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**AGREEMENT BETWEEN THE MICHIGAN SUBURBS ALLIANCE
AND THE CITY OF ROSEVILLE**

GRANTEE/ADDRESS:

City of Roseville
29777 Gratiot Avenue
Roseville, MI 48066

GRANT ADMINISTRATOR/ADDRESS:

Samuel G. Offen, Energy Programs Director
Michigan Suburbs Alliance
22757 Woodward Avenue
Suite 250
Ferndale, Michigan 48220

GRANT PERIOD:

From 08/01/2011 to 06/30/2012

TOTAL AUTHORIZED BUDGET: \$36,958.00

AGREEMENT

This is an Agreement (the "Agreement") between the Michigan Suburbs Alliance ("Grantor") and the City of Roseville ("Grantee"), described on the preceding page and subject to terms and conditions below.

This Agreement supplements the grant between the Michigan Strategic Fund/Michigan Energy Office and City of Roseville (Grant No. MEO-11-53 for \$81,074) for the grantee match portion of the approved budget for contractual services and equipment costs.

PART I –AGREEMENT AND PROJECT

1.0 Statement of Purpose

The purpose of this agreement is to invest directly in energy efficiency and renewable energy projects within local governments and recapture the capitalization value of those investments through energy cost savings, creating a permanent, sustainable funding source to support similar projects in the future. These energy efficiency and conservation strategies reduce fossil fuel emissions and total energy use and improve energy efficiency in the transportation, building and other sectors.

1.1 Statement of Work

The Grantee agrees to undertake, perform, and complete the following project (the "Project"):

The Grantee will implement cost effective energy efficiency and conservation strategies to reduce fossil fuel emissions and total energy use and to improve energy efficiency in the transportation, and/or building, and/or other sectors. The Grantee will document improved energy efficiency, a reduction of total energy use, and/or the creation or retention of jobs related to these matters.

Specifically, the Project will retrofit 171 exterior lights with LED lighting on eight municipal buildings, at landscaping sites and at a parking structure.

1.2 Project Management

The Project will be managed by the staff of the Grantee. If available, the Grantee may enlist the services of a project manager either who is a contractor of the Grantee or who is on the staff of the Grantor or retained as a contractor for the Grantor. There will be no additional charge for this service by Grantor, however, the time expended by the Grantor will be charged against the Grantee's total available hours for technical support as a member of the Southeast Michigan Regional Energy Office (SEMREO). The project manager shall complete and submit a Project Charter to the Grantor, including the items listed in the template supplied by the Grantor, within two weeks of the authorization of this Agreement. The project manager shall also complete and submit a project schedule to the Grantor, including milestones

for City Council approval, selection of a contractor, and lead time for material delivery within 30 days of the authorization by the City Council of Grantee.

1.3 Detailed Budget

(a) This Agreement does not commit the Grantor to approve requests for additional funds at any time. Expenses exceeding the budget are the responsibility of the Grantee.

(b) If applicable, travel expenses will be reimbursed at rates equal to the State Travel Rates, Attachment B, without the prior written consent of the Grantor.

(c) Attachment A is the Budget.

1.4 Schedule of Grant Disbursement

The maximum amount of grant assistance offered is \$36,958.00. Progress disbursements up to a total of 85% of the Total Authorized Budget may be made upon submission of a Grantee request indicating grant funds received to date, objectives completed to date and project expenditures to date (supported with invoices, proof of payment and documentation of leveraging such as local match or utility rebates or the equivalent). Backup documentation such as computer printouts of accounts, ledger sheets, check copies, or their equivalents shall be maintained for audit purposes in order to comply with this Agreement. Disbursement of the final 15% of the grant amount shall be made after completion of the project and after the Grantor has received and approved a final report. The final disbursement is also contingent upon the submission of a final invoice that includes expenditures of grant funds and a comparison to the approved Budget. Approvals and submission of payment requests by Grantee administrators and City Council shall be the responsibility of the Grantee.

This agreement supplements the grant between the Michigan Strategic Fund/Michigan Energy Office and City of Roseville (Grant No. MEO-11-53) for the grantee match portion of the approved budget for contractual services and equipment costs.

Grantor shall take all steps necessary to assure that payment for goods or services is delivered within 45 days after receipt of the goods or services, a complete invoice for goods or services, or a complete contract for goods or services, whichever is later.

1.5 Monitoring and Reporting Program Performance

A. Monitoring. The Grantee shall monitor performance to assure that time schedules are being met and completion of projected work by time period is being accomplished.

B. Monthly Reports. The Grantee shall submit to the Grantor **monthly** progress status reports that briefly present the following information:

1. A statement of accomplishments toward grant objectives.
2. Percent of completion of the project objectives. This should include a brief outline of the work accomplished during the reporting period and the work to be completed during the subsequent

reporting period.

3. Brief description of problems or delays, real or anticipated, which should be brought to the attention of the Grantor.
4. Statement concerning any significant deviation from previously agreed-upon Statement of Work.
5. A statement of project-to-date expenses and any copies of invoices which have not yet been submitted for reimbursement. Any invoices submitted must include the required documentation identified in paragraph 1.4.

C. Final Report

At the conclusion of the project the Grantee must:

1. Submit one draft electronic copy of the final report no later than June 30, 2012 for review by the Grantor.
2. After the Grantor has determined the completeness and factual accuracy of the report, the Grantee shall submit 1 final electronic copy of the report to the Grantor.
3. The final report will include the following information:
 - a. A summary of the project implementation plan and any deviations from the original plan as proposed.
 - b. Accomplishments and problems experienced while carrying out the project activities.
 - c. Coordinated efforts with other organizations to complete the project.
 - d. Impacts, anticipated and unanticipated, experienced as a result of the project implementation.
 - e. Financial expenditures of grant money and other contributions to the project, in-kind and/or direct funding.
 - f. Any experience in applying or using the project outputs and anticipated "next steps".
 - g. Actual budget expenditures compared to the Budget in this Agreement. Include the basis or reason for any discrepancies.
 - h. Expected annual energy savings for the project on which determination of the return on investment, which will be shared with the Grantor, will be based.

1.6 Sharing of Return on Investment with SEMREO

Grantee agrees that it will share the return on investment (in the form of energy cost savings) with SEMREO. SEMREO's share of the return on investment shall be equal to sum of the amount the Grantee receives from the Michigan Strategic Fund/Michigan Energy Office (Grant No. MEO-11-53 for

\$81,074) and the amount of funding described in this agreement, for \$36,958. Grantor and Grantee agree that the amount due to SEMREO each year under this Agreement shall be equal to energy and cost savings predicted for the project on a "simple payback" basis -- the final amount Grantee will share with SEMREO will be based on actual expenditures and estimated energy and cost savings from the same. Exceptions to this requirement must be approved in writing by the Grantor. The maximum time period of the sharing of the return on investment shall not exceed fifteen years. Grantor agrees that in recognition of the cooperation reflected in the sharing of the return on investment, Grantee shall be eligible to participate in SEMREO as described in Section 1.7 at no additional cost. The estimate of energy savings, the specific amount of monthly sharing of the return on investment, and the total amount to be shared with SEMREO shall be determined at the conclusion of the project and an addendum to this Agreement setting forth such amounts shall be executed at that time based on the calculation method described in this paragraph 1.6, but in any event no later than ninety (90) days after the conclusion of the Project.

1.7 Participation in the Southeast Michigan Regional Energy Office

As a result of implementing this project, the Grantee agrees to participate in the Southeast Michigan Regional Energy Office. This participation provides voting rights on the SEMREO Steering Committee and both the general and dedicated services provided to all members.

PART II - PRIMARY GRANT TERMS

2.1 Project Changes

Grantee must obtain prior written approval for major project changes from the Grantor.

2.2 Record Retention

The Grantee shall retain all financial records, supporting documents, statistical records, and all other pertinent records for a period of seven (7) years or greater as provided by law following the creation of the records or document.

2.3 Project Income

To the extent that it can be determined that interest was earned by Grantee on advances of Grant funds, such interest shall be remitted to the Grantor. All other program income shall either be added to the project budget and used to further eligible program objectives or deducted from the total program budget for the purpose of determining the amount of reimbursable costs. The final determination regarding the use of interest or other income on Grant funds advanced to Grantee shall be made by the Grantor.

2.4 Share-in-savings

The Grantor expects to share in any energy cost savings realized by the Grantee as described in Section 1.6, up to the grant amount.

2.5 Order of Spending

Unless otherwise required, Grantee shall expend funds in the following order: (1) private or local funds, (2) other funds secured for this project, and (3) Suburbs Alliance funds.

2.6 Buy Michigan Preference

A preference shall be given to products manufactured or services offered by Michigan-based firms if all other things are equal and if not inconsistent with federal statute (see MCL 18.1261).

2.7 Purchase of Equipment

The purchase of equipment not specifically listed in the Budget, Attachment A, must have prior written approval of the Grant Administrator. Equipment is defined as non-expendable personal property having a useful life of more than one year. Such equipment shall be retained by the Grantee unless otherwise specified at the time of approval.

2.8 Accounting

The Grantee shall adhere to the Generally Accepted Accounting Principles and shall maintain records which will allow, at a minimum, for the comparison of actual outlays with budgeted amounts. The Grantee's overall financial management system must ensure effective control over and accountability for all funds received. Accounting records must be supported by source documentation including, but not limited to, balance sheets, general ledgers, time sheets and invoices. The expenditure of Grantor funds shall be reported by line item and compared to the Budget.

2.9 Audit

The Grantee agrees that Grantor may, upon 24-hour notice, perform an audit and/or monitoring review at Grantee's location(s) to determine if the Grantee is complying with the requirements of the Agreement. The Grantee agrees to cooperate with Grantor during the audit and/or monitoring review and produce all records and documentation that verifies compliance with the Agreement requirements. The Grantor may require the completion of an audit before final disbursement. If the Grantee is a governmental or non-profit organization and expends the minimum level specified in OMB Circular A-133 (\$500,000 as of June 27, 2003) or more in total federal funds in its fiscal year, then Grantee is required to submit a Single Audit report to all agencies that provided federal funds to the entity during the fiscal year being audited.

2.10 Competitive Bidding

The Grantee agrees that all procurement transactions involving the use of state funds shall be conducted in a manner that provides maximum open and free competition. When competitive selection is not feasible or practical, the Grantee agrees to obtain the written approval of the Grantor before making a sole source selection. Sole source contracts should be negotiated to the extent that such negotiation is possible and shall be commercially reasonable.

PART III – ANCILLARY GRANT TERMS

3.0 Liability

The Grantor is not liable for any costs incurred by the Grantee before the start date or after the grant

period. Liability of the Grantor is limited to the terms and conditions of this Agreement and the grant amount.

3.1 Intellectual Property

Grantee grants to the Grantor a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use any deliverable created by Grantee or any of its agents, employees, or affiliates with funds from the Grant that has intellectual property content and related documentation ("IP Deliverables") according to the terms and conditions of this Agreement. For the purposes of this license, "site-wide" includes any Grantor office regardless of its physical location.

The Grantor may modify the IP Deliverables and may combine the IP Deliverables with other programs or materials to form a derivative work. The Grantor will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in an IP Deliverable other than those granted in this Agreement.

The Grantor may copy each IP Deliverable to multiple hard drives or networks unless otherwise agreed by the parties. The Grantor may also make copies of any IP Deliverable in the course of routine backups for the purpose of recovery of contents.

In the event that the Grantee shall, for any reason, cease to conduct business, or cease to support the IP Deliverable, the Grantor shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

3.2 Safety

The Grantee, all contractors, and subcontractors are responsible for insuring that all precautions are exercised at all times for the protection of persons and property. Safety provisions of all Applicable Laws and building and construction codes shall be observed. The Grantee, contractors, and every subcontractor are responsible for compliance with all federal, state and local laws and regulations in any manner affecting the work or performance of this Agreement and shall at all times carefully observe and comply with all rules, ordinances, and regulations. The Grantee, all contractors and subcontractors shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement. Grantor shall not be liable for any damages arising from any failure by Grantee to comply with this Section 3.2.

3.3 Indemnification

Each party to this grant must seek its own legal representation and bear its own costs; including judgments, in any litigation which may arise from the performance of this grant. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

3.4 Cancellation

The Grantor may terminate this Agreement without further liability or penalty to the Grantor, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

(a) *Termination for Cause* In the event that Grantee breaches any of its material duties or obligations under this Agreement or poses a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the Grantor may terminate this Agreement immediately in whole or in part, for cause, as of the date specified in the notice of termination. In the event that this Agreement is terminated for cause, in addition to any legal remedies otherwise available to the Grantor by law or equity, Grantee shall be responsible for all costs incurred by the Grantor in terminating this Agreement, including but not limited to, Grantor administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the Grantor may incur.

(b) *Termination for Convenience* The Grantor may terminate this Agreement for its convenience, in whole or part, if the Grantor determines that such a termination is in the Grantor's best interest. Reasons for such termination shall be left to the sole discretion of the Grantor and may include, but not necessarily be limited to (a) the Grantor no longer needs the Services or products specified in the Agreement, or (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the services no longer practical or feasible. The Grantor may terminate this Agreement for its convenience, in whole or in part, by giving Grantee written notice at least thirty (30) days prior to the date of termination. If the Grantor chooses to terminate this Agreement in part, the Budget shall be equitably adjusted to reflect those reductions.

(c) *Non-Appropriation* Grantee acknowledges that continuation of this Agreement is subject to appropriation or availability of funds for this Agreement. If funds to enable the Grantor to effect continued payment under this Agreement are not appropriated or otherwise made available (including the federal or state government suspending or halting the program or issuing directives preventing the Grantor from continuing the program), the Grantor shall have the right to terminate this Agreement, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Grantee. The Grantor shall give Grantee at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the Grantor receives notice of the final decision less than thirty (30) days before the funding cutoff). In the event of a termination under this section, the Grantee shall, unless otherwise directed by the Grantor in writing, immediately take all reasonable steps to terminate its operations and to avoid and/or minimize further expenditures under the Agreement.

(d) *Criminal Conviction* The Grantor may terminate this Agreement immediately and without further liability or penalty in the event Grantee or an officer of Grantee, is convicted of a criminal offense incident to the application for, or performance of, a public or private contract or subcontract or grant; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for Grantor employees; convicted under State of Michigan or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the Grantor reflects upon Grantee's business integrity.

(e) *Approvals Rescinded* The State may terminate this Agreement without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Grantee or may be effective as of the date stated in such written notice.

3.5 No State Employees or Legislators

No member of the Legislature or Judiciary of the State of Michigan or any individual employed by the State shall be permitted to share in this Agreement, or any benefit that arises from this Agreement.

3.6 Non-Discrimination

In the performance of the Agreement, Grantee agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Grantee further agrees that every subcontract entered into for the performance of this Agreement will contain a provision requiring non-discrimination in employment, as here specified, binding upon each subcontractor. This covenant is required pursuant to the Elliott Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.* and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Agreement.

3.7 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the Grantor shall not award a grant or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Grantee, in relation to the Agreement, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Agreement if, subsequent to award of the Agreement, the name of Grantor as an employer or the name of the subcontractor, manufacturer or supplier of Grantor appears in the register.

3.8 Certification Regarding Debarment

The Grantee certifies, by signature to this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal or State department or agency. If the Grantee is unable to certify to any portion of this statement, the Grantee shall attach an explanation to this Agreement.

3.9 Illegal Influence

a) The Grantee certifies, to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan

or cooperative agreement.

- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this grant, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Grantee shall require that the language of this certification be included in the award documents for all grants or subcontracts and that all subrecipients shall certify and disclose accordingly. The State has relied upon this certification as a material representation. Submission of this certification is a prerequisite for entering into this Agreement imposed by 31 USC § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- b) The Grantee certifies, to the best of his or her knowledge and belief that no state funds have been paid nor will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any State agency, a member of the Legislature, or an employee of a member of the Legislature in connection with the awarding of any state contract, the making of any state grant, the making of any state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state contract, grant, loan or cooperative agreement.

3.10 Publicity

Grantee shall inform Grantor regarding any planned publicity regarding the Project, and provide Grantor an opportunity to review any press releases or other materials issued by Grantee related to the Project. Grantee shall also make its best efforts to inform Grantor of all media inquiries regarding the Project prior to publication of the related article. Grantor shall have the right to publicize the Project, and Grantee agrees to accommodate reasonable requests from Grantor for opportunities to photograph, video, observe and describe, and otherwise have reasonable access to the Project for the purposes of developing publicity materials. Grantee shall comply with all reasonable requests from Grantor regarding any signage at the Project Site describing the Project and its funding sources, subject to all local ordinances.

PART IV - GENERAL PROVISIONS

4.0 Governing Law

The Agreement shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

4.1 Compliance with Laws

Grantee shall comply with all applicable state, federal, and local laws and ordinances ("Applicable

Laws”) in performing this Agreement.

4.2 Jurisdiction

Any dispute arising from the Agreement shall be resolved in the State of Michigan. With respect to any claim between the parties, Grantee consents to venue in Oakland County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non convenienc or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

4.3 Assignment

Grantee shall not have the right to assign the Agreement, or to assign or delegate any of its duties or obligations under the Agreement, to any other party (whether by operation of law or otherwise), without the written consent of the Grantor. Any purported assignment in violation of this section shall be null and void.

4.4 Entire Agreement

The Agreement, including any Attachments, constitutes the entire agreement between the parties with respect to the grant and supersedes all prior agreements, whether written or oral, with respect to such subject matter.

4.5 Independent Contractor Relationship

The relationship between the Grantor and Grantee is that of client and independent Contractor. No agent, employee, or servant of Grantee or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Grantee will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of the Agreement.

4.6 Conflicts

In the event of a conflict between the terms of this Agreement and any federal or state laws or regulations, the federal or state laws or regulations will supersede any contrary term contained in this Agreement.

Signature Page to Follow

*Signature Page
Grant Agreement
Between the Michigan Suburbs Alliance
and the City of Roseville*

AGREED AND ACCEPTED:

Michigan Suburbs Alliance

City of Roseville

By: _____

By: _____

Name: Conan Smith _____

Name: _____

Title: Executive Director

Title: Mayor

Date: _____

Date: _____

City of Roseville

By: _____

Name: _____

Title: City Clerk

Date: _____