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:
A281-6-ORG-10016	4/22/2016

3. CONTRACTS & LEASES

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

FISCAL INFORMATION

4. Account Number:	5. Account Name:
17010-10600.531025	ORANGE CO REGIONAL ECO
6. Total amount this action: $5,799,736.97	7.New contract total: 5,799,736.97
8. Revenue generated this action: $0.00	9.Revenue generated total contract: $0.00

10.New total amount for each fiscal year :

Year 2016	$1,119,736.97
Year 2017	$1,560,000.00
Year 2018	$1,560,000.00
Year 2019	$1,560,000.00

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year):	12. To (month, day, year):
7/1/2015	6/30/2019

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	0000006044

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 #:
Georgia Chang	317/232-8903

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

COURIER INFORMATION

20. Name:	21. Telephone #:
Joyce Weidner	317-234-8003

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

VENDOR INFORMATION

23 Vendor ID # 0000252314

24. Name:	25. Telephone #:
RADIUS INDIANA	N/A

26. Address:
1501 I STREET
BEDFORD, IN 47421

27. E-mail address: j.quyle@radiusindiana.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-Veterans
Minority: ___ Yes X No
Women: ___ Yes X No
IN-Veteran ___ Yes X No

30. Primary Vendor Percentages
100.0 %

31. Sub Vendor: M/WBE/IN-Veteran
Minority: ___ Yes X No
Women: ___ Yes X No
IN-Veteran ___ Yes X No

32. If yes, list the %:
Minority: ___ %
Women: ___ %
IN- Veteran ___ %

33. Is there Renewal Language in
X Yes ___ No

34. Is there a "Termination for Convenience" clause in the document? 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)*:
IC. 4-33-13-5 & IC 4-35-8.3-4(A)(8)

37. Description of work and justification for spending money. *(Please give a brief description of the scope of work included in this agreement.)*

This Contract shall terminate and replace entirely the previous agreement (A281-2-ORG-11-002). Under the new contract terms Contractor shall remain & operate the RIF as agreed between 2 parties; and maintain an inventory of regional assets, up-to-date marketing plan, website and collateral brochures; perform outreach to uncover significant business issues and to mobilize response for the purpose of retaining SC IN businesses and expend efforts to make SC Indiana conducive to business retention and expansion.

38. Justification of vendor selection and determination of price reasonableness:

The IEDC recognizes Contractor as the lead regional economic development orgainzation for the South Cenral IN region and for selected contiguous counties for years. This Agreement is to expend the State support to Contractor's service to 4 more years. The disbursement of the funding shall be quarterly not to exceed $225,000 and an additional $660,000 on an annual basis.

39. If this contract is submitted late, please explain why: *(Required if more than 30 days late.)*

40. Agency fiscal officer or representative appro	41. Date Approved	42. Budget agency approval	43. Date Approved
[signature]	4/22/16	AC	4/29/16
44.Attorney General's Office approval	45. Date Approved	46. Agency representative receiving from AG	47. Date Approved

94831-000

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "**Agreement**") is made and entered into by and between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the "**IEDC**") and **RADIUS INDIANA, INC.** (the "**Contractor**").

RECITALS

WHEREAS, pursuant to Indiana Code § 4-33-13-5 and Indiana Code § 4-35-8.3-4(a)(8) (together, the "**Act**"), wagering taxes and historic hotel district community support fees are collected and are to be used for development and implementation of a regional economic strategy to assist the residents of Orange County and the counties contiguous to Orange County ("**South Central Indiana**") in improving their quality of life and to help promote successful and sustainable communities;

WHEREAS, the IEDC has dedicated these funds for the development and implementation of a regional economic development strategy for South Central Indiana to the Contractor as the Contractor has served successfully as the lead regional economic development organization for the South Central Indiana region and for selected contiguous counties;

WHEREAS, the Contractor continues to build upon its regional economic strategies and desires to enter into a new agreement with the IEDC in furtherance of the Act; and

WHEREAS, the parties agree that upon full execution, this Agreement shall supersede and fully replace in its entirety the prior agreement (EDS# A281-2-ORG-11-002), which was executed on June 21, 2012, and subsequently amended by the parties.

NOW THEREFORE, in consideration of the above recitals and the mutual undertakings and covenants set forth herein, the parties hereby agree as follows:

1. **DUTIES OF CONTRACTOR.** The Contractor's duties hereunder shall include the following:

   (A) The purpose of this Agreement is to enable continued development and implementation of a regional economic strategy in South Central Indiana pursuant to the Act. The Contractor represents that it is aware of these provisions and goals and that it is entering into this Agreement with the intention to continue to further them.

   (B) The funding under this Agreement shall be provided in accordance with the provisions contained in this Agreement and in the Act. In the event the Contractor is unable to perform these services to the satisfaction of the IEDC, the IEDC reserves the right to withhold disbursements under this Agreement, unless otherwise agreed to by the parties.

(C) The Contractor shall perform the services as described in **Exhibit A** (the "**Services**"). **Exhibit A** is attached hereto and incorporated into this Agreement by reference as if fully set forth in this Paragraph. The IEDC shall determine whether subsequent modifications to **Exhibit A** require an amendment to this Agreement.

2. TERM.

(A) This Agreement shall commence on **July 1, 2015** and shall remain in effect through **June 30, 2019** or unless earlier terminated in accordance with the provisions of this Agreement (the "**Expiration Date**"). All Services under this Agreement must be completed by the Expiration Date. In no event shall disbursements be made after the Expiration Date.

(B) This Agreement may be renewed under the same terms and conditions, subject to the approval of the parties and the State Budget Director. The term of the renewed Agreement may not be longer than the term of the original Agreement. All renewals and extensions must be in writing and signed by all parties.

(C) Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of this Agreement, including provisions for disbursement of amounts owed under the Agreement, disclaimer of warranty, limitation of liability, and intellectual property clauses.

3. CONSIDERATION.

(A) The Contractor represents that funding under this Agreement is contingent upon funds being made available and actually disbursed to the IEDC for distribution pursuant to the formulas set forth in the Act, as amended effective July 1, 2015.

(B) Within thirty-five (35) days of execution of this Agreement, the IEDC shall disburse to the Contractor the sum of $1,119,736.97, as follows:

a. In consideration for the performance of the Contractor's duties set forth in Paragraph 29 of this Agreement, the IEDC shall disburse to the Contractor $187,139.40.

b. Disburse to the Contractor $272,597.57 from funds available under Indiana Code § 4-33-13-5.

c. Disburse to the Contractor $660,000.00 from funds available under Indiana Code § 4-35-8.3-4(a)(8).

(C) The Contractor shall send an invoice for its Services to the IEDC and the IEDC shall disburse funds to the Contractor as follows:

a. On a quarterly basis, an amount not to exceed $225,000.00 from funds available under Indiana Code § 4-33-13-5, and

b. In December of each year, all of the funds available under Indiana Code § 4-35-8.3-4(a)(8), which amount shall not to exceed $660,000.00.

(D) Except for those funds provided under Paragraph 3(B)(a), in no event shall the IEDC be responsible to disburse to the Contractor any funds in excess of the funds available under the Act.

(E) Within one hundred and twenty (120) days of the end of each state fiscal year, the parties will collaborate to decide how best to make use of any remaining funds available under the Act.

(F) The Services performed by the Contractor under this Agreement as provided in **Exhibit A** hereto. All Services provided by the Contractor under this Agreement must be performed to the IEDC's reasonable satisfaction, which satisfaction shall be determined at the discretion of the IEDC, and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations.

4. **DISBURSEMENTS.**

(A) All evidentiary materials required by **Exhibit A** must be submitted to and approved by the IEDC.

(B) All disbursement obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures, and as required by Indiana Code § 4-13-2-14.8. Notwithstanding any other law, rule, or custom, a person or company whom has a contract with the State of Indiana or submits invoices to the state for disbursement shall authorize, in writing, the direct deposit by electronic funds transfer of all disbursements by the state to the person or company. The written authorization must designate a financial institution and an account number to which all disbursements are to be credited. Any exception to this requirement must be approved by the IEDC and the State of Indiana. For forms and additional information, see the Auditor of State's website at *www.in.gov/auditor/forms.*

5. **CONFIDENTIALITY OF INFORMATION.**

(A) The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information disclosed to the Contractor by the IEDC for the purpose of this Agreement, and specifically identified as confidential information will not be disclosed to others or discussed with other parties without the prior written consent of the IEDC.

(B) **Deleted by mutual agreement of the parties.**

6. **USE OF THE IEDC NAME.**

The IEDC has not granted any rights to use its name, trademark, intellectual property, or logos. The Contractor agrees that it will not use the name or intellectual property, including IEDC trademarks or logos, in any manner, including commercial advertising or as a

business reference without the prior written consent of the IEDC. For any purposes outside those contemplated by this Agreement, and for which the IEDC's participation will be referenced, the IEDC shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing and delivered to the IEDC for approval at its sole discretion.

7. **GOVERNING LAW.**

(A) This Agreement shall be construed in accordance with, and governed by, the laws of the State of Indiana without regard to principles of choice of law, and suit, if any, must be brought in the State of Indiana. The venue for any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court for the Southern District of Indiana. The Contractor hereby consents to the personal jurisdiction of Indiana state and federal courts.

(B) If any section, 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 section, paragraph, term, condition, or provision so found will be deem severed from this Agreement, but all other sections, paragraphs, terms, conditions, and provisions will remain in full force and effect.

(C) The Contractor understands that this Agreement is a public record subject to request pursuant to Indiana Code § 5-14-3 and its exemptions. Use by the public of the information contained in this Agreement shall not be considered an act of the IEDC or the State.

8. **TERMINATION, FUNDING CANCELLATION, & DEFAULT.**

(A) This Agreement may be terminated by the IEDC in its sole discretion if the IEDC determines that the Contractor is failing to meet its obligations and requirements of this Agreement after the IEDC has provided the Contractor thirty (30) days' prior written notice of such failure that the Contractor, within such 30 days, has not, to the IEDC's satisfaction, remedied such failure or otherwise fail to meet its obligations under the terms and provisions of this Agreement. Termination of Services shall be effected by delivery to the Contractor of a termination notice at least 30 days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective.

(B) The sole source of funding for this Agreement shall be the funds available to the IEDC under the Act. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available under the Act to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. Funds shall be deemed to be unavailable to the extent that the Services provided under this Agreement are not authorized under the Act.

(C) The Contractor may cease providing Services or terminate this Agreement, for cause, if the IEDC, within one hundred twenty (120) days after receipt of written notice, fails to correct or cure any material breach of this Agreement, the Contractor may cancel and terminate this Agreement and institute the appropriate measures to collect monies due up to and including the date of termination.

(D) The Contractor shall be compensated for Services properly rendered prior to the effective date of termination. The IEDC will not be liable for Services performed after the effective date of termination. In no case shall the disbursements to the Contractor exceed that of the funds available under the Act.

9. PROGRESS REPORTS.

(A) The Contractor shall submit written semiannual progress reports ("**Semiannual Progress Reports**") to the IEDC as provided in this Agreement and **Exhibit A**.

(B) Semiannual Progress Reports shall be submitted to the IEDC at reports@iedc.in.gov, unless otherwise directed by the IEDC.

(C) The Semiannual Progress Reports must be submitted for the duration of this Agreement.

(D) In the event that such Semiannual Progress Reports are not submitted within the time frame allotted or the Contractor fails to produce the evidence required by the IEDC, the Contractor may be deemed a breach of this Agreement and the IEDC may, among its other remedies under this Agreement, withhold authorization for any disbursements until such time as the deficiency is corrected.

10. ACCESS TO RECORDS & AUDITS.

(A) The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. The Contractor shall make such materials available at his/her respective office at all reasonable times during the Agreement period, and for three (3) years from the date of final disbursement under the Agreement, for inspection by the IEDC or by any other authorized representative of state government for the purpose of verifying that the compensation Contractor has received under this Agreement was accurate and in accordance with the terms of this Agreement and any amendments thereto. Copies thereof shall be furnished at no cost to the IEDC if requested.

(B) The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with Indiana Code § 5-11-1 *et seq.* and any audit guidelines specified by the IEDC.

11. THE CONTRACTOR'S SERVICES.

(A) The Contractor recognizes that the Services to be performed under this Agreement are vital to the IEDC and must be continued without interruption and that, upon the expiration of the Agreement, the parties shall make a reasonable effort to negotiate an

extension or renewal of this Agreement; and, in the event such extension or renewal cannot be accomplished, a successor regional entity or partnership may continue them, as contemplated by the Act. The Contractor agrees to use commercially reasonable efforts and cooperation to effect an orderly and efficient transition to a successor to provide the Services contemplated hereby. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written modification thereof.

(B) Except as provided in Exhibit A, the Contractor shall not change the scope of Services unless and until authorized in writing by the IEDC. No claim for additional compensation shall be made except as contemplated by this Agreement. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

(C) The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. The Contractor represents that it has or shall obtain at its own expense all personnel, materials, and equipment required to perform the Services under this Agreement. All of the Services performed hereunder shall be performed by the Contractor or under its supervision. The Contractor warrants that all personnel assigned to perform the Services or other consultants or subcontractors engaged by the Contractor to perform the Services are fully qualified and authorized to perform such Services under the state and local laws. If the IEDC becomes dissatisfied with the work product of, or the working relationship with, any individuals assigned to work under this Agreement, the IEDC may notify the Contractor of its dissatisfaction and the Contractor will use commercially reasonable efforts to resolve the IEDC's dissatisfaction. However, nothing in this Agreement shall be interpreted to require Contractor to seek or obtain IEDC approval in hiring decisions or staff assignments, nor to make changes in staff or staff assignments.

(D) The IEDC shall, at all reasonable times, have the right to inspect the work, Services or performance of the Contractor. The Contractor shall furnish all reasonable aid and assistance required by the IEDC for proper examination of the work or Services. Such inspection shall not relieve the Contractor of any obligation to perform said Services in accordance with the law or this Agreement.

12. OWNERSHIP OF DOCUMENTS & MATERIALS. Deleted by mutual agreement of the parties.

13. COMPLIANCE WITH LAWS.

(A) The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IEDC and the Contractor to determine whether the provisions of this Agreement require formal modification.

(B) The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, Indiana Code § 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the website of the Indiana Inspector General at *http://www.in.gov/ig/*. If the Contractor or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4 and under any other applicable laws.

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

(D) The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, or pending, and agrees that it will immediately notify the IEDC of any such actions. During the term of such actions, the Contractor agrees that the IEDC may delay, withhold, or deny work under any supplement, amendment, change order, or other contractual device issued pursuant to this Agreement.

(E) If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the IEDC or the State of Indiana or its agencies, and the IEDC decides to delay, withhold, or deny work to Contractor, Contractor may request that it be allowed to continue, or receive work, without delay.

(F) Any disbursements that the IEDC may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest under Indiana Code § 5-17-5.

(G) The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations applicable in connection with the Services provided under this Agreement. Failure to do so is a material breach of the Agreement and grounds for immediate termination of this Agreement and denial of further work with the IEDC. The IEDC shall not be required to reimburse the Contractor for any Services performed when Contractor or its employees or subcontractors were not or are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked,

Contractor shall notify the IEDC immediately, and the IEDC, at its option, may immediately terminate this Agreement.

(H) The Contractor affirms that, if it is an entity described in Title 23 of the Indiana Code, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT.

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

(A) The Contractor and any principals of the Contractor certify that:

(1) The Contractor, 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 Contractor 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 Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor:

(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.

15. DRUG-FREE WORKPLACE CERTIFICATION.

(A) The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace during the term of this Agreement. The Contractor will give written notice to the IEDC within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the Contractor's workplace.

(B) It is further expressly agreed that a false certification, a violation of the certification or the failure of the Contractor to, in good faith, comply with the terms of this Section shall constitute a material breach of this Agreement and shall entitle the IEDC to impose, or may otherwise result in, sanctions against the Contractor including, but not limited to, suspension of Agreement disbursements, the termination of this Agreement and/or the debarment of the Contractor 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), the Contractor 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 contracts with and contracts from the State of Indiana in excess of $25,000.00. No award of a contract 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 Contractor and made part of the contract or agreement as part of the contract documents.

The Contractor 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 Contractor'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 Contractor'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 (A) above that, as a condition of continued employment, the employee will:
   (a) Abide by the terms of the statement; and
   (b) Notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
(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.

16. NONDISCRIMINATION.

Pursuant to Indiana Code § 22-9-1-10 and the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Americans with Disabilities Act, the Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment relating 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 employee or applicant's race, color, religion, sex, age disability, national origin or ancestry or status as a veteran, or any other characteristic protected by federal, state, or local law. Breach of this covenant may be regarded as a material breach of the 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
Attn: General Counsel
One North Capitol Avenue, Suite 700
Indianapolis, IN 46204-2288
reports@iedc.in.gov

2) Notices to the Contractor shall be sent to:
Jeff Quyle, President/COO
RADIUS INDIANA, INC.
1504 I Street
Bedford, IN 47421
j.quyle@radiusindiana.com

With copy to:
David M. Umpleby, Partner
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204
dumpleby@kdlegal.com

(B) Any change in the Contractor's contact information must be provided in writing by the Contractor to the IEDC in accordance with this paragraph.

(C) Notice shall be provided via electronic mail to the Contractor's electronic mail address and via certified, registered, or first-class U.S. mail at the option of the IEDC. Notice shall be deemed delivered upon dispatch.

18. SUBCONTRACTS, ASSIGNMENT & KEY PERSONS.

(A) The Contractor shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the IEDC. The Contractor agrees to bind all subcontractors, successors and assignees to all the terms and conditions of this Agreement.

(B) The Contractor shall specifically require each subcontractor, if any, who has access to the IEDC's confidential information in the course of performing any Services to be bound by the confidentiality provisions in Paragraph 5 of this Agreement and, at the IEDC's discretion, to execute a non-disclosure agreement that is satisfactory to the IEDC.

(C) KEY PERSON(S): **Deleted by mutual agreement of the parties.**

(D) BACKGROUND CHECKS: **Deleted by mutual agreement of the parties.**

19. INDEMNIFICATION.

The Contractor shall indemnify, defend, and hold harmless the IEDC and the State of Indiana and their respective agents, officers, employees and representatives from all third party 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 the Contractor or its subcontractor(s), and from all judgments recovered there from 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 the Contractor and/or subcontractor(s), agents, officers, or employees in connection with performance of this Agreement. The IEDC shall <u>not</u> provide such indemnification to Contractor.

20. DEBARMENT & SUSPENSION.

(A) The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency, branch of government, or by any department, agency, or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management of supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

(B) The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from use

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

21. ATTORNEYS' FEES & INTEREST.

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, attorneys' fees, court costs, or litigation expenses, except as required by Indiana law, in part, Indiana Code § 5-17-5, Indiana Code § 34-54-8, Indiana Code § 34-13-1, and Indiana Code § 34-54-8. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the parties stipulate and agree that any liability resulting from the IEDC's failure to make prompt disbursement shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

22. MISCELLANEOUS.

(A) No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right. Neither the IEDC's review, approval, or acceptance of, nor disbursement of funds for the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Contractor shall be and remain liable to the IEDC in accordance with applicable law for all damages to the IEDC caused by the Contractor's negligent performance of any of the Services furnished under this Agreement.

(B) This Agreement constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties. Upon Contractor's receipt of funds set forth in Paragraph 3(B), all obligations of both parties under the prior agreement (EDS# A281-2-ORG-11-002) shall be considered fully satisfied.

(C) This Agreement may be executed through an original or through an electronic copy, and in duplicates 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.

(D) Both parties hereto, in the performance of this Agreement, shall act 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 the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

(E) Nothing in this Agreement shall be construed to confer any rights or remedies on any third party not a signatory to this Agreement, including, but not limited to, the employees or sub-contractors of the Contractor.

(F) If the IEDC determines that it would be in the IEDC's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the IEDC or to the employee.

(G) The IEDC is exempt from state, federal, and local taxes. The IEDC will not be responsible for any taxes levied on the Contractor as a result of this Agreement.

(H) This Agreement was reviewed and/or revised by legal counsel for the IEDC and the Contractor, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

23. INSURANCE.

The Contractor shall secure and keep in force during the term of this Agreement the insurance coverages requested by the IEDC to cover claims of any nature which may arise out of or result from this Agreement and shall furnish a certificate of insurance and all endorsements to the undersigned IEDC representative upon request. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees. The Contractor shall also carry sufficient General Liability Insurance.

24. AUTHORITY TO BIND CONTRACTOR.

Notwithstanding anything in the Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Agreement fully binding upon the Contractor when his/her signature is affixed and is not subject to home office acceptance hereto when accepted by the IEDC.

25. INFORMATION TECHNOLOGY ACCESSIBILITY STANDARDS.

If the Contractor provides any information technology-related products or Services to the IEDC, the Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are available online at *http://iot.in.gov/architecture/*. The Contractor specifically agrees that all hardware, software, and Services provided to or purchased by the IEDC shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and Indiana Code § 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The IEDC may terminate this Agreement for default if the Contractor fails to cure a breach of this provision within a reasonable time.

26. DISPUTES.

(A) Should any disputes arise with respect to this Agreement, the Contractor and the IEDC agree to act immediately to resolve such disputes. Neither party shall be required to submit to binding arbitration for the resolution of disputes. Time is of the essence in the resolution of disputes.

(B) The Contractor agrees that, the existence of a dispute notwithstanding, it will continue, without delay, to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work or Services, without delay, any additional costs incurred by the IEDC or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the IEDC for such costs.

27. ORDER OF PRECEDENCE; INCORPORATION BY REFERENCE.

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

28. NON-PROFIT CERTIFICATION.

The Contractor certifies that it is an Indiana non-profit corporation under 501(c)(3) of the Internal Revenue Code. The Contractor further represents that should its status lapse or should it become ineligible under the Act, to receive the funds under this Agreement, the Contractor shall notify the IEDC immediately and shall cure such default within a reasonable period of time. If the Contractor is unable to cure, the Contractor shall immediately repay funds received while ineligible to the IEDC.

29. RESOLUTION OF OCDC OBLIGATIONS.

(A) The Contractor, on behalf of the IEDC, shall ensure that the Orange County Development Commission ("**OCDC**") retires the following obligations:

- Homestead Apartments: $50,000.00.
- Indiana Railway Museum: $150,000.00.
- Town of French Lick: $90,058.75.
- Town of West Baden Springs: $90,058.75.

(B) The IEDC shall provide the Contractor with the funds set forth under Paragraph 3(B)(a) to assist the Contractor with retiring the OCDC's obligations. The Contractor may arrive at any alternative arrangement to resolve the OCDC's obligations that the Contractor deems prudent; provided, however, that no additional funds shall be provided by the IEDC to the Contractor for the aforementioned obligations of the OCDC, any other existing obligations of the OCDC, or any future obligations of the OCDC.

(C) The Contractor shall provide written notice to the IEDC of the OCDC's retirement of all obligations.

(D) In the event the conditions set forth above are not satisfied, the IEDC may elect to suspend subsequent fund disbursements set forth in Paragraph 3 to the Contractor until such time as the conditions are remedied to the sole satisfaction of the IEDC. The IEDC shall provide the Contractor written notice of suspension of fund disbursements.

(E) The Contractor accepts the IEDC's assignment and delegation of all duties and liabilities to resolve the obligations of the OCDC set forth in Paragraph 29(A). Further, the Contractor shall defend, indemnify, and hold harmless the IEDC for all claims that may arise relating to those obligations. A list of potential OCDC obligations that were evaluated and declined by the IEDC is set forth in Exhibit B; those potential obligations are not included in Paragraph 29(A). If there becomes known any other obligations of the OCDC that existed as of or before January 1, 2015, the parties will work together to resolve those obligations from funds available under the Act; provided however, that liabilities claimed by the OCDC that were declined by the IEDC prior to the execution of this Agreement shall not be reconsidered.

(F) The parties acknowledge that the amendments to Ind. Code § 4-33-13-5 resulted in there being no funding available to satisfy future commitments the OCDC made under a long-term local development agreement. Therefore, the Contractor is not responsible for satisfying any commitment whatsoever arising thereunder, and the parties agree that this resolution shall not be reconsidered by either party.

30. AGREEMENT MODIFICATIONS.

Only the following paragraphs of this Agreement were added, deleted, or modified during construction and/or negotiation of this Agreement. All changes to this Agreement are mutually agreed to by the parties.

(A) Paragraph 1 of this Agreement is renamed "Duties of Contractor" and is further modified by the mutual agreement of the parties.

(B) Paragraph 2 of this Agreement, entitled Term, is modified by the mutual agreement of the parties.

(C) Paragraph 3 of this Agreement, entitled Consideration, is modified by the mutual agreement of the parties.

(D) Paragraph 4 of this Agreement is renamed "Disbursements" and is modified by the mutual agreement of the parties.

(E) Paragraph 5 of this Agreement, entitled Confidentiality of Information, is modified by the mutual agreement of the parties.

(F) Paragraph 8 of this Agreement is renamed "Termination, Funding Cancellation, & Default" and is further modified by the mutual agreement of the parties.

(G) Paragraph 9 of this Agreement is renamed "Progress Reports" and is further modified by the mutual agreement of the parties.

(H) Paragraph 10 of this Agreement, entitled Access to Records & Audits, is modified by the mutual agreement of the parties.

(I) Paragraph 11 of this Agreement, entitled The Contractor's Services, is modified by the mutual agreement of the parties.

(J) Paragraph 12 of this Agreement, entitled Ownership of Documents & Materials, is deleted by mutual agreement of the parties.

(K) Paragraph 18 of this Agreement, entitled Subcontracts, Assignment & Key Persons, is modified by the mutual agreement of the parties.

(L) Paragraph 22 of this Agreement, entitled Miscellaneous, is modified by the mutual agreement of the parties.

(M) Paragraph 23 of this Agreement, entitled Insurance, is modified by the mutual agreement of the parties.

(N) Paragraph 27 of this Agreement, entitled Order of Precedence; Incorporation by Reference, is added to this Agreement by the mutual agreement of the parties.

(O) Paragraph 28 of this Agreement, entitled Non-Profit Certification, is added to this Agreement by the mutual agreement of the parties.

(P) Paragraph 29 of this Agreement, entitled Resolution of OCDC Obligations, is added to this Agreement by the mutual agreement of the parties.

31. NON-COLLUSION AND ACCEPTANCE

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

Signatures Appear on the Following Page

In Witness Whereof, Contractor 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 the Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

RADIUS INDIANA, INC.

Jeffrey L. Quyle

JEFF QUYLE, PRESIDENT/COO

Date: April 22, 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: 2016.04.22 10:47:40 -04'00'

STATE BUDGET AGENCY

Andrew Cummings for

BRIAN E. BAILEY, DIRECTOR

Date: 4/29/16

EXHIBIT A
SERVICES PROVIDED BY CONTRACTOR & MANAGEMENT OF THE REGIONAL IMPACT FUND

(A) SERVICES PROVIDED BY CONTRACTOR

a. The Contractor shall maintain and operate the Regional Impact Fund as described in Section (B) below.

b. The Contractor shall maintain an inventory of regional assets, including local infrastructure, incentive programs, workforce assessments, education and training programs, and other items affecting economic development in the region.

c. The Contractor shall maintain an up-to-date marketing plan, website, and collateral brochures.

d. As reasonably requested by the IEDC, the Contractor shall participate in events and economic development activities sponsored by the IEDC; however, this such participation shall not obligate Radius to make a financial contribution to such events.

e. The Contractor shall perform outreach to uncover significant business issues and to mobilize response for the purposes of retaining South Central Indiana businesses.

f. The Contractor shall target economic development opportunities, through marketing activities and other means, for South Central Indiana, particularly those that may add investment, jobs, and tax revenue.

g. The Contractor shall secure economic development project leads for prompt referral to the IEDC and appropriate local economic development organizations.

h. The Contractor shall respond to requests for information, direct assistance, and referral in support of business attraction, expansion, and retention.

i. To the extent permitted by the Act and as otherwise deemed feasible and appropriate in the sole discretion of the Contractor, the Contractor may assist in facilitation of the educational advancement and workforce development strategy for Westgate Academy and Westgate at Crane Authority.

j. The Contractor shall undertake stakeholder outreach, including coordination of efforts with local economic development organizations. The Contractor shall publish and distribute quarterly newsletters on regional developments, copies of which shall be included with each Semiannual Progress Report.

k. Semiannual Progress Reports also shall include:

    i. A summary of information requests and lead prospects made to the Contractor.

ii. An update on monthly contacts to stakeholders within the region and each local economic development organization in the region.

iii. Summary reports of Initiatives (defined below).

iv. Regional Impact Fund relevant financial statements.

v. Updates on the Contractor's performance of other duties provided in this Agreement.

l. The Contractor shall otherwise expend efforts to make South Central Indiana conducive to business retention and expansion and encourage attraction of external investment and growth of business in the region..

(B) **MANAGEMENT OF THE REGIONAL IMPACT FUND**

a. REGIONAL IMPACT FUND DESCRIPTION.

i. Regional Impact Fund. The Contractor has incorporated under the laws of the State of Indiana and has capitalized a wholly-owned subsidiary of the Contractor called the Regional Impact Fund, Inc. (the "**Fund**") for the purposes of making investments in public and private activity projects that comply with and further the objectives of the Act (each an "**Initiative**"). The Fund may make such investments in the form of grants, loans, equity investments, or other such vehicles as the Fund finds to be in the best interests of the Initiative, the Fund, and South Central Indiana, for furthering the Statutory Purpose (defined herein). The Fund's organizational documents include provisions consistent with this **Exhibit A** and Indiana law.

ii. Fund Statutory Purpose. The Fund's organizational documents provide that the Fund shall use its assets to invest in economic development projects, which advance the goals for the regional economic development strategy set forth in the Act, specifically for projects that assist the residents of Orange County and the counties contiguous to Orange County in improving their quality of life and to help promote successful and sustainable communities (collectively, the "**Statutory Purpose**").

iii. Fund Initiatives. The Fund shall undertake a rigorous analysis of each Initiative, substantially in the manner provided for herein, prior to using Fund assets to make an investment in an Initiative. The Fund analysis must include an evaluation of the direct, indirect, immediate, and future economic development and community impacts of the Initiative itself, the likelihood that those impacts will be achieved as well as a determination of whether the Initiative actually advances the Statutory Purpose. Within these Statutory Purpose, the Contractor shall determine the qualifications,

procedures, and standards for applicants seeking funding for a proposed Initiative. These standards shall include, at a minimum:

1. The Fund shall give higher priority to Initiatives whose primary purpose is job creation.

2. The Fund may use its assets to provide financial support to Initiatives with grants, loans, equity investments, or other such vehicles as the Fund finds to be in the best interests of the Initiative, the Fund, and South Central Indiana.

3. The Fund will perform due diligence activities, including collection of sufficient documentation, to ensure the viability of proposed Initiatives.

4. The Fund's investments must incorporate a compliance provision, which requires the recipient of the Fund investment to repay the Fund in the event of noncompliance.

iv. Fund Capitalization. The Contractor will capitalize the Fund, from time to time, and in amounts determined by the Contractor, for the purpose of allowing the Fund to undertake the Initiatives described in this **Exhibit A**.

b. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.

i. The Contractor represents that the Fund shall be used exclusively to advance the Statutory Purpose described in the Act and for no other purpose. The Contractor represents that it is aware of these provisions and goals and that it is entering into this Agreement with the intention to further them.

ii. The Contractor agrees that it has properly established the Fund as an Indiana corporation in accordance with this exhibit and that the Fund is in good standing with the State of Indiana.

iii. The Contractor has established or caused the Fund to establish financial controls conforming with the Generally Accepted Accounting Principles for the proper administration of the Fund, including: (i) establishment of a segregated account to receive, hold, and invest Fund capital in (the "**Fund Account**"), (ii) ensuring segregation of the Fund Account from the Contractor's other funds, (iii) ensuring segregation of the Fund Account from other accounts belonging to the Fund; and (iv) obtaining principled accounting and legal advice for managing the Fund Account and any other accounts.

iv. The Contractor represents that it will not permit the Fund to use the Fund Account for an illegal or unlawful purpose. Monies shall only be drawn from the Fund Account for the purposes described herein and for no other purpose. The Contractor will take such steps as are legally available to change governance of the Fund, if necessary, to avoid any such illegal or unlawful use of the Fund Account.

v. The Contractor represents that the Fund shall be administered by the Fund's officers ("**RIF Officers**"), and the Contractor shall ensure that the RIF Officers shall obtain fidelity bond coverage with respect to its RIF Officers and with respect to any person who either handles or is responsible for the Fund Account, in an amount equal to maximum funds that will be custody of the Fund or the Contractor at any time while the bond is in force. Evidence of coverage shall be submitted to the IEDC. The Contractor currently has a fidelity bond for $2,000,000.00. The Contractor shall provide evidence of additional fidelity bond coverage to cover the entire amount in the Fund. Such evidence shall be provided within ten (10) days after the Fund compensation increases beyond $2,000,000.00 in increments of at least $250,000.00. Failure to obtain coverage and promptly provide evidence shall constitute a material default, which may be enforced by the IEDC at its sole discretion.

vi. To the extent compliance with any of the provisions of this Agreement shall be within the control of the Fund and not the Contractor, the Contractor shall embody the same in the organizational documents of the Fund; and, further, upon the Contractor receiving notice that the Fund has failed to comply with any of the requirements of this Agreement, the Contractor represents and warrants that it shall take such action as the sole shareholder of the Fund as may be required to cure the noncompliance, including replacing the Board of Directors.

vii. The Contractor shall ensure it establishes and/or maintains a proper system to manage conflicts of interest as to Contractor Related Parties that have a material interest in any Initiative and/or receipt of Funds. The Contractor shall ensure that Contractor Related Parties disclose any conflict or potential conflict.

c. <u>FUND ACCOUNT MANAGEMENT, REPORTING, BOARD MEETINGS, & INFORMATION REQUESTS.</u>

i. <u>Management of the Fund Account</u>. The Contractor shall comply and require the Fund to comply with the following in the management of the Fund Account:

1. The IEDC shall be notified promptly of any possible legal action, known or suspected, against the Contractor and/or the Fund and an estimation of the total exposure and/or risk shall be provided.

2. The Fund shall maintain an account for the Fund compensation to be transferred electronically.

ii. Annual Reporting for Fund Account.

1. The Contractor and the Fund shall dedicate a portion of an annual public meeting to present the efforts of the Fund to local communities and citizens.

iii. Fund Board Meetings.

1. The Fund shall provide the IEDC with Fund Board of Director meeting minutes upon request to reports@iedc.in.gov.

2. The IEDC shall have the right to attend Fund Board of Director regular and special meetings (whether in person or by telephone). The Contractor shall use its best efforts to notify the IEDC in advance of a meeting (reports@iedc.in.gov) and the IEDC may attend such meeting upon request.

iv. Information Request. The Fund Board shall provide to the IEDC any information about Initiatives, upon request of the IEDC.

EXHIBIT B
POTENTIAL OCDC OBLIGATIONS DECLINED BY THE IEDC

1. Hoosier Hills PACT ($75,000.00)
2. Paoli Municipal Airport ($165,919.99)