

Development Infrastructure Program
MISSISSIPPI DEVELOPMENT AUTHORITY
501 North West Street, 5th Floor (zip: 39201)
Post Office Box 849 (zip: 39205)
Jackson, Mississippi

Grant Agreement

<p>Recipient:</p> <p>Madison County 125 West North Street Canton, Mississippi 39046</p> <p>Benefitting Business:</p> <p>Fastenal Company, a Minnesota Corporation</p>	<p>Effective Date:</p> <p>July 15, 2018</p> <p>DIP Grant Award Amount:</p> <p>\$150,000.00</p>												
<p>Grant Number:</p> <p>DIP #393</p>	<p>Beginning and Ending Dates:</p> <p><u>July 15, 2018 to July 15, 2022</u></p>												
<p>Net Number of Permanent, Full Time Jobs to be created and maintained for 12 months: <u>50</u></p> <p><u>Madison County</u>, the Recipient herewith commits to the Mississippi Development Authority that <u>Fastenal Company, a Minnesota Corporation (i.e., the Benefitting Business)</u> will increase its employment by creating <u>50</u> net new, permanent, full time jobs within four years of the Effective Date of this Agreement and as indicated in that certain Memorandum of Agreement between the Recipient and such Benefitting Business dated effective as of <u>June 4, 2018</u> and maintain such jobs created for at least 12 months.</p>	<p>Project Description:</p> <p>The scope of work for this project is to grant DIP funds to be used for <u>certain utility relocation costs, drainage improvements, roadway improvements, sewer and/or water improvements, together with any other eligible improvements approved by the MDA</u> as specified in the approved DIP application and stated in additional supporting data contained in the application files.</p>												
<p>The Recipient agrees to comply with all terms and conditions of the Grant Terms and Conditions attached hereto.</p> <p><u>Additional Grant Terms and Conditions:</u> Grant funds will be disbursed on a reimbursable or services rendered basis to the Recipient. All funds must be disbursed by July 15, 2020.</p>													
<p>MDA Approval:</p>	<p>Recipient Approval:</p>												
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Signature</td> <td style="width: 50%; border: none;">Date</td> </tr> <tr> <td style="border: none;">Name: Steven C. Hardin</td> <td style="border: none;">Name: Sheila Jones</td> </tr> <tr> <td style="border: none;">Title: Director, Community Services Division Mississippi Development Authority</td> <td style="border: none;">Title: President, Board of Supervisors Madison County</td> </tr> </table>	Signature	Date	Name: Steven C. Hardin	Name: Sheila Jones	Title: Director, Community Services Division Mississippi Development Authority	Title: President, Board of Supervisors Madison County	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Signature</td> <td style="width: 50%; border: none;">Date</td> </tr> <tr> <td style="border: none;">Name: Sheila Jones</td> <td style="border: none;">Name: Sheila Jones</td> </tr> <tr> <td style="border: none;">Title: President, Board of Supervisors Madison County</td> <td style="border: none;">Title: President, Board of Supervisors Madison County</td> </tr> </table>	Signature	Date	Name: Sheila Jones	Name: Sheila Jones	Title: President, Board of Supervisors Madison County	Title: President, Board of Supervisors Madison County
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Development Infrastructure Program Budget

Applicant: Madison County - Fastenal Company, a Minnesota Corporation

Funding Year: **Grant Year:** **Contract:** DIP - 393

Description	MDA	IDIS	Other Funding Sources				Total
			DIP	Local	Company	ACE	
Administration							
General Administration							\$ -
Application Prep.							\$ -
							\$ -
Subtotal (A)				0	0	0	\$ -

Description	MDA	IDIS	Other Funding Sources				Total
			DIP	Local	Company	ACE	
Econ. Dev							
Acquisition					\$ 2,035,200.00		\$ 2,035,200.00
Site Improvements					\$ 640,390.00	\$ 350,000.00	\$ 990,390.00
Utility Relocation (24" Water Line)			\$ 90,400.00				\$ 90,400.00
Water Improvements					\$ 198,512.00		\$ 198,512.00
Waste Water Improvements					\$ 15,259.00		\$ 15,259.00
Backfill			\$ 1,500.00				\$ 1,500.00
Erosion Control/ Clean Up			\$ 1,343.64				\$ 1,343.64
Overlay of Existing Access Road			\$ 43,120.00				\$ 43,120.00
Engineering			\$ 13,636.36				\$ 13,636.36
Access Driveways in Pulic ROW				\$ 114,300.00			\$ 114,300.00
Equipment/Building					\$ 8,000,000.00		\$ 8,000,000.00
							\$ -
							\$ -
Subtotal (B)			\$ 150,000.00	\$ 114,300.00	\$ 10,889,361.00	\$ 350,000.00	\$ 11,503,661.00
Grand Total (A + B)			\$ 150,000.00	\$ 114,300.00	\$ 10,889,361.00	\$ 350,000.00	\$ 11,503,661.00

**Development Infrastructure Program
Grant Terms and Conditions
Grant Number: DIP #393**

WITNESSETH:

This Grant Agreement, dated as of the effective date set forth in the Grant Agreement (this “Agreement”), by and between the Mississippi Development Authority (“MDA”) (acting for and on behalf of the State of Mississippi and the entity set forth in the Grant Agreement (the “Recipient”).

WHEREAS, all references herein to the “Agreement” shall collectively mean page 1 hereof entitled “Grant Agreement”, page 2 hereof entitled “Budget” and these Grant Terms & Conditions; and

WHEREAS, unless otherwise defined in these Grant Terms and Conditions, each capitalized term used herein shall have the meanings ascribed thereto on Page 1 of this Agreement; and

WHEREAS, the Mississippi Business Investment Act, Section 57-61-1 *et seq.*, Mississippi Code of 1972, as amended (the “Act”), was enacted for the purpose of promoting business and economic development in the State of Mississippi (the “State”) through job producing programs and through securing new or expanded industry in the State by providing loans and grants to municipalities, as defined in the Act, to assist them in securing investments by private companies locating or expanding in the State; and

WHEREAS, pursuant to Section 57-61-36 of the Act, MDA is authorized to make grants to municipalities or counties to complete infrastructure related to new or expanded industry or to aid in infrastructure related improvements as determined by MDA for the purchase of equipment and in the purchase, construction or repair and renovation of public facilities; and

WHEREAS, pursuant to the Act and guidelines adopted by MDA under the Act (the “Guidelines”), the Recipient has filed an application (the “Application”) with MDA for a grant to be used for the development of the project, more particularly described on page 1 of this Agreement under the heading entitled “Project Description” (the “Project”); and

WHEREAS, based upon the Application and other relevant factors, MDA has agreed to provide the Recipient with the grant described on page 1 of this Agreement (the “Grant”) under the Act in the amount set forth in the Grant Agreement (the “DIP Award Amount”) under the terms and conditions set forth in the Grant Agreement in order to fund, in part, and develop the Project by the Recipient; and

WHEREAS, the Project is authorized by the Act; and

WHEREAS, the parties hereto agree that it is necessary to provide for and demonstrate compliance with the Agreement of the Act; and

WHEREAS, it is also necessary to assure that the public purpose of the Act is satisfied in order not to be in contravention of those provisions of the Mississippi Constitution prohibiting the State from making donations or granting gratuities by establishing that the Project is an investment resulting in a significant and measurable increase in employment in the State.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the parties hereto intend to be legally bound hereby and in consideration of the mutual covenants hereinafter contained do hereby agree as follows:

Section 1. Grant. MDA hereby agrees to make to the Recipient and the Recipient hereby agrees to accept from

MDA a Grant pursuant and subject to the terms of this Agreement and the Act as set forth in the Grant Agreement. The Recipient hereby agrees that it will apply the proceeds of the Grant only to the costs of the Project as more fully described in the Application. The Grant shall be disbursed by MDA to the Recipient in installments as provided in this Agreement pursuant to the Grant Agreement. MDA's obligation to make the Grant and to disburse the Grant in installments shall be subject to all of the terms and conditions of this Agreement and the Recipient satisfying its entire obligation under this Agreement and the Act.

Section 2. Disbursements. The obligation of MDA to make any disbursement of the Grant shall be subject to the following conditions, as well as any others herein set forth:

- a. the Recipient shall not be in default under this Agreement or the Act;
- b. development of the Project shall have progressed at a rate and in a manner reasonably satisfactory to MDA; and
- c. receipt by MDA of a certificate of a representative of the Recipient in the form set forth in paragraph 3 hereof and the notice required of the Recipient set forth in paragraph 4 hereof for such disbursement in a form satisfactory to MDA. If the Recipient fails at any time to meet the conditions precedent to any disbursement of the Grant as specified in the preceding sentence, the obligation of MDA to make further disbursements in connection with the Grant shall cease until such time and such condition precedent is met and satisfied. The parties hereto agree that disbursements by MDA to the Recipient of the Grant may be made from time to time or at one time over the two (2) year period beginning on the Effective Date of this Agreement. The disbursements shall be made in accordance with this Grant Agreement. All rights of the Recipient to request disbursement of any portion of the Grant not disbursed prior to twenty four (24) months of the Effective Date of this Grant Agreement, shall all be forfeited and any undisbursed amount of the Grant may be applied by the State in any manner consistent with the terms of the resolution of the State directing the issuance and prescribing the form and details of the Bonds.
- d. Any expenses incurred before the Effective Date of this Agreement will not be reimbursed by MDA.

Section 3. Conditions. A condition precedent to all disbursements of the Grant shall be the delivery of a certificate of a representative of the Recipient to the effect that:

- a. to the best of his or her knowledge, the representations and warranties of the Recipient contained in this Agreement are true and correct as of the date of the disbursements with the same effect as of made on the date of such disbursements;
- b. this Agreement has been duly authorized, executed and delivered by the Recipient and constitutes a legal, valid and binding obligation of the Recipient enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and except to the extent that the enforceability of the rights set forth herein may be limited by the availability of any particular remedies;
- c. this Agreement has not been amended or supplemented or modified since the date of its execution and remains in full force and effect as of the date

of the disbursement;

- d. the authorization, execution and delivery of this Agreement by the Recipient, and compliance by the Recipient with the provisions hereof, will not conflict with or constitute a breach or default of the Recipient's duties hereunder or under any law, administrative regulation, court decree, resolution, charter, bylaw or other agreement to which the Recipient is subject or by which it is bound; and
- e. there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the best of his or her knowledge, after reasonable investigation and due inquiry, threatened against the Recipient in any way contesting or affecting the validity of this Agreement or contesting the powers of the Recipient to enter into or perform its obligations under this Agreement.

Section 4. Requisitions. A condition precedent to all disbursements of the Grant shall be the presentation to the State Treasurer of a warrant issued by the Department of Finance and Administration of the State or its successor to such duties, which warrant shall be issued under proper requisition signed by the Executive Director of MDA, all pursuant to Section 57-61-21(1) of the Act. Warrants may only be issued for costs and expenses which are authorized by the Act. No requisition shall be executed by the Executive Director of MDA until the following shall have been satisfied:

- a. The Recipient shall have provided MDA with reasonable written notice of the amount of the Grant disbursement requested by the Recipient. Such notice shall contain all information necessary to enable MDA to prepare the requisition for a warrant described in this paragraph 4 including, without limitation, the name and title of the requesting representative of the Recipient, the name of the vendor to be paid or the party to be reimbursed for its previous payment of the work performed and a description of the work performed. In addition, such notice shall certify that the amount requested is the just amount due at the current time, is currently unpaid, is for a product or service which has heretofore been delivered or performed and that all statutory requirements in connection with the acquisition of such product or service have been complied with by the Recipient.
- b. MDA shall have indicated in writing its approval of the request for the Grant disbursement.

Section 5. Representations of MDA. MDA makes the following representations as the basis for the undertakings on the part of the Recipient herein contained:

- a. MDA is an agency of the State and is authorized pursuant to the provisions of the Act and the Guidelines to enter into the transactions contemplated by this Agreement.
- b. MDA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.
- c. MDA has been duly authorized to execute and deliver this Agreement and by proper action has duly authorized the execution and delivery hereof and as to MDA, this Agreement is valid and legally binding and enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited:

- (1) by bankruptcy, reorganization, or other similar laws limiting the enforceability of creditors' rights generally; or
 - (2) by the availability of any discretionary equitable remedies.
- d. The Grant to complete infrastructure related to a new or expanded industry or to aid in infrastructure related improvements as determined by the MDA for the purchase of equipment and the purchase, construction or repair and renovation of public facilities, as provided by this Agreement, will further the purposes of this Act, to wit:
- for the purpose of enhancing the process of local economic development through the creation of jobs.

Section 6. Representations of the Recipient. The Recipient makes the following representations as a basis for the Grant and the undertakings on the part of MDA, herein contained:

- a. The Recipient has all necessary power and authority to enter into and perform its duties under this Agreement and, when executed and delivered by the respective parties hereto, this Agreement will constitute a legal, valid and binding obligation of the Recipient enforceable in accordance with its terms except to the extent that the enforceability of the rights set forth herein may be limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally and except to the extent that the enforceability of the rights set forth herein may be limited by the validity of any particular remedy.
- b. The execution and delivery of this Agreement and compliance with the provisions hereof will not conflict with, or constitute a breach of or default under, the Recipient's duties under any law, administrative regulation, court decree, resolution, charter, bylaws or other agreement to which the Recipient is subject or by which it is bound.
- c. There is no consent, approval, authorization or other order of, filing with, or certification by, any regulatory authority having jurisdiction over the Recipient required for the execution, delivery or the consummation by the Recipient of any of the transactions contemplated by this Agreement and not already obtained.
- d. There is no action, suit proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the best knowledge of the Recipient, after reasonable investigation and due inquiry, threatened against the Recipient in any way contesting or affecting the validity of this Agreement or contesting the powers of the Recipient to adopt, enter into or perform its obligations under this Agreement or materially and adversely affecting the properties or condition (financial or otherwise) or existence or powers of the Recipient.
- e. The Recipient will not discriminate against any employee or any applicant for employment because of the race, religion, color, national origin, sex or age.
- f. The Recipient shall comply with the terms and provisions of this Agreement and the Act.
- g. The Recipient certifies that all of the material information contained in the

Application is true and correct as of the date of the Application and the date of this Agreement. The Recipient further acknowledges that MDA, in making the Grant, is relying upon the truthfulness and correctness of the material information contained in the Application.

- h. The Recipient represents and warrants that it will further the purposes of the Act, to wit:

to provide infrastructure, equipment and construction, repair and renovation of public facilities for the purpose of enhancing the process of local economic development through the creation of jobs.

Section 7. Termination. MDA may terminate its obligation to honor any disbursement of the Grant at any time prior to any disbursement of the Grant if any event occurs which would constitute a default under this Agreement.

Section 8. Notice Addresses. All notices given pursuant to this Agreement shall be in writing signed by the party giving the notice and shall be given by:

- a. certified mail, postage prepaid;
- b. prepaid overnight delivery; or
- c. hand delivery.

For the purposes of this Agreement, notices shall be sent to the parties at the addresses set forth in the Grant Agreement hereto or to such other addresses that the parties may designate in writing.

Section 9. Non-Performance Standard- If at the end of twelve (12) months from the effective date (as stated in the Grant Agreement) construction of the project (as described in this Grant Agreement) has not begun, the MDA, may, at its option, terminate this contract and recapture and Grant funds disbursed to Recipient.

Section 10. Minority and Women-Owned Business Enterprises- The MDA, Community Services Division (CSD) encourages the maximum opportunity for increased participation by local Minority and Women-Owned Businesses Enterprises (MBE/WBE) in the procurement of goods and services. The MDA Minority Business Division at www.mississippi.org and the Mississippi Procurement Technical Center at www.mspsc.com can assist with MBE/WBE outreach efforts.

Section 11. Job Creation and Maintenance. The Benefiting Business has committed to the creation of **50** net new, permanent full time jobs beginning on or after the Effective Date through the contract end date in Madison County, Mississippi, at the location described in Exhibit A, which is where or is otherwise adjacent to or near where the Project (as described in the Grant Agreement) is constructed or otherwise installed using Grant proceeds. In addition, the Benefiting Business will be required to maintain such new jobs for a period of 12 months.

Section 12. Recapturing of funds. Job creation will be satisfied once Fastenal meets the requirements set forth below.

- a. At such time that the job creation obligation of the Benefiting Business set forth in paragraph 11 hereof has been satisfied, the Benefiting Business shall be required provide to Recipient and the MDA a dated payroll or employee roster evidencing such compliance by the Benefiting Business of its job creation obligation described herein. One full time job is a minimum of 1,820 annual work hours. An employee hired through a temporary

employment service will not be considered in the above mentioned numbers prior to being moved into a permanent position at the Benefiting Business. Once the Benefiting Business satisfies its job creation obligation described herein, such employment level must be maintained for a period of 12 months. As evidence of such 12 month job maintenance obligation, the Benefiting Business shall be required to provide to the Recipient and the MDA a dated payroll or employee roster for review at the end of such 12 month period. Subject to compliance by the Recipient of it other obligations set forth herein, once the Benefiting Business satisfies its job creation and maintenance obligations described herein, neither the Benefiting Business nor the Recipient shall any further obligation, contingent or otherwise, to repay to the MDA all or any portion of the Grant or any other amounts disbursed by the MDA to the Recipient in accordance herewith. Notwithstanding the foregoing provisions of this subparagraph (a), to the extent that the Benefiting Business maintains at least 50 net new, permanent full time jobs in Madison County, Mississippi, at the location described in Exhibit A, which is where or is otherwise adjacent to or near where the Project is located for any 12 month period, the Benefiting Business's obligations set forth in paragraph 11 and this subparagraph (a) shall be deemed to have been satisfied.

- b. If the Benefiting Business fails to create **50** net new, permanent full-time jobs and maintain such jobs in accordance herewith and with the Memorandum of Agreement and this Agreement, the Recipient will reimburse the MDA a pro rata share of the amount contemplated by this Agreement. The reimbursement amount will be arrived at by multiplying the difference between the total number of jobs projected to be created and maintained and the number of actual jobs created and maintained by the cost per job, which is **three thousand dollars (\$3,000.00)**. The cost per job is derived by dividing the amount of the DIP Award amount actually disbursed by the MDA to the Recipient in accordance herewith by the total number of jobs that the Benefiting Business is obligated to create in accordance with paragraphs 11 and 12(a) of this Agreement.
- c. Should the Recipient default on any of its obligations set forth in this Agreement (other than the job creation obligations set forth in paragraphs 11 and 12(a) of this Agreement), and thereafter fail to timely cure such default, MDA will demand in writing repayment by the Recipient of the total amount of the Grant funds disbursed to the Recipient, and the Recipient shall, within thirty (30) days, pay such amount to MDA.

Section 13. Close-out Package. Within sixty (60) days after the expiration of this Agreement, the Recipient must submit a completed close-out package with any such attachments as required by the Community Services Department at the MDA.

Section 14. Miscellaneous.

- a. This Agreement has been made by MDA (acting for and on behalf of the State), the Recipient and the Benefiting Business, and no person or entity other than the foregoing and their successors or assigns shall acquire or have any right under or by virtue of this Agreement.
- b. This Agreement shall become effective upon the execution and the

acceptance hereof by the parties hereto and shall be valid and enforceable from and after the time of such execution and acceptance.

- c. If any paragraph or part of a paragraph of this Agreement shall be declared null and void or unenforceable against any of the parties hereto by any court of competent jurisdiction, such declaration shall not affect the validity or enforceability of any other section or part of a paragraph of this Agreement.
- d. In the event any agreement contained in this Agreement shall be breached and such breach shall thereafter be waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- e. This Agreement shall inure to the benefit of MDA and the Recipient and shall be binding upon MDA and the Recipient and their respective successors and assigns.
- f. This Agreement shall be governed as to its validity, construction and performance by the laws of the State.
- g. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.
- h. No amendment, change, modification, alteration or termination of this Agreement shall be made other than pursuant to a written instrument signed by the parties to this Agreement.

Exhibit A

(Attach Map and/or Legal Description)