

Hoosier Business Investment Tax Credit Agreement

This Hoosier Business Investment Tax Credit Agreement (“Agreement”) is entered into by and between the Indiana Economic Development Corporation (the “IEDC”) and Central Indiana Ethanol, LLC (the “Company”). 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 AGREEMENT:

Pursuant to I.C. 6-3.1-26 et seq. and in accordance with the terms and conditions contained herein, the purpose of this Agreement is to foster job creation and higher wages in Indiana. In order to fulfill this purpose, the IEDC has awarded, and this Agreement specifies the terms of, a credit for the Company against its Indiana state tax liability, as defined by I.C. 6-3.1-26-9 (“State Tax Liability”), that may be imposed on the Company for certain tax years of the Company (each a “Taxable Year”) as set forth in Paragraph 4 below.

2. TERM OF AGREEMENT:

This Agreement will commence effective as of August 5, 2005 and shall be in effect until December 31, 2015 (“Term”).

3. DESCRIPTION OF THE PROJECT:

The Company will (i) build a new ethanol facility in Marion, IN and (ii) purchase equipment (“Project”). The number of full-time employees, as defined in I.C. 6-3.1-26-4 (“Full-Time Employees”), employed by the Company at the Project location on August 5, 2005 is established at 0 employees with an average hourly wage of [REDACTED] (“Current Full-Time Employees”). During each Calendar Year of the Term, the annual number of Full-Time Employees, and the annual average hourly wage of such Full-Time Employees employed by the Company at the Project location in Indiana shall be equal to or greater than the following (the “Fiscal Impact Requirements”):

<u>Calendar Year</u>	<u>Aggregate Employment at Project Location</u>	<u>Average Hourly Wage of All Employees</u>
December 31, 2005	3	
December 31, 2006 – 2015	37	

4. DURATION OF THE TAX CREDIT:

The Company may claim a tax credit for any Taxable Year during the Term in which the Company makes a qualified investment, as defined in I.C. 6-3.1-26-8 (“Qualified Investment”), that is certified by the IEDC pursuant to Paragraph 5 below. Notwithstanding the foregoing or anything in the Agreement to the contrary, the Company shall not be entitled to a tax credit for any Qualified Investment made after December 31, 2007. The first Taxable Year for which the tax credit may be claimed under this Agreement is the Company’s Taxable Year ending September 30, 2006 (“First Taxable Year”). The Company may carry forward an unused tax credit for nine (9) consecutive Taxable Years beginning with the Taxable Year after the Taxable Year in which the Company makes the Qualified Investment.

5. CERTIFICATION OF TAX CREDIT:

A. The Company shall submit a certification report to the IEDC on or before forty-five (45) days following the close of each Taxable Year during the Term of this Agreement. If the Company makes a Qualified Investment in a Taxable Year, then the Company shall submit the following information to the IEDC regarding the applicable Taxable Year:

1. The information requested by the IEDC in its Annual Certification Procedure Packet;
2. The Company’s federal identification number and taxpayer account number as assigned by the Indiana Department of Workforce Development for the purpose of unemployment insurance, to assist in the verification of the provided information;

3. The number of Full-Time Employees employed by the Company at the Project location;
4. The average wage of all Full-Time Employees employed by the Company at the Project location;
5. The average wage of all Full-Time Employees excluding highly compensated employees, as defined in Section 414 (q) of the Internal Revenue Code ("Highly Compensated Employees"), employed by the Company at the Project location;
6. The total payroll amount (not to include non-taxable fringe benefits) paid to Full-Time Employees employed by the Company at the Project location during the Taxable Year; and
7. Any other information required by the IEDC to perform its duties under I.C. 6-3.1-26.

The above information submitted must be certified as true and correct by an officer of the Company. The IEDC shall review the information submitted by the Company and shall certify the aggregate Qualified Investment made by the Company in the applicable Taxable Year. The IEDC will also certify the maximum tax credit the taxpayer may claim for such Taxable Year, which shall be subject to the limitations set forth in Paragraph 6 below.

B. For each Taxable Year ending after the last Taxable Year for which a Qualified Investment has been made, up to and including the Taxable Year ending at the expiration of the Term of the Agreement, the Company's annual report to the IEDC shall consist of the following information:

1. The information requested by the IEDC in its Annual Certification Procedure Packet;
2. The Company's federal identification number and taxpayer account number, as assigned by the Indiana Department of Workforce Development for the purpose of unemployment insurance, to assist in the verification of the provided information;
3. The number of Full-Time Employees at the Project location;
4. The average wage of all Full-Time Employees employed by the Company at the Project location;
5. The average wage of all Full-Time Employees excluding highly compensated employees, as defined in Section 414 (q) of the Internal Revenue Code ("Highly Compensated Employees"), employed by the Company at the Project location;
6. The total payroll amount (not to include non-taxable fringe benefits) paid to Full-Time Employees employed by the Company at the Project location during the Taxable Year;
7. The assessed value of real and personal property at the Project location;
8. Confirmation that the Qualified Investment property is maintained in Indiana; and
9. Any other information the IEDC needs to perform the IEDC's duties under I.C. 6-3.1-13.

6. CREDIT AMOUNT ALLOWED:

Subject to the limitations set forth herein, the tax credit allowed for each Taxable Year shall equal 2.5% of the Qualified Investment made by the Company during such Taxable Year, as certified by the IEDC (plus any unused credit carried forward from a prior Taxable Year). Notwithstanding the foregoing or anything in this Agreement to the contrary, the aggregate tax credits for all Taxable Years shall not exceed \$1,330,000. Furthermore, the Company acknowledges and agrees that the tax credit granted pursuant to this Agreement is conditioned upon the representations of the Company set forth in this Agreement, including without limitation those made pursuant to Paragraph 3 above. If the Company fails to meet or exceed the Fiscal Impact Requirements set forth in Paragraph 3 for a given Taxable Year, the IEDC may (i) reduce the amount of Qualified Investment, if any, certified for such Taxable Year, and (ii) recommend an assessment pursuant to Paragraph 8 below. For each Taxable Year, the Company shall compute the amount of tax credit to which it is entitled consistent with the terms and conditions of this Agreement. The actual amount of the tax credit allowable to the taxpayer is subject to the final determination of the Indiana Department of Revenue under I.C. 6-8.1-3-12 and I.C. 6-8.1-5.

7. DUTIES AND RESPONSIBILITIES OF THE COMPANY:

- A. In entering into this Agreement, the Company has made certain representations to the IEDC regarding the Project. These representations include, but are not limited to, the amount of the capital investment, anticipated new jobs and annual payroll. The Company verifies that these representations are true and accurate.

- B. The Company shall maintain operations at the Project location for at least the Term of this Agreement.

- C. The Company shall use the following specific method for determining the number of New Employees during a Taxable Year: subtract the number of Full-Time Employees employed at the Project location as established in

Paragraph 3 from the number of Full-Time Employees employed at the Project on the last day of the applicable Taxable Year. For purposes of this subparagraph, Full Time Employees shall not include employees excluded from the definition of New Employees pursuant to IC 6-3.1-13-6(b).

- D. The Company shall keep the Qualified Investment property at the location that is the basis for the tax credit in Indiana for at least (i) the useful life of the property, as determined for federal income tax purposes; or (ii) ten (10) years; whichever is less.
- E. The Company shall pay an average wage to all its employees excluding Highly Compensated Employees in each Taxable Year that the tax credit provided herein is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under I.C. 22-2-2-4 or its equivalent.
- F. The Company shall maintain at the location where the Qualified Investment is made during the Term of this Agreement a total payroll that is at least equal to the payroll level that existed before the Qualified Investment was made.
- G. The Company shall provide written verification to the IEDC not more than thirty (30) days after it makes or receives a proposal that would transfer its State Tax Liability obligations to a successor taxpayer. The successor taxpayer may only receive the tax credits pursuant to this Agreement with the advance written consent of the IEDC.
- H. As required under I.C. 6-3.1-26-22, the Company shall submit a copy of the certificate of verification to be issued by the IEDC pursuant to this Agreement, along with its annual state tax return to the Indiana Department of Revenue (the "IDOR") at the time the Company's annual state tax return is filed.

- I. The Company agrees that at least 90% of its Qualified Investment will be spent with Indiana Businesses (as defined by I.C. 5-22-15-20.5). The Company shall determine and report the percentage of Qualified Investment spent with Indiana Businesses at the request of the IEDC. Furthermore, the Company shall permit the IEDC to conduct an on-site audit, or other means of assessment, to determine the Company's compliance with this provision.

8. DUTIES AND RESPONSIBILITIES OF THE IEDC:

- A. The IEDC is hereby authorized to verify with the appropriate state agencies the information reported by the Company under Paragraph 5 of this Agreement.
- B. Pursuant to I.C. 6-3.1-26-23, if the President of the IEDC determines that the Company is not complying with the requirements of this Agreement or any of the provisions of I.C. 6-3.1-26 et seq., the President shall, after giving the Company an opportunity to explain the noncompliance, notify the IDOR of the noncompliance and request an assessment. The IDOR, with the assistance of the IEDC, shall state the amount of the assessment, which may not exceed the sum of any previously allowed credits under I.C. 6-3.1-26 et seq. After receiving the notice, the IDOR shall make an assessment against the Company under I.C. 6-8.1.

9. NONDISCRIMINATION:

Pursuant to I.C. 22-9-1-10, the Company shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the employee's or applicant's hire, tenure, terms, conditions, or privileges of employment because of the employee's or applicant's race, color, religion, sex, handicap, national origin, ancestry, or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement.

10. NOTICE TO PARTIES:

Whenever any notice, statement or other communications shall be sent to the IEDC or the Company, it shall be sent to the following address, unless otherwise specifically advised.

A. Notices to the IEDC shall be sent to:

Indiana Economic Development Corporation
Tax Incentives Manager
Office of Development Finance
One North Capitol, Suite 700
Indianapolis, IN 46204

B. Notices to the Company shall be sent to:

Mitch Miller
General Manager
Central Indiana Ethanol, LLC
2955 W. Delphi Pike
Marion, IN 46953

11. AUTHORITY TO BIND:

Notwithstanding anything in this Agreement to the contrary, the signatory for the Company represents that he/she has been duly authorized to execute this Agreement on its behalf.

12. ASSIGNMENT:

The Company shall not assign the whole or any written part of this Agreement without the IEDC's prior written consent.

13. REMEDIES NOT IMPAIRED:

No delay or omission of the IEDC in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

14. COMPLIANCE WITH LAWS:

The Company 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 of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IEDC and the Company to determine whether the provisions of the Agreement require formal modification.

- A. The Company 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 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Company is not familiar with these ethical requirements, the Company should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Company or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the Company. In addition, the Company may be subject to penalties under Indiana Code § 4-2-6-12.

- B. The Company certifies by entering into this Agreement, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Company agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Company. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Company is current in its payments and has submitted proof of such payment to the IEDC.

- C. The Company warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that

it will immediately notify the IEDC of any such actions. Any payments that the IEDC may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

- D. The Company warrants that the Company and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of business activities. Failure to do so is a material breach of the Agreement and grounds for immediate termination of the Agreement. The Company hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

- E. The Company agrees that the IEDC may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that Company may be barred from contracting with the State of Indiana in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State of Indiana and has submitted proof of such payment to the IEDC.

- F. As required by IC 5-22-3-7:
 - 1. The Company and any principals of the Company certify that:
 - a. The Company, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations], or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines]in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

- b. The Company will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
2. The Company and any principals of the Company certify that an affiliate or principal of the Company and any agent acting on behalf of the Company or on behalf of an affiliate or principal of the Company:
 - a. Except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - b. Will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

15. GOVERNING LAWS:

- a. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules and suit, if any, must be brought in the State of Indiana.

16. ENTIRE AGREEMENT:

This Agreement and attachments hereto contain the entire understanding of the parties and this Agreement supersedes all prior agreements and understandings, oral and written, with respect to this subject matter.

17. MAINTAINING A DRUG-FREE WORKPLACE:

- A. The Company hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Company will give written notice to the IEDC within ten (10) days after receiving actual notice that an

employee has been convicted of a criminal drug violation occurring in the Company's workplace.

- B. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of benefits, termination of this Agreement and/or debarment of the Company from doing further business with the State of Indiana for up to three (3) years.
- C. In addition to the provisions of the subparagraphs A and B above, if the total estimated value of the tax credits to be received by the Company pursuant to this Agreement is in excess of \$25,000.00, the Company hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:
 - D. This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all agreements with and grants from the State of Indiana in excess of \$25,000.00. No award of an agreement shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Company and be made a part of this Agreement as part of the Agreement documents.
- E. The Company certifies and agrees that it will provide a drug-free workplace by:
 - 1. Publishing and providing to all of its employees a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited

in the Company's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establishing a drug-free awareness program to inform its employees of (i) the dangers of drug abuse in the workplace; (ii) the Company's policy of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph 1 above that as a condition of continued employment the employee will (i) abide by the terms of the statement; and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision 3(ii) above, or otherwise receiving actual notice of such conviction;
5. Within thirty (30) days after receiving notice under subdivision 3(ii) 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: (i) take appropriate personnel action against the employee, up to and including termination; or (ii) require 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

6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 1 through 5 above.

18. INDEMNIFICATION:

The Company agrees to indemnify, defend, and hold harmless the IEDC and the State of Indiana and their respective agents, officers and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Company and/or its subcontractors, if any. The IEDC shall not provide such indemnification to the Company.

19. PENALTIES/INTEREST/ATTORNEY'S FEES:

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, I.C. 5-17-5-1 et seq., I.C. 34-54-8-5 et seq., and I.C. 34-13-1-6 et seq.

20. SEVERABILITY:

The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

21. 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.

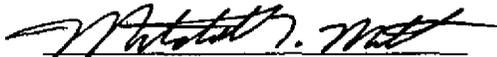
22. TERMS:

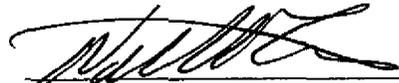
Terms not otherwise defined in this Agreement shall have the meanings set forth in I.C. 6-3.1-26 et seq.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement on the dates entered below.

**CENTRAL INDIANA ETHANOL,
LLC**

**INDIANA ECONOMIC
DEVELOPMENT CORPORATION**

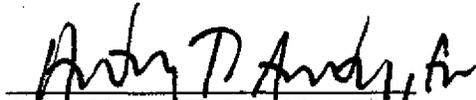

BY: Mitchell J. Miller
TITLE: General Manager


BY: Nathan J. Feltman
TITLE: CS

DATE: 1/18/07

DATE: 3/19/07

**STATE BUDGET AGENCY CERTIFICATION
PURSUANT TO I.C. 6-3.1-26-18**


BY: Charles E. Schalliol, Director
The State Budget Agency

DATE: 4/17/07