

A RESOLUTION APPLYING FOR AND ACCEPTING A GRANT FROM THE AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT FUND

RESOLVED, pursuant to the authority vested in the Nashville Town Council, after discussion and upon motion duly made, seconded and carried, the Nashville Town Council is hereby authorized to apply for and accept money in the form of a recoverable grant from the **Affordable Housing and Community Development Fund**, administered by Indiana Housing and Community Development Authority (“IHCDA”) in an amount not to exceed **Ten Thousand and 00/100 Dollars (\$10,000.00)** according to the terms and conditions as more particularly described in the Award Agreement between IHCDA and Borrower, a copy of which is attached hereto and made a part hereof, marked as “Exhibit A”;

<u>Brenda K. Young</u>	<u>Clerk-Treasurer</u>
Name	Title

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF NASHVILLE,
BROWN COUNTY, INDIANA, THIS 19th DAY OF JUNE, 2014.**

yea nay abstain

Arthur Graberg, Councilmember

Brenda K. Young
Brenda K. Young, Clerk-Treasurer

RESOLUTION NO. 2014-06
EXHIBIT A

**AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT FUND AWARD
AGREEMENT
AWARD NUMBER DFG-014-184**

THIS AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT FUND AWARD AGREEMENT (the "Agreement") is made and entered into by and between the **Indiana Housing and Community Development Authority** (the "IHCD" or "Authority"), a public body corporate and politic of the State of Indiana (the "State"), and the **Town of Nashville** (the "Recipient"),

In consideration of the following mutual undertakings and covenants the parties agree as follows:

1. Purpose. The purpose of this Agreement is to enable IHCD to award a grant (the "Award") in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) for the purposes of preparing and submitting its Strategic Investment Plan (the "Project") in accordance with its letter of intent that it submitted for this assistance (the "LOI") and the Strategic Community Investment Plan Requirements set forth in Attachment A, attached hereto and fully-incorporated herein. The funds shall be used exclusively for the purposes set forth herein.
2. Term of Agreement. This Agreement shall commence as of April 25, 2014 ("the **Effective Date**") and shall remain in effect until **October 25, 2014**, unless otherwise modified as provided for herein (the "Term").
3. Audit. The Recipient acknowledges that it may be required to submit to an audit of funds paid through this Agreement and/or an onsite monitoring. Any such audit shall be conducted in accordance with I.C. 5-11-1, *et seq.* and audit guidelines specified by the State. The Recipient 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 to the Recipient by IHCD or its authorized designee. Copies shall be furnished to IHCD at no cost.
4. Representations, Warranties, and Covenants of Recipient. The Recipient hereby represents and warrants to the Authority and covenants with the Authority that:
 - a. The Recipient is statutorily eligible to receive the Award and it expressly agrees to repay all monies paid to it under this Agreement, should a legal determination of its ineligibility be made by any applicable state agency, federal agency or court of competent jurisdiction;
 - b. It shall timely perform or cause to be performed all work specified in its Application;
 - c. 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 and the LOI;
 - d. It shall not expend any part of the Award for purposes other than the Project or spend more of the Award for any class of items or activities other than the amount allocated for such purposes in the appropriate line item of the budget included in the LOI;
 - e. All work and activities authorized and/or contemplated under this Agreement, the LOI, and the Project will be in strict compliance with and observance of all applicable laws, rules, regulations, and executive orders of all federal, state, and local governments and regulatory bodies;
 - f. It shall promptly repay IHCD for any funds it utilizes for expenses that are deemed "ineligible" by any of the following: IHCD, an audit, or the Strategic Investment Plan Requirements;

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- g. It shall keep and, upon request, timely submit such records and reports as may be required from time to time by the Authority, which records shall include those necessary for fair housing and equal opportunity purposes;
 - h. 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 Project. It shall timely prepare all fiscal and management records required by the Authority that are necessary or appropriate to effectively administer and/or monitor the Project. It shall retain all such records for the greater of five (5) years after: (i) completion of the Project; or (ii) resolution of any problems and/or findings by the Authority regarding the Award. Records shall be retained beyond the prescribed period if any litigation, claim, negotiation, audit, or other action is begun involving this Agreement or the Project. In that instance, the records shall be retained until the litigation, claim, negotiation, audit, or other action has been finally resolved;
 - i. It guarantees total satisfactory performance of all work contemplated by this Agreement, and it shall take any and all action necessary including for purposes of illustration that which is requested by the Authority to correct or otherwise cure any problems or deficiencies identified by IHCD A during its monitoring and evaluation;
 - 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 a material fact necessary to make such information, statements, or reports not misleading;
 - k. Recipient must adopt procedures to ensure that all client information is handled and maintained in a confidential manner and in 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. § 4-1-11 and the notice of security breach provisions in I.C. § 4-1-11. Confidential information means any individually identifiable information, whether oral or written, about the participants who receive services and/or assistance from grantees and/or sub-recipients of the IHCD A. Employees, agents, contractors or others who require access to confidential client information must sign a confidentiality agreement commensurate with the conditions set forth in this Agreement;
 - l. It will obtain and maintain all required permits, licenses, and approvals required to perform its obligations under the Agreement.
5. Payment Schedule. All payments will be made in arrears only, the Authority shall disburse to the Recipient an amount not in excess of the Award upon receipt of the following: (i) request for disbursement in the form of a Development Fund Draw Request form supplied by IHCD A (each "Development Fund Draw Request") properly executed by the Recipient; (ii) all proper materials, receipts, and approvals provided herein, together with such other documentation as the Authority may, from time to time, request; (iii) appropriate assurance and/or evidence satisfactory to the Authority that the Recipient is in full and strict compliance with this Agreement. At a minimum, each Development Fund Draw Request shall contain the following information: uses of funds, Project name, activity, location, funds budgeted and expended, and beginning and ending dates of activities. Funds must be drawn within the term of the Grant Agreement.
6. Limitations on Expenditures of Program Funds.
- a) All costs incurred by the Recipient prior to the execution of the Award and receipt of a "Notice of Drawdown Eligibility," are incurred voluntarily, at the Recipient's risk, and upon its own credit and expense.

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- b) Funds shall not be obligated or utilized for any activities requiring a release of funds by the State under the Environmental Review Procedures applicable to IHCD program set forth in 24 C.F.R. Parts 50 and 58, and any successor statute or regulation, until such release is issued in writing.

7. 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 IHCD 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, IHCD 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 law.
- (d) The Recipient certifies by entering into this Agreement, that either 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 the IHCD.
- (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 IHCD of any such actions. During the term of such actions, the Recipient agrees that IHCD 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 IHCD 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 ("IDOA") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that IHCD 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 the IHCD. Failure to do so is a material breach and grounds for immediate termination of this Agreement and denial of further payment by the IHCD.

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

(i) 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 Agreement, even if IC 24-4.7 is preempted by Federal law.

8. Termination; Cancellation of Funding.

(a) Termination.

- 1) The Authority may immediately suspend or terminate this Agreement if the Recipient fails to comply with any material term of the Agreement.
- 2) This Agreement may be suspended and/or terminated immediately by IHCD, if the Recipient has committed fraud or has misused or misappropriated funds received under this Agreement or another agreement between the Recipient and the IHCD. In this event IHCD may recapture or de-obligate all or any portion of this award. This subsection shall survive the expiration or termination of this Agreement.
- 3) This Agreement may be terminated, in whole or in part, by IHCD whenever, for any reason, IHCD determines that such termination is in its best interest. Termination shall be effected by delivery to the Recipient of a Termination Notice, specifying the extent to which such termination becomes effective.
- 4) This Agreement may be terminated at any time, by either party, with or without cause, upon thirty (30) days written notice. Written notice of such termination must be sent to the other party by certified mail, return receipt requested, postage prepaid. After mailing of such notice of termination, no new or additional liabilities shall be incurred without the prior written approval of the Authority.

(b) 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 the IHCD. In this event IHCD may de-obligate and/or redistribute all or any portion of this award to another recipient. Further, Recipient's breach or default with respect to other agreements or obligations related to the Project shall constitute a material breach of this Agreement.

(c) Funding Cancellation. When the Executive Director of IHCD 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 IHCD 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.

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(d) Effect of Termination. Upon expiration or termination of this Agreement for any reason, the Recipient shall transfer to the Authority any unexpended funds on hand and any accounts receivable attributable to the use of the Award.

9. Indemnification.

a) Indemnification. The Recipient shall indemnify, defend, and hold harmless the IHCD, 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 (a) any breach or alleged breach by the Recipient of any provision of this Agreement or the LOI or any material inaccuracy of any representation or warrant made by it herein, (b) any act or omission by the Recipient, its employees, agents, representatives or affiliates, directly or indirectly, related to its performance of this Agreement constituting negligence, recklessness or willful misconduct; and (c) any alleged failure on the part of the Recipient, its employees, agents, representatives or affiliates to comply with federal, state and local laws and regulations, including without limitation laws and regulations. The Authority shall not provide such indemnification to the Recipient. This subsection shall survive the expiration or termination of this Agreement.

10. Notice to Parties. Notice shall be deemed to have been given under this Agreement whenever any notice, statement, or other communication shall be delivered in person, or sent via overnight delivery service maintaining records of receipt to the address below, unless otherwise requested in writing:

(a) To the Recipient:

Town of Nashville
200 Commercial Street
P.O. Box 448
Nashville, IN 47448
Attention: Bob Kirlin, Town Council President

COPY

(b) To the IHCD:

Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, IN 46204
Attention: Development Fund Manager

The parties may change the foregoing notice addresses by providing notice of such change to the other party in accordance with this section.

11. 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 American 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. The Recipient understands that IHCD is a recipient of federal funds, and therefore, where applicable, the Recipient and its subcontractors agree to comply with requisite affirmative action requirements, including reporting pursuant to 41 C.F.R. Chapter 60, as amended and Section 202 of Executive Order 11246. The Recipient will be required to document compliance with all nondiscrimination laws, executive orders, and regulations.

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12. Maintaining a Drug-Free Workplace (Executive Order No. 90-5).

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 Applicant 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; and
- (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 the contracting State Agency and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subdivision (c)-(2) above, or otherwise receiving actual notice of a conviction;
- (e) Within thirty (30) days after receiving notice under subdivision (c)-(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) 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 subparagraphs (a) through (e) above.

13. 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 venturers, 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 9(a), 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.

14. Assurances and Certifications. The Recipient has signed "Assurances and Certifications" as an Exhibit to its LOI. Those "Assurances and Certifications" are hereby reaffirmed, incorporated herein by reference, and made a part hereof as if fully set forth in this Agreement. Any material inaccuracy of any representation or warranty contained therein shall constitute a material breach of this Agreement, for which the Authority may terminate this Agreement pursuant to Section 8(a)(1).

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15. Work Standards. The Recipient shall execute its responsibilities under this Agreement by following and applying at all times the highest professional and technical guidelines and standards. If IHCDCA becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, IHCDCA may request in writing the replacement of any or all such individuals, and the Recipient shall grant such request.
16. 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.
17. 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.
18. 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.
19. Severability. The invalidity of any provision of this Agreement shall not invalidate the remaining provisions of this Agreement.
20. 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.
21. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement, (2) the Exhibits prepared by the IHCDCA, (3) the LOI, and (4) the Exhibits prepared by the Recipient.

COPY

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Non-Collusion and Acceptance

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

In Witness Whereof, The Recipient and IHCD have, through their duly authorized representatives, entered into this Agreement. The parties have read and understand the foregoing terms of this Agreement and do by their respective signatures dated below hereby agree to the terms thereof.

Town of Nashville

By: ROBERT D. KIRLIN
Printed Name: ROBERT D. KIRLIN
Title: PRESIDENT, TOWN COUNCIL
Date: 6/5/14

Indiana Housing and Community Development Authority:

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

COPY

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ATTACHMENT A (Separate Attachment)
STRATEGIC COMMUNITIES INVESTMENT PLAN REQUIREMENTS

COPY