

**MEDC DEVELOPMENT PROJECTS
ADVISOR CONFIDENTIALITY AGREEMENT**

This MEDC DEVELOPMENT PROJECTS ADVISOR CONFIDENTIALITY AGREEMENT

(“**Agreement**”) is dated _____ the “**Effective Date**”) and is entered into by The City of Novi (“**Advisor**”) and the Michigan Economic Development Corporation (the “**MEDC**”). The MEDC and the Advisor are each a “Party” and collectively are the “Parties.”
(Date)
(Full Legal Name of Advisor)

RECITALS:

(A) From time to time, the MEDC works with various companies or individuals (each hereinafter referred to as a “**Company**”) regarding project(s) that furthers economic development in the State of Michigan, generates investment and maintains or creates jobs (each a “**Development Project**”).

(B) While working with the MEDC on a Development Project, a Company may voluntarily provide the MEDC information identified by the Company as “**Confidential Exempt Information**.” In each case, the Company will have certified that (i) such information provided to the MEDC is comprised of, or contains, trade secrets or commercial or financial information voluntarily submitted by Company for use in developing governmental policy, and (ii) the release of the Confidential Exempt Information will cause competitive harm to such Company.

(C) Confidential Exempt Information may include, without limitation, commercial information, trade secrets, and/or financial information that are of a non-public nature.

(D) The MEDC and Advisor desire to establish terms governing the disclosures of any Confidential Exempt Information shared with the Advisor.

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. The Advisor shall (a) hold any Confidential Exempt Information in strict confidence using at least the same care and caution she/he affords its own confidential information, but in no case less than a reasonable degree of care; (b) take any and all steps which may be necessary and reasonable to protect such Confidential Exempt Information; (c) use such Confidential Exempt Information only in connection with facilitation of the applicable Development Project at a

Michigan locality; and (d) reproduce Confidential Exempt Information only to the extent necessary in connection with the applicable Development Project. For the avoidance of doubt, this Agreement shall apply to Confidential Exempt Information provided to the Advisor by the MEDC, a State of Michigan department or agency, a local regional economic development organization, and/or a local unit of government including, but not limited to, a city, township, or county. If Advisor is a “public body” within the meaning of the Michigan Freedom of Information Act, Act 442 of 1976, (the “Act”), Advisor agrees to maintain a description of each document comprising the Confidential Exempt Information in a central place and otherwise comply with the requirements of MCL 15.243(1)(f)(iii) and agrees to claim any and all applicable exemptions from disclosure available at law, including without limitation, MCL 15.243(1)(e) (furnished by public body exemption) and MCL 15.243(1)(f) (trade secret exemption).

2. Subject to Section 3(a) below, the Advisor will use her/his best efforts to keep confidential (i) the fact that Confidential Exempt Information for any applicable Development Project has been made available to the Advisor, (ii) the fact that the MEDC is discussing a Development Project with any certain Company, (iii) any of the terms, conditions or other facts with respect to a Development Project or other related transactions, including the status thereof, whether included in the Confidential Exempt Information or not, and (iv) the identity of any Company considering a Development Project. If the dissemination of any such information provided in the preceding sentence is required by law or court order, the Advisor will only provide the minimum amount of information necessary to comply with the applicable law or court order, and then only after first providing the MEDC the required notice specified in Section 3(d) below.

3. The obligations with respect to the Confidential Exempt Information under this Agreement shall not apply to any Confidential Exempt Information which the Advisor can prove by a written evidence: (a) is in the public domain (provided that such information has not or does not come into the public domain as the result of a disclosure by the Advisor); (b) is received by the Advisor on a non-confidential basis from a source other than the MEDC, the applicable Company, a State of Michigan department or agency, a local regional economic development organization, or a local unit of government including, but not limited to, a city, township, or county (provided that such source is not bound by a confidentiality agreement with the applicable Company or another party); (c) has been approved for release by written consent of the applicable Company or the MEDC; or (d) is required to be disclosed by court order or by operation of law (including but not limited to the Act), provided that promptly following receipt of a legal request and prior to making such disclosure, the Advisor has notified the MEDC of such request so that the MEDC or the applicable Company may take action to safeguard its interests, and the Advisor shall cooperate with the MEDC and the applicable Company in seeking to preserve the confidentiality of the Confidential Exempt Information.

4. Within ten (10) days following the receipt of a written request from the MEDC or upon the termination of this agreement, but subject to any records retention requirements required by law, the Advisor shall destroy all such Confidential Exempt Information, and provide written certification to the

MEDC that such Confidential Exempt Information has been destroyed. That portion of the Confidential Exempt Information which has been incorporated into analyses, compilations, comparisons, studies or other documents prepared by the Advisor or its employees and agents shall be held by the Advisor and kept confidential as provided in this Agreement and shall not be used for any reason other than in connection with the Development Project.

5. The Advisor agrees that its obligations hereunder are necessary and reasonable to protect the MEDC, the applicable Company(s), and the opportunity that the State of Michigan may have to secure Development Projects and expressly agrees that monetary damages might be inadequate to compensate the MEDC and/or Company(s) for any breach of any covenant or agreement set forth herein. The Advisor agrees and acknowledges that any such violation or threatened violation may cause irreparable injury to the MEDC and the applicable Company and that, if deemed appropriate by the court presiding over the matter, the MEDC and/or the applicable Company (in addition to any other rights and remedies that may be available at law or in equity) may be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach.

~~To the extent allowable by law, Advisor and its successors and assigns shall, jointly and severally, indemnify, defend, and hold the MEDC, its agents, representatives, employees, officers and directors (collectively the “Indemnified Parties”), harmless from and against any and all claims, liabilities, penalties, fines, losses, damages, and expenses, together with costs and expenses related thereto (including costs of defense, settlement, and reasonable attorneys’ fees necessarily incurred in relation to such claims) arising from a breach of its obligations under this Agreement, or incurred in connection with the application of the Act to the Confidential Exempt Information, and including without limitation any third party claims to the extent that such claims are attributable to Advisor’s breach of this Agreement, intentional misconduct, gross negligence, or negligence in connection with its obligations under this Agreement. Advisor shall promptly notify the MEDC of any such third party claims, whether threatened or actually asserted, and shall tender the defense thereof to the MEDC, and cooperate in the defense thereof.~~

6. This Agreement shall be governed and interpreted under the laws of the State of Michigan, without regard to its choice of law provisions.

7. The Agreement shall continue to be effective until the tenth-year anniversary of the Effective Date; provided, however, that the Advisor’s confidentiality obligations with respect to the Confidential Exempt Information and the items listed in Section 2 of this Agreement shall survive for an additional three (3) years following expiration of this Agreement.

8. This Agreement constitutes the entire understanding between the Advisor and the MEDC hereto as to Confidential Exempt Information and merges all prior discussions between them relating thereto. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by their respective duly authorized officers

or representatives.

9. This Agreement may be signed in one or more counterparts and delivered by facsimile or in PDF form, and in any such circumstances, shall be considered one document and an original for all purposes.

10. No failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

11. Each respective Company is made a third-party beneficiary to this Agreement; provided, however, that the rights of each Company as third-party beneficiary shall be construed to the narrowest extent possible and such rights shall be limited to the express terms providing such Company rights to protect its Confidential Exempt Information and further only as set forth in the following Sections: 3(d), 4, 5, and 10. No Company shall have the right to require the MEDC to assert any right on its behalf or to assert any right that is not expressly granted to such Company under this provision.

IN WITNESS WHEREOF, the Parties have executed and delivered this MEDC Development Projects Advisor Confidentiality Agreement effective as of the date first written above.

MICHIGAN ECONOMIC DEVELOPMENT CORPORATION:

CEO

ADVISOR

Signature: _____

Name: _____

Title: _____