

**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION
GRANT WITH
CITY OF ROCHESTER HILLS**

The Michigan Economic Development Corporation (the "MEDC") enters into a binding agreement (the "Agreement") with City of Rochester Hills (the "Grantee" or the "Municipality"). As used in this Agreement, the MEDC and Grantee are sometimes individually referred to as a "Party" and collectively as "Parties."

Grantee: City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309

I. NATURE OF SERVICES. The purpose of this Agreement is to provide funding to the Grantee to hire services to develop a gateway and streetscape plan for the Municipality (the "Grant Activities").

II. PERFORMANCE SCHEDULE.

Starting Date: August 1, 2022

Ending Date: October 2, 2023

The term of this Agreement (the "Term") shall commence on the Starting Date and shall continue until the occurrence of an event described in Section VIII of this Agreement.

III. PAYMENT SCHEDULE INFORMATION.

A. The MEDC agrees to pay the Grantee a sum not to exceed \$50,000 (the "Grant"), according to the following schedule:

(i) 25% of the Grant paid upon completion and approval of Milestone One.

(ii) 50% of the Grant paid upon completion and approval of Milestone Two.

(iii) 25% of the Grant paid upon completion and approval of Milestone Three.

B. Payment under this Agreement shall be made by the MEDC to Grantee upon receipt and approval by the Grant Administrator, as identified in Section IV, of documentation evidencing the completion and achievement of each of the Milestones (the "Supporting Documentation") to the satisfaction of the Grant Administrator. The Grant Administrator shall provide the Grantee with appropriate submission instructions of the Supporting Documentation.

- C. MEDC requires that payments under this Agreement be processed by electronic funds transfer (EFT). Grantee is required to register to receive payments by EFT at the State Integrated Governmental Management Applications (SIGMA) Vendor Self Service (VSS) website (www.michigan.gov/VSSLogin).
- D. The Grantee agrees that all funds are to be spent as specified in this Agreement. This Agreement does not commit the MEDC to approve requests for additional funds during or beyond this Grant period.

IV. **MEDC GRANT ADMINISTRATOR.** The Grantee must communicate with the MEDC representative named below or his or her designee regarding this Agreement. The Grant Administrator may be changed, at any time, at the discretion of the MEDC.

Michelle Parkkonen (the "Grant Administrator")
Michigan Economic Development Corporation
300 North Washington Square
Lansing, Michigan 48913
parkkonenm@michigan.org

V. **GRANTEE DUTIES.** The Grantee agrees to undertake, perform, and complete the following during the Term, to the satisfaction of the Grant Administrator:

- A. **Milestone One:**
 - i. Provide a fully executed copy of a contract between the Municipality and Orchard, Hiltz & McCliment, Inc., d/b/a OHM Advisors (the "Consultant") to have the following services performed for the Municipality:
 - 1. develop a gateway and streetscape plan in a manner consistent with the MEDC's Redevelopment Ready Communities ("RRC") Best Practices; and
 - 2. Facilitate formal adoption of the gateway and streetscape plan.
 - ii. Schedule a formal kick-off meeting with the MEDC, the Consultant, and key officials at the Municipality.
- B. **Milestone Two:** Provide full draft of the gateway and streetscape plan to the Grant Administrator.
- C. **Milestone Three:**
 - i. Prior to obtaining formal adoption indicated in Section V(C)(ii), obtain agreement from the MEDC that the proposed gateway and streetscape plan aligns with the RRC Certified expectations.

- ii. Obtain formal adoption by the Municipality's governing body of the gateway and streetscape plan, as approved by the MEDC.
 - iii. Make the gateway and streetscape plan available on Municipality's website within thirty (30) days following formal adoption.
- D. Apply all Grant funds towards paying the Consultant for its services described in Section V(A).
- E. Ensure the MEDC is invited to all key meetings throughout the project.
- F. Within 15 days of the Ending Date, provide the MEDC with written feedback summarizing feedback to the MEDC on the Grant funding process and the experience working with the Consultant.

VI. RELATIONSHIP OF THE PARTIES.

- A. Due to the nature of the services described herein and the need for specialized skill and knowledge of Grantee, the MEDC is entering into this Agreement with Grantee. As a result, neither Grantee nor any of its employees or agents is or shall become an employee of the MEDC due to this Agreement.
- B. Grantee will provide the services and achieve the results specified in this Agreement free from the direction or control of the MEDC as to means and methods of performance.
- C. The MEDC is not responsible for any insurance or other fringe benefits, including, but not limited to, Social Security, Worker's Compensation, income tax withholdings, retirement or leave benefits, for Grantee or its employees. Grantee assumes full responsibility for the provision of all such insurance coverage and fringe benefits for its employees.
- D. All tools, supplies, materials, equipment and office space necessary to carry out the services described in this Agreement are the sole responsibility of Grantee unless otherwise specified herein.
- E. Grantee shall retain all control of its employees and staffing decisions independent of the direction and control of the MEDC.

VII. ACCESS TO RECORDS. During the Term, and for Seven years after the Ending Date, the Grantee shall maintain reasonable records, including evidence that the services actually were performed and the identity of all individuals paid for such services, and shall allow access to those records by the MEDC or their authorized representative at any time during this period.

VIII. TERMINATION. This Agreement shall terminate upon the earlier of the following:

- A. The Ending Date.
 - B. Termination by the MEDC, by giving thirty calendar days prior written notice to the Grantee. In the event that the Legislature of the State of Michigan (the "State"), the State Government, or any State official, commission, authority, body, or employee or the federal government (a) takes any legislative or administrative action which fails to provide, terminates or reduces the funding necessary for this Agreement, or (b) takes any legislative or administrative action, which is unrelated to the source of funding for the Grant, but which affects the MEDC's ability to fund and administer this Agreement and other MEDC programs, provided, however, that in the event such action results in an immediate absence or termination of funding, cancellation may be made effective immediately upon delivery of notice to the Grantee.
 - C. Termination by the MEDC pursuant to Section XIX of this Agreement.
- IX. **MEDC EMPLOYEES.** The Grantee will not hire any employee of the MEDC to perform any services covered by this agreement without prior written approval from the Chief Executive Officer of the MEDC.
- X. **CONFIDENTIAL INFORMATION.** Except as required by law, the Grantee shall not disclose any information, including targeted business lists, economic development analyses, computer programs, databases and all materials furnished to the Grantee by the MEDC without the prior written consent of the MEDC. All information described in this Section shall be considered "Confidential Information" under this Agreement. Confidential Information does not include: (a) information that is already in the possession of, or is independently developed by, Grantee; (b) becomes publicly available other than through breach of this Agreement; (c) is received by Grantee from a third party with authorization to make such disclosures; or (d) is released with MEDC's written consent.
- XI. **PUBLICATIONS.** Except for Confidential Information, the MEDC hereby agrees that researchers funded with the Grant shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, the methods and results of their research. Grantee shall at its sole discretion and at its sole cost and expense, prior to publication, seek intellectual property protection for any Inventions (as described in Section XIII) if commercially warranted. Grantee shall submit to the MEDC a listing of articles that Grantee has submitted for publication resulting from work performed hereunder in its quarterly report to the MEDC. Grantee shall acknowledge the financial support received from the MEDC, as appropriate, in any such publication.

XII. INTELLECTUAL PROPERTY RIGHTS. Grantee shall retain ownership to the entire right, title, and interest in any new inventions, improvements, or discoveries developed or produced under this Grant, including, but not limited to, concepts know-how, software, materials, methods, and devices (“Inventions”) and shall have the right to enter into license agreements with industry covering Inventions.

XIII. CONFLICT OF INTEREST. Except as has been disclosed to the MEDC, Grantee affirms that neither the Grantee, nor its Affiliates or their employees has, shall have, or shall acquire any contractual, financial business or other interest, direct or indirect, that would conflict in any manner with Grantee’s performance of its obligations under this Agreement or otherwise create the appearance of impropriety with respect to this Agreement.

Grantee further affirms that neither Grantee nor any affiliates or their employees has accepted or shall accept anything of value based on an understanding that the actions of the Grantee or its affiliates or either’s employees on behalf of the MEDC would be influenced. Grantee shall not attempt to influence any MEDC employee by the direct or indirect offer of anything of value. Grantee also affirms that neither Grantee, nor its Affiliates or their employees has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Grantee or its Affiliate, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

In the event of change in either the interests or services under this Agreement, Grantee will inform the MEDC regarding possible conflicts of interest which may arise as a result of such change. Grantee agrees that conflicts of interest shall be resolved to the MEDC’s satisfaction or the MEDC may terminate this Agreement. As used in this Paragraph, “conflict of interest” shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.

XIV. INDEMNIFICATION AND GRANTEE LIABILITY INSURANCE. To the extent permitted by law, the Grantee shall indemnify, defend and hold harmless the MEDC, its corporate board of directors, executive committee members including its participants, its officers, agents, and employees (the “Indemnified Persons”) from any damages that it may sustain through the negligence of the Grantee pertaining to the performance of this Agreement.

The Grantee shall maintain such insurance to protect the Indemnified Persons from claims that might arise out of or as a result of the Grantee’s operations; however, Grantee’s indemnification obligation shall not be limited to the limits of liability imposed under the Grantee’s insurance policies. The Grantee will provide and maintain its own general liability, property damage, and workers compensation insurance. The insurance shall be written for not less than any limits of liability required by law for the Grantee’s obligation for indemnification under this Agreement.

- XV. TOTAL AGREEMENT.** This Agreement is the entire agreement between the Parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding.
- XVI. ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Except as contemplated by this Agreement, the Grantee shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of the MEDC. Any future successors of the Grantee will be bound by the provisions of this Agreement unless the MEDC otherwise agrees in a specific written consent. The MEDC reserves the right to approve subcontractors for this Agreement and to require the Grantee to replace subcontractors who are found to be unacceptable.
- XVII. COMPLIANCE WITH LAWS.** The Grantee is not and will not during the Term be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by any governmental authority to which it is subject, and will not fail to obtain any licenses, permits or other governmental authorizations necessary to carry out its duties under this Agreement.
- XVIII. DEFAULT.** The occurrence of any one or more of the following events or conditions shall constitute an "Event of Default" under this Agreement, unless a written waiver of the Event of Default is signed by the MEDC: (a) any representation, covenant, certification or warranty made by the Grantee shall prove incorrect at the time that such representation, covenant, certification or warranty was made in any material respect; (b) the Grantee's failure generally to pay debts as they mature, or the appointment of a receiver or custodian over a material portion of the Grantee's assets, which receiver or custodian is not discharged within Sixty calendar days of such appointment; (c) any voluntary bankruptcy or insolvency proceedings are commenced by the Grantee; (d) any involuntary bankruptcy or insolvency proceedings are commenced against the Grantee, which proceedings are not set aside within Sixty calendar days from the date of institution thereof; (e) any writ of attachment, garnishment, execution, tax lien, or similar writ is issued against any property of the Grantee, which is not removed within Sixty calendar days. (f) the Grantee's failure to comply with the reporting requirements hereof; (g) the Grantee's failure to comply with any obligations or duties contained herein; (h) Grantee's use of the Grant funds for any purpose not contemplated under this Agreement.
- XIX. AVAILABLE REMEDIES.** Upon the occurrence of any one or more of the Events of Default, the MEDC may terminate this Agreement immediately upon notice to the Grantee. The termination of this Agreement is not intended to be the sole and exclusive remedy in case any Event of Default shall occur and each remedy shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law or equity.

- XX. REIMBURSEMENT.** If this Grant is terminated as a result of Section XVIII(h) hereof, the MEDC shall have no further obligation to make a Grant disbursement to the Grantee. The Grantee shall reimburse the MEDC for disbursements of the Grant determined to have been expended for purposes other than as set forth herein as well as any Grant funds, which were previously disbursed but not yet expended by the Grantee.
- XXI. NOTICES.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes: (a) on the delivery date if delivered by electronic mail or by confirmed facsimile; (b) on the delivery date if delivered personally to the Party to whom the same is directed; (c) One business day after deposit with a commercial overnight carrier, with written verification of receipt; or (d) Three business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. The notice address for the Parties shall be the address as set forth in this Agreement, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by notifying Party. The MEDC and Grantee may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.
- XXII. AMENDMENT.** This Agreement may not be modified or amended except pursuant to a written instrument signed by the Parties.
- XXIII. GOVERNING LAW.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws. The terms of this provision shall survive the termination or cancellation of the Agreement
- XXIV. COUNTERPARTS AND COPIES.** The Parties hereby agree that the faxed signatures of the Parties to this Agreement shall be as binding and enforceable as original signatures; and that this Agreement may be executed in multiple counterparts with the counterparts together being deemed to constitute the complete agreement of the Parties. Copies (whether photostatic, facsimile or otherwise) of this Agreement may be made and relied upon to the same extent as though such copy was an original.
- XXV. JURISDICTION.** In connection with any dispute between the Parties under this Agreement, the Parties hereby irrevocably submit to jurisdiction and venue of the Michigan circuit courts of the State of Michigan located in Ingham County. Each Party hereby waives and agrees not to assert, by way of motion as a defense or otherwise in any such action any claim (a) that it is not subject to the jurisdiction of such court, (b) that the action is brought in an inconvenient forum, (c) that the

venue of the suit, action or other proceeding is improper or (d) that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

XXVI. SEVERABILITY. All of the clauses of this Agreement are distinct and severable and, if any clause shall be deemed illegal, void or unenforceable, it shall not affect the validity, legality or enforceability of any other clause or provision of this Agreement. To the extent possible, the illegal, void or unenforceable provision shall be revised to the extent required to render the Agreement enforceable and valid, and to the fullest extent possible, the rights and responsibilities of the Parties shall be interpreted and enforced to preserve the Agreement and the intent of the Parties. Provided, if application of this section should materially and adversely alter or affect a Party's rights or obligations under this Agreement, the Parties agree to negotiate in good faith to develop a structure that is as nearly the same structure as the original Agreement (as may be amended from time to time) without regard to such invalidity, illegality or unenforceability.

XXVII. PUBLICITY. At the request and expense of the MEDC, the Grantee will cooperate with the MEDC to promote the Grant Activities through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Parties.

XXVIII. SURVIVAL. The terms and conditions of sections VII, VIII, XI, XV, XVII, XXIV, XXVI and XXVII shall survive termination of this Agreement.

(remainder of page intentionally left blank)

Execution Copy

The signatories below warrant that they are empowered to enter into this Agreement.

GRANTEE ACCEPTANCE:

City of Rochester Hills

Dated: _____

Bryan Barnett
Mayor

MEDC ACCEPTANCE:

Michigan Economic Development Corporation

Dated: _____

Christin Armstrong
Secretary