dcotterman
**CONFIDENTIAL**

## EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

| 1. EDS Number: | 2. Date prepared: |
|---|---|
| A229-7-IDGF-16-1101 | 7/15/2016 |

### 3. CONTRACTS & LEASES

| | |
|---|---|
| ___ Professional/Personal Services | ___ Contract for procured Services |
| X Grant | ___ Maintenance |
| ___ Lease | ___ License Agreement |
| ___ Attorney | ___ Amendment# ___ |
| ___ MOU | ___ Renewal # ___ |
| ___ QPA ___ | ___ Other ___ |

### FISCAL INFORMATION

| | |
|---|---|
| 4. Account Number: 52210-52100.571010 | 5. Account Name: INDUSTRIAL DEVE GRANT FI |
| 6. Total amount this action: $500,000.00 | 7.New contract total: 500,000.00 |
| 8. Revenue generated this action: $0.00 | 9.Revenue generated total contract: $0.00 |

10.New total amount for each fiscal year :

| | | |
|---|---|---|
| Year | 2017 | $500,000.00 |
| Year | | $ |
| Year | | $ |
| Year | | $ |

### TIME PERIOD COVERED IN THIS EDS

| 11. From (month, day, year): | 12. To ( month, day, year ): |
|---|---|
| 10/2/2015 | 12/31/2017 |

13. Method of source selection:
___ Bid/Quotation ___ Emergency X Negotiated ___ Special Procurement
___ RFP# ___ ___ Other *(specify)* ___

### AGENCY INFORMATION

| 14. Name of agency: | 15. Requisition Number: |
|---|---|
| Economic Development Corp | 0000006167 |

16. Address: IN Economic Development Corp
Central Office
1 N CAPITOL AVE STE 700
INDIANAPOLIS, IN 46204-2040

### AGENCY CONTACT INFORMATION

| 17. Name: | 18. Telephone #: |
|---|---|
| Dale Cotterman | 317/232-8822 |

19. E-mail address: dcotterman@iedc.in.gov

### COURIER INFORMATION

| 20. Name: | 21. Telephone #: |
|---|---|
| Jackie Addison | 317-234-8741 |

22. E-mail address: jacaddison@iedc.in.gov

### VENDOR INFORMATION

23 Vendor ID # 0000193933

| 24. Name: | 25. Telephone #: |
|---|---|
| SHELBYVILLE CLERK-TREASURER | 317) 398-6624 |

26. Address:
44 W WASHINGTON STREET
SHELBYVILLE, IN 46176-1247

27. E-mail address: d.tracy@shelbydevelopment.com

28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) X Yes ___ No

| 29. Primary Vendor: M/WBE/IN-Vetera | 30. Primary Vendor Percentages |
|---|---|
| Minority: ___ Yes X No | 100.0 % |
| Women: ___ Yes X No | |
| IN-Veteran ___ Yes X No | |

| 31. Sub Vendor: M/WBE/IN-Veteran | 32. If yes, list the %: |
|---|---|
| Minority: ___ Yes X No | Minority: ___ % |
| Women: ___ Yes X No | Women: ___ % |
| IN-Veteran ___ Yes X No | IN- Veteran ___ % |

| 33. Is there Renewal Language in | 34. Is there a "Termination for Convenience" clause in the document? |
|---|---|
| ___ Yes X No | X Yes ___ No |

35. Will the attached document involve data processing or telecommunications system ___ Yes: IOT or Delegate has signed off on contract

36. Statutory Authority *(Cite applicable Indiana or Federal Codes)*:
5-28-25

37. Description of work and justification for spending money. *(Please give a brief description of the scope of work included in this agreement.)*
Project #416922. The City of Shelbyville infrastructure project shall consist of constructing an access road to Krone NA, Inc.'s new U.S. headquarters in Shelbyville, Indiana. The IEDC's disbursements of Grant total amount of $500,000 shall be based upon completion of each milestone.

38. Justification of vendor selection and determination of price reasonableness:
The Industrial Development Grant Fund (IDGF) is a state funded program which provides assistance for off-site infrastructure projects in support of new or existing business development in Indiana. The IDGF is designed to support new job creation and investment in Indiana. Preference is given to projects which have a substantial impact on Indiana's economic climate.

39. If this contract is submitted late, please explain why: *(Required if more than 30 days late.)*
These incentives were offered as a pre-commit back in October, 2015. The City of Shelbyville has already started the project.

| 40. Agency fiscal officer or representative approval | 41. Date Approved | 42. Budget agency approval | 43. Date Approved |
|---|---|---|---|
| [signature] Dn: cn=Matthew R. Kennick, o=Indiana Economic Development Corporation, ou, email=mkkennick@iedc.in.gov, c=US Date: 2016.07.15 17:45:30 -04'00' | | TB | 7/20/16 |
| 44.Attorney General's Office approval | 45. Date Approved | 46. Agency representative receiving from AG | 47. Date Approved |

96552-000

PROJECT I.D.: 416922
INCENTIVE I.D.: A229-6-IDGF-1101

# INDIANA ECONOMIC DEVELOPMENT CORPORATION
# INDUSTRIAL DEVELOPMENT GRANT FUND (IDGF)
# GRANT AGREEMENT

(REV: 07/2014)

This Agreement (the "Agreement") is between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the "IEDC") and **CITY OF SHELBYVILLE** (the "Grantee"). The parties to this Agreement, in consideration of the mutual covenants, obligations, and stipulations set forth herein, witness and agree as follows:

## 1. PURPOSE OF AGREEMENT:

Pursuant to Indiana Code § 5-28-25 and in accordance with the terms and conditions contained herein, the purpose of this Agreement is for the IEDC to make a grant to the Grantee from the Industrial Development Grant Fund (the "IDGF") for **$500,000.00** (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 IDGF, as well as any rules adopted thereunder, and no other purpose. Eligible expenditures include construction costs, land or other acquisition costs, professional or engineering fees for the preparation of surveys, plans, and specifications for the Infrastructure Project. No grant funds may be used to cover the administrative costs of the Infrastructure Project incurred by the Grantee.

## 2. TERM OF AGREEMENT:

The term of this Agreement shall commence on **October 2, 2015** and continue until **December 31, 2017,** unless sooner terminated under this Agreement. 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. Any other extensions or amendments shall occur pursuant to Paragraph 8C. The IEDC's obligation for payment shall not survive past the Expiration Date.

## 3. DESCRIPTION OF THE PROJECT:

The Grantee shall be solely responsible for the proper design and construction of the Infrastructure Project, as described at Exhibit A. The Project will be at the location(s) listed at Exhibit A (collectively, the "Project Location"). The Infrastructure Project at the Project Location is complementary to a competitive project designed to create jobs and enhance economic development. 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 submitted to the IEDC for the Project. Modification of the Infrastructure Project shall require prior written approval of the IEDC.

## 4. 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. The IEDC will reimburse the Grantee the Requested IDGF Grant Portion (as referenced in Exhibit A, Section 2) upon completion of the corresponding Milestone, subject to the conditions and limitations set forth in this Agreement and 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 sixty (60) days after 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 fulfilled to the IEDC's satisfaction.

C. Requests for disbursement of the payment to the Grantee will be made by the IEDC, after approval of the claim and in accordance with State fiscal policies and procedures. The Grantee agrees to comply with requests for information so the IEDC can make payment requests. The Grantee will submit claims detailing expenditures eligible for reimbursement ("IDGF Claim Forms") in accordance with the Infrastructure Project Milestones. If requested by the IEDC, the Grantee shall further list expenditures by line items as specified by the IEDC. In accordance with State fiscal policies and procedures and as required by Indiana Code § 4–13–2–14.8, and notwithstanding any law, rule, or custom to the contrary, payments will be made by electronic funds transfer to the financial institution designated in writing by the Grantee, unless a specific waiver has been obtained from the Auditor of the State. The written authorization for the electronic funds transfer must designate a financial institution and an account number to which all payments are to be credited. For forms and additional information, the Grantee should see the Auditor of State's website (www.in.gov/auditor). 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. In order to receive payments: (i) the conditions set forth or referenced in this Agreement must have been met by the Grantee; and (ii) the Grantee shall submit IDGF Claim Forms to the IEDC, with each IDGF Claim Form substantially in compliance with Exhibit B, and satisfactory evidence that the scheduled progress has occurred towards completion of the Infrastructure Project, as set forth in the Infrastructure Project Milestones in Exhibit A. Notwithstanding any other provision of this Agreement, the Grantee expressly agrees that the monies provided herein by the IEDC are limited to the Maximum Grant Amount. The IEDC may deobligate any grant funds which have not been expended and drawn down as of sixty (60) days after the Expiration Date. In no event shall the IEDC be required to disburse funds under this Agreement until the IEDC has determined that the performance to date conforms to the descriptions of the Infrastructure Project, notwithstanding any other provision of this Agreement to the contrary. The IEDC will proportionately adjust any grant payment for a completed Milestone if the actual cost of the milestone was lower than the Total Cost of Each Milestone as reflected in Exhibit A, Section 2.

E. Failure by the Grantee to produce the evidence required by the IEDC under Paragraphs 4 and 6 shall be deemed a material breach of this Agreement. In such instances, in addition to its other remedies, the IEDC may (i) withhold authorization for any payment request of the grant funds until such time as the deficiency is corrected, (ii) require the Grantee to immediately repay the IEDC any funds disbursed under this Agreement, or (iii) terminate this Agreement, pursuant to Paragraph 8A. If the IEDC is entitled to a repayment of the grant funds disbursed to the Grantee, the IEDC may further impose sanctions against the Grantee, including but not limited to the suspension of the 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.

F. As set forth in Paragraph 9B, the IEDC may retain an amount of up to twenty percent (20%) of the Maximum Grant Amount (the "Final Distribution Amount") until a final Monitoring Review has been completed in accordance with Paragraph 9 of this Agreement. Such Monitoring Review may include the IEDC's review of 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 Infrastructure Project Milestones 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 this Agreement.

H. If the IEDC determines that the Grantee has materially breached this Agreement, the Grantee shall be notified and given a thirty (30) day opportunity to cure. If, after such notice and thirty (30) day period, the IEDC determines that the default continues to exist, the Grantee shall immediately repay the IEDC any funds disbursed under this Agreement.

Until such repayment is made, the IEDC may impose other sanctions against the Grantee, including but not limited to the suspension of the 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.

## 5. USE OF GRANT FUNDS BY GRANTEE:

Grant funds received by the Grantee pursuant to this Agreement shall be used only to pay for approved Infrastructure Project Milestones as defined in Exhibit A and as permissible under Indiana Code § 5–28–25. The Grantee may use funds from other public sources to finance the Infrastructure Project under this Agreement, as long as the Grantee receives no more than 100% of the costs from all sources. The Grantee represents and warrants that all sources of funding for the Infrastructure Project, whether paid to Grantee or to another entity, shall not exceed 100% of the costs of the Infrastructure Projects. The Grantee agrees that any funds received by the Grantee and/or other entity in excess of 100% of the costs of the Infrastructure Project shall be remitted by the Grantee to the IEDC, up to the Maximum Grant Amount.

## 6. DUTIES AND RESPONSIBILITIES OF GRANTEE:

A. Pursuant to the provisions of Indiana Code § 5-28-25 and this Agreement, the Grantee shall submit an IDGF Claim Form to the IEDC after a Milestone has been completed. The IDGF Claim Form must have sufficient detail and supporting documentation to allow for verification. The form and medium of the IDGF Claim Form must be substantially similar to Exhibit B. The Grantee agrees to supply additional information upon request of the IEDC.

B. Upon request, the Grantee shall submit to the IEDC documentation sufficient, as determined by the IEDC's sole and unreviewable discretion, to demonstrate that the Infrastructure Project is progressing towards completion by the Expiration Date pursuant to the Infrastructure Project Milestones in Exhibit A. Should completion of the Infrastructure Project or a Milestone fall behind schedule, the Grantee shall promptly notify the IEDC and provide a written justification for the delay. 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.

## 7. INFRASTRUCTURE PROJECT COMMITTMENT:

The Grantee must complete the Infrastructure Project in accordance with the Infrastructure Project Milestones. The Grantee represents that its application includes a plan outlining the Infrastructure Project Milestones, including the Total Cost of Each Milestone, and that representations in the application are materially true and accurate to the best knowledge of the Grantee. Should there be a material change to the Milestones, the Grantee must first obtain advance written approval of the IEDC. In no event will the IEDC make a Grant Payment other than in accordance with the Milestones.

## 8. TERMINATION; FUNDING CANCELLATION; EXTENSION:

A. This Agreement may be terminated with or without cause by the IEDC before its Expiration Date by sending the Grantee written notice, as described in Paragraph 18, 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 through 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 9 below, with respect to the Grantee's proper expenditure of all grant funds and matching funds through the date of termination.

B. In the event that the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled, and the IEDC shall have no further obligation to make payments under this Agreement. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

C. By the Expiration Date, the Grantee may request in writing additional time beyond the sixty (60) days described in Paragraph 2 in which to submit a final claim and all final paperwork. The Grantee's request may be approved and acknowledged by a duly authorized representative of the IEDC. It is solely within the IEDC's discretion whether to grant additional time for submission of claims.

## 9. MONITORING REVIEW:

A. The IEDC may periodically carry out a monitoring review of the Infrastructure Project (the "Monitoring Review"), including an evaluation of activities and/or collection of documentation, as deemed appropriate by the IEDC. The Grantee shall effectively ensure the cooperation of its employees in such monitoring and evaluation efforts and shall produce all documentation reasonably requested by the IEDC evidencing the progress made on the Infrastructure Project. The Grantee will take all actions necessary to correct or cure any issues identified by the IEDC during its monitoring and evaluation.

B. If the IEDC elects to conduct a monitoring review of the Infrastructure 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 terms of this Agreement, the Infrastructure Project Milestones, and the Grantee's application;

(2.) A complete, detailed analysis of actual grant and matching funds expended to date on the Infrastructure Project, and conformity or nonconformity with the permitted amounts for any line item of the Infrastructure Project Milestones.

(3.) Upon the request of the IEDC, the Grantee shall be required to submit the following: (i) copies of agreements between the Grantee and all consultants and/or professional services providers to be paid with grant funds, and (ii) copies of agreements between the Grantee and any entity involved in the Infrastructure Project;

(4.) A detailed listing of all Infrastructure Project costs by Milestone line item which are accrued yet unpaid, if any, in a format that may be prescribed by the IEDC;

(5.) A written evaluation of the Grantee's timely progress in Infrastructure Project management, financial management and control systems, procurement systems and methods; and

(6.) A written evaluation as to the Grantee's compliance with its procurement policies, procedures, and regulations, including a requirement that the Grantee 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 disburse funds before the Monitoring Review has been completed.

C. 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 9B above.

D. The Grantee's failure to meet the requirements of the Monitoring Review, including but not limited to failure to respond to IEDC requests for information, records and/or on-site access, shall be a material breach of this Agreement.

## 10. ACCESS TO RECORDS:

The Grantee agrees that the IEDC may elect to engage in monitoring practices independently of, or in conjunction with other appropriate State agencies or departments at all reasonable times during the term of this Agreement and for three (3) years following the date of final payment under this Agreement, or until a State or federal audit has been completed and all audit exceptions cleared, whichever is earlier. Upon reasonable notice, the Grantee shall make available to the IEDC, its agents, or other appropriate State agencies or officials all books or records in its possession or control which pertain to this Agreement and the Project. If any site visit is made on the premises of the Grantee or under this Agreement, the Grantee shall provide and shall require all reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of the Grantee.

## 11. SUBSTANTIAL PERFORMANCE:

This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

## 12. STATUTORY AUTHORITY OF GRANTEE:

As a condition of receiving a grant from the IDGF fund, the Grantee expressly represents and 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 IEDC for the Infrastructure Project under Indiana Code § 5–28–25. The Grantee expressly agrees to promptly repay all monies received under this Agreement should a legal determination of the Grantee's ineligibility be made.

## 13. COMPLIANCE WITH LAWS:

A. The Grantee agrees to comply with all applicable federal, State, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. At the request of either party, the enactment of any relevant State or federal statute or the promulgation of regulations thereunder after execution of this Agreement will be reviewed by the IEDC and the Grantee to determine whether the provisions of this Agreement require formal modification.

B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana (the "State"), as set forth in Indiana Code § 4–2–6, Indiana Code § 4–2–7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Grantee is not familiar with these

ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig/). If the Grantee or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under Indiana Code § 4–2–6–12, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4, and under any other applicable laws.

C. The Grantee certifies, by entering into this Agreement, that neither it nor any of its principals 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. Further, the Grantee agrees that any payments in arrears and currently due to the IEDC or the State 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 pending, current, or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the IEDC of any such actions, should they arise. During the term of such actions, the Grantee agrees that the IEDC may delay, withhold, or deny payment of claims for grant funds otherwise available under this Agreement or any other tax credits or incentives issued pursuant to this Agreement or any other agreement with the State or any of its agencies or departments.

E. If a legitimate dispute exists as to the Grantee's liability or guilt in any action initiated by the IEDC, the State, or its agencies, and the IEDC decides to delay, withhold, or deny funding or credits 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 (the "IDOA") following the procedures for disputes outlined herein. A determination by the IDOA shall be binding on the parties.

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, and regulations. Failure to do so is a material breach of this Agreement and is grounds for delay, withholding, or denial of payment of claims for grant funds under this Agreement.

G. The Grantee hereby affirms that it is properly registered and in good standing with the Indiana Secretary of State (the "SOS"). The Grantee also has, if required, registered with the Indiana Department of Workforce Development (the "DWD") and has no outstanding workforce issues with the DWD. The Grantee further affirms that if required, it has properly registered with the IDOR and has no outstanding issues with the Indiana Department of Revenue (the "IDOR"). The Grantee also affirms that there are no outstanding enforcement actions against it by agencies of the State. The below named signatory hereby warrants that he/she is authorized to make such affirmations to the IEDC.

H. The Grantee agrees that the IEDC may confirm, at any time, that no liabilities exist to the IEDC or to the State. If any such liabilities are discovered, the Grantee agrees that the IEDC or the State may bar the Grantee from contracting with the IEDC or the State in the future, cancel existing contracts, withhold payments to offset such obligations, and/or withhold further payments or purchases until the Grantee becomes current in its payments on its liability to the IEDC or to the State, and has submitted proof of such payment to the IEDC or to the State.

I. Any payments that the IEDC may delay, withhold, deny, or apply under this Agreement shall not be subject to penalty or interest under Indiana Code § 5–17–5.

J. The Grantee acknowledges that the IEDC and state contracts are subject to the Access to Public Records Act (Indiana Code § 5-14-3). Unless an APRA exception applies, final offers of public financial resources are disclosable public records.

## 14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT:

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

A. The Grantee and any principals of the Grantee certify that:
(1.) The Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:
(a.) Indiana Code § 24–4.7 [Telephone Solicitation of Consumers];
(b.) Indiana Code § 24–5–12 [Telephone Solicitations]; or
(c.) Indiana Code § 24–5–14 [Regulation of Automatic Dialing Machines]
in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and

(2.) The Grantee will not violate the terms of Indiana Code § 24–4.7 for the duration of this Agreement, even if Indiana Code § 24–4.7 is preempted by federal law.

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

## 15. DRUG-FREE WORKPLACE CERTIFICATION:

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

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

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement;

and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the IEDC in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## 16. NONDISCRIMINATION:

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

## 17. NOTICE TO PARTIES:

A. Whenever any notice, statement, or other communication ("Notice") is required under this Agreement, it shall be sent to the following address, unless otherwise advised in writing:

(1.) Notices to the IEDC shall be sent to:
INDIANA ECONOMIC DEVELOPMENT CORPORATION
Attention: General Counsel
One North Capitol, Suite 700
Indianapolis, IN 46204-2288

(2.) Notices to the Grantee shall be sent to the Grant Contract Administrator:.
Debra Tracy
Shelby County Development Corporation
16 Public Square, Suite A
Shelbyville, IN 46176
d.tracy@shelbydevelopment.com

B. Notice from the IEDC to the Grantee may be provided via electronic mail to the Grantee's electronic mail address specified at Exhibit A, or via certified, registered, or first-class U.S. mail at the option of the IEDC. Notice shall be deemed delivered upon dispatch. Any change in Grantee Contract Administrator or contact information must be provided in writing by the Grantee to the IEDC.

C. As required by Indiana Code § 4–13–2–14.8 and detailed in Paragraph 4C, payments to the 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. Payments shall be deemed delivered upon transmission pursuant to the written instructions of the Grantee.

## 18. ASSIGNMENT:

A. This Agreement binds the Grantee's successors and assignees to all terms and conditions herein. The Grantee shall not assign, subgrant, or subcontract the whole or any part of this Agreement without prior written approval of the IEDC.

B. The Grantee may not, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, seek to avoid the observance or performance of its obligations to the IEDC under this Agreement.

## 19. INDEMNIFICATION:

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

## 20. DEBARMENT AND SUSPENSION:

The Grantee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, the IEDC, or any agency or political subdivision of the State. The term "principal" for purposes of this Agreement means the primary executive officer or board of the Grantee.

## 21. 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, including Indiana Code § 5-17-15, 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 of the IEDC shall be limited to only the amount of funding originating from the IEDC or the State and shall not be based on funding from federal or other sources. In the event of legal action or proceedings of any kind, including without limitation enforcement of payment terms, the recapture of grant funds, whether brought by either party, the IEDC shall be entitled to reasonable attorney's fees, court costs, and other related reasonable expenses, plus interest pursuant to Indiana Code § 34-51-4-9.

## 22. 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. This Agreement may not be altered or amended except in writing, signed by an authorized representative of each party hereto.

C. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) Indiana Code § 5-28-25; (2) regulations pertaining to the IEDC; (3) this Agreement; (4) Exhibit A, attached hereto. All of the foregoing are fully incorporated herein by reference.

D. 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. 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. The Grantee hereby consents to the personal jurisdiction of said courts.

E. 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.

F. 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.

G. The parties to this Agreement, in the performance thereof, will be acting in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees, or subagents of any other party.

H. The Grantee shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

I. 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.

J. The IEDC may terminate this Agreement, and the Grantee shall be obligated to promptly repay any funds received under this Agreement, if any one or more of the following events occur: (i) the Grantee makes an assignment, conveyance or surrender of the Project facilities for the benefit of creditors; (ii) the Grantee applies to any court for the appointment of a trustee or receiver of any substantial part of the assets of the same or commences any proceedings relating to any of the same under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or other liquidation law of any jurisdiction; or (iii) any application is filed or proceedings are commenced as described above against the Grantee and the Grantee indicates its approval, consent or acquiescence, or an order is entered appointing a trustee or receiver or adjudication of any of the same as a bankrupt or an insolvent or approving the petition in any such proceedings and such proceedings are not dismissed within sixty (60) days after the filling or commencement of such proceedings. Should any of the foregoing events occur, the Grantee shall provide written notice to the IEDC immediately. This paragraph shall not be construed to limit the ability of the IEDC or the IDOR to collect, or limit the Grantee's obligation to repay, any grant funds disbursed under this Agreement, plus any applicable interest and penalties, should any one or more of the aforementioned events occur.

K. This Agreement may be executed through an original or through 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.

## 23. REPRESENTATIONS CONCERNING APPLICATION:

The Grantee represents and warrants that all representations, statements, and all other matters contained in the application submitted by the Grantee to the IEDC are true and complete in all material respects, unless disclosed or made a part 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 application was made.

## 24. 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 the Grantee and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Grantee when his/her signature is affixed. This Agreement is not subject to further acceptance by the Grantee once accepted by the IEDC.

## 25. 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 Grantee; (ii) that he/she has not, nor has any other member, employee, representative, agent, or officer of the Grantee, directly or indirectly, to the best of the undersigned's 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 this Agreement.

*(remainder of page intentionally left blank)*

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

**CITY SHELBYVILLE**

Signed Name

THOMAS D. DEBAUN

Printed name

Mayor

Title

JUNE 29, 2016

Date

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**
***Victor P. Smith, Secretary of Commerce***
*(Digital Signature Stamp Below)*

Victor Smith

Digitally signed by Victor P. Smith
DN: cn=Victor P. Smith, o=Secretary of Commerce, ou=IEDC, email=vsmith@iedc.in.gov, c=US
Date: 2016.07.11 09:44:36 -04'00'

**STATE BUDGET AGENCY**

Trevor Butler (for)

BRIAN E. BAILEY
DIRECTOR

7/20/16

Date

# INDIANA ECONOMIC DEVELOPMENT CORPORATION
# INDUSTRIAL DEVELOPMENT GRANT FUND (IDGF)
# GRANT AGREEMENT

## CITY SHELBYVILLE

## EXHIBIT A

## 1. PROJECT DESCRIPTION:

A. The Grantee's Infrastructure Project shall consist of constructing an access road to Krone NA, Inc.'s new U.S. headquarters in Shelbyville, Indiana.

B. The Project will be located at **Shelbyville, IN** (the "Project Location").

## 2. INFRASTRUCTURE PROJECT MILESTONES:

| Milestone | Estimated Date of Completion | Requested IDGF Grant Portion | Matching Funds from Non-IDGF Sources | Total Cost of Each Milestone |
|---|---|---|---|---|
| *R/W for Road and Detention* | *05/1/2016* | *$0.00* | *$107,730.00* | *$107,730.00* |
| *Design* | *07/25/2016* | *$64,500.00* | *$0.00* | *$64,500.00* |
| *Road Construction A. Grading, Drainage, Subgrade* | *10/25/2016* | *$300,000.00* | *$297,000.00* | *$597,000.00* |
| *Road~~and~~ Construction B. Asphalt Paving, Detention & Drainage Construction* | *11/25/2016* | *$135,500.00* | *$254,500.00* | *$390,000.00* |
| **TOTAL:** | | *$500,000.00** | *$659,230.00* | *$1,159,230.00*** |

*Must equal award amount for IDGF grant **Must equal total cost of Infrastructure Project

As a condition of payment of the Requested IDGF Grant Portion, the actual costs must equal or exceed the Total Cost of the corresponding Milestone (regardless whether Grantee and/or other entities are paying the costs); if actual costs are less, then the Requested IDGF Grant Portion payment will be reduced proportionately.

PROJECT I.D.: 416922
INCENTIVE I.D.: A229-6-IDGF-1101

**EXHIBIT B**
**IDGF Claim Form**

# Your Company Name

***Your Company Slogan***

Street Address
City, ST ZIP Code
Phone 405.555.0190 Fax 405.555.0191

**DATE:** July 22, 2014
**INVOICE #**
**IEDC Grant ID :**
**Project #**

**Remit Via email to:**
Indiana Economic Development Corporation
Tammy Jones
One North Capital Ave Suite 700
Indpls IN 46204
317-234-8259

| DESCRIPTION | AMOUNT |
|---|---|
| **Milestone #** | |
| **Cost of Milestone $XX + $AA** | |
| **Requested Payment ($XX)** | $ - |
| **Brief description of what was completed on this Milestone** | |
| ***Grantee must submit sufficient documentation to demonstrate that Milestone has been completed.*** | |
| **TOTAL** | $ - |

*I am authorized to present this claim for reimbursement. I certify that the account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.*

Name: _____ Title: _____

Signature: _____ Date: _____

Authorized Initials/Date of IEDC CFO: _____

Signature of IEDC Approving Authority _____ Date _____

Project ID: 416922

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**
**FIRST AMENDMENT TO IDGF AGREEMENT**

This FIRST AMENDMENT (the "First Amendment") to the Industrial Development Grant Fund Agreement (the "IDGF Agreement") is entered into between the **Indiana Economic Development Corporation** (the "IEDC") and **City of Shelbyville** (the "Grantee").

**RECITALS**

WHEREAS, City of Shelbyville and the IEDC entered into the IDGF Agreement, fully executed on July 20, 2016 to provide for the project described therein (the "Project"), and

WHEREAS, the Grantee desires to update the **INFRASTRUCTURE PROJECT** Milestones of the Project, as stated in Exhibit A of the IDGF Agreement;

WHEREAS, City of Shelbyville seeks to maintain the term of the agreement as set forth in the IDGF Agreement and to further enhance economic growth in the State;

WHEREAS, the nature of the Project as originally contemplated by the parties has not undergone any substantial or material change in scope, purpose, and expectations, except as described herein;

WHEREAS, neither the changes nor this First Amendment will alter the position of the IEDC in regards to its rights and benefits under the IDGF Agreement;

Now, THEREFORE, in consideration of the above recitals and the mutual promises, obligations, and stipulations contained herein and in the IDGF Agreement, the parties hereby agree as follows:

1. The IDGF Agreement is amended such that the "Infrastructure Project Milestones" in Exhibit A shall mean the following:

| Milestone | Estimated Date of Completion | Requested IDGF Grant Portion | Matching Funds from Non-IDGF Sources | Total Cost of Each Milestone |
|---|---|---|---|---|
| *Milestone 1 R/W for Road and Detention* | *09/01/2016* | *$-0-* | *$107,730.00* | *$107,730.00* |
| *Milestone 2 Road Construction A. Grading, Drainage, Subgrade* | *10/25/2016* | *$300,000.00* | *$297,000.00* | *$597,000.00* |
| *Milestone 3 Road Construction B. Asphalt Paving* | *11/25/2016* | *$135,500.00* | *$54,500.00* | *$190,000.00* |
| *Milestone 4 Design* | *05/01/2017* | *$64,500.00* | *$-0-* | *$64,500.00* |
| *Milestone 5 Detention & Drainage Construction.* | *08/01/2017* | *$-0-* | *$200,000.00* | *$200,000.00* |
| **TOTAL:** | | *$500,000.00* | *$659,730.00* | *$1,159,230.00* |

2. This First Amendment may be executed through an original or through 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 First Amendment.

3. All remaining provisions of the IDGF Agreement shall remain in full force and effect.

4. Unless modified by this First Amendment, City of Shelbyville hereby certifies: (i) that all representations and warrants set forth in the IDGF Agreement were correct and true as of the date of the IDGF Agreement and remain correct and true as of the date of execution of this First Amendment; (ii) that it has fully complied with the terms and covenants set forth in the IDGF Agreement from the date of execution of the IDGF Agreement to the date of execution of this First Amendment; (iii) that it hereby represents, warrants, and covenants to abide by all the terms of the IDGF Agreement, as amended by this First Amendment; and (iv) that it is not forbidden by law, corporate action, or the terms of another agreement or contract to enter into the IDGF Agreement, as amended by this First Amendment.

5. This First Amendment shall be effective as of August 12, 2016.

6. The undersigned representative of City of Shelbyville attests, subject to the penalties for perjury, that he/she is the contracting party or that he/she is the properly authorized representative, agent, member, or officer of the Grantee. Each undersigned also represents that he/she has not, nor has any other member, employee, representative, agent, or officer of the Grantee, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of the IDGF Agreement or this First Amendment other than that which appears upon the face of the IDGF Agreement.

*(remainder of page intentionally left blank)*

Having read and understand the foregoing terms of this First Amendment to the IDGF Agreement, the parties do, by their respective signatures dated below, hereby agree to the terms thereof.

**CITY OF SHELBYVILLE**

BY: THOMAS D. DEBAUN
Its: MAYOR
Date: SEPT. 15, 2016

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**

*Victor P. Smith, Secretary of Commerce*

*(Digital Signature Stamp Below)*

Victor Smith

Digitally signed by Victor P. Smith
DN: cn=Victor P. Smith, o=Secretary of Commerce, ou=IEDC, email=vsmith@iedc.in.gov, c=US
Date: 2016.09.16 10:50:42 -04'00'

**STATE BUDGET AGENCY**

Trevor Mattlee (for)
Brian E. Bailey
Director

Date: 9/20/16