

**INDIANA ECONOMIC DEVELOPMENT CORPORATION  
INDUSTRIAL DEVELOPMENT GRANT FUND  
GRANT AGREEMENT  
(REV: 8/10)**

THIS GRANT AGREEMENT (the or this "Agreement"), entered into by and between **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the "IEDC") and the **CITY OF MARION** (the "Grantee") is executed pursuant to the terms and conditions set forth herein, and shall be dated as of the date of execution by all parties hereto. Terms not otherwise defined in this Agreement shall have the meanings set forth at Exhibit A, which is attached hereto and incorporated herein by reference. In consideration of the mutual undertakings and covenants set forth herein, the parties agree as follows:

**1. PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to enable the IEDC to make a grant to the Grantee from the State of Indiana's Industrial Development Grant Fund (IDGF) for the lesser of (i) the Award Percentage of eligible Infrastructure Project expenditures and (ii) the Maximum Grant Amount. The grant funds shall be used exclusively in accordance with the provisions of this Agreement and Indiana Code § 5-28-25, which establishes the Industrial Development Grant Fund, as well as any rules adopted there-under, and no other purpose.

**2. TERM OF AGREEMENT:**

The term of this Agreement shall be from the Commencement Date until the Expiration Date. The Infrastructure Project must be fully completed by the Expiration Date. The Grantee shall have sixty (60) days from the Expiration Date to submit a final claim and all other documentation required by this Agreement. In no event shall payments be made for work done or services performed after the Expiration Date. Prior to the Expiration Date, the Grantee may request in writing that this Agreement be extended for a maximum of six (6) months, which request may be approved and acknowledged by a duly authorized representative of the IEDC. If approved, the written request and evidence of IEDC's approval shall be attached to this Agreement as an addendum. If the Expiration Date is extended, all other provisions of this Agreement shall remain in full force and effect. Any other extensions or amendments shall occur pursuant to Paragraph 19.

**3. DESIGN AND CONSTRUCTION OF INFRASTRUCTURE PROJECT:**

The Grantee shall be solely responsible for the proper design and construction of the Infrastructure Project. Although not expressly attached to this Agreement, the Grantee agrees to complete the Infrastructure Project in accordance with the Grantee's representations, including but not limited to, any plans and specifications contained in its application. Modification of the description of the Infrastructure Project set forth at Exhibit A shall require prior written approval of the IEDC.

**4. MONITORING BY THE IEDC:**

A. Throughout the term of this Agreement, the Grantee shall, by written agreement, require the Company to submit an annual report to the Grantee with details about the Company Economic Impact Goals described at Exhibit A of this Agreement. The form of the report will be provided by the IEDC. The Grantee

agrees that any job creation or retention goals set forth in the Company Economic Impact Goals may only be satisfied by Indiana resident employees. The Company's timely submission of an annual report pursuant to another agreement with the IEDC shall be deemed to satisfy this requirement provided that the report contains the same information as the Company Report and contains sufficient information to determine whether the Company is meeting the Company Economic Impact Goals.

- B. The Grantee shall submit to the IEDC, upon request, documentation sufficient as determined by the IEDC's sole and unreviewable discretion that the Infrastructure Project is progressing towards completion by the Expiration Date. Should completion of the Grantee's Infrastructure Project fall behind schedule, the Grantee shall immediately notify the IEDC of the delay and provide the IEDC with a written justification as to why the Infrastructure Project's completion is not occurring as scheduled. The Grantee hereby agrees that providing notification of a delay in the Infrastructure Project's completion shall in no event be considered a formal request for an extension of the Expiration Date or a modification of this Agreement and that the IEDC shall have no obligation to extend the deadlines set forth in this Agreement.
- C. The IEDC may periodically carry out a Monitoring Review (as defined below), including an evaluation of activities and/or collection of documentation, as deemed appropriate. The Grantee shall effectively ensure the cooperation of its and the Company's employees in such monitoring and evaluation efforts and shall produce all documentation reasonably requested by the IEDC evidencing the work completed on the Infrastructure Project and the progress made toward the achievement of the Company Economic Impact Goals. The Grantee will take all actions necessary to correct or cure any findings identified by the IEDC during its monitoring and evaluation.
- D. If the IEDC elects to conduct a monitoring review of the Infrastructure Project and the Project (the "Monitoring Review"), the IEDC may withhold up to the Final Distribution Amount until such Monitoring Review is completed and the results analyzed. The Monitoring Review may document any or all of the following:
- (1.) Whether grant and matching funds allocated for the Infrastructure Project were expended for activities consistent with the Grantee's grant application and Exhibit A of this Agreement.
  - (2.) A complete, detailed analysis of actual grant and matching funds expended to date on the Infrastructure Project and conformity with the amounts for any line item of the Budget (as defined in Paragraph 7). The Grantee shall be required to submit, upon request of the IEDC, the following: (a) copies of agreements between the Grantee and all consultants and/or professional services providers to be paid with grant funds, and (b) copies of agreements between the Grantee and the Company to satisfy the reporting and operational requirements under this Agreement.

- (3.) A detailed listing of all Infrastructure Project costs by Budget line item which are accrued yet unpaid, if any, in a format that may be prescribed by the IEDC;
- (4.) A written evaluation as to the Grantee's timely progress in Infrastructure Project management, financial management and control systems, procurement systems and methods, and as to the timely submission of the Company Reports; and
- (5.) A written evaluation as to the Grantee's compliance with its procurement policies, procedures, and regulations, including a requirement for the Grantee to submit a certified statement that it has abided by all applicable procurement policies, procedures, and regulations related to the Infrastructure Project.

The parties acknowledge that the Monitoring Review is only for the benefit of the IEDC and that the IEDC may elect, in whole or in part, to allow a payment to be made before the Monitoring Review has been completed.

- E. If grant funds are disbursed and this Agreement is terminated by either party prior to the Expiration Date, the IEDC may elect to conduct an on-site Monitoring Review of the Infrastructure Project and the Project, as described in Paragraph 4 of this Agreement.

**5. PAYMENT OF GRANT FUNDS BY THE IEDC:**

The payment of this grant by the IEDC to the Grantee shall be made in accordance with the following schedule and conditions:

- A. IEDC will reimburse the Grantee the Award Percentage of eligible Infrastructure Project costs subject to the conditions and limitations set forth in this Agreement; provided that the funds available under this Agreement are expressly limited to the Maximum Grant Amount notwithstanding any other provision of this Agreement to the contrary. The IEDC may deobligate any grant funds which have not been expended and drawn down as of the Expiration Date.
- B. Prior to a payment disbursement, this Agreement must be fully executed, and all the evidentiary materials required by this Agreement must be submitted to and approved by the IEDC. Further, any other grant conditions specified in this Agreement must also be met to the IEDC's satisfaction.
- C. All payments will be made in arrears only upon presentation of approved and signed State of Indiana Claim Vouchers and 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. Such claim vouchers must be submitted with a Budget Expenditure Report detailing disbursements of the grant and matching funds. If requested by the IEDC, Grantee shall further list expenditures by line items determined by the IEDC. The written authorization must designate a financial institution and an account

number to which all payments are to be credited. For forms and additional information see the Auditor of State's website at [www.in.gov/auditor/forms](http://www.in.gov/auditor/forms). No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by Indiana Code § 4-13-2-20 or by Indiana Code § 5-28-25.

- D. The IEDC may require the Grantee to produce satisfactory evidence that the scheduled progress has occurred towards completion of the Infrastructure Project and the Company Economic Impact Goals, respectively, and that the conditions set forth or referenced in this Agreement have been met, prior to making a payment under this Agreement. The Grantee shall be solely responsible for providing the IEDC evidence that the Infrastructure Project is progressing towards completion by the Expiration Date and that the Company Economic Impact Goals are being met as scheduled. In each case, the evidence must be satisfactory and sufficient in the sole opinion of the IEDC that the scheduled progress is occurring as anticipated, and in no event shall the IEDC be required to disburse a payment under this Agreement until the IEDC's determines that the performance to date conforms to the descriptions and schedules of Infrastructure Project and the Company Economic Impact Goals, notwithstanding any other provision of this Agreement to the contrary.
- E. In the event that the evidence required by the IEDC under Paragraphs 4 or 5 fails to be produced, the Grantee shall be deemed to be in material breach of this Agreement. In such instances, the IEDC may, in addition to its other remedies, withhold authorization for any payment request of the grant funds until such time as the deficiency is corrected or may terminate the Agreement.
- F. As set forth in Paragraph 4D, the IEDC may retain an amount of up to Final Distribution Amount until a final Monitoring Review has been completed in accordance with Paragraph 4 of this Agreement, which may include the IEDC's receipt of the a report prepared by a duly authorized representative of the IEDC summarizing the Monitoring Review, detailing how funds have been spent on the Infrastructure Project in accordance with the Budget and evaluating the Grantee's timely progress.
- G. If the Grantee receives funds under this Agreement, failure to complete the Infrastructure Project by the Expiration Date shall be considered a material breach of the Agreement.
- H. If the Grantee receives funds under this Agreement, the Company must commence material operations of the Project by the Expiration Date and shall maintain material operations of the Project Location through the end of the Expiration Date. A violation of this provision shall be considered a material breach by the Grantee.
- I. The IEDC shall retain an amount of up to Final Distribution Amount until the IEDC receives the following documents:
  - (1.) A report prepared by a duly authorized representative of the IEDC summarizing the Monitoring Review, detailing how funds have been spent

on the Project in accordance with the Budget and evaluating the Grantee's timely progress. This Monitoring Review is subject to Paragraphs 4 and 5 of this Agreement.

- (2.) A final payment request submitted on an approved and signed State of Indiana Claim Voucher, and a Budget Expenditure Report.
- J. If the IEDC determines that the Grantee has materially breached this Agreement, the Grantee shall, after receiving a notice of default and a thirty (30) day opportunity to cure, repay the IEDC any funds disbursed under this Agreement if the IEDC determines that the default continues to exist. Until such repayment is made, the IEDC may impose other sanctions against the Grantee including, but not limited to, the suspension of Grantee's participation in all other state grant or incentive programs until the IEDC is repaid or all material breaches are cured to the IEDC's satisfaction.
- K. Notwithstanding any other provision of this Agreement, the Grantee expressly agrees that the monies provided herein by the IEDC are limited to the lesser of (i) the Award Percentage of eligible Infrastructure Project expenditures and (ii) the Maximum Grant Amount. The IEDC may deobligate any grant funds which have not been expended and drawn down as of the Expiration Date.

**6. ACCESS TO RECORDS:**

- A. Grantee and its permitted subgrantees, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement ("Records"), for inspection by the IEDC, the State of Indiana or by any of their respective authorized representatives, and reasonable requests for copies thereof shall be furnished to the IEDC and the State of Indiana if requested. Grantee and its permitted subgrantees, if any, shall make all Records available at their respective offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement or until a state or federal audit has been completed and all audit exceptions cleared, whichever is earlier.
- B. If the IEDC determines that fraud or other criminal misconduct has occurred with disbursements made to Grantee, the IEDC will consider Grantee in default and will terminate this Agreement in accordance with Paragraph 20. Grantee will be responsible for reimbursement to the IEDC of the full amount granted to Grantee at the time of the termination.
- C. The IEDC, authorized representatives and staff of the IEDC have the right, at all reasonable times, to make site visits to: (1) review Infrastructure Project accomplishments and to confer with principals of the Grantee and permitted subgrantees, if any; (2) to audit Records and management control systems; and (3) to provide such technical assistance as may be required. If any site visit is made on the premises of Grantee or any subgrantee or contractor under this Agreement, Grantee shall provide and shall require its subgrantees and contractors to provide all reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not

unduly delay the Grantee's operations or work on the Infrastructure Project. Grantee will be given at least one (1) week prior notice before any site visit.

**7. INFRASTRUCTURE PROJECT BUDGET AND BUDGET MODIFICATION:**

The Infrastructure Project budget is set forth as Exhibit A of this Agreement (the "Budget"). The Grantee shall not spend more than the amount for each line item, as described in Budget, without the prior written consent of a duly authorized representative of the IEDC, nor shall the Infrastructure Project costs funded by the grant and those funded by the matching share be amended without prior written consent of the IEDC. Notwithstanding the foregoing, no grant funds may be used to cover the administrative costs of the Infrastructure Project for the Grantee or the Company.

**8. STATUTORY AUTHORITY OF GRANTEE:**

As a condition of receiving a grant from the IDGF, Grantee expressly warrants to the IEDC that it is an "eligible entity," that the Infrastructure Project is an "industrial development program," and that the Grantee is statutorily eligible to receive monies from the IDGF for the Infrastructure Project under Indiana Code § 5-28-25. Further, in the event that a court of competent jurisdiction finds Grantee legally ineligible to receive funds from IDGF for the Infrastructure Project, Grantee expressly agrees to promptly repay all monies paid to it under this Agreement.

**9. USE OF GRANT FUNDS BY GRANTEE:**

Grant funds received by the Grantee pursuant to this Agreement shall be used only to reimburse the Grantee for instituting an approved IDGF project permitted by Indiana Code § 5-28-25 or providing services in conformance with the Budget and no other purpose. Grantee further agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. The Grantee certifies that no other state or federal funds from any source will be used to finance the specific activities reimbursed under this Agreement.

**10. 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 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 Grantee to determine whether the provisions of the 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 Grantee and the State of Indiana, as set forth in Indiana Code § 4-2-6 *et seq.*, Indiana Code § 4-2-7 *et seq.*, 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 the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. 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 § 4-2-6-12.

- C. The Grantee 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 IEDC or the State of Indiana. Further, the Grantee agrees that any payments in arrears and currently due to the IEDC or the State of Indiana may be withheld from payments due to the Grantee 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 pending, and agrees that it will immediately notify the IEDC of any such actions. During the term of such actions, Grantee agrees that the IEDC may delay, withhold, or deny grant funds 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, the State of Indiana or its agencies, and the IEDC decides to delay, withhold, or deny funding to the Grantee, the Grantee may request that funding be continued. The Grantee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the IEDC may delay, withhold, deny, or apply under this paragraph shall not be subject to penalty or interest under Indiana Code § 5-17-5.
- F. The Grantee warrants that the Grantee and its contractors, 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. Failure to do so is a material breach of the Agreement and grounds for delaying, withholding or denying grant funds under this Agreement.
- G. The Grantee hereby affirms that, if applicable, it is properly registered and owes no outstanding reports with the Indiana Secretary of State and that it is in good standing with the Indiana Department of Revenue. Grantee affirms that (1) there are no outstanding enforcement actions against it by agencies of the State of Indiana, and (2) there are no significant workforce issues pending against it. The below named signatory(ies) hereby warrant that they are authorized to make such affirmations to the IEDC.
- H. Grantee agrees that the IEDC may confirm, at any time, that no liabilities exist to the IEDC or the State of Indiana, and, if such liabilities are discovered, that IEDC or the State of Indiana may bar Grantee from contracting with the IEDC or 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 IEDC or the State of Indiana and has submitted proof of such payment to the IEDC or the State of Indiana.

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

**12. CONFLICT OF INTEREST:**

- A. As used in this paragraph:
- (1.) "Immediate family" means the spouse and the unemancipated children of an individual.
  - (2.) "Interested party" means:
    - (a.) The individual executing this Agreement;
    - (b.) An individual who combined with his immediate family has an equity interest of one percent (1%) or more of the Grantee, if the Grantee is not an individual; or
    - (c.) Any member of the immediate family of an individual specified under subparagraph 1 or 2.
  - (3.) "Department" means the Indiana Department of Administration.
  - (4.) "Commission" means the State Ethics Commission.
- B. The parties agree that the Department may cancel this Agreement without recourse by the Grantee if any interested party (i) is an employee of the State of Indiana or the IEDC, (ii) is a state officer or special state appointee of the IEDC under Indiana Code § 4-2-6, or (iii) a public servant of the IEDC under Indiana Code § 35-44-1.
- C. The Department will not exercise its right of cancellation under subparagraph (B.) above if the Grantee gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment, election or appointment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees, officers and special state appointees of the IEDC. The Department may take action,

including cancellation of this Agreement consistent with an opinion of the Commission obtained under this paragraph.

- D. Grantee has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee, officer or special state appointee of the State of Indiana. The obligation under this paragraph extends only to those facts that the Grantee knows or reasonably could know.

**13. DRUG-FREE WORKPLACE CERTIFICATION:**

- A. The Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace during the term of this Agreement. 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 Grantee's workplace.
- B. It is further expressly agreed that a false certification, a violation of the certification or the failure of the Grantee to in good faith comply with the terms of this paragraph shall constitute a material breach of this Agreement and shall entitle the IEDC to impose, or may otherwise result in, sanctions against the Grantee including, but not limited to, suspension of grant payments, the termination of this Agreement and/or the debarment of the Grantee from doing further business with the IEDC and the State of Indiana for up to three (3) years.
- C. In addition to the provisions of above paragraphs, if the total Agreement amount set forth in the Agreement is in excess of Twenty-Five Thousand Dollars (\$25,000.00), Grantee hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following Certification:

*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 grants with and grants from the State of Indiana in excess of \$25,000.00. No award of a grant shall be made, and no grant, 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 Grantee and made part of the grant or agreement as part of the grant documents.*

The Grantee certifies and agrees that it will provide a drug-free workplace by:

- (1.) Publishing and providing to all of its employees a statement notifying employees 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; and
- (2.) Establishing a drug-free awareness program to inform employees about:
  - (a.) The dangers of drug abuse in the workplace;
  - (b.) The Grantee's policy of maintaining a drug-free workplace;

- (c.) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d.) 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;
- (a.) Abide by the terms of the statement; and
  - (b.) 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.
- (4.) Notifying in writing the IEDC within ten (10) days after receiving notice from an employee under subparagraph 3(b) above, or otherwise receiving actual notice of such conviction; and
- (5.) Within thirty (30) days after receiving notice under subparagraph 3(b) 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:
- (a.) Take appropriate personnel action against the employee, up to and including termination; or
  - (b.) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purpose 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.

**14. FUNDING CANCELLATION CLAUSE:**

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

**15. NOTICE OF SEVERE WORKFORCE REDUCTIONS:**

During the term of this Agreement, the Grantee will provide the IEDC notice within thirty (30) days of learning of any potential reductions in the Company's workforce that will result in an employment loss for fifty percent (50%) or more of the employees at the Project Location.

**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, Grantee and its sub-grantees 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 the race, color, religion, sex, age disability, national origin or ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Agreement by Grantee also signifies compliance with applicable federal and state laws and regulations prohibiting the aforementioned discrimination in the provision of services.

**17. NOTICE TO PARTIES:**

Whenever any notice, statement or other communication is required under this Agreement, 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  
Attention: Account Manager  
Office of Development Finance  
One North Capitol Avenue, Suite 700  
Indianapolis, IN 46204-2288

B. Notices to the Grantee shall be sent to the Grantee Contract Administrator.

Notices, statements or other communications shall be deemed delivered when received. As required by Indiana Code § 4-13-2-14.8, payments to Grantee shall be made via electronic funds transfer in accordance with the instructions filed by the Grantee with the Indiana State Auditor's Office, unless an exception to such requirement is approved by the IEDC and the State of Indiana. Payments shall be deemed delivered upon being transmitted pursuant to the written instructions of the Grantee.

**18. ORDER OF PRECEDENCE:**

Any inconsistency or ambiguity in the Agreement shall be resolved by giving precedence in the following order: (1) this Agreement (including its exhibits), (2) IEDC guidelines, (3) all grant application requirements and guidelines, and (4) the applications of the Grantee or Company on file with the IEDC relating to the Project.

**19. EXTENSION OPTION:**

Upon the request of the Grantee, the IEDC may extend this Agreement under the same terms and conditions of this Agreement upon the request of the Grantee subject to the approval of the State Budget Director in compliance with Indiana Code § 5-22-17-4, which authority shall be in addition to the extension provisions set forth in Paragraph 2.

**20. TERMINATION OF AGREEMENT:**

This Agreement may be terminated with or without cause by the IEDC before its Expiration Date by sending the Grantee written notice via certified mail, return receipt requested, at least thirty (30) days prior to the date of termination. Upon receipt of this notice from the IEDC to the Grantee, no new or additional liabilities payable from grant funds shall be incurred without the prior written approval of the IEDC. The Grantee shall continue to be responsible and liable for the proper performance of its obligations to the date of termination. In the event of a termination, the IEDC will perform an on-site Monitoring Review of all Infrastructure Project expenditures, as described in Paragraph

4 of this Agreement, with respect to the Grantee's proper expenditure of all grant funds and matching funds through the date of termination.

**21. ASSIGNMENT:**

This Agreement binds the Grantee's successors and assignees to all terms and conditions of this Agreement. The Grantee shall not assign or grant the whole or any part of the Agreement unless it has been approved in writing by the IEDC.

**22. HOLD HARMLESS:**

Grantee shall indemnify, defend, and hold harmless the IEDC and the State of Indiana and their respective agents, officers, employees and representatives from all claims and suits for loss or damage to property, including the loss of use thereof, and injuries to or death of persons, including without limitation any officers, agents, employees and representatives of Grantee or its subgrantees or contractors, and from all judgments recovered therefor and for expenses in defending any such claims or suits, including court costs, attorneys' fees, and for any other expenses caused by an act or omission of Grantee and/or its subgrantees, contractors, agents, officers or employees in connection with performance of this Agreement. IEDC shall not provide any kind of indemnification to the Grantee.

**23. DEBARMENT AND SUSPENSION:**

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 or department, the IEDC, or agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement is defined as the primary executive officer or board of the Grantee.

**24. PENALTIES; INTEREST; ATTORNEY'S FEES:**

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 authorized by Indiana law, in part, if applicable, 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 hereto stipulate and agree that any liability resulting from any failure of the IEDC to make payments as required hereunder shall be based solely on 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 or exceed the amount of the withheld payments.

**25. MISCELLANEOUS:**

- A. The headings in this Agreement are intended solely for convenience or reference and will be given no effect in the construction or interpretation of this Agreement.
- B. This Agreement, including any attached exhibits, 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 and may not be altered or amended except in writing, signed by an authorized representative of each party hereto.

- C. The construction and enforcement of this Agreement will be governed by the laws of the State of Indiana, without regard to principles of choice of law and the venue for any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court of the Southern District of Indiana and the Grantee hereby consents to the personal jurisdiction of said courts.
- 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 will be 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 the Agreement, in the performance of this Agreement, 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, employees or subagents of any other party.
- G. Grantee shall be responsible for providing all necessary unemployment and workers' compensation insurance for Grantee's employees.
- H. Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement will remain in force during the term stated in Paragraph 2. 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 or termination of this Agreement, will survive until their purposes are fulfilled.
- I. This Agreement may be executed through an original or a facsimile copy 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.

**26. REPRESENTATIONS CONCERNING APPLICATION:**

The Grantee represents and warrants that its representations, statements and all other matters contained in the materials submitted to the IEDC related to this grant were true and complete in all material respects at the time the information was submitted and remains true and complete as of the execution of this Agreement. It shall be considered a material breach of this Agreement if such representations, statements and other matters were not true and complete at the time the information was submitted or as of the execution of this Agreement, whichever the case may be.

**27. AUTHORITY TO COMMIT TO 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 his/her respective entity and has obtained all necessary or applicable approvals to make this Agreement fully binding upon such entity when his/her signature is affixed, and this Agreement is not subject to further acceptance by Grantee when accepted by the IEDC.

**28. NON-COLLUSION AND ACCEPTANCE:**

The undersigned representative of the Grantee attests, subject to the penalties for perjury, (i) that he/she is the contracting party, or that he/she is the duly authorized representative, agent, member or officer of the contracting party; (ii) that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and (iii) that he/she has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

In Witness Whereof, Grantee and the Indiana Economic Development Corporation have, through duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of this Agreement, do by their respective signatures hereby agree to the terms thereof.

**CITY OF MARION**

By: [Signature]  
Printed: WA 7022 S24504  
Its: MAYOR  
DATE: 12-15-10

**ATTESTED  
BY:**

By: [Signature]  
Printed: Debra Goodman  
Its: First Deputy Clerk  
MARION CITY CLERK'S OFFICE  
DATE: 12-15-10

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**

E. MITCHELL ROOB, JR., Secretary of Commerce

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

**ADAM M. HORST, DIRECTOR  
The State Budget Agency**

DATED: \_\_\_\_\_

In Witness Whereof, Grantee and the Indiana Economic Development Corporation have, through duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of this Agreement, do by their respective signatures hereby agree to the terms thereof.

**CITY OF MARION**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

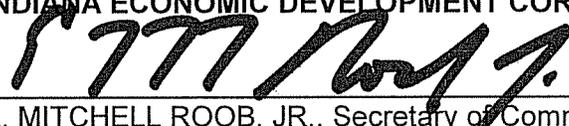
DATE: \_\_\_\_\_

ATTESTED  
BY:

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

DATE: \_\_\_\_\_

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**

  
\_\_\_\_\_  
E. MITCHELL ROOB, JR., Secretary of Commerce

DATE: 12-21-10

BY:  \_\_\_\_\_

ADAM M. HORST, DIRECTOR  
**The State Budget Agency**

DATED: 1/21/11

**CITY OF MARION  
EXHIBIT A**

- I. **Schedule of Terms.** The defined terms in the Industrial Development Grant Fund Grant Agreement (the "Agreement") shall have the definitions set forth below:
- A. "Commencement Date" shall mean **October 24, 2008**
  - B. "Company" shall mean **Trienda, LLC** and its affiliates and subsidiaries.
  - C. "Company Economic Impact Goals" shall mean the capital investment of at least **\$20,301,600** by **December 31, 2012** and the creation of **342** new full-time employee jobs that were not jobs previously performed by Company employees in Indiana by **December 31, 2012**.
  - D. "Expiration Date" shall mean **June 30, 2011** unless sooner terminated under the Agreement.
  - E. "Final Distribution Amount" shall mean **\$145,000.00** or twenty percent (20%) of the Maximum Grant Amount.
  - F. "Grantee Contract Administrator" shall mean  

**City of Marion  
Mr. Wayne Seybold  
Mayor  
301 S. Branson St.  
Marion, IN 46952**
  - G. "Maximum Grant Amount" shall mean **\$725,000.00**.

- II. **Project Description.** The Project shall consist of the Company expanding its Midwest operations to accommodate future growth. The Project will be located at the following location: **Marion, IN** (the "Project Location").
- III. **Infrastructure Project Description.** The Infrastructure Project shall consist of the Grantee constructing a rail spur.

IV. **Infrastructure Project Budget**

	Grant Funds	Matching Funds	Total* Costs
Total Infrastructure Costs*	<b>\$725,000.00</b>	<b>\$25,000.00</b>	<b>\$750,000.00</b>

\*The eligible construction costs, land or other acquisition costs, professional or engineering fees for the preparation of surveys, plans, and specifications for the Infrastructure Project.