

**NORTHEAST INDIANA REGIONAL DEVELOPMENT AUTHORITY REGIONAL  
CITIES INITIATIVE SUBRECIPIENT AGREEMENT**

This Northeast Indiana Regional Development Authority Regional Cities Initiative Subrecipient Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 201\_\_ (“Effective Date”), by and between the Northeast Indiana Regional Development Authority, a Regional Development Authority organized under Indiana Code § 36-7.6-1 et seq. and the laws of Indiana (the “RDA”), and \_\_\_\_\_, a(n) \_\_\_\_\_ (“Subrecipient”).

WHEREAS, the RDA has entered into a Indiana Economic Development Corporation Regional Cities Initiative Agreement with the Indiana Economic Development Corporation (“IEDC”) for the purposes of administering grants and loans the RDA receives from the Indiana regional city fund to support the IEDC’s Regional Cities Initiative (“RCI Funds”) in connection with the RDA’s Regional Development Plan, as amended (“RDP”) and in accordance with Indiana Code §5-28-37 and Indiana Code §5-28-38, a copy of which is attached hereto as Exhibit “A” and made a part hereof (“IEDC Agreement”).

WHEREAS, the Subrecipient has proposed a project as described on Exhibit “B” which is attached hereto and made a part hereof (“Project”) and the RDA wishes to provide RCI Funds to Subrecipient to perform the work necessary to complete such Project.

WHEREAS, pursuant to the IEDC Agreement, the RDA has requested and received approval of RCI Funds for the Project from the IEDC, in accordance with the Claim Form (as hereinafter defined) in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (“Project Funds”).

WHEREAS, Subrecipient requests that Project Funds be obtained and disbursed to Subrecipient to be utilized for the Project pursuant to the terms and conditions of this Agreement.

AND WHEREAS, the RDA agrees to disburse Project Funds in accordance with this Agreement.

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. **TERM OF AGREEMENT.** This agreement shall be effective upon the Effective Date and shall remain in full force and effect, unless sooner terminated in accordance with the terms herein or otherwise extended by the terms hereof, until a letter of completion is issued by the IEDC in accordance with Section 3.F. (the “Expiration Date”).

2. **PROJECT CLAIM FORM.** Prior to the execution of this Agreement, Subrecipient completed and submitted the Regional Development Plan Project Claim Form (“Claim Form”) to the RDA for approval and submittal to the IEDC. The Claim form was approved by the RDA, submitted to the IEDC and approved by the IEDC for the Project. The

approved Claim Form (and all other approval documents provided by the IEDC) is attached hereto as **Exhibit “C”** and made a part hereof.

**3. DISBURSEMENT OF PROJECT FUNDS.** Subject to the terms of this Agreement the parties agree that the Project Funds shall be disbursed in accordance with the schedule attached hereto as **Exhibit “D”** and made a part hereof (“**Distribution Schedule**”), but in no event sooner than funds are disbursed by the IEDC to the RDA in accordance with the IEDC Agreement.

- A. Each application for disbursement of Project Funds shall be made in writing and shall be directed to the RDA.
- B. Each application for disbursement shall be deemed a certification of the Subrecipient that as of the date of such application, all representations and warranties contained in this Agreement are true and correct and that the Subrecipient is in compliance with all the provisions of this Agreement.
- C. The RDA’s obligation to make the initial disbursement of the Project Funds under this Agreement shall be subject to the receipt by the RDA of:
  - a. fully executed copies of the construction contract and the architect’s contract for the Project;
  - b. fully executed:
    - i. loan agreements;
    - ii. all other economic incentive agreements;
    - iii. proof of equity; and
    - iv. all other documents evidencing (coupled with these Project Funds) all necessary funds to complete the Project have been obtained;
  - c. proof of ownership, leasehold rights or other rights reasonably satisfactory to the RDA that Subrecipient has the right and access to the real property for which the Project will be completed; and
  - d. corporate documentation reasonably satisfactory to the RDA establishing Subrecipient’s corporate (or other form) existence and authority, as well as establishing the authority of the signatory below to execute this Agreement.
- D. The RDA’s obligation to make each (including the initial) disbursement of the Project Funds under this Agreement shall be subject to the receipt by the RDA of:
  - a. all requirements of Section 3.C. shall being satisfied; and
  - b. certification by an engineer, architect, or other qualified inspector acceptable to the RDA that:
    - i. the construction of the Project has reached the required percentage stage of completion set forth in the Distribution Schedule; and
    - ii. construction has complied with all applicable plans, specifications, statute, ordinances, codes, regulations and other similar requirements

as set forth in the construction documents, Claim Form and this Agreement.

- E. Disbursement of Project Funds for the Project shall be made within thirty-five (35) days of receipt of the application and supporting documentation outlined herein and shall be made in accordance with this Agreement. Notwithstanding the foregoing, if the IEDC elects a scheduled distribution of Project Funds in accordance with Section 3.C.3) a. of the IEDC Agreement, Project Funds may be delayed in accordance with the scheduled approved by the IEDC.
- F. Subrecipient shall provide notice to the RDA when the Project is completed. The RDA will subsequently notify the IEDC, who shall review the Project, and shall issue a letter of completion to the RDA to acknowledge the Project completion.

**3. DUTIES AND RESPONSIBILITIES OF SUBRECIPIENT.** Subrecipient shall use the Project Funds received pursuant to this Agreement exclusively in compliance with the provisions of this Agreement, the approved Claim Form, the IEDC Agreement, the RDP, federal, and state (in conformance with Indiana Code §5-28-37, Indiana Code §5-28-38, and other legal authority affecting the use of Project Funds) laws. In exchange for receipt of the Project Funds for the Project, the Subrecipient also agrees to comply with the following:

- A. Compliance with IEDC Agreement. Subrecipient shall comply with any and all applicable terms, provisions, conditions and restrictions contained in the IEDC Agreement.
- B. Applying for funding. Subrecipient shall be solely responsible for applying, securing, and retaining federal, state, private, or other public funding of any nature the Subrecipient wishes to obtain to assist Subrecipient in carrying out the Project.
- A. Design and Implementation. The Subrecipient shall be solely responsible for overseeing and/or completing the proper design and implementation of the Project approved by the RDA.
- C. Documentation. Upon request, Subrecipient shall provide the RDA with any necessary information or documentation regarding any contracts, accountings, agreements or similar documents with other parties relating to this Agreement, including any subcontract 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 Subrecipient's reasonable best efforts, are available. Subrecipient shall provide notice to the RDA of any material changes to these contracts, agreements, or similar documents. Upon request, Subrecipient shall submit the materially changed contracts, agreements or similar documents to the RDA.
- D. Subrecipient's contractors. Subrecipient understands and agrees that Subrecipient and any of its own selected contractors and/or subcontractors are solely

responsible for the selection of vendors, contractors, other subcontractors, or similar parties for the performance of the Project. The RDA has no role in selecting a vendor, contractor, subcontractor, or similar party for the performance of the Project, regardless of whether the RDA has listed the vendor, contractor, subcontractor or similar party on the Claim Form. Subrecipient may enter into any contracts or agreements necessary or incidental to the performance of this Agreement; however, the RDA shall not be bound by any contracts or agreements of Subrecipient unless otherwise agreed to by the RDA in writing.

- E. Further Assurances. Subrecipient shall from time to time execute and deliver all other documents and instruments and do all things and acts as the RDA reasonably deems necessary to comply with the IEDC Agreement or carry out, better evidence, or perfect the full meaning of this Agreement.

**4. PROJECT COMPLETION ACCORDING TO CLAIM FORM.** Subrecipient furnished all plans, drawings and specifications, if not provided as part of the Claim Form, in connection with the Project and in accordance with which the Subrecipient is to perform the work for the Project. Any additional documents that were not a part of the Claim Form are attached as **Exhibit “E”** to this Agreement and made a party hereof. It is intended that the Claim Form includes everything required and necessary to complete the entire Project properly, even though certain minor items are not mentioned. All work when finished shall be in a complete and undamaged state. Unless otherwise set forth in this Agreement, Subrecipient shall not undertake any work on the Project not a part of the approved Claim Form. The Project is to be made complete in accordance with the Claim Form and to the reasonable satisfaction of the RDA notwithstanding any minor omissions in the plans, drawings or specifications.

**5. MATERIAL CHANGE.** Subrecipient shall provide notice to the RDA of any material changes to the Project. A material change occurs when there is any of the following: (i) an increase in the total cost of the Project of five percent (5%) or more and which, as a result of that increase, would require additional Project Funds for the Project or (2) change in the nature of the Project from the Subrecipient’s submission on the approved Claim Form (“**Material Change**”). After receipt of notice of a Material Change, the RDA will notify the IEDC to determine if an amended Claim Form is required to proceed with the Project. Notwithstanding any other remedy herein, in the event that Project Funds have been disbursed to the Subrecipient and the IEDC and/or the RDA reasonably determines the Project is becoming unviable for some reason, including due to a Material Change or either party reasonably determines Project Funds have or will be used in a manner not permitted by this Agreement, the Subrecipient shall cease any further expenditure of Project Funds for the Project until such time as the parties reach an agreement in writing on how to proceed.

**6. RESTRICTIONS OF PROJECT FUNDS.** Any architectural, preliminary engineering design, environmental reviews, or other similar costs that Subrecipient intends to pay for with Project Funds may be incurred by the Subrecipient for the Project prior to the RDA and the IEDC's approval of the Claim Form. Notwithstanding the foregoing, the Subrecipient, upon its own credit and expenses, assumes the sole risk for costs incurred prior to the RDA and the IEDC's approval of the Claim Form. Subrecipient may incur any cost for the Project it

deems appropriate, without the RDA's approval, only if Subrecipient does not intend to request reimbursement for such expenses with Project Funds and provided it does not result in a Material Change. Subrecipient represents and warrants that any Project Funds it receives for the Project will be used only as permitted by this Agreement.

Project Funds shall not be expended by the Subrecipient to cover any costs associated with the following: (i) travel expenses or meals; (ii) applying for the Regional Cities Initiative; or (iii) any costs incurred before January 1, 2016. Subrecipient shall promptly notify the RDA of any suspected failure to use the Project Funds in accordance with this Agreement. Upon such notification, the RDA and Subrecipient shall work together to resolve the concerns. In the event that the RDA determines that there has been a failure to use Project Funds in accordance with this Agreement and said concerns cannot be immediately resolved the RDA will act in accordance with Sections 12 and 13 of this Agreement unless other remedies are required under the IEDC Agreement.

**7. PROJECT CONSTRUCTION.** The Subrecipient shall furnish all labor, supervision, materials, temporary structures, scaffolding, equipment, tools, and appliances of any sort which are necessary to complete the Project. All construction equipment shall be of adequate size and capacity to safely and efficiently handle the work for which it is used.

**8. COMPLIANCE WITH LAWS.**

- A. Subrecipient 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. Subrecipient shall be solely responsible and agrees to obtain all necessary permits and licenses required for the Project and shall be responsible for the payment of any required fees. 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 RDA and the Subrecipient to determine whether the provisions of this Agreement require formal modification.
- B. Subrecipient 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 Subrecipient is not familiar with these ethical requirements, the Subrecipient should refer any questions to the Indiana State Ethics Commission, or visit Inspector General's website at <http://www.in.gov/ig>. In addition, the Subrecipient 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. Subrecipient represents and warrants that it will obtain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules and regulations in regards to the Project. In the event that Subrecipient breaches this covenant, the RDA may immediately suspend or terminate the Agreement.

**9. RISK OF LOSS AND INSURANCE.** The Project shall be under the charge and control of the Subrecipient and all risks of loss or damage in connection therewith and the materials, supplies and equipment to be used therein shall be borne exclusively by the Subrecipient. Subrecipient shall maintain, at Subrecipient's own expense insurance coverages, insuring Subrecipient, Subrecipient's employees, agents and designees and the indemnitees as required herein in commercially reasonable amounts, which insurance shall name the RDA as an additional named insured and shall incorporate a provision requiring the giving of written notice to the RDA at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies as evidenced by return receipt of United States Certified Mail. Subrecipient shall also maintain Builder's Risk Insurance in an amount at least equal to the projected completion value of the Project covering property damage. All deductibles of any policy of insurance to be purchased by Subrecipient hereunder shall be borne by Subrecipient. Subrecipient shall submit valid certificates in form and substance satisfactory to the RDA evidencing the effectiveness of the foregoing insurance policies along with copies of the amendatory riders to any such policies.

**10. INDEMNITY.** Subrecipient shall INDEMNIFY, DEFEND, AND HOLD HARMLESS the RDA and its officers, employees, and agents, from any and all damages, losses, claims, demands, suits, liabilities, penalties, or forfeitures of every kind and nature (collectively "**Claims**"), including but not limited to reasonable attorneys' and experts' fees and expenses and other costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of bodily and other personal injuries to or deaths of persons; damages to tools or equipment owned or leased by Subrecipient; damages to other property; the release or threatened release of a hazardous substance or any pollution or contamination of or other adverse effects on the environment; violations of any applicable laws; or infringement of patent, copyright, trademark, trade secret, or other property right to the extent resulting or alleged to have resulted from acts or omissions of Subrecipient, its employees, agents, contractors, subcontractors, or other representatives or otherwise arising out of, directly or indirectly relating to, or in connection with the performance of this Agreement, the Project or otherwise, whether suffered directly by the RDA or indirectly by reason of third party claims, demands, or suits. This obligation to indemnify, defend, and hold harmless shall survive termination or expiration of this Agreement and shall apply whether or not it is alleged that the RDA in any way contributed to the Claims or is liable due to a non delegable duty, however the Subrecipient shall not be responsible for any Claim(s) which are caused by the sole negligence or sole willful misconduct of the RDA where such is contrary to law. The indemnification obligation under the Agreement may not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subrecipient or any contractor(s), subcontractor(s) or materialmen under worker's or workmen's compensation acts, disability benefit acts or other employee benefits acts. Without limiting the generality of the foregoing, the indemnity herein shall include all Claims arising out of personal injury, death or damage to personal property of the Subrecipient or its contractors or subcontractor's employees or agents or licensees or invitees or to any other persons, whether based upon or claimed to be based upon, statutory, contractual, common law, tort (including but not limited to negligence, fraud, conversion, intentional tort or other common law tort) or other liability of Subrecipient, Subrecipient's representatives, employees, contractors, subcontractors, material men or suppliers or any other persons. The promise of indemnification herein shall be construed to reflect Subrecipient's intent to indemnify

the RDA to the fullest extent permitted by law for such Claims. Subrecipient shall insure specifically the indemnity contained hereinabove and shall include the RDA as an additional insured by causing amendatory riders or endorsements to Subrecipient's insurance policies. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR OR HAVE ANY DUTY FOR INDEMNIFICATION OR CONTRIBUTION TO THE OTHER PARTY FOR ANY CLAIMS FOR STATUTORY OR COMMON LAW INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR TREBLE DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, REVENUE, PROFIT, BUSINESS OPPORTUNITIES AND THE LIKE, DEPRECIATION OR DIMINUTION IN VALUE, EVEN IF THE PARTY HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

**11. LIENS.** The Subrecipient shall make prompt payments to all persons who have done work or furnished materials for the Subrecipient's performance of the work and shall, from time to time upon demand, furnish satisfactory evidence to the RDA that such persons are entitled to no further compensation. In the event a lien shall be filed against the Project, by any person who has done work or furnished materials for or in the performance of the Subrecipient or its representatives work, the Subrecipient shall at its expense, upon demand of the RDA, take all necessary action, by bond or otherwise, to cause any such lien to be release or discharged therefrom, and Subrecipient shall fully indemnify the RDA against any loss or expense in connection therewith, including reasonable expert and attorneys' fees incurred by the RDA.

**12. SUSPENSION.** The RDA reserves the right to immediately 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. Subrecipient 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 Subrecipient requires prompt intervention by the RDA, an authorized RDA representative may provide the Subrecipient with verbal notification of the suspension and extent thereof. Written notice of the suspension shall be provided to the Subrecipient within fifteen (15) days from the date of verbal notification. The notice shall include the qualifying violation(s) for such suspension and the extent of the suspension. In determining the suspension, the RDA may consider the following criteria: (i) the severity of the violation; (ii) the number of similar violations; (iii) whether the violations were willful or intentional; (iv) whether the violations involved dishonesty; and (v) the history of prior violations. In the event the RDA determines that the issue is sufficiently resolved, the RDA shall provide notice to the Subrecipient that the parties shall resume, as soon as practical, their duties of this Agreement. No disbursements of Project Funds shall be issued to the Subrecipient during the suspension period.

**13. TERMINATION.** This Agreement may be terminated by the RDA whenever a material breach of this Agreement goes uncured by the Subrecipient after forty-five (45) days' notice is provided to the Subrecipient or if the IEDC or the IEDC Agreement requires immediate termination. Termination for a material breach of this Agreement will thereupon occur and be effective by delivery to the Subrecipient of notice, at least fifteen (15) days prior to the date of termination ("**Termination Notice**"). The Termination Notice shall set forth the Subrecipient's

required dissolution procedures to conclude this Agreement, including return of all unused Project Funds in the possession of Subrecipient and the return of all Project Funds if required by the IEDC. Upon Subrecipient's receipt of the Termination Notice, no new or additional liabilities for Project Funds disbursement by the RDA shall be incurred without the prior written approval of the RDA. Subrecipient 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 RDA. Nothing in this paragraph shall limit the RDA's right to take immediate action for misuse of Project Funds as set forth herein above. Notwithstanding anything contained herein, the RDA may notify the Subrecipient to return all Project Funds transferred to it by the RDA and may use any and all legal remedies to collect the same if Subrecipient is noncompliant with such request.

**14. CANCELLATION OF FUNDING FOR RCI FUNDS.** In the event that the Director of the State Budget Agency makes a written determination that RCI Funds and/or Project Funds are not appropriated or otherwise available to support the continuation of the performance of this Agreement, this Agreement shall be cancelled. A determination by the Director of the State Budget Agency that RCI Funds and/or Project Funds are not appropriated or otherwise available to support the continuation of performance of the Project shall be final and conclusive and this Agreement shall immediately terminate.

**15. DRUG-FREE WORKPLACE CERTIFICATION.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Subrecipient, if it has employees, hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Subrecipient will give written notice to the RDA within ten (10) days after receiving actual notice that the Subrecipient, or an employee of the Subrecipient 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 Subrecipient 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 Subrecipient'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 Subrecipient'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 Subrecipient 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 RDA 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 Subrecipient 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. DIVERSITY BUSINESSES.** Subrecipient shall use its reasonable best efforts and is encouraged to contract for services with or purchase materials from Indiana-based persons, including contracting with Indiana minority, women's, and veteran's business enterprises ("**diverse business(es)**").

**18. DEBARMENT.** Subrecipient represents, warrants, and certifies that it or its principals are not 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 the purposes of this Agreement shall mean any officer, director or member.

**19. NOTICES.** All notices to be given under this Agreement shall be in writing, and shall be deemed to have been given and served when delivered in person, by Federal Express, UPS or similar overnight carrier, or by United States mail, postage pre-paid to the addressee at the following addresses:

RDA:  
Northeast Indiana Regional Development Authority

Attn: Alan Tio  
200 E Main St #910  
Fort Wayne, IN 46802

Subrecipient:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change its mailing address by serving written notice of such change and of such new address upon the other party.

**20. PERIODIC MONITORING REVIEWS.** The IEDC may carry out periodic monitoring reviews (“**Periodic Monitoring Reviews**”) of the RDA and/or the Project, as deemed appropriate by the IEDC. The IEDC shall not be required to provide the RDA or Subrecipient advance notice of such Periodic Monitoring Reviews except as reasonably required to make sure the necessary individuals and materials are available. Subrecipient shall cooperate 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: (i) 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 RDA has submitted to the IEDC; (ii) 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; (iii) a detailed listing of a Project’s costs by Project budget line item which are accrued yet unpaid, if applicable; (iv) a written evaluation of a Project with respect to the RDA and/or Subrecipient’s timely progress in Project management, financial management, control systems, procurement systems and methods, and performance relative to timely submission of the RDA’s quarterly progress reports required pursuant to the IEDC Agreement. Subrecipient 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 RDA to suspend or terminate this Agreement. In the event that the IEDC requests a final audit following the completion of the Project, the Subrecipient shall cooperate with such audit and any and all other requests for monitoring or evaluation efforts required by the RDA or the IEDC.

**21. DISCLOSURE OF PUBLIC RECORDS.** Subrecipient 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>. The Claim Form and any reports submitted to the IEDC by the RDA under this Agreement 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 Subrecipient 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 Subrecipient as confidential. Subrecipient shall also allow the RDA to distribute public information, data, or statistics that the RDA collects on the RDP and

the Project to third parties. If requested, the Subrecipient shall work together on the terms of the data collection, format, submission timelines and distribution methods.

**22. PUBLIC RELEASE.** Subrecipient shall use reasonable efforts to coordinate with the RDA 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 the Project. Should the RDA reasonably object to the Subrecipient's Public Release, the parties agree to work together to resolve and/or revise the Public Release. Subrecipient shall ensure that prompt responses and materials are provided to the RDA for the preparation of any Public Release. Subrecipient shall designate an individual to serve as the primary contact regarding Public Releases. In no event shall Subrecipient be required to notify the RDA prior to making a notice, submission, or disclosure as required by law.

**23. USE OF IEDC AND RDA NAME.** The RDA and IEDC have not granted any rights to use their name, trademark, intellectual property, or logos. Subrecipient shall not use the IEDC's or the RDA's name or intellectual property, including IEDC or RDA trademarks or logos, in any manner, including commercial advertising or as a business reference, without the prior written consent of the IEDC or the RDA. For any purposes outside those contemplated by this Agreement, and for which the IEDC's participation will be referenced, the IEDC or the RDA shall have the right of review and approval of the use, disclosure, and the finished product prior to publication. All such requests from the Subrecipient must be made in writing and delivered to the RDA for approval at its sole discretion. Any requests by Subrecipient for the use of the IEDC name or intellectual property shall be first submitted to the RDA who shall work with the IEDC regarding review and approval.

**24. ASSIGNMENT.** The RDA shall have the right to unilaterally assign its rights to recover RCI Funds and delegate its rights under this Agreement to the IEDC. In such event, the RDA shall provide advance notice to the Subrecipient of such unilateral assignment and delegation. **THE PARTIES AGREE THAT IN NO EVENT SHALL THIS PROVISION BE VOIDED OR CONSTITUTE A MATERIAL BREACH AS SIGNATURE TO THIS AGREEMENT SHALL CONSTITUTE THE PARTIES' CONSENT TO THE RDA'S UNILATERAL ASSIGNMENT AND DELEGATION TO THE IEDC.** Subrecipient shall not assign, transfer, or convey or otherwise dispose of this Agreement or any part hereof, to any person, company, or corporation, without the prior written consent of the RDA.

**25. GOOD FAITH ASSURANCES.** The parties to this Agreement shall in good faith undertake to perform their obligations under this Agreement, to satisfy all conditions and to cause the transactions contemplated by this Agreement to be carried out promptly in accordance with the terms of this Agreement. Upon the execution of this Agreement and thereafter, each party shall do such things as may be reasonably requested by the other party hereto in order more effectively to consummate or document the transactions contemplated by this Agreement.

**26. 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 RDA and Subrecipient.
- 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. This Agreement shall be governed in accordance with the laws of the state of Indiana. The venue for disputes hereunder shall be exclusive to local and federal courts of Allen County, Indiana.
- G. The Subrecipient 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. Claim Forms and reports submitted to the IEDC 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 Subrecipient 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 Subrecipient as confidential.
- K. If the Subrecipient 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, or other contractors of the Subrecipient.
- M. This Agreement was reviewed and/or revised by legal counsel for the RDA and Subrecipient, 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 RDA’s ability to seek remedies available at law or in equity against the Subrecipient in respect to claims of mismanagement, misappropriation, fraud, concealment, or similar claims of disbursed Project Funds.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**NORTH EAST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“RDA”**

**“Subrecipient”**

# List of Exhibits

- Exhibit A - Indiana Economic Development Corporation Regional Cities Initiative Agreement
- Exhibit B - Project Description
- Exhibit C - Approved Project Claim Form
- Exhibit D - Distribution Schedule
- Exhibit E - Additional Plans and Specifications

Exhibit D  
Distribution Schedule  
(Sample)

*Twenty-Five Percent (25%) Completion:* (\$\_\_\_\_\_);  
*Fifty Percent (50%) Completion:* (\$\_\_\_\_\_);  
*Seventy-Five Percent (75%) Completion:* (\$\_\_\_\_\_); and  
*One Hundred Percent (100%) Completion:* (\$\_\_\_\_\_).