

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into, effective as of 1<sup>st</sup> day of August 2015, by and between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** with an office at One North Capitol Avenue, Suite 700, Indianapolis, Indiana 46204 (the "IEDC"), and **THE TRUSTEES OF INDIANA UNIVERSITY**, an educational institution organized under the laws of the State of Indiana, whose address is Office of Research Administration, 980 Indiana Avenue, Room 2232, Indianapolis, Indiana 46202-2915 (the "University").

In consideration of the mutual undertakings and covenants set forth herein, the parties hereby agree as follows:

### 1. PURPOSE OF AGREEMENT

- (A) The purpose of this Agreement is for the University to use its reasonable efforts to perform the experiments and studies set forth in Exhibit A, entitled **Concept Proposal from the Indiana University Public Policy Institute (Institute) regarding an Analysis of Economic Development Tools for the Indiana Economic Development Corporation (IEDC)**, attached hereto and made a part hereof.
- (B) Title to any equipment purchased by the University in the performance of this Agreement whether or not purchased with funds provided under this Agreement will remain with the University and will be free of all claims, liens, or encumbrances of the IEDC.

### 2. TERM

- (A) This Agreement shall commence on **August 1, 2015** and shall remain in effect through **May 31, 2016** or unless earlier terminated in accordance with the provisions of this Agreement (the "Expiration Date"). All work and/or services under this Agreement must be completed by the Expiration Date. In no event shall payments be made for work done or services performed after the Expiration Date.
- (B) The University may request in writing that the Expiration Date be extended, provided that the University provides a written justification for the extension at least seven (7) days in advance of the Expiration Date, and the amount of the funds to be paid does not exceed the amount of the original agreement. The IEDC may approve such requests in writing but will not extend the Expiration Date beyond **August 31, 2016**. Approval of the extension is subject to the sole discretion of the IEDC. If the Expiration Date is extended, all other provisions of this Agreement shall remain in full force and effect.
- (C) Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of the Agreement, including but not limited to provisions for payment of amounts owed for work performed under the Agreement.

### 3. CONSIDERATION

- (A) All services performed by the University under this Agreement must be authorized by the IEDC and consistent with the description set forth in Exhibit A. For the services provided hereunder, the University shall be compensated as follows and in accordance with Paragraph 4:

Upon execution of Agreement	\$18,090.00
Midpoint through Agreement	\$10,854.00
Upon project completion	<u>\$ 7,235.00</u>
	<b>\$36,179.00</b>

Total remuneration under this Agreement shall not exceed **Thirty-Six Thousand One Hundred Seventy-Nine and 00/100 Dollars (\$36,179.00)** (the "Agreement Amount").

- (B) All work and/or services provided by the University 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. The IEDC shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement, or performed in violation of federal, state, or local laws.

#### **4. PAYMENTS**

- (A) The University shall submit invoices for payments (Paragraph 3) in connection with its services provided hereunder. Such invoices shall include line item details describing performed services (or as otherwise agreed to by the parties) and shall otherwise be in compliance with the requirements of this Paragraph.
- (B) All payment 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 payment shall authorize, in writing, the direct deposit by electronic funds transfer of all payments by the state to the person or company. The written authorization must designate a financial institution and an account number to which all payments 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](http://www.in.gov/auditor/forms).
- (C) The University shall not be reimbursed for any travel expenses under this Agreement.

#### **5. CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, COPYRIGHT PROHIBITION AND OWNERSHIP OF DOCUMENTS AND MATERIALS**

- (A) Publication and dissemination of the project results are of fundamental importance to both the IEDC and the University. Other than as limited in Paragraph 12 below, the University is free to publish in academic journals, present at symposia, or use any results arising out of the performance of this Agreement for its own internal instructional and research, or publication (i.e. graduate theses and dissertations) objectives. Any publications or presentations referencing the IEDC shall be made in accordance with this Article.
- (B) The parties agree that all information, data, findings, recommendations, proposals, by whatever name described and in whatever form secured, developed, written or produced by the University in furtherance of this Agreement shall be available to IEDC for its use without additional charge to IEDC, except as specified in Exhibit A of this Agreement.
- (C) Use of materials set forth in Paragraph 5, other than related to Agreement performance by the University and research publications merely stating IEDC's financial support, which includes any reference to IEDC, without the prior written consent of IEDC, is prohibited. For any purposes outside those contemplated by this Agreement, and for which IEDC's participation will be referenced, 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 Agency Head or his/her designee. IEDC shall have sixty (60) days to review such requests and will respond in writing to the University. If IEDC has not responded within sixty (60) days, the request will be deemed approved.

- (D) Each party shall retain all right, title and interest in any patent, patent application, trade secret, know-how and other intellectual property that was owned by such party or its affiliate prior to the execution date of this Agreement ("Pre-existing Intellectual Property") and no license grant or assignment, express or implied, to any Pre-Existing Intellectual Property is intended by, or shall be inferred from, this Agreement.
- (E) The University and IEDC agree that the distribution of proceeds from any commercial licenses for patentable or copyrightable material developed as a result of this Agreement, other than publications and presentations outlined in the preceding paragraph, shall be negotiated by the parties and shall be representative of the input of each party.

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

The IEDC has not granted any rights to use its name, trademark, intellectual property, or logos. The University agrees that it will not use the name or intellectual property, including but not limited to 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 University 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 deemed severed from this Agreement, but all other sections, paragraphs, terms, conditions, and provisions will remain in full force and effect.
- (C) The University 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**

- (A) This Agreement may be terminated, in whole or in part, by the IEDC whenever, for any reason, with or without cause, the IEDC determines that such termination is in its best interest. Termination of services shall be effected by delivery to the University of a termination notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The University shall be compensated for services properly rendered and non-cancelable commitments incurred prior to the effective date of termination. The IEDC will not be liable for services performed after the effective date of termination. The University shall be compensated for services herein provided, but in no case shall total payment made to the University exceed the original Agreement price or shall any price increase be allowed on individual line items if canceled in whole or in part prior to the original termination date.

- (B) When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the Agreement shall be cancelled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**9. RESEARCH REPORT(S)**

- (A) Deliverables will be provided to the IEDC in accordance with Exhibit A. The parties may mutually agree to extend the date without amending the terms of this Agreement.
- (B) Upon completion of the research or termination of the Agreement, the University will submit a written study report to the IEDC. This report will be due within sixty (60) days after completion of the research or termination of this Agreement. The parties may mutually agree to extend the date without amending the terms of this Agreement.

**10. ACCESS TO RECORDS & AUDITS**

- (A) The University 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 University 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 payment under the Agreement, for inspection by the IEDC or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the IEDC if requested.
- (B) The University 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 UNIVERSITY'S SERVICES**

- (A) The University 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, a successor, either the IEDC or another contractor, may continue them. The University agrees to use 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) The University shall not commence any additional services or change the scope of services unless and until authorized in writing by the IEDC. No claim for additional compensation or any material change to the Budget shall be made. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.
- (C) The University shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. The University 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 work performed hereunder shall be performed by the University or under its supervision. The University warrants that all personnel assigned to perform the services or other consultants or subcontractors engaged by the University 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 request in writing the replacement of any or all such individuals, and the University shall grant such request.

- (D) The IEDC shall, at all reasonable times, have the right to inspect the work, services or performance of the University. The University 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 University of any obligation to perform said services in accordance with the law or this Agreement.

## **12. CONFIDENTIALITY OF IEDC INFORMATION**

- (A) University acknowledges that the IEDC may, prior to and during the term of this Agreement, provide University with scientific, technical, business, or other information which is treated by the IEDC as confidential or proprietary (hereinafter referred to as "Confidential Information"). In recognition that University is a non-commercial, academic institution, the IEDC agrees to limit to the extent possible the delivery of confidential information to University. Both parties agree that in order to ensure that each party understands which information is deemed to be confidential, all Confidential Information will be in written form and clearly marked as "Confidential," and if the Confidential Information is initially disclosed in oral or some other non-written form, it will be confirmed in writing and clearly marked as "Confidential" within thirty (30) days of disclosure. University shall hold such Confidential Information in strict confidence and shall treat such information in the same manner as it treats its own confidential information. The University retains the right to refuse to accept any such information or data from the IEDC which it does not consider to be essential to the completion of the Research Project or which it believes to be improperly designated, for any reason. The Confidential Information provided to University by the IEDC will remain the property of the IEDC, and will be disclosed only to those persons necessary for the performance of this Agreement. No indirect or consequential damages or damages based on loss of profits or market share are contemplated or recoverable for breach of confidentiality.
- (B) The obligation of University to maintain confidential under this Agreement will survive its expiration or termination and will endure for five (5) years from the date of disclosure.
- (C) The obligation of non-disclosure will not apply to any part of the Information that:
- i. is already known to University prior to the effective date, as evidenced by University's records;
  - ii. becomes publicly known without the wrongful act or breach of this Agreement by University;
  - iii. has been or is disclosed to University by a third party who was not, or is not, under any obligation of confidence or secrecy to the IEDC at the time said third party discloses to University, or has the legal right to do so;
  - iv. is developed independently by employees of University who had no access to or knowledge of the Information, as evidenced by University's records;
  - v. is approved for release by written authorization of the IEDC;
  - vi. is required to be disclosed by law or governmental regulation or to any governmental entity with jurisdiction, provided University promptly notifies the IEDC, if reasonably practical or possible, in writing of such lawful disclosure.

## **13. COMPLIANCE WITH LAWS**

- (A) The University 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 University to determine whether the provisions of this Agreement require formal modification.

- (B) The University 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 University is not familiar with these ethical requirements, the University 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 University or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to University. In addition, the University may be subject to penalties under Indiana Code § 4-2-6, Indiana Code § 4-2-7, Indiana Code § 35-44-1-3 and under any other applicable laws.
- (C) The University 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 University agrees that any payments in arrears and currently due to the State of Indiana or to the IEDC may be withheld from payments due to the University. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the University is current in its payments and has submitted proof of such payment to the IEDC.
- (D) The University 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 University 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 University'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 University, University may request that it be allowed to continue, or receive work, without delay.
- (F) Any payments 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 University warrants that the University 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 University for any services performed when University 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, University shall notify the IEDC immediately, and the IEDC, at its option, may immediately terminate this Agreement.
- (H) DELETED BY MUTUAL AGREEMENT OF THE PARTIES**

#### **14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT**

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

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

(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. CONFLICT OF INTEREST**

(A) As used in this Paragraph:

(1) "Immediate Family" means the spouse and the unemancipated children of an individual.

(2) "Interested Party" means:

(a) The individual executing this Agreement;

(b) An individual who, combined with his immediate family, has an equity interest of one percent (1%) or more of the University, if the University is not an individual; or

(c) Any member of the Immediate Family of an individual specified under subdivision (1) or (2).

(3) "Commission" means the State Ethics Commission.

(B) The IEDC may cancel this Agreement without recourse by the University if such cancellation is consistent with an opinion of the Commission or if any Interested Party is (1) an employee of the State or the IEDC; (2) a State officer or special State appointee of the IEDC under Indiana Code § 4-2-6; or (3) a public servant of the IEDC under Indiana Code § 35-44-1.

(C) ~~DELETED BY MUTUAL AGREEMENT OF THE PARTIES~~

#### **16. DRUG-FREE WORKPLACE CERTIFICATION – DELETED BY MUTUAL AGREEMENT OF THE PARTIES**

#### **17. 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 University 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.

#### **18. NOTICE TO PARTIES**

Whenever any notice, statement, or other communication is required under this Agreement, it shall be sent to the following address, unless otherwise specifically advised:

(A) Notices to the IEDC shall be sent to:

INDIANA ECONOMIC DEVELOPMENT CORPORATION  
Attn: General Counsel  
One North Capitol Avenue, Suite 700  
Indianapolis, IN 46204-2288

(B) Notices to the University shall be sent to:

**Contractual and Financial Notices:**

Office of Research Administration  
Indiana University  
980 Indiana Avenue, Room 2232  
Indianapolis, IN 46202-2915  
Phone: (317) 278-3473  
Fax: (317) 274-5932

**Programmatic Notices:**

John Marron  
Phone: (317) 261-3037  
Email: marronj@iupui.edu

Notice from the IEDC may be provided via electronic mail electronic mail address 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 contact information must be provided in writing to the IEDC. Notices, statements, or other communications to the IEDC shall be deemed delivered when received.

**19. SUBCONTRACTS, ASSIGNMENT & KEY PERSONS**

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

(B) KEY PERSON(S):

(1) This Agreement will be performed under the direction of John Marron (the "Principal Investigator"). In the event the Principal Investigator is unable or unwilling to continue providing the services under this Agreement, the parties will attempt to find a mutually acceptable substitute. In the event a mutually acceptable substitute is not found, the Agreement may be suspended or terminated in accordance with Paragraph 8.

(2) Nothing in this Paragraph shall be construed to prevent the University from using the services of others to perform its duties as defined in Paragraph 1 of this Agreement, as well as any services ancillary to those duties, including secretarial, clerical, and common labor duties. The University shall, at all times, remain responsible for the performance of all necessary duties, whether performed by the Principal Investigator, employees, subcontractors, or others.

(C) BACKGROUND CHECKS: ~~DELETED BY MUTUAL AGREEMENT OF THE PARTIES~~

**20. INDEMNIFICATION – DELETED BY MUTUAL AGREEMENT OF THE PARTIES**

**21. DEBARMENT AND SUSPENSION**

- (A) The University 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 or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the University.
- (B) The University 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 University 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.

## **22. ATTORNEYS' FEES & INTEREST– DELETED BY MUTUAL AGREEMENT OF THE PARTIES**

### **23. 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 payment 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 University shall be and remain liable to the IEDC in accordance with applicable law for all damages to the IEDC caused by the University'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.
- (C) This Agreement may be executed through an original or through a facsimile 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 subcontractors of the University.
- (F) **DELETED BY MUTUAL AGREEMENT OF THE PARTIES**
- (G) The IEDC is exempt from state, federal, and local taxes. The IEDC will not be responsible for any taxes levied on the University as a result of this Agreement.

## **24. INSURANCE – DELETED BY MUTUAL AGREEMENT OF THE PARTIES**

### **25. AUTHORITY TO BIND UNIVERSITY**

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

### **26. INFORMATION TECHNOLOGY ACCESSIBILITY STANDARDS**

If the University provides any information technology-related products or services to the IEDC, the University shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are available online at <http://iot.in.gov/architecture/>. The University 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 University fails to cure a breach of this provision within a reasonable time.

### **27. DISPUTES**

(A) Should any disputes arise with respect to this Agreement, the University and the IEDC agree to act immediately to resolve such disputes.

(B) The University 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 University 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 University as a result of such failure to proceed shall be borne by the University, and the University shall make no claim against the IEDC for such costs.

(C) If a party to the Agreement is not satisfied with the progress toward resolving a dispute, the party must notify, in writing, the other party of the dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, the dissatisfied party will submit the dispute in writing according to the following procedure:

(1) The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail, or otherwise furnish a copy thereof, to the University and the IEDC within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

- (2) The IEDC may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the IEDC to the University of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for the University to terminate this Agreement, and the University may bring suit to collect these amounts without following the disputes procedure contained herein.

## **28. 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 to the Agreement, entitled Purpose of Agreement, is modified by mutual agreement of the parties.
- B. Paragraph 2 to the Agreement, entitled Term, is modified by mutual agreement of the parties.
- C. Paragraph 3 to the Agreement, entitled Consideration, is modified by mutual agreement of the parties.
- D. Paragraph 4 to the Agreement, entitled Payments, is modified by mutual agreement of the parties.
- E. Paragraph 5 to the Agreement, entitled Confidentiality of Information, is renamed Confidentiality of Data, Property Rights in Products, Copyright Prohibition and Ownership of Documents and Materials, and is further modified by mutual agreement of the parties.
- F. Paragraph 8 to the Agreement, entitled Termination & Funding Cancellation, is modified by mutual agreement of the parties.
- G. Paragraph 9 to the Agreement, entitled Progress Reports, is renamed Research Report(s) and is further modified by mutual agreement of the parties.
- H. Paragraph 11 to the Agreement, entitled The Contractor's Services, is renamed The University's Services, and is further modified by mutual agreement of the parties.
- I. Paragraph 12 to the Agreement, entitled Ownership of Documents and Materials, is renamed Confidentiality of IEDC Information, and is further modified by mutual agreement of the parties.
- J. Paragraph 13 to the Agreement, entitled Compliance with Laws, is modified by mutual agreement of the parties.
- K. Paragraph 15 of the Agreement, entitled Conflict of Interest, is modified by mutual agreement of the parties.
- L. Paragraph 16 of the Agreement, entitled Drug-Free Workplace Certification, is deleted by mutual agreement of the parties.
- M. Paragraph 18 of the Agreement, entitled Notice to Parties, is modified by mutual agreement of the parties.
- N. Paragraph 19 of the Agreement, entitled Subcontracts, Assignment & Key Persons, is modified by mutual agreement of the parties.
- O. Paragraph 20 of the Agreement, entitled Indemnification, is deleted by mutual agreement of the parties.
- P. Paragraph 22 of the Agreement, entitled Attorneys' Fees & Interest, is deleted by mutual agreement of the parties.
- Q. Paragraph 23 of the Agreement, entitled Miscellaneous, is modified by mutual agreement of the parties.
- R. Paragraph 24 of the Agreement, entitled Insurance, is deleted by mutual agreement of the parties.
- S. Paragraph 25 of the Agreement, entitled Authority to Bind Contractor, is renamed Authority to Bind University.
- T. Paragraph 27 of the Agreement, entitled Disputes, is modified by mutual agreement of the parties.

**29. 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 University. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the University, 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, the University 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.

**THE TRUSTEES OF INDIANA UNIVERSITY**

*Katie Morris*

**Katie Morris**  
Asst. Dir. for ~~APR 15 10 11 AM~~ [NAME & TITLE]

Date: 9/23/15

**PRINCIPAL INVESTIGATOR**

*[Signature]*

**JOHN MARRON, PRINCIPAL INVESTIGATOR**

Date: 9/23/15

**INDIANA ECONOMIC DEVELOPMENT CORPORATION**

*Victor Smith*

Digitally signed by Victor P. Smith  
DN: cn=Victor P. Smith, o=IEDC, ou=Secretary of  
Commerce, email=vsmith@iedc.in.gov, c=US  
Date: 2015.10.01 08:43:43 -04'00'

**VICTOR P. SMITH, SECRETARY OF COMMERCE**

Date: \_\_\_\_\_

**STATE BUDGET AGENCY**

*Brian E. Bailey*

**BRIAN E. BAILEY, DIRECTOR**

Date: 10/14/15

EXHIBIT A



Concept Proposal from the  
Indiana University Public Policy Institute (Institute)  
regarding an Analysis of Economic Development Tools for the  
Indiana Economic Development Corporation (IEDC)

August 22, 2015

**CONTEXT**

As Indiana's lead economic development agency, the IEDC has a number of tools – authorized in statute – at its disposal to attract businesses to Indiana or help Indiana businesses expand, providing new jobs for Indiana residents. Each of the tools created within state statute were developed to address challenges and take advantage of opportunities that existed at the time of their adoption. As a result, these tools may or may not remain relevant to changes in technology or the economic realities of many Indiana communities. At the same time, the theory and practice of economic development has evolved, and other states are considering innovative strategies to address new economic opportunities in an ever-changing, increasingly global economy.

Based on its work through *Policy Choices; Thriving Communities, Thriving State*; and other efforts, the Institute is well positioned to examine these questions. The IEDC discussed with the Institute a research program to help IEDC assess the applicability of emerging practices within the field of economic development relative to the assets and opportunities presented by Indiana's economy and its communities.

This concept paper is an outline of how the Institute would pursue such a study.

**APPROACH AND WORK PRODUCTS**

**Comparative Analysis.** The Institute will undertake a substantive review of the current tools available to IEDC by statute to provide a cursory understanding of the objectives of the tools and where they have been utilized. This review will provide a baseline understanding of outcomes that might reasonably be achieved with these tools; specifically, the Community Revitalization Enhancement District (CRED), Industrial Recovery Tax Credits (IRTC/DINO), Certified Technology Parks (CTP), and Urban Enterprise Zones (UEZ). Other IEDC tools may be included upon the request of IEDC.

The Institute will then examine emerging economic development tools and practices through a literature review from academic and practitioner literature to assess the tools other states and localities are utilizing to support their economic development goals. The Institute will align the desired outcomes of these tools and compare them with IEDC programs with the same or similar objectives and assess the differences. Where appropriate, the Institute will provide insights on the pros and cons of the comparative approach relative to the IEDC approach and examine considerations for policy change.



Further, if there are objectives that IEDC may be challenged in pursuing, given their current statutory authority, these areas will be noted as well.

**Gap Analysis.** Through an examination of program requirements and available data, the Institute will develop an analysis of which communities are eligible for the various programs provided by IEDC, and conversely, which areas are unlikely to have access to any or all programs. The findings of the analysis will be presented through a series of maps, outlining gaps in individual programs with a composite map showing gaps/coverage of the entire state. These findings will also map these gaps/coverages in combination with other demographic and economic data that provide additional insight about which populations and types of communities are systemically over or underserved.

In the narrative component of reporting its findings, the Institute will outline various options for (and the benefits or challenges associated with) expanding the coverage of these programs. Specifically, to the degree that the reasons for the existence of an underserved area or areas is related to state statute or program administration, the Institute will provide guidance on the barrier and consider options for addressing the barrier given research on emerging practices as part of the comparative analysis.

**Return on Investment.** In examining the outcomes related to the work of IEDC, the Institute will consider up to four case studies to examine return on investment related to IEDC's efforts. These findings will go beyond economic return on investment to consider social returns on investment – as outlined within existing academic literature – leverage created through IEDC investment (beyond the initial project), efficiencies in service delivery and/or employer-realized outcomes, impact on quality of life, and other related measures uniquely tied to each case study.

*The scope of any of these sections can be expanded, in a limited way, through the request of IEDC at the beginning of each phase, to ensure the Institute is responsive to the specific questions of interest to IEDC. It is the responsibility of the Institute to inform IEDC if a requested change in scope is considerable enough that it would change the timeline of deliverables and/or the anticipated budget. In such cases that a schedule change and/or budget amendment would be required, an amendment to the contract by mutual consent would be required.*

#### **DELIVERABLES**

Each of the three products outlined above would be provided to IEDC as separate, independent reports containing a technical report with an executive summary, delivered to IEDC electronically, in PDF format. Upon request of IEDC, the Institute can combine the three reports into one larger report.

The dates below outline the anticipated completion date for each report. Draft documents may be provided to IEDC for feedback and information as needed throughout the term of the agreement, which could affect delivery dates.

- **Comparative Analysis:** December 15, 2015
- **Gap Analysis:** February 8, 2016
- **Return on Investment Case Study:** April 30, 2016



## INDIANA UNIVERSITY PUBLIC POLICY INSTITUTE

Upon request of IEDC, the Institute agrees to make itself available to present its findings to IEDC and other interested parties at a time that is mutually convenient for a time up to one year following the conclusion of the term of this contract.

### **TERM AND BUDGET**

The term of the agreement shall be from the date upon which all parties enter into said agreement to May 31, 2016. Any delays resulting from unresponsiveness to reasonable requests for data, meetings, or other information on the part of the client may result in the amendment of the term of the contract and the schedule upon which deliverables will be presented. The Institute will work with IEDC to ensure timely delivery of updates and progress of the analysis as needed by IEDC throughout the term of the agreement.

The cost for this project, as currently conceived, is a fixed price of **\$36,179**. Changes to the scope of work, depth of analysis, unanticipated delays in responsiveness of clients, adjustments to the proposed timeline, or other considerations may result in an amendment to the estimated cost of this project. Upon acceptance of a concept proposal, the Institute will develop a fixed-cost contract agreement and budget and route through the University and the University's Institutional Review Board, for review and approval as required.

### **ABOUT THE INSTITUTE**

The IU Public Policy Institute delivers unbiased research and data-driven, objective, expert analysis to help public, private, and nonprofit sectors make important decisions that directly impact quality of life in Indiana and throughout the nation. Using the knowledge and expertise of our staff and faculty, we provide research and analysis that is free of political and ideological bias, and that addresses a wide range of issues to deliver data and insights needed to make informed decisions. We help leaders, citizens, businesses, and organizations solve problems, seize opportunities, and effect positive change. A multidisciplinary institute within the Indiana University School of Public and Environmental Affairs (SPEA), our efforts also support the Indiana Advisory Commission on Intergovernmental Relations (IACIR).