

**PERFORMANCE AGREEMENT  
BETWEEN  
LOCAL OFFICIALS  
AND  
INNOFA USA LLC**

DATE: \_\_\_\_\_, 2015

COMMUNITY: Rockingham County and the City of Eden  
(the "Community")  
P.O. Box 207  
Wentworth, NC 27375

COMPANY: Innofa USA LLC  
716 Commerce Drive  
Eden, NC 27288

**ECONOMIC INCENTIVE PURPOSE**

**Expansion of the Local Economy.** Incentives agreed to be paid by the Community under this agreement are in consideration of the Company expanding within the County and the City the industrial enterprise described herein which will increase the population, tax base and business prospects of the County and City, as well as result in the maintenance and creation of a substantial number of basic employment jobs in the County and City that pay at or above the median average wage.

**Basic Employment Jobs.** "Basic employment jobs," for purposes of this agreement are defined as jobs which are export-oriented or export-driven and jobs which are associated with activities that generate income from the sales of products and services in markets outside of the Rockingham County and the City of Eden economy. Basic employment jobs have a multiplier effect creating additional jobs within the local economy. (A relevant study by the Piedmont Triad Council of

Governments indicated that each basic employment job created within Rockingham County results in the generation of 2.9 additional jobs within the County's economy.)

**Source of Funding.** The County and City expenditures under this Agreement have been calculated by reference to the Net New Taxable Value of the Company's investment under this Agreement, but may be funded from any revenue sources in the individual discretion of the County and the City.

**Net New Taxable Value.** "Net new taxable value," for purposes of this Agreement is defined to be that increase in the total tax value of the Location real estate and improvements listed with the Rockingham County Tax Department over and above its current value of \$1,498,374.00 for personal property which is new to the economy of Rockingham County and the City of Eden. Under this definition, "net new taxable value" would exclude any value which, by whatever means, is removed from another situs within Rockingham County to the Location; however, any net increase in taxable market value of the Location resulting from improvements located thereon after the execution of this Agreement by all parties would be included.

## **TOTAL INCENTIVE PACKAGE**

The Community and Company have agreed to enter into the following Performance Agreement. The Community is offering to the Company a total incentive of \$19,230.48. The Company shall be eligible to receive \$10,256.26 in incentives from Rockingham County and \$8,974.22 in incentives from the City of Eden. In return, the Company agrees to meet certain industrial investment and employment performance standards outlined below in Article 2. If the Company meets all industrial investment and employment performance standards, then it shall receive the full amount of yearly financial incentives offered by the Community. If the Company fails to meet a portion of its investment or employment performance standards, then the incentives payable shall be calculated as referenced in Article 4., Section C. below.

### **1. SUMMARY OF COMMUNITY INCENTIVES**

#### **A. ROCKINGHAM COUNTY INCENTIVES FOR MACHINERY AND EQUIPMENT:**

The County agrees to pay for Eligible Costs in an amount not to exceed \$10,256.26 . As used herein, "Eligible Costs" shall consist of the costs of machinery and equipment incurred by the Company at the location described in Article 1., Section C. below in connection with the investment described in Article 2., Section A. below and previously approved by the Board of County Commissioners and recommended by Rockingham County Partnership For Economic and Tourism Development. The County will reimburse the Company for such Eligible Costs over a 4-year period. The first annual installment of \$2,564.06 shall be made by February 28, 2017. The second annual installment of \$2,564.06 shall be made by February 28, 2018. The third annual installment of \$2,564.06 shall be made by February 28, 2019. The fourth annual installment of \$2,564.06 shall be made by February 28, 2020.

**B. CITY OF EDEN INCENTIVES FOR MACHINERY AND EQUIPMENT:** The City agrees to pay for Eligible Costs in an amount not to exceed \$8,974.22 . As used herein, “Eligible Costs” shall consist of the costs of machinery and equipment incurred by the Company at the location described in Article 1., Section C. below in connection with the investment described in Article 2., Section A. below and previously approved by the Eden City Council and recommended by Rockingham County Partnership For Economic and Tourism Development. The City will reimburse the Company for such Eligible Costs over a 4-year period. The first annual installment of \$2,243.56 shall be made by February 28, 2017. The second annual installment of \$2,243.56 shall be made by February 28, 2018. The third annual installment of \$2,243.56 shall be made by February 28, 2019. The fourth annual installment of \$2,243.56 shall be made by February 28, 2020.

**C. LOCATION:**

The Project (as defined below) will be located at 716 Commerce Drive, Eden, NC, an existing industrial facility (also known as “Location” or the “Plant Site”) situated on a 14.78 acre tract. The tax identification number for this parcel is 7080-00-95-5287-00.

**2. INDUSTRIAL INVESTMENT AND EMPLOYMENT AGREEMENT**

**A. INVESTMENT QUALIFICATION:** The Company agrees for the benefit of the County and the City to invest a minimum of \$600,000.00 in net new taxable machinery and equipment by the end of December 31, 2015 (such machinery and equipment may be referred to herein as the “Project”) at the site identified in Article 1., Section C. above. The Company also stipulates that such taxable machinery and equipment shall be listed as business personal property with the office of the Rockingham County Tax Assessor using Schedule A10 of the Cost Index and Declaration Schedule developed by the North Carolina Department of Revenue. More specifically this machinery and equipment shall, for valuation purposes, have a 10 year life with a 25% residual tax value. The \$600,000.00 investment for the County and the City in taxable investment in machinery and equipment shall be in place by December 31, 2015 and listed for taxation with the Rockingham County Tax Department no later than January 31, 2016, or such later date as authorized by statute or in writing by the Tax Assessor. Said listing and subsequent valuation shall reflect the minimum taxable investment by the Company in machinery and equipment which is new to the economy of Rockingham County and the City of Eden. Such \$600,000.00 in machinery and equipment for the County and the City in net new taxable investment, considering allowable depreciation as specified below for such machinery and equipment, shall be maintained through December 31, 2019. “Allowable Depreciation” for purposes of this Agreement is the amount expressed in dollars generated by computing depreciation under said Cost Index and Depreciation Schedule utilizing Schedule A10 and 10-year life with a 25% residual value. Provided, however, that should the Cost Index and Depreciation Schedule be altered by the State of North Carolina or the applicable machinery and equipment treated by the taxing authorities other than as contemplated by the parties so as to reduce the taxable investment of the Company below the above described minimums, then the incentives paid hereunder by the County and the City shall be reduced on

a pro rata basis to reflect the percentage reduction in net new taxable investment actually created by the Company pursuant to this Agreement.

- B. EMPLOYMENT QUALIFICATION:** The Company currently employs 40 full-time employees. The Company agrees for the benefit of the County and the City to create, fill and maintain an employment level of 5 additional full-time positions by December 31, 2015 for a total of 45 full-time positions as verified by the North Carolina Employment Security Commission. The Company agrees to maintain these 45 full-time positions for a period beginning December 31, 2015 and ending December 31, 2019. Full-time positions shall mean positions in which an employee is employed for a minimum of 52 weeks and 2080 hours during the course of each year January 1 through December 31 at an average annual wage of \$18,720 and provided with a medical benefit plan by the Company. It is understood that the Company will report to the Community the number of full time employees it has on its payroll as of December 31 of each year. This report shall be filed with the Community on or before January 31 of the following year. The calculation of financial incentives shall be based on the number of full-time employees as reported and amounts of capital investments resulting in Net New Taxable Value, as reported pursuant to Article 2., Section A. above. It is understood that the amount of financial incentives paid will be subject to reductions pursuant to the formula set forth in Article 4., Section C. below.
- C. LOCAL ZONING QUALIFICATION:** The Company agrees to certify that there are no pending violations of local zoning ordinances.
- D. STATUTORY COMPLIANCE:** The Company understands that County participation is contingent upon compliance by the Company and County with N.C. General Statute 158-7.1.
- E. BINDING EFFECT:** This agreement and the obligations of performance contained herein shall be binding upon the Company and its successors and assigns.

### **3. PROOF AND CERTIFICATION**

Community and Company officials agree to furnish to the other reasonable access to their records and to furnish to the other any reports and certificates necessary to verify that each is performing its obligations under this Performance Agreement. Once the Company meets its investment and employment goals, it will no longer be obligated to provide such access to its records or furnish such reports and certificates.

### **4. REMEDY**

- A. COMPANY:** In the event of the Community's breach or threatened breach of any provision of this Agreement, Company shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity to enforce the specific covenants herein.

- B. OFFSET:** The Community reserves the right to suspend or reduce any payment due to the Company under this Agreement if any water and sewer charges, ad valorem taxes, assessments or other financial obligations lawfully incurred by the Company and payable to the County and the City are not current.
- C. COMMUNITY:** If the Company does not meet and maintain the investment and employment requirements set forth in Article 2 above, within the timetable set forth in this Agreement, then the Company agrees to a reduction by the County and the City of a pro rata share of the sum \$19,230.48 offered as a financial incentive to reimburse Eligible Costs under this Agreement that has not been earned and to have its annual installments suspended or reduced by the Community until such time that the Company is in compliance. Each year shall be reviewed by its individual requirements without regard for cumulative totals unless otherwise specified herein. Any pro rata adjustment of annual incentive payments shall be based 50% on the Company's Investment Qualification and 50% on the Company's Employment Qualification (For example: if the actual new investment is 10% less than the Investment Qualification, and the actual new employment is 20% less than the Employment Qualification, then the annual incentive payment would be reduced by 15%. Or, if the actual new investment meets the Investment Qualification, but actual employment is 20% less than the Employment Qualification, then the annual incentive payment would be reduced by 10%). Provided however, that the incentive paid to the Company by either the County or the City under this Agreement in any year of performance shall not exceed the amount of ad valorem taxes paid to such entity for net new taxable value invested by the Company pursuant to this Agreement prior to or for such year. The remedies set forth in this Article 4., Section C. shall be the sole and exclusive remedy of the Community and the sole and exclusive obligation of the Company in the event the Company does not meet and maintain the investment set forth in Article 2 or otherwise fails to comply with the terms of this Agreement.

## **5. REPRESENTATIONS AND WARRANTIES**

- A. COMMUNITY'S REPRESENTATIONS:** Each Community entity represents for itself (but not for the other), as follows:
- (i) The Community (1) has full power and authority to enter into this Agreement, and to enter into and carry out the transactions contemplated by this Agreement; (2) by proper action has duly authorized the execution and delivery of this Agreement; and (3) is not in default under any provisions of this Agreement.
  - (ii) The Community has duly authorized, executed and delivered this Agreement, and this Agreement constitutes the Community's legal, valid and binding obligation, enforceable in accordance with its terms.
  - (iii) To the Community's knowledge, there is no litigation or proceeding pending or threatened against the Community or affecting it which would adversely affect the validity of this Agreement.
  - (iv) The Community is not in default under any provision of State Law which would affect its existence or its powers as referred to in subsection (i).

- (v) No member, director, officer or official of the Community has any interest (financial, employment or other) in the Company or the transactions contemplated by this Agreement.

**B. COMPANY'S REPRESENTATIONS:** The Company represents as follows:

- (i) The Company; (1) is a limited liability company duly incorporated and in good standing under the laws of the State North Carolina; (2) is duly qualified to transact business and is in good standing in the State of North Carolina; (3) is not in violation of any provision of its Articles of Organization or its Operating Agreement; (4) has full corporate power to own its properties and conduct its business; (5) has full corporate power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (6) by proper corporate action has duly authorized the execution and delivery of this Agreement; and (7) is not in default under any provision of this Agreement.
- (ii) Its execution and delivery of this Agreement neither conflicts with, nor will result in a breach of or default under or will result in the imposition of any lien on its property pursuant to its Articles of Organization or its Operating Agreement or, to the best of its knowledge, the terms, conditions or provisions of any statute, order, rule, regulation, agreement or instrument to which it is a party or by which it is bound.
- (iii) It has duly authorized, executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.
- (iv) To its knowledge, there is no litigation or proceeding pending or threatened against the Company, which would adversely affect the validity of this Agreement.

**6. MISCELLANEOUS PROVISIONS**

**A. Assignments:** No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties. Provided, however, that this Agreement may be assigned by the Company to a wholly owned subsidiary of the Company, without the consent of all other parties, provided that the Company will guarantee the performance by the subsidiary of the obligations due under this Agreement.

**B. Governing Law:** The parties intend that this Agreement shall be governed by the law of the State of North Carolina.

**C. Notices:**

- (i) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

- (ii) Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as shown above on page 1 of this Agreement.
- (iii) Any communications hereunder sent to the County or the City, shall also be sent to each of the other.
- (iv) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

**D. Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

**E. Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

**F. Entire Agreement; Amendments.** This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by all the parties.

**G. Time.** Time is of the essence in this Agreement and each and all of its provisions.

**H. Liability of Officers and Agents.** No officer, agent or employee of the County, the City, or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**I. Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

**In Witness Whereof Rockingham County, the City of Eden, and Innofa USA LLC, have executed this Agreement effective as of the date first above written.**

**ROCKINGHAM COUNTY**

(SEAL)

By: \_\_\_\_\_  
Mark F. Richardson, Chairman                      Date  
Board of Commissioners

**ATTEST:**

\_\_\_\_\_  
Pamela M. McLain, MMC/NCCCC                      Date  
Clerk to the Board of Commissioners

**CITY OF EDEN**

(SEAL)

By: \_\_\_\_\_  
Wayne Tuggle, Sr., Mayor                                      Date

**ATTEST:**

\_\_\_\_\_  
Sheralene Thompson, City Clerk                      Date



**INNOFA USA LLC**

(SEAL)

By: \_\_\_\_\_  
Date  
\_\_\_\_\_  
Title

**NORTH CAROLINA  
ROCKINGHAM COUNTY**

I, \_\_\_\_\_, a Notary Public of said County and State, do hereby certify that Pamela M. McLain, Clerk to the Rockingham County Board of Commissioners, personally appeared before me and certified that the foregoing instrument was executed in the name of **ROCKINGHAM COUNTY** by Mark R. Richardson, Chairman of the Rockingham County Board of Commissioners, and that she, Pamela M. McLain, Clerk to the Board, did attest to said instrument and sealed it with its corporate seal.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

(OFFICIAL SEAL)

\_\_\_\_\_  
**Notary Public**

My commission expires:

\_\_\_\_\_

**NORTH CAROLINA  
ROCKINGHAM COUNTY**

I, \_\_\_\_\_, a Notary Public of said County and State, do hereby certify that Sheralene Thompson, Clerk to the City of Eden, personally appeared before me and certified that the foregoing instrument was executed in the name of the **CITY OF EDEN** by Wayne Tuggle, Sr., Mayor of the City of Eden, and that she, Sheralene Thompson, Clerk to the City of Eden, did attest to said instrument and sealed it with its corporate seal.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

(OFFICIAL SEAL)

\_\_\_\_\_  
**Notary Public**

My commission expires:

\_\_\_\_\_

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that \_\_\_\_\_, personally appeared before me this day and acknowledged that he is Manager of **INNOFA USA LLC**, and that he as Manager, being authorized to do so, executed the foregoing instrument on behalf of the Company.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

(OFFICIAL SEAL)

\_\_\_\_\_  
**Notary Public**

My commission expires:

\_\_\_\_\_

**ROCKINGHAM COUNTY**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

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Finance Officer

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY.

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ROBERT V. SHAVER, JR., COUNTY ATTORNEY

**CITY OF EDEN**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

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Finance Officer

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY.

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ERIN GILLEY, CITY ATTORNEY