

**INDIANA ECONOMIC DEVELOPMENT CORPORATION  
REGIONAL CITIES INITIATIVE AGREEMENT**

This Regional Cities Initiative Agreement (“**this Agreement**”) is between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the “**IEDC**”) and \_\_\_\_\_ (the “**Grantee**”). The parties to this Agreement, in consideration of the mutual covenants, obligations, and stipulations set forth herein, witness and agree as follows:

**1. PURPOSE OF THIS AGREEMENT.**

The purpose of this Agreement is for the IEDC to administer grants and/or loans from the Indiana regional city fund to support the IEDC’s Regional Cities Initiative (“**RCI Fund(s)**”) to the Grantee in an amount not to exceed **\$42,000,000.00** (the “**Maximum Agreement Amount**”) in connection with the Grantee’s Regional Development Plan (“**RDP**”) and in accordance with Indiana Code § 5-28-37 and Indiana Code § 5-28-38.

**2. TERM OF THIS AGREEMENT.**

- A. This Agreement shall remain in effect for four (4) years. It shall commence on April 22, 2016 (the “**Effective Date**”) and shall remain in effect through April 21, 2020, unless otherwise terminated (the “**Expiration Date**”).
- B. The Grantee shall have forty-five (45) days prior to the Expiration Date to submit all final claims for disbursement under this Agreement.
- C. This Agreement may be renewed under the same terms and conditions, subject to the approval of the parties and the State Budget Director. The term of the renewed Agreement may not be longer than the term of the original Agreement. All renewals and extensions must be in writing and signed by all parties, unless otherwise set forth in Paragraph 2(D).
- D. If an extension of three (3) months or less is needed for the Grantee to perform its duties under this Agreement then at least thirty (30) days prior to the Expiration Date, the Grantee may request in writing that the Expiration Date of this Agreement be extended. A duly authorized representative of the IEDC may approve or deny, in writing, the request to extend the Expiration Date.
- E. Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of the Agreement until their purposes are fulfilled.

**3. DUTIES AND RESPONSIBILITIES OF THE GRANTEE.**

- A. The Grantee shall be solely responsible for carrying out all planning and coordination activities to implement the RDP in accordance with this Agreement.
- B. All activities performed by the Grantee pursuant to this Agreement shall be done in conformance with all current-published applicable rules, regulations, policies, and directives of the IEDC and the State. The Grantee agrees that it shall comply with all future reasonable requirements determined by the IEDC to be necessary

provided said future requirements do not require the Grantee to breach, or materially alter, any then existing agreements with any Subrecipients (as hereinafter defined), as well as all then current applicable state and federal rules, regulations, policies, and directives to which the Grantee is subject.

C. For each RDP project for which the Grantee requests RCI Fund disbursement (individually a “**Project**” collectively “**Projects**”), the Grantee shall submit to the IEDC a Regional Development Plan Project Claim Form (“**Claim Form**”).

- 1) A sample Claim Form is set forth in **Exhibit A**, which is attached hereto and incorporated into this Agreement by reference as if fully set forth herein.
- 2) A separate Claim Form must be completed for each Project.
- 3) Each Claim Form shall include the following information:
  - a. The Grantee shall propose the distribution of RCI Funds that it deems appropriate to ensure the success of the Project. Upon approval of the Claim Form, the Grantee shall receive 100% of the RCI Funds requested for the Project; provided however, that the IEDC on a Project-by-Project basis may, as an alternative, agree to disburse such RCI Funds in accordance with a fixed schedule as set forth in the approved Claim Form.
  - b. The Grantee shall indicate what the distribution of non-public, State, and other public funds is for the Project. The parties agree that the overriding goal of the IEDC Regional Cities Initiative is to have no more than 20% support from the State (*e.g.*, RCI Funds, state tax incentives, and other state taxpayer supported funds), with the remainder of funding for each Project coming in the form of non-public funds (*e.g.*, private or foundation, non-governmental loans, equity and loans supported by new-market tax credits, in kind contributions) and other public funds (*e.g.*, local or federal government funding); however, the parties further agree that each individual Project may not meet this goal and that, while the overriding goal is that the cumulative use of the Maximum Agreement Amount meets this goal, the Grantee may propose, and the IEDC may approve, any deviation from this overriding goal for a Project or Projects submitted for IEDC review on a Claim Form. Projects that have 60% or more funding from non-public sources will receive priority review from the IEDC.
  - c. For any in kind contribution, the Grantee shall provide a reasonable value associated with each such contribution. The IEDC may question the value attributed to an in kind contribution and request adjustment by the Grantee before or after a Claim Form is approved.

- d. In addition to the amount of RCI Funds requested to be dedicated for the Project, the Grantee shall request separately any amounts requested pursuant to Paragraphs 5(B) and 5(C) of this Agreement.
- 4) The Grantee may submit Claim Forms for Projects not initially included in the RDP, as an additional Project or Projects of the RDP, provided that such Project(s) may be subject to additional requests for information or documents from the IEDC. When a Claim Form with a Project not initially included in the RDP is approved by the IEDC, the Project shall automatically become a part of the Grantee's RDP.
- 5) The Grantee may include any other additional information to supplement the Claim Form that the Grantee determines is necessary to assist with the IEDC's review of the Claim Form.
- 6) The Grantee shall submit completed Claim Forms to the IEDC by email to [reports@iedc.in.gov](mailto:reports@iedc.in.gov).
- 7) The IEDC shall have up to thirty (30) days to evaluate a submitted Claim Form. If additional time is needed to evaluate a submitted Claim Form, the IEDC shall notify the Grantee of a date by which its decision can be expected.
- 8) The IEDC shall provide the Grantee notice of its decision to approve or deny a submitted Claim Form in the timeframe required by Paragraph 3(C)(7).
- 9) The IEDC may condition its approval of a submitted Claim Form on conditions it deems appropriate, including an alternate approach to the distribution of RCI Funds in accordance with this Agreement. The Grantee may then accept, reject, request further revision to the conditional approval, or submit an amended Claim Form. A conditionally approved Claim Form shall only be considered approved if the Grantee gives notice of its acceptance of such Claim Form.
- 10) The IEDC may at any time (before or after the IEDC's approval of a Claim Form) request from the Grantee any additional information or documentation relating to a Project that is necessary for the IEDC to perform its obligations under this Agreement, which the Grantee shall use its best efforts to obtain and provide to the IEDC within a reasonable time.
- 11) The Grantee understands and agrees that the IEDC retains the right to approve or deny a Claim Form, as solely determined by the IEDC, including if the Claim Form proposes to use RCI Funds for broadband activities.
- 12) In the event the Grantee requests additional RCI Funds to support a Project under an already approved Claim Form, the Grantee shall complete an amended Claim Form and shall submit the amended Claim Form, which

shall be processed in the same manner as a newly submitted Claim Form. RCI Funds previously disbursed to the Grantee to support a Project that is the subject of an amended Claim Form shall not be expended until the amended Claim Form is approved by the IEDC.

13) The Grantee shall provide notice to the IEDC when a Project is completed. The IEDC shall review the Project and shall issue a letter of completion to the Grantee to acknowledge Project completion.

D. The Grantee shall provide notice to the IEDC of any Material Changes to a Project. A “Material Change” occurs when there is any:

- 1) Increase in the total cost of a Project of five percent (5%) or more and which, as a result of that increase, would require additional RCI Funds for the Project,
- 2) Change in the nature of a Project from the Grantee’s submission on the approved Claim Form, such as building a structure instead of constructing a park.

Promptly after receipt of a notice of Material Change, the IEDC will notify the Grantee if an amended Claim Form is required to proceed with the Project.

E. The Grantee must complete or ensure that a Subrecipient completes each Project in an approved Claim Form in accordance with this Agreement.

F. The Grantee shall ensure RCI Funds shall be used exclusively in compliance with the provisions contained in this Agreement, the Grantee’s approved Claim Form, the RDP, federal, state (in conformance with Indiana Code § 5-28-37, Indiana Code § 5-28-38, and other legal authority affecting the use of RCI Funds).

G. In the event RCI Funds have been disbursed to the Grantee and:

- 1) The IEDC reasonably determines the Project is becoming unviable for some reason, including due to a Material Change; or,
- 2) Either party reasonably determines RCI Funds have or will be used in a manner not permitted by this Agreement,

the Grantee shall cease any further expenditure of RCI Funds dedicated to that Project until such time as the parties reach an agreement in writing on how to proceed.

H. It is expressly understood and agreed by the Grantee and the IEDC that the Grantee may distribute the funds granted to the Grantee hereunder to any Subrecipients (“**Subrecipients**”) to perform a Project as the Grantee deems acceptable, provided however, the Grantee shall remain obligated to perform all of its obligations under

this Agreement and/or to ensure that Subrecipients complies with the same, if applicable.

- I. The Grantee shall be solely responsible for overseeing and/or completing the proper design and implementation of a Project approved by the IEDC. The Grantee shall make certain that it and any Subrecipient completes an approved Project in accordance with this Agreement, approved Claim Form, and its RDP.
- J. The Grantee shall use its reasonable best efforts, and encourage its Subrecipients, to contract for services with or purchase materials from Indiana-based persons, including contracting with Indiana minority, women's, and veteran's business enterprises.
- K. The Grantee and/or Subrecipients shall be solely responsible for applying, securing, and retaining federal, state, private, or other public funding of any nature the Grantee and/or Subrecipient wish to obtain to assist the Grantee and/or Subrecipients in carrying out a Project.
- L. Upon request, the Grantee shall provide the IEDC with any necessary information or documentation regarding any contracts, agreements, or similar documents with other parties relating to this Agreement, including Subrecipients agreements, interlocal memorandums of understanding, letters of intent from financial institutions, agreements with other state agencies, federal grants, developer specifications, and tenant arrangements that, upon Grantee's reasonable best efforts, are available. The Grantee shall provide notice to the IEDC of any material changes to these contracts, agreements, or similar documents. Upon request, the Grantee shall submit the materially changed contracts, agreements, or similar documents to the IEDC.
- M. The Grantee shall from time to time execute and deliver all other documents and instruments and do all things and acts as the IEDC reasonably deems necessary to effectively carry out, better evidence, or perfect the full meaning of this Agreement. Provided however, no such action shall modify the Grantee's obligations under this Agreement in a manner or fashion that prevents the Grantee from complying with any agreements with any Subrecipient or other third party in existence before such request or requirement.
- N. The Grantee may enter into any contracts or agreements necessary or incidental to the performance of this Agreement, however, the IEDC shall not be bound by any contracts or agreements of the Grantee's unless otherwise agreed to by the IEDC in writing.
- O. The Grantee understands and agrees that the Grantee and any of its own selected Subrecipients are solely responsible for selection of vendors, contractors, other sub-Subrecipients, or similar parties for the performance of Projects. The IEDC has no role in selecting a vendor, contractor, sub-Subrecipient, or similar party for the

performance of Projects, regardless of whether the Grantee has listed the vendor, contractor, Subrecipients, sub-Subrecipient, or similar party on the Claim Form.

- P. The parties shall use reasonable efforts to coordinate with one another in advance of issuing any public relations communications and/or materials, including press releases, or otherwise responding to media inquiries (collectively, “**Public Release**”) in relation to the subject matter of this Agreement, including each Project. Should either party reasonably object to the other party’s Public Release, the parties agree to work together to resolve and/or revise the Public Release. Each party shall ensure that prompt responses and materials are provided to the other party for the preparation of any Public Release. Each party shall identify an individual to the other party who shall serve as the primary contact regarding Public Releases. In no event shall either party be required to notify the other party prior to making a notice, submission, or disclosure as required by law. The Grantee is responsible for ensuring that any of its Subrecipients or other third party contractors coordinate with the Grantee as necessary to ensure the Grantee’s compliance with this Paragraph 3(P).
- Q. Within thirty (30) days of the Effective Date, the Grantee shall provide the IEDC a list of (i) the members the development authority and (ii) a list of the appointees to the development board. As required by Indiana Code § 36-7.6-2-4(g), the Grantee shall notify the IEDC promptly in writing when a new member joins the development authority. Additionally, the Grantee shall notify the IEDC promptly in writing when a new member withdraws from the development authority in accordance with Indiana Code § 36-7.6-2-5(f). The Grantee shall provide the IEDC notice whenever (i) a vacancy of the development board occurs and (ii) a new member is appointed to the development board.
- R. The Grantee shall provide the IEDC a copy of the bylaws and rules of the development authority promptly after their adoption pursuant to Indiana Code § 36-7.6-2-12.
- S. The Grantee shall provide notice to the IEDC, of any meeting of its development board at the same time it provides notice thereof pursuant to the Indiana Open Door Law.
- T. The Grantee shall allow the IEDC to distribute public information, data, or statistics (collectively, “**Data**”) that the Grantee collects on the RDP and its Projects to third parties. Additionally, the IEDC may require the Grantee to collect certain specific Data that is reasonably obtainable without significant cost to the Grantee. The parties shall work together on the terms for Data collection, format, submission timelines, and distribution methods.
- U. By entering into this Agreement, the Grantee understands and agrees that the IEDC’s obligations and commitments set forth in this Agreement are made in reliance on and are conditioned upon the representations presented in the Grantee’s RDP, as amended.

#### 4. DISBURSEMENT OF RCI FUNDS.

Disbursement of RCI Funds by the IEDC to the Grantee shall be as follows:

- A. Disbursement of RCI Funds for a Project shall be made in accordance with this Agreement and, if applicable, as provided in the approved Claim Form.
- B. Disbursements of RCI Funds to the Grantee shall be made within thirty-five (35) days of the IEDC's notice of approval of a Claim Form and shall be made in accordance with State fiscal policies and procedures and, as required by Indiana Code § 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Auditor of the State, notwithstanding any other law, rule, or custom to the contrary. The written authorization must designate a financial institution and an account number to which all disbursements are to be credited. For forms and additional information, see the Auditor of State's website at [www.in.gov/auditor/2340.htm](http://www.in.gov/auditor/2340.htm). If applicable, no disbursements will be made in advance of receipt of the goods or services if any are provided under this Agreement, except as permitted by Indiana Code § 4-13-2-20. Disbursements shall be deemed delivered upon transmission pursuant to the written instructions of the Grantee. All disbursements shall be made upon presentation of approved and signed State of Indiana claim vouchers. Such claim vouchers must be submitted with a budget expenditure report, which shall detail disbursements of any grants, local funds or incentives, and/or other funds in accordance with an approved Claim Form.

#### 5. USE OF RCI FUNDS.

- A. RCI Funds shall only be expended as provided in an approved Claim Form; provided however, that to ensure the effective administration and oversight of this Agreement, the parties agree that (i) the Grantee shall receive \$120,000.00 as a reduction to the Maximum Agreement Amount from the IEDC within thirty-five (35) days from the Effective Date, which may be used by the Grantee for any purpose permitted by this Agreement and as otherwise deemed appropriate by a majority vote of the development board, and (ii) the IEDC shall retain \$150,000.00 as a reduction to the Maximum Agreement Amount for the IEDC's costs associated with overseeing the Regional Cities Initiative.
- B. RCI Funds approved for use in an approved Claim Form shall be used only for costs directly associated with each Project, except as follows:
  - 1) The Grantee may request in a submitted Claim Form to retain up to four percent (4%) of the total cost of each Project from the RCI Funds requested in the Claim Form, which the Grantee may use to defray administrative costs directly associated with implementing the RDP (collectively, **"Implementation Costs"**).

- 2) No more than \$1,250,000.00 from the Maximum Agreement Amount is permitted to be retained by the Grantee for Implementation Costs.
  - 3) The Grantee acknowledges that any costs designated as Implementation Costs (that are not otherwise declined by the IEDC as provided in Paragraph 5(B)(6)) reduces the amount of RCI Funds available to support costs directly associated with Projects.
  - 4) When the first \$250,000.00 of Implementation Costs has been retained by the Grantee, the Grantee shall provide an accounting to the IEDC documenting the use of the RCI Funds for Implementation Costs. Such accounting shall be updated and sent to the IEDC by the Grantee when the Implementation Costs retained by the Grantee amounts to (i) \$500,000.00, (ii) 750,000.00, (iii) \$1,000,000.00, and (iv) \$1,250,000.00.
  - 5) Upon receipt of the accounting of Implementation Costs from the Grantee, the IEDC shall review the accounting and may ask the Grantee to explain how each expense qualifies as an Implementation Cost. Such inquiries may include a request that the Grantee demonstrate how it has made best efforts to secure other funding to support its Implementation Costs.
  - 6) The IEDC shall not be responsible for any costs claimed by the Grantee as Implementation Costs that (i) are not approved by the IEDC in a Claim Form or (ii) the IEDC later determines, in its reasonable discretion, do not constitute administrative costs directly associated with implementing the RDP.
  - 7) The IEDC may, in its reasonable discretion, withhold distribution of RCI Funds for Implementation Costs in an amount necessary to offset any expenses deemed to not be appropriately attributed as Implementation Costs, and the IEDC shall provide notice thereof promptly to the Grantee. Upon such notice, the parties shall work in good faith to resolve promptly any such concerns.
- C. Architectural, preliminary engineering design, environmental reviews, or other similar costs that Grantee intends to pay for with RCI Funds may be incurred by the Grantee and/or Subrecipient for a Project prior to the IEDC's approval of a Claim Form. The Grantee, upon its own credit and expenses, assumes the sole risk for costs incurred prior to the IEDC's approval of a Claim Form. To be reimbursed with RCI Funds, these expenses must be identified by the Grantee on an approved Claim Form. The Grantee and/or Subrecipient may incur any cost for a Project it/they deem appropriate, without the IEDC's approval, if the Grantee does not intend to request reimbursement for such expenses with RCI Funds.
- D. The Grantee is responsible for ensuring that each Subrecipient of RCI Funds from the Grantee makes use of RCI Funds only as permitted by this Agreement and, if applicable, the approved Claim Form. No RCI Funds may be transferred to a

Subrecipient for the purpose of circumventing the limitations or other requirements on the acceptable use of RCI Funds that are set forth in this Agreement.

- E. In its effort to leverage RCI Funds to the maximum extent appropriate, the Grantee may loan or grant RCI Funds in a manner it determines will be most appropriate for each Project.
- F. In the event the Grantee does not use all RCI funds allocated for a Project as indicated on an approved Claim Form, the Grantee shall return the unused allocated RCI Funds to the IEDC within thirty-five (35) days of the IEDC's issuance of the letter of completion for the Project. Such RCI Funds shall not be used by the Grantee for any other purpose. RCI Funds returned by the Grantee to the IEDC may later be used for a subsequent Project upon the IEDC's approval of a Claim Form.
- G. The Grantee shall use its best efforts to ensure RCI Funds for a Project are disbursed in accordance with the Project timeline. The Grantee shall provide notice to the IEDC explaining why the RCI Funds have not been disbursed in accordance with the Project timeline, if applicable. If the IEDC reasonably determines that said delay is related to a material issue with that Project, then the IEDC may provide notice to the Grantee requiring the Grantee to return those RCI Funds to the IEDC within thirty-five (35) days, and the Grantee shall comply promptly with such notice. Upon failure of the Grantee to return such RCI Funds, the IEDC, in its sole discretion, may give notice to the Grantee that it is withholding future disbursements of RCI Funds and/or suspend or terminate this Agreement in accordance with Paragraph 24.
- H. The IEDC may de-obligate any RCI Funds not drawn-down by the Grantee as of the forty-sixth (46<sup>th</sup>) day after the Expiration Date of this Agreement; provided however, any RCI Funds already disbursed to the Grantee in accordance with this Agreement prior to the Expiration Date may be expended by the Grantee after the Expiration Date. Notwithstanding the foregoing, if the IEDC requires that RCI Funds be retained by the IEDC for disbursement in accordance with Paragraph 3(C)(3)(a) beyond the forty-sixth (46<sup>th</sup>) day after the Expiration Date, then those RCI Funds shall not be de-obligated and this Agreement shall survive only as it relates to the disbursement of those RCI Funds; provided however, the IEDC may choose to release said RCI Funds to the Grantee and forego the previously established retention requirement.
- I. Notwithstanding any other provision of this Agreement, RCI Funds shall not be expended by the Grantee or transferred by the Grantee to any Subrecipient to cover any costs associated with:
  - 1) Travel expenses or meals;
  - 2) Applying for the Regional Cities Initiative; or,
  - 3) Any costs incurred before January 1, 2016.

## 6. COMPLIANCE.

- A. The Grantee shall ensure that all of its agreements with Subrecipients include a provision providing for the Grantee to unilaterally assign its rights to recover RCI Funds and delegate the rights therein to the IEDC by giving notice to the Subrecipient of such unilateral assignment and delegation. The provision shall further provide that the Grantee and the Subrecipient agree that in no event shall the provision be voided or constitute a material breach as signature to such agreement shall constitute the parties' consent to the Grantee's unilateral assignment and delegation to the IEDC. The IEDC may give notice of its election to take such assignment and delegation as provided in Paragraphs 6(B) and 6(C). Notwithstanding any such assignment and delegation, the Grantee shall remain obligated to assist the IEDC in recovering any RCI Funds.
- B. The Grantee shall promptly notify the IEDC of any suspected failure to use RCI Funds in accordance with this Agreement. Upon such notification, the IEDC and the Grantee shall immediately work together to resolve the concerns. In the event the IEDC determines that there has been a failure to use RCI Funds in accordance with this Agreement and said concerns cannot be immediately resolved:
- 1) The IEDC may notify the Grantee to require a Subrecipient to return all RCI Funds transferred to it by the Grantee, in which case the IEDC shall allow the Grantee a reasonable period of time during which to collect misused RCI Funds (using all legal remedies) from a noncompliant Subrecipient in order to reimburse the IEDC for the same; provided however, that after exercising all reasonable means to collect from a Subrecipient the Grantee shall not be responsible for reimbursement of RCI Funds that are uncollectible (in whole or in part);
  - 2) The IEDC may notify the Grantee to assign and delegate its rights under an agreement with a Subrecipient as provided by Paragraph 6(A);
  - 3) The IEDC may notify the Grantee to return all undisbursed RCI Funds transferred to it for the Project;
  - 4) The IEDC may notify the Grantee that the IEDC is withholding future disbursements of RCI Funds;
  - 5) The IEDC may suspend this Agreement pursuant to Paragraph 24; and/or,
  - 6) Take any other action permitted by this Agreement or otherwise permitted by law to recover RCI Funds not used in accordance with this Agreement.

Upon such notice, the Grantee is obligated to take all appropriate action in accordance with the notice provided by the IEDC under this Paragraph 6(B), including immediately assigning and delegating the Grantee's rights to the IEDC as provided by this Paragraph 6(B)(2).

- C. If the Grantee fails to comply with applicable laws, rules, regulations, terms and conditions of this Agreement, the IEDC may, in its sole discretion, suspend or terminate this Agreement in accordance with Paragraph 24.

## 7. USE OF IEDC NAME.

The IEDC has not granted any rights to use its name, trademark, intellectual property, or logos. The Grantee agrees that it, and its Subrecipients, shall not use the IEDC's name or intellectual property, including IEDC trademarks or logos, in any manner, including commercial advertising or as a business reference, without the prior written consent of the IEDC. For any purposes outside those contemplated by this Agreement, and for which the IEDC's participation will be referenced, the IEDC shall have the right of review and approval of the use, disclosure, and the finished product prior to publication. All such requests from the Grantee must be made in writing and delivered to the IEDC for approval at its sole discretion; requests from a Subrecipient shall be first submitted to the Grantee.

## 8. REPORTING BY THE GRANTEE.

- A. The IEDC shall monitor and assess the Grantee's performance in accordance with this Agreement.
- B. Quarterly Progress Reports. The Grantee shall submit a written progress report on a quarterly basis to the IEDC ("**Quarterly Progress Report(s)**"), as follows:
  - 1) The first Quarterly Progress Report shall be provided by the Grantee to the IEDC not later than July 31, 2016, with each Quarterly Progress Report submitted by the Grantee to the IEDC not later than the last day of the month following the last day of each subsequent quarter.
  - 2) Each Quarterly Progress Report shall include:
    - a. An executive summary of the contents of the Quarterly Progress Report;
    - b. A description of the Grantee's overall progress against its RDP, including all RDP projects monitored by the Grantee whether the project receives RCI Funds or not; and,
    - c. A separate summary of each RDP project monitored by the Grantee whether the project receives RCI Funds or not. Summaries for Projects (*i.e.*, those that receive RCI Funds) shall disclose the amount of RCI Funds dedicated to that Project.
  - 3) All projects monitored by the Grantee whether the project receives RCI Funds or not, shall be included in the Quarterly Progress Report until such time as (i) the IEDC issues a letter of completion to the Grantee to acknowledge Project completion or (ii) the Grantee provides notice to the

IEDC of project completion for projects where RCI Funds were not disbursed.

- C. Annual Report. The Grantee shall submit an annual report by April 1 of each year as required by Indiana Code § 36-7.6-3-4.
- D. Final Report. Within forty-five (45) days of the Expiration Date of this Agreement, the Grantee shall submit a final written report to the IEDC. The final report shall include an account of the Grantee's efforts to complete the RDP, accounting of all funding associated with the RDP, including funds being held for future disbursement on an already approved Project, and any additional information that the IEDC may reasonably request.
- E. In the event that a report required under this Paragraph 8 is not timely submitted to the IEDC, the IEDC may, among its other remedies under this Agreement, withhold approval of any Claim Form or any disbursement of RCI Funds until such time as such report is submitted.
- F. All reports required under this Paragraph 8 shall be submitted to the IEDC at reports@iedc.in.gov.
- G. The Grantee is solely responsible for ensuring that no information that should be withheld from disclosure pursuant to the Indiana Access to Public Records Act is included in a report required under this Paragraph 8 shall be submitted to the IEDC. Any information that the Grantee determines should be withheld from disclosure should be separately submitted to the IEDC and clearly marked as confidential.

**9. IEDC ADVICE AND ASSISTANCE.**

The Grantee bears complete responsibility for the administration and success of the RDP under the terms of this Agreement. Although the Grantee may seek the advice and assistance of the IEDC, the offering of the IEDC of advice or assistance shall not modify the Grantee's rights and obligations under this Agreement, and the IEDC shall not be held liable for offering such advice or assistance to the Grantee.

**10. AUDITS AND ACCESS TO RECORDS.**

- A. Within ten (10) days of a written request by the IEDC, the Grantee shall deliver to the IEDC an accounting of all RCI Funds distributed by the IEDC to the Grantee.
- B. The Grantee agrees that the IEDC may elect to engage in monitoring and evaluation practices independently of, or in conjunction with other appropriate State agencies or departments at all reasonable times during the term of this Agreement and for three (3) years following the date of final disbursement under this Agreement, or until a State or federal audit has been completed and all audit exceptions cleared, whichever is earlier. Copies of any audit required by law (or otherwise performed by the Grantee or an agent thereof), shall be furnished to the IEDC at no cost.

- C. Periodic Monitoring Reviews. The IEDC may carry out periodic monitoring reviews (“**Periodic Monitoring Reviews**”), as deemed appropriate by the IEDC. The IEDC shall not be required to provide the Grantee advance notice of such Periodic Monitoring Reviews except as reasonably required to make sure the necessary individuals and materials are available. The Grantee shall ensure the cooperation of the Grantee’s employees, Subrecipients, and designees in such monitoring and evaluation efforts and shall produce all documentation reasonably requested by the IEDC. The IEDC shall designate the location of the Periodic Monitoring Reviews (e.g., the IEDC’s premises or at a location of the Grantee’s).

Periodic Monitoring Reviews may consist of the following:

- 1) Whether a Project’s activities are consistent with those set forth in this Agreement, the approved Claim Form, the RDP, and any additional information or documentation the Grantee has submitted to the IEDC.
- 2) A complete, detailed analysis of actual non-public funds, State support, and other public funds expended to date on the on a Project and conformity with a Claim Form.
- 3) A detailed listing of a Project’s costs by Project budget line item which are accrued yet unpaid, if applicable.
- 4) A written evaluation of a Project with respect to the Grantee’s and/or Subrecipient’s timely progress in Project management, financial management, control systems, procurement systems and methods, and performance relative to timely submission of Quarterly Progress Reports.

The Grantee shall take all actions reasonably necessary to correct or cure any issues identified by the IEDC during its Periodic Monitoring Reviews. Failure to do so may allow the IEDC the option to withhold future disbursements and allow the IEDC to suspend or terminate this Agreement in accordance with Paragraph 24.

- D. Notwithstanding the foregoing, the Grantee shall be subject to an annual financial audit and be responsible for the costs thereof in accordance Indiana Code § 36-7.6-2-14.
- E. The IEDC may request a final audit following the Expiration Date of this Agreement. The Grantee shall arrange for a financial and compliance audit of RCI Funds disbursed pursuant to this Agreement and any other RDP funding, regardless of the source. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), who shall be paid by the Grantee, and performed in accordance with Indiana State Board of Accounts publication entitled “Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources,” and applicable provisions of the Office of Management and Budget Circular(s) A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Grantee is responsible for ensuring that the audit and any management letters are completed

and forwarded to the IEDC in accordance with the terms of this Agreement. Audits conducted pursuant to this Paragraph 10 must be submitted no later than nine (9) months following the close of the Grantee's fiscal year. The Grantee agrees to provide the Indiana State Board of Accounts and the IEDC originals of all financial and compliance audits at no cost. The Grantee shall ensure that the independent public or certified public accountant has expertise in audits of state and federal funds.

- F. Upon reasonable notice, the Grantee shall make available to the IEDC, its agents, or other appropriate State agencies or officials all books or records in its possession or control which pertain to this Agreement, including tax returns, records of personnel, and conditions of employment. If any site visit is made, the Grantee shall provide and shall require all reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of the Grantee.
- G. The IEDC, its agents, or other appropriate State agencies or officials have the right, at all reasonable times, to make site visits to:
  - 1) Review Project accomplishments and to confer with the Grantee and permitted Subrecipients, if any;
  - 2) Audit records and management control systems; and,
  - 3) Provide such technical assistance, as may be required.
- H. The Grantee shall ensure the cooperation of the Grantee's employees, Subrecipients, and designees in such monitoring and evaluation efforts. The Grantee shall take all steps reasonably necessary to correct or cure any problems or deficiencies identified by the IEDC during its monitoring and evaluation.
- I. Each party shall be responsible for its own costs except as provided by law.

## **11. SUBSTANTIAL PERFORMANCE.**

This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof. The parties to this Agreement agree that all terms and conditions to this Agreement are essential.

## **12. STATUTORY AUTHORITY OF THE GRANTEE.**

As a condition of receiving RCI Funds, the Grantee expressly represents and warrants to the IEDC that it is a duly constituted development authority pursuant to Indiana Code 36-7.6 and statutorily eligible to receive monies from the IEDC for the Agreement under Indiana Code § 5-28-37 and Indiana Code § 5-28-38.

### 13. COMPLIANCE WITH LAWS.

- A. The Grantee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IEDC and the Grantee to determine whether the provisions of this Agreement require formal modification.
- B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, Indiana Code § 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit Inspector General's website at <http://www.in.gov/ig>. If the Grantee or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under Indiana Code § 4-2-6, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4, and under any other applicable laws.
- C. The Grantee certifies by entering into this Agreement that neither it nor its principal(s), to the best of its knowledge, is presently in arrears in payment of its taxes, permit fees, or other statutory, regulatory or judicially required payments to the State of Indiana or the IEDC. Further, the Grantee agrees that any payments in arrears and currently due by the Grantee to the State of Indiana or to the IEDC may be withheld from payments due to the Grantee. Additionally, funding may be withheld, delayed, or denied; the IEDC or the State of Indiana may bar the Grantee from contracting with the IEDC or the State of Indiana in the future; and/or this Agreement or other agreements with the State of Indiana may be suspended until the Grantee is current in its payments and has submitted proof of such payment to the IEDC.
- D. The Grantee warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, or pending, and agrees that it will immediately notify the IEDC of any such actions. During the term of such actions, the Grantee agrees that the IEDC may delay, withhold, or deny funding otherwise available under this Agreement.
- E. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the IEDC or the State of Indiana or its agencies, and the IEDC decides to delay, withhold, or deny RCI Funds to the Grantee, the Grantee may request that it be allowed to receive RCI Funds without delay.
- F. The Grantee represents and warrants that the Grantee and each Subrecipient for an approved Project, if any, will obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental

statutes, rules, and regulations. In the event the Grantee or a Subrecipient breaches this covenant, the IEDC may suspend this Agreement or the specific Project in accordance with Paragraph 24.

- G. The Grantee agrees that the IEDC may confirm, at any time, that the Grantee has no past due liabilities to the IEDC or to the State. If any such liabilities are discovered, the Grantee agrees that the IEDC or the State may bar the Grantee from contracting with the IEDC or the State in the future, cancel existing contracts, withhold payments to offset such obligations, and/or withhold further payments or purchases until the Grantee becomes current in its payments on its liability to the IEDC or to the State and has submitted proof of such payment to the IEDC or to the State, or proof that such liability is not actually owed or past due.
- H. Any disbursement that the IEDC may delay, withhold, deny, or apply under this Agreement shall not be subject to penalty or interest under Indiana Code § 5-17-5.

#### **14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT.**

As required by Indiana Code § 5-22-3-7:

- A. The Grantee and any principals of the Grantee certify that:
  - 1) The Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:
    - a. Indiana Code § 24-4.7 [Telephone Solicitation of Consumers];
    - b. Indiana Code § 24-5-12 [Telephone Solicitations]; or
    - c. Indiana Code § 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
  - 2) The Grantee will not violate the terms of Indiana Code § 24-4.7 for the duration of this Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.
- B. The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee:
  - 1) Except for de minimis and nonsystematic violations, has not violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
  - 2) Will not violate the terms of Indiana Code § 24-4.7 for the duration of this

Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

**15. DRUG-FREE WORKPLACE CERTIFICATION.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Grantee, if it has employees, hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Grantee will give written notice to the IEDC within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of disbursements under this Agreement, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, the Grantee agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the IEDC in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the

implementation of subparagraphs (A) through (E) above.

**16. NONDISCRIMINATION.**

Pursuant to Indiana Code § 22-9-1-10, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee shall not discriminate against any employee or applicant for employment related to this Agreement with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, disability, national origin, ancestry, or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable federal and state laws and regulations prohibiting the aforementioned discrimination in the provision of services.

**17. NOTICE TO PARTIES.**

A. Whenever any notice, statement, submission, or other communication (“**Notice**”) is required under this Agreement, it shall be sent as follows:

1) Notice to the IEDC shall be sent to:

INDIANA ECONOMIC DEVELOPMENT CORPORATION  
ATTN: General Counsel  
One North Capitol Avenue Suite 700  
Indianapolis, IN 46204  
reports@iedc.in.gov

2) Notice to the Grantee shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Any change in a party’s contact information must be provided in writing to the other party in accordance with this Paragraph 17.

C. Except as set forth in Paragraph 17(D), Notice by electronic mail shall be sufficient. Notice shall be deemed delivered upon dispatch.

D. Notice regarding breach of contract, suspension, default, and/or termination under this Agreement shall be provided via electronic mail and via certified, registered, or first-class U.S. mail. Notice shall be deemed delivered upon dispatch.

**18. ASSIGNMENT & KEY PERSON(S).**

- A. This Agreement binds the Grantee's successors and assignees to all terms and conditions of this Agreement. The Grantee shall not assign the whole or any part of this Agreement without prior written approval of the IEDC.
- B. The Grantee may not, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, bankruptcy, or any other voluntary action, seek to avoid the observance or performance of its obligations to the IEDC under this Agreement.
- C. The Grantee and the IEDC shall mutually agree to designate a certain individual(s) of the Grantee's as the key person(s) for communications to this Agreement. In the event the key person(s) changes, the Grantee shall provide the IEDC notice and contact information for the replacement key person(s). The Grantee shall also identify an individual to the IEDC to serve as the primary contact regarding Public Releases (as further set forth in Paragraph 3) and a key person(s) as designated fiscal officer or advisor to serve as its primary liaison regarding disbursement of RCI Funds, if these individuals differ from the key person(s) for communications to this Agreement.

**19. INDEMNIFICATION.**

The Grantee agrees to indemnify, defend, and hold harmless the IEDC and the State and their respective agents, officers, employees, and representatives from all third party claims and suits arising from or relating to this Agreement. The Grantee shall bear all reasonable costs, including court costs, attorney's fees, and other expenses caused by any act or omission of the Grantee and/or its Subrecipients, contractors or invitees relating to said third party claims or suits. Notwithstanding the foregoing, the Grantee shall not be responsible to the IEDC for any costs for defense or indemnification arising from a breach of this Agreement by the IEDC. The IEDC shall not provide any indemnification whatsoever to the Grantee or its employees, contractors, Subrecipients or agents in connection with performance of this Agreement.

**20. DEBARMENT AND SUSPENSION.**

- A. The Grantee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency, branch of government, or by any department, agency, or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director or member.
- B. The Grantee certifies that it has verified the state and federal suspension and debarment status for all Subrecipients and contractors receiving RCI Funds under this Agreement and, subject to the provisions of this Agreement, shall be solely responsible for any recoupment, penalties, or costs that might arise from use of a suspended or debarred Subrecipient or contractor. The Grantee, as soon as it

becomes aware, shall immediately notify the IEDC if any Subrecipient or contractor becomes debarred or suspended, and shall, at the IEDC's request, take all steps required by the IEDC to terminate its contractual relationship with the Subrecipient or contractor for work to be performed under this Agreement.

**21. PENALTIES; INTEREST; ATTORNEY'S FEES.**

The IEDC will in good faith perform its required obligations under this Agreement and does not agree to pay any penalties, liquidated damages, interest, attorneys' fees, court costs, or litigation expenses, except as required by Indiana law, including Indiana Code § 5-17-5, Indiana Code § 34-54-8, and Indiana Code § 34-13-1. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the parties stipulate and agree that any liability of the IEDC shall be limited to only the amount of funding originating from the IEDC or the State of Indiana and shall not be based on funding from federal or other sources. In the event of legal action or proceedings of any kind, including without limitation enforcement of disbursement terms, the recapture of RCI Funds, whether brought by either party, the IEDC shall be entitled to reasonable attorney's fees, court costs, and other related reasonable expenses, plus interest pursuant to Indiana Code § 34-51-4-9.

**22. GOVERNING LAW.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana without regard to principles of choice of law, and suit, if any, must be brought in the State of Indiana. The venue for any court action shall be the circuit or superior court of Marion County, Indiana. The Grantee consents to the personal jurisdiction of Indiana courts.

**23. MISCELLANEOUS.**

- A. The headings in this Agreement are intended solely for reference and will be given no effect in the construction or interpretation of this Agreement.
- B. The parties agree that this Agreement, including any attached exhibits and/or attachments, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire agreement of the parties with respect to the subject matter hereof.
- C. This Agreement may not be altered or amended except in writing, signed by authorized representatives of the IEDC and the Grantee.
- D. No waiver of any default, failure to perform, condition, provision, or breach of this Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision, or breach of this Agreement.
- E. If any paragraph, term, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State

of Indiana, then the paragraph, term, condition, or provision so found will be deemed severed from this Agreement, but all other paragraphs, terms, conditions, and provisions will remain in full force and effect.

- F. The parties to this Agreement, in the performance thereof, will be acting in an individual capacity, and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons or any damage to any property arising out of the acts or omissions of the agents, Subrecipients, employees, or subagents of any other party.
- G. The Grantee shall be responsible for providing all legally required unemployment and workers' compensation insurance for its employees, if any.
- H. Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement shall remain in force during the term of this Agreement. Notwithstanding anything contained herein to the contrary, provisions of this Agreement which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the Expiration Date shall survive until their purposes are fulfilled.
- I. This Agreement may be executed through an original or electronically, and in duplicate or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same agreement.
- J. The Grantee understands that this Agreement is a public record as defined by the Indiana Access to Public Records Act (Indiana Code § 5-14-3-1, *et seq.*), and, once fully executed, will be posted on the IEDC's transparency portal, which is available at <https://transparency.iedc.in.gov>. Claim Forms and reports submitted to the IEDC under Paragraph 8 are public documents and are subject to public inspection pursuant to the Indiana Access to Public Records Act. Confidential financial information and other information that Grantee desires to be withheld from disclosure in accordance with the Indiana Access to Public Records Act should be submitted in a separate addendum clearly designated by the Grantee as confidential.
- K. If the Grantee refers to more than one entity, each entity shall be jointly and severally responsible to satisfy the obligations under this Agreement. In the event of a default, all entities are jointly and severally liable for the obligations in this Agreement, irrespective of which entity caused the default.
- L. Nothing in this Agreement shall be construed to confer any rights or remedies on any third party not a signatory to this Agreement, including the employees, Subrecipients, or other contractors of the Grantee.

- M. This Agreement was reviewed and/or revised by legal counsel for the IEDC and the Grantee, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.
- N. Nothing in this Agreement is intended to preclude or limit the IEDC's ability to seek remedies available at law or in equity against the Grantee in respect to claims of mismanagement, misappropriation, fraud, concealment, or similar claims of disbursed RCI Funds.

#### **24. SUSPENSION AND TERMINATION.**

- A. The IEDC reserves the right to suspend, in whole or in part, this Agreement for the appearance of an actual or potential violation of this Agreement or any relevant provision of federal or state laws, rules, or regulations. The Grantee shall be provided with notice of the suspension and a forty-five (45) day period in which to cure said violation or demonstrate that no violation exists. In the event an act (or failure) of the Grantee requires prompt intervention by the IEDC, an authorized IEDC representative may provide the Grantee with verbal notification of the suspension and extent thereof. Written notice of the suspension shall be provided to the Grantee within fifteen (15) days from the date of verbal notification. The notice shall include the qualifying violation(s) for such suspension and the extent to which the Grantee's duties set forth in this Agreement shall be suspended. In determining the suspension, the IEDC may consider the following criteria:

- 1) The severity of the violation.
- 2) The number of similar violations.
- 3) Whether the violations were willful or intentional.
- 4) Whether the violations involved dishonesty.
- 5) The history of prior violations.

During the suspension period, (i) the IEDC may give notice of its election to any of the remedies provided under Paragraph 6(B) and (ii) the Grantee will correct, cure, rectify, or otherwise address the violations, which may include presenting measures to the IEDC to prevent further violations. In the event the IEDC determines that the issue is sufficiently resolved, the IEDC shall provide notice to the Grantee that the parties shall resume, as soon as practical, their duties of this Agreement. No disbursements of RCI Funds shall be issued to the Grantee during the suspension period, unless otherwise agreed to in writing by the IEDC.

- B. This Agreement may be terminated by the IEDC whenever a material breach of this Agreement goes uncured by the Grantee after sixty (60) days' notice is provided to the Grantee. Termination for a material breach of this Agreement shall be effected by delivery to the Grantee of notice, at least thirty (30) days prior

to the date of termination (“**Termination Notice**”). The Termination Notice shall set forth the Grantee’s required dissolution procedures to conclude this Agreement, including return of all unused RCI Funds in the possession of Grantee or a Subrecipient. Upon Grantee’s receipt of the Termination Notice, no new or additional liabilities for RCI Funds disbursement by the IEDC shall be incurred without the prior written approval of the IEDC. The Grantee and its Subrecipients shall continue to be responsible and liable for the proper performance of its obligations to the date set forth in the Termination Notice, unless otherwise agreed to in writing by the IEDC.

- C. Nothing in this Paragraph 24 shall limit the IEDC’s right to take immediate action pursuant to Paragraph 6(B).

**25. AUTHORITY TO COMMIT TO THIS AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, the signatory for the Grantee represents that he/she has been duly authorized to execute contracts on behalf of the Grantee and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Grantee when his/her signature is affixed.

**26. DISPUTES.**

- A. Should any disputes arise with respect to this Agreement, the Grantee and the IEDC agree to act immediately to work to resolve such disputes. Neither party shall be required to submit to binding arbitration for the resolution of disputes. Time is of the essence in the resolution of disputes.
- B. The Grantee agrees that, the existence of a dispute notwithstanding, it will continue, without delay, to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the Grantee fail to continue to perform its responsibilities without delay, any additional costs incurred by the IEDC or the Grantee as a result of such failure to proceed shall be borne by the Grantee, and the Grantee shall make no claim against the IEDC for such costs.

**27. ORDER OF PRECEDENCE; INCORPORATION BY REFERENCE.**

Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement; (2) exhibits/attachments prepared by the IEDC; and (3) the RDP and exhibits/attachments prepared by the Grantee.

**28. FUNDING CANCELLATION.**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**29. GOOD FAITH COLLABORATION.**

The parties acknowledge that other development authorities are also entering into agreements with the IEDC to receive RCI Funds. The parties agree to collaborate in good faith and to work to perform their duties under this Agreement in a manner that helps reinforce consistency between and among the IEDC and the development authorities; provided however, that nothing in this Paragraph 29 shall limit the parties' rights or remedies under this Agreement as each faithfully performs its duties in the public interest.

**30. NON-COLLUSION AND ACCEPTANCE.**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member, or officer of the Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

*(Remainder of page intentionally left blank)*

**IN WITNESS WHEREOF**, the Grantee and the IEDC have, through duly authorized representatives, understood the foregoing terms of this Agreement and do by their respective signatures hereby enter into this Agreement and agree to the terms hereof.

**GRANTEE**

**INDIANA ECONOMIC  
DEVELOPMENT CORPORATION**

\_\_\_\_\_  
[Name]  
[Title]  
Date: \_\_\_\_\_

\_\_\_\_\_  
Victor P. Smith  
Secretary of Commerce  
Date: \_\_\_\_\_

*Acknowledged by:*

*Approved by:*

REGIONAL DEVELOPMENT BOARD

STATE BUDGET AGENCY

\_\_\_\_\_  
[Name]  
Date: \_\_\_\_\_

\_\_\_\_\_  
Brian E. Bailey, Director  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]  
Date: \_\_\_\_\_