

## INDIVIDUAL DEVELOPMENT ACCOUNT TAX CREDIT PROGRAM

AGREEMENT NO: «Award\_»

**THIS INDIVIDUAL DEVELOPMENT ACCOUNT TAX CREDIT AGREEMENT** (this “Agreement”) is made and entered into by and between the Indiana Housing and Community Development Authority (the “IHCDA” or “Authority”), a public body corporate and politic of the State of Indiana (the “State”), and «Agency» an Indiana not-for-profit corporation (the “Recipient”).

### WITNESSETH:

**WHEREAS**, the Authority has been designated to allocate and administer Individual Development Accounts (“IDA”) tax credits pursuant to Indiana Code IC 4-4-28-13, and IC 6-3.1-18, as amended (“the Code”); and,

**WHEREAS**, the Recipient has applied to the Authority for IDA tax credits and the Authority desires to make available IDA tax credits to the Recipient for eligible purposes under the Code.

**NOW, THEREFORE**, in consideration of the following mutual promises, the covenants, and conditions herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated herein as though set forth in their entirety.
2. **Credit Limit.** The Authority awards the Recipient the amount of tax credits stated in Exhibit A, which is attached hereto and made a part hereof (the “Award”), for use by the Recipient pursuant to its application submitted to the IHCDA for the 2013 IDA Tax Credit allocations (the “Application”), exclusively for the purpose and activity outlined therein and in accordance with Section I of Exhibit A (the “Activity”). Amendments to the Application resulting from negotiations or corrections of the Application to meet statutory and regulatory requirements are also contained in Exhibit A (“Amendments and Technical Corrections to the Agreement”).
3. **Representations, Warranties, and Covenants of Recipient.** The Recipient hereby represents and warrants to the Authority and covenants with the Authority that:
  - A. It shall timely perform or contract to have performed all work specified in its Application;
  - B. It shall, from time to time, timely and promptly do each and every act and thing that may be necessary and/or appropriate to perform its duties and obligations under this Agreement, the Application, IC 4-4-28-13, and IC 6-3.1-18, all of which may be obtained by Recipient from the Authority’s web site.;
  - C. It shall administer the Award in accordance with the terms and conditions of this Agreement, as well as with the Application;
  - D. It shall not expend any part of the proceeds generated from the sale of tax credits for purposes other than the Activity;
  - E. It shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, whether currently existing or hereafter created, including, but not limited to IC 4-4-28-13, IC 6-3.1-18, and all work and activities authorized and/or contemplated under this Agreement and the

Application. Also, the Activity will be performed in strict compliance, and observance of all applicable laws, rules, regulations, and executive orders of all Federal, State, and local governments and regulatory bodies;

- F. It shall timely submit such records and reports as may be required from time to time by the Authority.
  - G. It has not taken and will not take any action or permit any action that is within its control to be taken or fail to take any action that would impair the Award or the Activity.
  - H. It shall timely prepare all fiscal and management records required by the Authority that are necessary or appropriate to effectively administer the Award and/or monitor the Activity;
  - I. It guarantees to the Authority total satisfactory performance of all work contemplated by this Agreement, and it shall take any and all action necessary to correct or otherwise cure any problems or deficiencies identified by the Recipient or the Authority during their respective monitoring and evaluation of the Award and the Activity;
  - J. No information or statement furnished by it to the Authority contains, and no report required to be or otherwise delivered by it to the Authority will contain, any untrue statement of a material fact or will omit to state any material fact necessary to make such information, statements, or reports not misleading;
  - K. It will maintain books, records, documents, and other evidence pertaining to the Activity and all costs and expenses incurred and revenues received under this Agreement in sufficient detail to reflect all activities undertaken in connection with the Activity and all costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs of whatever nature, for which payment is claimed under this Agreement. Such records shall be maintained for five (5) years beyond the term of this agreement. Records shall be retained beyond the prescribed period if any litigation, claim, negotiation, audit, or other action is begun involving this Agreement or the Activity. In that instance, the records shall be retained until the litigation, claim, negotiation, audit, or other action has been finally resolved. Authority will have the right to review all such books, records, documents and evidence, and Recipient shall make all records related to the Award available to the Authority and its agents and the Indiana Department of Revenue ("IDOR") and its agents for any purpose, including without limitation, evaluation, monitoring, and audit by the Authority or IDOR or their agents; and
  - L. Recipient agrees that it must receive written approval from the Authority prior to implementing any changes in Activity goals, objectives, budget, area served, or administrative structures.
  - M. Recipient must adopt procedures to ensure the compliance with the requirements of all applicable state or federal laws, rules, and regulations, including, but not limited to, those relating to the release of Social Security numbers in I.C. § 4-1-10 and the notice of security breach provisions in I.C. § 4-1-11.
4. **Term of Agreement.** This Agreement shall be effective from July 1, 2013 to June 30, 2014. Upon expiration of this Agreement, the Recipient shall transfer to the Authority any unexpended funds on hand and any accounts receivable attributable to the use of the award.
5. **Certification.** Upon request by the Authority, Recipient shall certify to the Authority that Recipient has complied fully with this Agreement and no event exists which constitutes a default hereunder or with the giving of notice or passage of time would constitute a default hereunder.

6. **Audits and Maintenance of Records.** Recipient shall submit to an audit of funds paid through this Grant Agreement, and shall make all books, accounting records and other documents available at all reasonable times during the term of this Agreement and for a period of five (5) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.

The Recipient agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Recipient, and not of a parent, member, or subsidiary corporation of the Recipient, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Agreement and that the Recipient is not out of compliance with the financial aspects of this Agreement

7. **Annual Reports.** The Recipient shall submit annual progress reports to IHCDA as set forth in Exhibit A, attached hereto. The report shall be reported online, unless IHCDA, upon receipt of the online report, should deem it necessary to have it in written form. The annual reports shall serve the purpose of assuring IHCDA that work is progressing in line with the proposal or schedule, and that completion can be reasonably assured on the scheduled date.
8. **Compliance with Laws.**
- A. Any action, review, recommendation, approval, or other activity taken by or on behalf of the Authority does not expressly or impliedly, directly or indirectly, suggest, represent, or warrant that the Recipient or the Project is in compliance with applicable statutes, rules, regulations, applications, or other statements. Rather, the Recipient acknowledges that it is solely responsible for all such matters.
  - B. The Recipient shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by IHCDA and the Recipient to determine whether the provisions of this Agreement require formal modification.
  - C. The Recipient and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Recipient is not familiar with these ethical requirements, the Recipient should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Recipient or its agents violate any applicable ethical standards, IHCDA may, in its sole discretion, terminate this Agreement immediately upon notice to the Recipient. In addition, the Recipient may be subject to penalties under Indiana Code §§ 4-2-6-12 and 4-2-7, and under any other applicable laws.
  - D. The Recipient 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. Further, the Recipient agrees that any payments in arrears and currently due to the State may be withheld from payments due to the Recipient. Additionally, further payments may be withheld, delayed, or denied and/or this Agreement suspended until the Recipient is current in its payments and has submitted proof of such payment to the State and IHCDA.
  - E. The Recipient warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State and IHCDA of any such actions. During the term of such actions, the Recipient agrees that IHCDA may delay,

withhold, or deny work under any supplement, amendment or contractual device issued pursuant to this Agreement.

F. If a valid dispute exists as to the Recipient's liability or guilt in any action initiated by the State or its agencies, and IHCDA decides to delay, withhold, or deny funding to the Recipient, the Recipient may request that funding be continued. The Recipient must submit, in writing, a request for review to the Indiana Department of Administration ("IDO") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that IHCDA may delay, withhold, deny, or apply under this subsection (f) shall not be subject to penalty or interest except as permitted by IC 5-17-5.

G. The Recipient warrants that the Recipient 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 in the performance of work activities for IHCDA. Failure to do so is a material breach and grounds for immediate termination of this Agreement and denial of further payment by IHCDA.

H. As required by IC §5-22-16.5, the Recipient certifies that the Recipient is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC §5-22-16.5-14 including termination of this Contract, denial of future state contracts, as well as an imposition of a civil penalty.

I. The Recipient hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

J. As required by IC 5-22-3-7:

1) The Recipient and any principals of the Recipient certify that (A) the Recipient, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 (Telephone Solicitation Of Consumers), (ii) IC 24-5-12 (Telephone Solicitations), or (iii) IC 24-5-14 (Regulation of Automatic Dialing Machines) in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by Federal law; and (B) the Recipient will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by Federal law.

2) The Recipient and any principals of the Recipient certify that an affiliate or principal of the Recipient and any agent acting on behalf of the Recipient or on behalf of an affiliate or principal of the Recipient (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by Federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of this Grant Agreement, even if IC 24-4.7 is preempted by Federal law.

9. **Limitations on Expenditures of Program Funds.** Donations for the purpose of the Activity collected by the Recipient are eligible to receive IDA tax credits, beginning on **July 1, 2013**, the date this allocation of IDA tax credits is available from the State, and ending on **June 30, 2014** provided that the requisite percentages of the Award are distributed and paid for in accordance with any interim deadlines described in Exhibit A to the Agreement or the Policy Guidance.

10. **Employment Eligibility Verification.** The Recipient hereby swears or affirms under the penalties of perjury that:

A. The Recipient does not knowingly employ an unauthorized alien.

- B. The Recipient shall require its contractors who perform work under this Agreement to certify to Recipient that the contractor does not knowingly employ or contract with an unauthorized alien.

11. **Termination; Cancellation of Funding.**

- A. **For Default.** The Authority may immediately suspend or terminate this Agreement if the Recipient fails to comply with any material term of the Agreement in the best judgment of the Authority.
- B. **For Convenience.** This Agreement may be terminated, in whole or in part, by the Authority whenever, for any reason, the Authority determines that such termination is in the best interest of the Authority. Termination shall be effected by delivery to the Recipient of a Termination Notice, specifying when such termination becomes effective. The Recipient shall be compensated for completion of activities properly performed prior to the effective date of termination. The Authority will not be liable for activities performed after the effective date of termination.
- C. **Funding Cancellation.** When the Executive Director of IHCDCA or the Director of the State Budget Agency makes a written determination that funds are not available to support continuation of performance of this Agreement, the Agreement shall automatically terminate. Any determination by the Executive Director of IHCDCA or the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- D. **Cross-Default.** This Agreement may be suspended and/or terminated immediately if the Recipient has committed fraud or has misused or misappropriated funds received under this Agreement or another agreement between the Recipient and IHCDCA. In this event IHCDCA may de-allocate and/or re-allocate all or any portion of this Award to another recipient. This subsection shall survive the termination or expiration of this Agreement. Further, Recipient's breach or default of other agreements or obligations related to the Activity shall constitute a material breach of this Agreement.
- E. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, the Recipient shall transfer to the Authority any unexpended portion of the Award.

12. **Indemnification.** The Recipient shall indemnify, save, and hold harmless the IHCDCA, its directors, officers, employees, and agents of and from any and all claims, losses, damages, or expenses (including reasonable attorneys' fees) arising out of or in any way related to the Authority or the failure or alleged failure of the Recipient to strictly and timely perform its services, duties, and obligations promptly and properly under this Agreement.

13. **Award Conditioned Upon Approval of Tax Credit Allocation.** Any termination, reduction, or delay of Tax credits by the State shall, at the option of the Authority, result in termination, reduction, or delay in making the Award available to the Recipient.

14. **Notice to Parties.** Whenever any notice, statement, or other communication shall be sent to any party, it shall be sent to the following address, unless otherwise specifically advised by the Recipient:

1. Notices to the Recipient shall be sent to:

«Agency»

«Address»

«City», IN «Zip\_Code»

2. Notices to IHCD shall be sent to:

Indiana Housing and Community Development Authority  
30 South Meridian Street, Suite 1000  
Indianapolis, IN 46204  
**Attention: IDA Tax Credits**

15. **Non-Discrimination Clause.** Pursuant to the Indiana Civil Rights Law, specifically including Indiana Code § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Recipient covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to 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, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Recipient certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Recipient or any subcontractor.

16. **Drug-Free Workplace Certification.** Pursuant to Executive Order No. 90-5, April 12, 1994, issued by Governor Evan Bayh, the Indiana Department of Administration requires the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract or grant shall be made, and no contract, purchase order or agreement, the total of which amount exceeds \$25,000, shall be valid unless and until this certification has been fully executed by the Recipient and attached to the contract or agreement as part of the contract documents. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

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

- A. 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 Recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the Recipient's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug use conviction for a violation occurring in the workplace no later than five (5) days after such a conviction;
- D. Notifying in writing IHCD and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subsection (C)(2) above, or otherwise receiving actual notice of a conviction;

- E. Within thirty (30) days after receiving notice under subsection (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subsection (A) through (E) above.

17. **Independent Contractor**. All parties hereto, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees of one party shall not be deemed or construed to be the employees or agents of the other parties for any purpose whatsoever. Except as provided in Section 12 neither party will assume liability for any injury to any persons, or any damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.
18. **Work Standards**. The Recipient shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the Authority becomes dissatisfied with the work product of or the working relationship with those individuals assigned to perform activities pursuant to this Agreement, the Authority may request in writing the replacement of any or all such individuals, and the Recipient shall grant such request.
19. **Authority of Representative**. The undersigned individual executing this Agreement on behalf of the Recipient represents that he or she has the authority to bind the Recipient.
20. **Governing Law**. This Agreement shall be construed and governed in accordance with the laws of the State of Indiana. The parties agree to submit to the exclusive jurisdiction and venue of the courts of Marion County, Indiana for any action arising out of this Agreement.
21. **Headings**. The headings and subheadings herein are for the convenience of the parties hereto and shall have no legal effect upon the construction of this Agreement.
22. **Non-Waiver**. No waiver, forbearance, or failure by any party of its right to enforce any provision of this Agreement shall constitute a waiver or estoppel of such party's right to enforce such provision in the future.
23. **Severability**. The invalidity of any provision of this Agreement shall not invalidate the remaining provisions of this Agreement.
24. **Publicity**. The parties shall cooperate with respect to all public statements regarding the subject matter of this Agreement. The parties agree that any publicity release or other public reference, including but not limited to media releases and informational pamphlets relating to the Project and any services funded under this Agreement, will clearly state that all activities and services are provided without regard to race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran.
25. **Order of Precedence**. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) the Agreement, (2) the Exhibits prepared by IHCD, (3) the Application, and (4) the Exhibits prepared by the Recipient.

26. **Entire Agreement.** The parties hereto acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms. This Agreement is the complete and final understanding between them and supersedes any and all other communications between them relating to the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto executed this Agreement on the date entered below.

«Agency»:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Indiana Housing and Community Development Authority:**

By: \_\_\_\_\_  
Printed Name: J. Jacob Sipe  
Title: Executive Director  
Date \_\_\_\_\_

**EXHIBIT A**

<b>AMENDMENTS AND TECHNICAL CORRECTIONS TO THE AGREEMENT</b>
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**Award Number:**                    «Award\_»

**Recipient:**                        «Agency»

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The Recipient is bound by the contents of the IDA Tax Credit Policy Statement, Memos, the IDA Tax Credit Application Package, the IDA Tax Credit Application, and any other IHCDA policy, directives, or memoranda that may be published from time to time.

**I. Establishment and Use of the IDA Fund**

The Recipient certifies that it has established an individual development account fund to provide money to finance additional accounts (not funded through IHCDA) to be administered by the Recipient and to help pay the Recipient’s expenses related to the administration of these additional accounts. The Recipient will encourage individuals, financial institutions, corporations, and other entities to contribute to this fund (the “IDA Fund”). A contributor to the IDA Fund may qualify for a tax credit as provided under IC 6-3.1-18.

The Recipient may use up to twenty percent (20%) of the first one hundred thousand dollars (\$100,000) deposited each calendar year into the IDA Fund to help pay for the Recipient’s expenses related to the administration of these additional accounts.

All deposits in the IDA Fund of more than one hundred thousand dollars (\$100,000) during each calendar year may be used only to fund these additional accounts.

**II. Award Amount**

The Authority hereby awards to the Recipient the sum of «Long\_Awd\_Amt» and 00/100 Dollars («Award\_Amt») (the “Award”) in tax credits to use to fund the IDA Fund as described in Section I and pursuant to the Application (the “Activity”).

**III. Donor Limits**

Pursuant to I.C. 6-3.1-18, a person or individual who contributes not less than one hundred dollars (\$100.00) and not more than fifty thousand dollars (\$50,000) to the IDA Fund, shall receive a tax credit equal to fifty percent (50%) of the amount that it contributed to the IDA Fund. The tax credit provided shall only be applied against any state tax liability owed by the taxpayer after the application of any credits that must be applied under IC 6-3.1-1-2. Each donor must file Form IDA 10/20 with the Indiana Department of Revenue.

**IV. Good Standing with the Secretary of State**

The Recipient must be in good standing with the Indiana Secretary of State through the term of this Agreement.

**V. Reporting Deadline**

The Recipient must meet the following reporting deadlines for its Award:

Reporting Period	Deadline for Receipt of IDA Tax Credit Report
Year-End Report	August 31, 2014

**Expenditure Deadline**

The Recipient must expend 100% of the Award by June 30, 2014, or IHCDA will de-allocate the unexpended portion.

**De-Allocation**

IHCDA may de-allocate the Award if the Recipient fails to file or is late filing its annual report.

**IDA Tax Credit Award Recipient  
Authorized Contact Information Form**

**Please indicate below the name(s) of the authorized contact person(s) for this award. This is the individual that IHEDA will contact should we have any questions regarding this award.**

Applicant: «Agency»

Award Number: «Award\_»

**CEO Contact Name:** \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Title: \_\_\_\_\_ Phone Number: (\_\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

**Point of Contact Name:** \_\_\_\_\_

Title: \_\_\_\_\_ Phone Number: (\_\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

**Signed:**

\_\_\_\_\_  
Authorized Signatory of Applicant

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Signature