Directors

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

## **Attachment A**

### **CODE OF ETHICS, CONFLICT OF INTEREST, AND LOBBYING**

Partner Agencies, Fee for Service Contractors, their employees, governing board or agents, shall not use official authority or influence to interfere with or influence the result of an election or nomination for public office. Partner Agencies and Fee for Service contractors may not contribute anything of value to a party, committee, organization, department, or person for political purposes; or conduct any political activity when performing services under this Agreement.

Should an employer board member of a Partner Agency or Fee for Service contractor hold a public office and a conflict of interest arises with his/her duties, the employee or board member will comply with State laws governing ethics and conflicts of interest and, if applicable, Federal law.

Partner Agencies and Fee for Service contractors will not ask questions on any application, examination, or interview which would directly or indirectly require the disclosure of a person's political affiliation, preferences, or opinions.

Partner Agencies and Fee for Service contractors their employees, governing board, or agents, must maintain a high standard of conduct and be free from the influence of personal considerations when conducting the services herein which are being paid for using public, taxpayer monies. Unacceptable behaviors or actions may lead to termination of this contract. Additionally, Partner Agencies will foster and support a "speak up" culture to strongly protect whistleblowers and prohibit any form of retaliation.