



# RESTAURANT RELIEF PROGRAM INTERLOCAL AGREEMENT

This Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the Public Body indicated below ("Public Body") County and Public Body may be referred to individually as a "Party" and jointly as "Parties".

**PURPOSE OF AGREEMENT.** County and Public Body enter into this Agreement pursuant to the Urban Cooperation Act of 1967, 1967 Public Act 7, MCL 124.501 et seq., for the purpose of improving economic development opportunities for restaurants and bars within Oakland County that have been negatively impacted by the pandemic. Assistance to these food establishments shall provide economic benefits to the Public Body and County. On December 7, 2020, in Resolution MR # 20664 the Oakland County Board of Commissioners created the Oakland Together Restaurant Relief Program and allocated \$2 million dollars for weatherization of eligible restaurants to adapt their operations for outdoor dining services and \$1 million dollars for supporting the safe reopening of eligible restaurants and bars. This Agreement is funded through that Program.

**Application Number:**

10039RR

**Public Body Name:**

City of Rochester Hills

**Public Body Address:**

1000 Rochester Hills Drive, Rochester Hills, MI 48309

**Public Body Point of Contact:**

Bryan Barnett

The undersigned agree to the Agreement terms specified in Sections 1 through 14 herein, including the incorporated attachment, and affirm that they have the authority to sign on behalf of their respective Parties.

**Grant Award:**

**Dollar Value of Products Awarded in Phase One:**

\$ 0.00

**Dollar Value of Products Awarded in Phase Two:**

\$ 6,268.00

**Acquisition and Reimbursement Funds Awarded in Phase Two:**

\$ 110,000.00

**Phase Two First Payment:**

\$ 77,000.00

**Phase Two Second Payment (Per Section 3):**

\$ 33,000.00

**Total Award:**

\$ 116,268.00

The undersigned agree to the Agreement terms specified in Sections 1 through 25 herein, including the incorporated Exhibit(s), and affirm that they have the authority to sign on behalf of their respective Parties. Public Body shall provide County with a copy of its Resolution or Minutes approving this Agreement.

**Public Body: \***

Sign

**By: \***

Enter your full name

**Oakland County Internal Processing Information:**

**Weatherization**

Fund: 10100

Dept: 1090201

Program: 133095

Account: 750462 (Provisions) if we are buying the goods OR 731598 (Regranting Program) if we are giving dollars.

PCBU: GRANT

Project ID: 100000003320

Activity ID: EXP

## Restaurant Safe Reopening

Fund: 10100

Dept: 1090201

Program: 133095

Account: 750462 (Provisions) if we are buying the goods OR 731598 (Regranting Program) if we are giving dollars.

PCBU: GRANT

Project ID: 100000003321

Activity ID: EXP

(A fully executed PDF copy of the grant agreement will be emailed to you for your records.)

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS**. The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows:

1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment.

1.2. **Claims** mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.

1.3. **Confidential Information** means all information and data that County is required or permitted by law to keep confidential, including records of County' security measures, including security plans, security codes and combinations, passwords, keys, and security procedures, to the extent that the records relate to ongoing security of County as well as records or information to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs relating to ongoing security measures, capabilities and plans for responding to violations of the Michigan Anti-terrorism Act, emergency response plans, risk planning documents, threat assessments and domestic preparedness strategies.

1.4. **County** means Oakland County, Michigan a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.

1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.

1.6. **Exhibits** mean the following exhibits, which are applicable to this Agreement only if they are attached to this Agreement and selected (checked) below or added later by a formal amendment to this Agreement:

Exhibit I: Requirements for Products, Acquisition and Reimbursement Provided by County

Exhibit II: Performance and Expenditure Report Form

Exhibit III: Phase I and Phase II Product Awards

1.7. **Grant Award** means (i) the products provided by County or (ii) funding for products acquired by Public Body and/or (iii) expenditures approved by County to Public Body. The total amount of the Grant Award is listed on the first page of the Agreement and is further explained in the Exhibits.

1.8. **Points of Contact** mean the individuals designated by Public Body and identified to County to act as contacts for communication and other purposes as described herein.

1.9. **Public Body** means the Public Body indicated on the first page of this Agreement, which is an entity created by state or local authority or which is primarily funded by or through state or local authority, including, but not limited to, its council, its Board, its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors. For purposes of this Agreement, Public Body includes any Michigan court, when acting in concert with its funding unit.

## 2. **COUNTY RESPONSIBILITIES.**

2.1. County has reviewed Public Body's Application and determined that Public Body is eligible to receive a Grant Award. County is not obligated or required to provide any additional services that are not specified in this Agreement.

2.2. County may access, use, and disclose information concerning this Agreement and the Grant Award and/or products described herein to comply with the law, such as a subpoena, court order, or Freedom of information Act request. County may refer all such requests for information to Public Body's Points of Contact for their response within the required time frame if the information requested relates to records held by Public Body. County will provide commercially reasonable assistance for the response if requested by Public Body's Points of Contact, and if reasonably able to access the requested information.

## 3. **PUBLIC BODY RESPONSIBILITIES.**

3.1. Public Body shall comply with all terms and conditions in this Agreement, including each selected Exhibit. Public Body certifies that all its representations in its request for products, acquisition and reimbursement submitted to County ("Application") were accurate, truthful and complete and that those statements remain true as of the effective date of this Agreement. Public Body will only provide a Grant Award as Public Body requested in its Application and as were approved by County.

3.2. Public Body shall designate a representative(s) to act as a Point of Contact with County. The Point of Contact's responsibilities shall include:

3.2.1. Direct coordination and interaction with County staff.

3.2.2. Communication with the general public when appropriate.

3.3. Public Body shall respond to and be responsible for Freedom of Information Act requests relating to Public Body's records, data, or other information.

3.4. Public Body shall timely provide to County a Performance and Expenditure Report Form (Exhibit II) no later than forty-five (45) days after the Effective Date of the Agreement. If County approves the first Performance and Expenditure Report Form and issues a second payment to Public Body, the second Performance and Expenditure Report Form shall be provided by Public Body to County no later than July 12, 2021. Public Body shall provide receipts and other pertinent evidence to County as requested to demonstrate that the Grant Award was applied consistent with the requirements of this Agreement. If requested by County, Public Body shall provide information concerning the Grant Award to Grantor in a web-based report format.

4. **DURATION OF INTERLOCAL AGREEMENT.** This Agreement and any amendments shall be effective when executed by both Parties with resolutions passed by the governing bodies of each Party except as otherwise specified below. The approval and terms of this Agreement and any amendments, except as specified below, shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State.

4.1. Notwithstanding Section 4.1, the Chairperson of the Oakland County Board of Commissioners is authorized to sign amendments to the Agreement to add Exhibits that were previously approved by the Board of Commissioners. An amendment signed by the Board Chairperson under this Section must be sent to the Election Division in the County Clerk's Office to be filed with the Agreement once it is signed by both Parties.

4.2. Unless extended by an Amendment, this Agreement shall remain in effect until June 30, 2021 or until cancelled or terminated by any of the Parties pursuant to the terms of the Agreement.

#### 5. **PAYMENTS**

5.1. If County approves providing money to Public Body as part or all of a Grant Award, County shall provide seventy (70) percent of the funds within fourteen (14) days of execution of the Agreement. County will provide thirty (30) percent of the funds within fourteen (14) days of its approval of a completed Performance and Expenditure Report Form. If Public Body fails to provide the necessary information in the Performance and Expenditure Form, County is not obligated to provide the additional thirty (30) percent of funds.

#### 6. **REPAYMENTS.**

6.1. Public Body shall repay County any unspent monies from the Grant Award by June 30, 2021. The payment of the unspent Grant Award shall be due to County by July 12, 2021.

6.2. Public Body is subject to repayment to County of an amount equal to the Grant Award funds received by Public Body in the event Public Body fails to comply with the requirements of this Agreement or the Grant Award funds were used in a manner inconsistent with federal or state law.

6.3. If Public Body, for any reason, fails to pay County any monies not properly spent under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was due and owing under this Agreement.

6.4. If County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay County any amounts due and owing County under this Agreement, County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid. 6.5. Nothing in this Section shall operate to limit County's right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.

6.6. Either Party's decision to terminate and/or cancel this Agreement, or any one or more of the individual Exhibits identified in this Agreement, shall not relieve Public Body of any payment obligation prior to the effective date of any termination or cancellation of this Agreement. The provisions of this Subsection shall survive the termination, cancellation, and/or expiration of this Agreement.

## **7. ASSURANCES.**

7.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.

7.2. **Responsibility for Attorney Fees and Costs.** Except as provided in this Agreement, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own legal representation and bear the costs associated with such representation, including judgments and attorney fees.

7.3. **No Indemnification.** Except as otherwise provided in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.

7.4. **Costs, Fines, and Fees for Noncompliance.** Public Body shall be solely responsible for all costs, fines, penalties, and fees associated with its acts or omissions related to this Agreement and /or for noncompliance with this Agreement.

7.5. **Reservation of Rights.** This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.

7.6. **Authorization and Completion of Agreement.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.

7.7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

## **8. USE OF CONFIDENTIAL INFORMATION.**

8.1. The Parties shall not reproduce, provide, disclose, or give access to Confidential Information to County or Public Body employees, agents, or contractors not having a legitimate need to know the Confidential Information, or to any third-party. County and Public Body shall only use the Confidential Information for performance of this Agreement.

Notwithstanding the foregoing, the Parties may disclose the Confidential Information if required by law, statute, or other legal process provided that the Party required to disclose the information: (i) provides prompt written notice of the impending disclosure to the other Party, (ii) provides reasonable assistance in opposing or limiting the disclosure, and (iii) makes only such disclosure as is compelled or required. This Agreement imposes no obligation upon the Parties with respect to any Confidential Information when it can be established by legally sufficient evidence that the Confidential Information: (i) was in possession of or was known by prior to its receipt from the other Party, without any obligation to maintain its confidentiality; or (ii) was obtained from a third party having the right to disclose it, without an obligation to keep such information confidential.

8.2. Subject to any record retention laws or legal requirements, within five (5) business days after receiving a written request from the other Party, or upon termination of this Agreement, the receiving Party shall return or destroy all the disclosing Party's Confidential Information.

## **9. DISCLAIMER OF WARRANTIES.**

9.1. County services, including any goods, services, parts, supplies, equipment, or other items that are provided to Public Body under this Agreement, are provided on an "as is" and "as available" basis, "with all faults."

9.2. County expressly disclaims all warranties of any kind, whether express, implied, or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

9.3. County makes no warranty that: (i) the goods or services will meet Public Body's requirements; or (ii) the services will be uninterrupted, timely, secure, accurate, or error-free.

## **10. LIMITATION OF LIABILITY.**

10.1. In no event shall either Party be liable to the other Party or any other person, for any consequential, incidental, indirect, special, and/or punitive damages arising out of this Agreement, regardless of whether the other Party has been informed of the possibility of such damages.

10.2. Notwithstanding anything to the contrary contained herein and to the extent permitted by law, the total liability of County under this Agreement (whether by reason of breach of contract, tort, equity, or otherwise) shall not exceed the amount of the goods or funding provided by County under this Agreement.

## **11. DISPUTE RESOLUTION.**

All disputes relating to the execution, interpretation, performance, or nonperformance of this Agreement involving or affecting the Parties may first be submitted to County's Deputy responsible for the Department of Economic Development and Public Body's Agreement Administrator/Point of Contact for possible resolution. County's Deputy and Public Body's Agreement Administrator/Point of Contact may promptly meet and confer in an effort to resolve such dispute. If they cannot resolve the dispute in five (5) business days, the dispute may be submitted to the chief executive officials of each Party or their designees. The chief executive officials or their designees may meet promptly and confer in an effort to resolve such dispute.

## **12. TERMINATION OR CANCELLATION OF AGREEMENT.**

12.1. Either Party may terminate or cancel this entire Agreement or any one of the Services described in the attached Exhibits, upon fifteen (15) days written notice, if either Party decided, in its sole discretion, to terminate this Agreement or one of the Exhibits, for any reason including convenience.

12.2. Early termination fees may apply to Public Body if provided for in the Exhibits.

12.3. The effective date of termination and /or cancellation shall be clearly stated in the written notice. Either the County Executive or the Board of Commissioners is authorized to terminate this Agreement for County under this provision. A termination of one or more of the Exhibits which does not constitute a termination of the entire Agreement may be accepted on behalf of County by its Director of Economic Development.

**13. SUSPENSION OF SERVICES.**

County, through its Director of Economic Development, may immediately suspend Services for any of the following reasons: (i) requests by law enforcement or other governmental agencies; (ii) engagement by Public Body in fraudulent or illegal activities relating to the Services provided herein; (iii) breach of the terms and conditions of this Agreement; or (iv) unexpected technical or security issues. The right to suspend Services is in addition to the right to terminate or cancel this Agreement according to the provisions in Section 11. County shall not incur any penalty, expense or liability if Services are suspended under this Section.

14. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

15. **NO EMPLOYEE-EMPLOYER RELATIONSHIP.** Nothing in this Agreement shall be construed as creating an employee-employer relationship between County and Public Body. At all times and for all purposes under this Agreement, the Parties' relationship to each other is that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, contractors, agents, and servants during the term of this Agreement. No liability, right or benefits arising out of an employer/employee relationship, either express or implied, shall arise or accrue to either Party as a result of this Agreement.

16. **NO THIRD-PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.

17. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

18. **SEVERABILITY.** If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.

19. **PRECEDENCE OF DOCUMENTS.** In the event of a conflict between the terms and conditions of any of the documents that comprise this Agreement, the terms in the Agreement shall prevail and take precedence over any allegedly conflicting terms and conditions in the Exhibits or other documents that comprise this Agreement.

20. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.



21. **FORCE MAJEURE**. Notwithstanding any other term or provision of this Agreement, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, other labor difficulties, or any law, order, regulation, direction, action, or request of the United States government or of any other government. Reasonable notice shall be given to the affected Party of any such event.

22. **NOTICES**. Except as otherwise provided in the Exhibits, notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.

22.1. If Notice is sent to County, it shall be addressed and sent to 1) County's Director of Economic Development, 2100 Pontiac Lake Road, Waterford, Michigan 48328, and 2) the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, Michigan 48341.

22.2. If Notice is sent to Public Body, it shall be addressed to the Point of Contact and Address of the Public Body indicated on the first page of the Agreement.

22.3. Either Party may change the individual to whom Notice is sent and/or the mailing address by notifying the other Party in writing of the change.

23. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE**. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

24. **SURVIVAL OF TERMS**. The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 7); Use of Confidential Information (Section 8); Limitation of Liability (Section 9); Dispute Resolution (Section 11); No Employee-Employer Relationship (Section 15); No Third-Party Beneficiaries (Section 16); No Implied Waiver (Section 17); Severability (Section 18); Precedence of Documents (Section 19); Force Majeure (Section 21); Governing Law/Consent to Jurisdiction and Venue (Section 23); Survival of Terms (Section 24); Entire Agreement (Section 25).

## **25. ENTIRE AGREEMENT.**

25.1. This Agreement represents the entire agreement and understanding between the Parties regarding the Services described in the attached Exhibits. Regarding those Services, this Agreement supersedes all other oral or written agreements between the Parties.

25.2. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

Submit

