

**AGREEMENT BETWEEN COUNTY OF KANE AND THE KANE COUNTY
ECONOMIC DEVELOPMENT CORPORATION**

This agreement (“Agreement”) is effective _____, 2024 and is entered into by and between the County of Kane, Illinois, a unit of local government organized and existing under the laws of the State of Illinois (“COUNTY”) and the Kane County Economic Development Corporation, a not-for-profit corporation organized under the laws of the State of Illinois and Section 501(c)(6) of the Internal Revenue Code (“KCEDC”). The COUNTY and KCEDC are hereafter sometimes referred to individually as “Party” and collectively known herein as the “Parties”.

RECITALS

WHEREAS, section 5-1005(3) of the Counties Code (55 ILCS 5/5-1005(3)) authorizes counties to make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers; and

WHEREAS, section 5-1005(21) of the Counties Code (55 ILCS 5/5-1005(21)) authorizes counties to appropriate and expend funds from the county treasury for economic development purposes, including the making of grants to any other governmental entity or commercial enterprise deemed necessary or desirable for the promotion of economic development in the county; and

WHEREAS, on March 11, 2021, the President of the United States signed into law the American Rescue Plan Act, Public Law 117-2 (“ARPA”); and

WHEREAS, through ARPA, the Congress of the United States appropriated funding, the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) to remain available through December 31, 2024, for making payments to metropolitan cities, nonentitlement units of local government, and counties to mitigate the fiscal effects stemming from the public health emergency with respect to COVID-19; and

WHEREAS, the Federal Award Identification Number (“FAIN”) is SLFRP0243, the federal awarding agency is the United States Department of the Treasury (“Treasury Department”), and the Assistance Listing Number is 21.027; and

WHEREAS, the COUNTY qualified as an eligible unit of local government and received SLFRF on 5/18/2021; and

WHEREAS, in accordance with ARPA and rules promulgated by the Treasury Department, the COUNTY can use SLFRF to provide government services to the extent of the reduction in revenue due to the COVID-19 public health emergency

WHEREAS, by Resolution 24-170, the Kane County Board allocated \$3,000,000 (Three Million Dollars) of State and Local Fiscal Recovery Funds to be used for traditional government

services and fund the planning and launch of a countywide economic development organization; and

WHEREAS, the COUNTY recognizes that the health, safety and general welfare of the people of Kane County are directly dependent on the continual encouragement, development, growth and expansion of business, industry and commerce within Kane County; and

WHEREAS, the COUNTY has participated with Kane County communities and business leaders to develop the Kane County Economic Development Strategic Plan for all of Kane County; and

WHEREAS, KCEDC will aggressively pursue an economic development program based on the Kane County Economic Development Strategic Plan that focuses on existing business retention and new business recruitment, attracting new jobs and investment and fostering an environment for innovation and entrepreneurship; and

WHEREAS, the Parties have prepared this Agreement to govern the distribution of the grant funds identified above and to recognize the roles and responsibilities for each Party.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

SECTION 1. RECITALS.

The above recitals are incorporated by reference and made substantive provisions of this agreement.

SECTION 2. PURPOSE.

The purpose of this Agreement is to provide funding to the KCEDC for economic development purposes, as authorized by the Kane County Board through Resolution 24-170.

SECTION 3. RESPONSIBILITIES.

A. The COUNTY shall:

1. Recognize the KCEDC as the central focal point for economic development activities in Kane County; and
2. Pursuant to the terms and conditions set forth in this Agreement, provide SLFRF to KCEDC in an amount not to exceed \$3,000,000 (Three Million Dollars) for allowable economic development purposes.

B. The KCEDC shall:

1. Use the funds disbursed by the COUNTY exclusively for economic development purposes and in accordance with the terms and conditions of this Agreement.
2. Comply with all applicable statutes, ordinances, and regulations in its use of the grant funds disbursed under this Agreement. If it is determined by the COUNTY that any expenditure made with the SLFRF provided under this Agreement is prohibited by law, then KCEDC will reimburse the COUNTY any amount that is determined to have been spent in violation of the law.
3. Through a financial investment campaign, secure additional program funding from private and public enterprises that are located in Kane County, do business in Kane County and/or benefit from a Kane County economic development program;
4. Direct resources to guide growth and to coordinate business development activities throughout the county and its 29 municipalities;
5. Establish a business retention and expansion program for existing Kane County companies.
6. Create a new business recruitment marketing program to attract new companies to Kane County in targeted business sectors that will invest in the county and create good paying jobs.
7. Maintain a Kane County data base of population, labor force, primary employers, workforce development programs, business assistance and incentive programs, economic indicators, educational facilities and community-based organizations committed, in part, for the promotion of a vibrant Kane County economy.
8. Provide the COUNTY quarterly updates on business retention and attraction, demographic and workforce trends and major developments throughout the county and other information requested from time to time by the COUNTY.
9. Support public policies and programs that foster business growth while preserving the high quality of life for Kane County residents
10. Serve as the COUNTY'S economic development representative for specific activities or projects as directed by the COUNTY.

SECTION 4. TERM.

This Agreement shall be effective on the date of final execution and shall expire on November 30, 2026, unless terminated pursuant to this Agreement. Any grant funds that are not expended by November 30, 2026 shall be returned to the COUNTY.

SECTION 5. PAYMENT.

The COUNTY will transfer \$3,000,000 (Three Million Dollars) to KCEDC to be used exclusively for economic development purposes according to the following schedule:

1. The COUNTY will transfer \$500,000 (Five Hundred Thousand Dollars) to KCEDC in COUNTY Fiscal Year 2024.
2. The COUNTY will transfer \$1,250,000 (One Million Two Hundred Fifty Thousand Dollars) to KCEDC in COUNTY Fiscal Year 2025.
3. The COUNTY will transfer \$1,250,000 (One Million Two Hundred Fifty Thousand Dollars) to KCEDC in COUNTY Fiscal Year 2026.

The annual allocations in COUNTY Fiscal Year 2025 and COUNTY Fiscal Year 2026 will be paid quarterly, in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.) upon receipt of an invoice and any appropriate supporting documentation from KCEDC. KCEDC acknowledges that funding is subject to and contingent upon future budget appropriations by the Kane County Board.

The sole source of grant payments under this AGREEMENT shall be from the COUNTY's SLFRF. The COUNTY shall not be obligated to provide funding from any other source. The COUNTY shall not be obligated to provide any grant funds in excess of the award amount under this Agreement. The grant funds shall not be used for costs reimbursed or to be covered by other grants, insurance, State or federal sources, including but not limited to CARES Act programs, FEMA, and any other source of financial recovery from COVID-19.

SECTION 6. INDEMNIFICATION.

KCEDC agrees to indemnify, save, and hold the COUNTY, its officers, agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the COUNTY, arising from the performance of this Agreement by KCEDC, its officers, agents, or employees.

In the event that the Treasury Department or any other entity authorized by law audits the COUNTY'S disbursement of SLFRF and determines that the funds disbursed to KCEDC were used for purposes other than those permitted under ARPA or Treasury Department regulations, KCEDC agrees to indemnify the COUNTY and hold the COUNTY harmless against any and all liabilities, including judgments, costs, and reasonable counsel fees, related to the disbursement of SLFRF to KCEDC. KCEDC expressly agrees to reimburse the COUNTY for the cost of any penalty, fine, or judgment should the Treasury Department penalize the COUNTY for any improper disbursement of SLFRF under this Agreement.

SECTION 7. AUDIT AND RECORDKEEPING.

KCEDC shall maintain all records and supporting documents relevant to this Agreement for 5 (five) years after all SLFRF have been expended or returned to the Treasury Department by the

COUNTY. KCEDC agrees to cooperate with the COUNTY and will ensure that it maintains such records to allow the COUNTY to comply with any and all recordkeeping requirements under federal or State law, or pursuant to any court order. KCEDC shall also allow the Kane County Auditor, and any outside auditor hired by either Party, reasonable access to such materials for auditing purposes.

SECTION 8. REPORTING.

KCEDC agrees to submit the forms, certifications, and documentation as may be required by the COUNTY which document expenses for which grant funds are used or will be used under this Agreement. The COUNTY may request ad-hoc reports and supporting documentation upon reasonable notice. The COUNTY may also request that KCEDC complies with audit requests made by the Treasury Department.

SECTION 9. TERMINATION.

This Agreement may be terminated upon thirty (30) days' written notice to the other Party.

SECTION 10. INSURANCE.

KCEDC shall carry sufficient insurance coverage to protect all funds disbursed under this Agreement from loss due to theft, fraud, and/or undue physical damage. Such insurance coverage shall be consistent with COUNTY requirements and shall be adequate to satisfy the indemnifications provisions as set forth in this Agreement. Upon COUNTY request, KCEDC shall provide a Certificate of Insurance satisfactory to the requirements of the COUNTY.

KCEDC shall also provide workers' compensation insurance coverage commensurate with statutory requirements for all of its employees involved in the performance of this Agreement.

SECTION 11. AMENDMENT.

This Agreement may only be amended or modified by a written instrument executed by both Parties.

SECTION 12. ASSIGNMENT.

Neither Party shall assign its rights or delegate its duties hereunder without the prior written consent of the other Party. All of the terms, provisions, covenants, conditions, and obligations of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties hereto.

SECTION 13. ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding between the Parties with respect to the matters contemplated by this Agreement and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to these matters.

SECTION 14. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set below:

COUNTY:

KCEDC:

SECTION 15. SEVERABILITY.

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall, nevertheless, be in full force and effect.

SECTION 16. WAIVER.

The failure by either Party to exercise any right, power or privilege under the terms of this Agreement will not be construed as a waiver of any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

SECTION 17. GOVERNING LAW AND VENUE.

This Agreement shall be governed by the construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 16th Judicial Circuit Court in the State of Illinois.

SECTION 18. CONFLICTS OF INTEREST.

KCEDC shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

SECTION 19. EQUAL EMPLOYMENT OPPORTUNITY.

KCEDC shall comply with the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) and any rules and regulations promulgated in accordance therewith, including, but not limited to, the Equal Employment Opportunity Clause (44 Ill. Adm. Code 750 Appendix A).

SECTION 20. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, all such counterparts taken together constituting but one and the same agreement.

SECTION 21. RELATIONSHIOP OF PARTIES.

The Parties shall retain their respective rights, privileges, powers, and functions as autonomous entities.

Except as otherwise expressly provided in this Agreement, no action taken by either Party, or by its officers, employees or agents, pursuant to this Agreement, shall be deemed to constitute either Party as the employee, agent or representative of the other Party, or shall be construed to place the Parties in a relationship of partners, joint ventures, principal and agent, or employer and employee, or shall be deemed to confer upon either Party any express or implied power, right or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other Party.

SECTION 22. AUTHORITY.

GRANTOR and GRANTEE each hereby warrant and represent that their respective signatures set forth below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written below.

COUNTY OF KANE

BY:
PRINT NAME:
TITLE:
DATE:

KANE COUNTY ECONOMIC DEVELOPMENT CORPORATION

BY:
PRINT NAME:
TITLE:
DATE:



DRAFT