Amendment to and Restatement of

A Partnership Program

Between the

**Indiana Department of Labor's (IDOL)**
**Indiana Occupational Safety and Health Administration (IOSHA)**

And the

**Metro Indianapolis Coalition for Construction Safety (MICCS)**

## I. Introduction and Objective

The Indiana Department of Labor (IDOL) and particularly the Indiana Occupational Safety and Health Administration (IOSHA), and the Metro Indianapolis Coalition for Construction Safety, Inc. (MICCS) mutually recognize the importance of providing a safe and healthful work environment for Indiana's construction workforce.

To advance our mutual goal of preventing accidents, we strongly agree on the need to develop a working relationship amongst IDOL, MICCS, and their members, which fosters mutual trust and respect for each organization's role in the construction safety process. To achieve this goal, MICCS and IDOL agree that a statewide partnership charter would be more effective for those MICCS Certified contractors that routinely perform construction activities in the State of Indiana. This partnership does not supersede any partnership agreements IDOL has with MICCS member firms. Instead, this statewide partnership provides an opportunity for MICCS "Certified" contractors who routinely work throughout the state to participate in an IDOL partnership program without having to enroll in separate partnership with IDOL on a job-by-job basis.

We are committed to working as partners to achieve construction safety through the following shared strategies and objectives:

A. Implement a continuing and open communication policy between IDOL and MICCS, in a manner that encourages respect and understanding.

B. Share knowledge of the best industry technology, innovations and work practices that improve workplace safety and health performance.

C. Cooperate in the development and continuous improvement of safety training programs for the construction industry and IDOL personnel.

D. Promote recognition for construction safety excellence at every opportunity.

E. Ensure that enforcement policies and practices are effective, consistent and fair.

F. Promote principles of good faith and fair dealings as the foundation of our relationship.

## II. Background and Goals

MICCS and the IDOL recognize the need to develop a working relationship that creates mutual trust and respect for the respective roles of each organization in the construction safety process. This partnership is an example of these two organizations working together to improve occupational safety and health in the Indiana construction community.

The goals of the partnership include:

A. Annual reduction in the composite rate of injuries and illness affecting MICCS "Certified Partner" Contractors, with an emphasis on reducing injuries resulting from those hazards that are the four leading causes of death on construction sites (falls, struck-by, caught in/between and electrocutions). This will be measured through use of participants' Total Case Incident Rate (TCIR), Days Away, Restrictions and Transfers (DART) Rate, and the number of days associated with each element of the DART rate.

B. Increase the number of Contractors who implement effective safety and health programs and who provide effective safety and health training for management, supervisors and employees.

C. Increase the number of consumers of construction and maintenance services (owners) who support the MICCS Certification program; thereby, positively influencing the contracting community to embrace these principles.

D. Hosting a semi-annual meeting with the Participants to discuss and determine best practices based on their experiences. These best practices will be shared with all MICCS Certification Program participants and the participants' subcontractors and suppliers to improve their worksite safety processes.

E. Annually increase the number of participants in the MICCS Certification Program; thereby, increasing the number of organizations deriving value from this Partnership.

F. Recognize the achievements of those contractors having exemplary safety and health programs by acknowledging them as a MICCS Certified Contractor, which includes but is not limited to, recognition at MICCS annual membership meetings and a signed certificate.

G. Allow IDOL to focus resources on companies that have not demonstrated implementation of effective safety programs.

IDOL staff, MICCS Certification Committee and MICCS members provided input in the partnership agreement and will be consulted regularly for feedback to improve the partnership and its goals.

A "Participant" within this program is defined as a MICCS "Certified Partner" Contractor and shall not be confused with a "Participating" Contractor (engaged but not Certified) within the MICCS Certification Program.

## III. MICCS Commitment/Role

MICCS will administer this partnership program, as outlined herein, and will serve as the principal safety resource in support of MICCS Certified Contractors. To fulfill the partnership, MICCS also will:

A. Act as a liaison for MICCS members with IDOL as appropriate. Members will be able to call MICCS with questions and MICCS will contact IDOL for responses.

B. Offer ongoing, quality training on topics of importance for members - specifically the focused areas of falls, struck-by, caught in/between and electrocutions.

C. Provide up-to-date informational materials and brochures to all MICCS members.

D. Organize and provide IDOL's interpretations of major standards, as well as statewide inspection issues including the most frequently cited IOSHA standards.

E. Ensure that written safety and health policies and programs for MICCS Certified and Participating contractors, include an emphasis on employer/employee responsibilities. This may include, but is not limited to, specific safety talks.

F. Promote construction safety excellence through the annual MICCS Awards Program and MICCS Certification Process.

G. Administer the overall partnership program, including but not limited to the initial evaluation of the partnership applications to determine whether the contractor meets the criteria specified within the partnership initiative. Information to be considered by MICCS will include pertinent company information as referenced in Section V (demonstrated safety and health program, training commitments, OSHA citation history, fatalities, injury/illness experience and similar factors).

H. Notify IOSHA on a regular and recurring basis (not less frequently than the 15th of each month) with the name(s) of contractors that have met the partnership criteria and have been enrolled in the program. Applications will be reviewed annually as defined in the MICCS Certification Program guidelines. All applicants will have their safety program audited by MICCS's agents or representatives before they are certified or re-certified and they will be audited at least every three years thereafter to assure they are complying with the MICCS Certification process.

I. Conduct an annual evaluation to determine the impact and effectiveness of this partnership with IDOL.

J. If necessary, terminate companies from the Certification Program and thus the partnership, if findings indicate that the Certified Company is not fulfilling its obligation to the basis of this partnership or has provided falsified documentation.

## IV. IDOL's Commitment/Role

"Certified Partner" Contractors are companies whose achievements in the area of worksite safety are outstanding. Acceptance into this partnership will require additional validation of safety and health program efficacy through a comprehensive project-site qualifying inspection and/or Home Office Audit by MICCS of each "Certified" firm per the MICCS auditing guidelines. IDOL will provide the following incentives to "Certified Partner" Contractors:

A. IDOL will exempt all "Certified Partner" Contractors from scheduled general inspections and will not issue citations to companies for non-serious violations that are fixed immediately and in the presence of the compliance officer.

B. Participants will receive unprogrammed inspections only in response to reports of imminent danger, fatalities/catastrophes, "plain view" violations or conditions or in the case of a signed, formal complaint.

C. Non-formal Complaints will be handled through the phone/fax process, if the complainant agrees.

D. During IDOL inspections of non-participating employers, contractors / subcontractors who are participating in this partnership will not be included in the inspection unless the inspector observes that, as a result of the partnership contractor's actions, any employees are exposed to hazards such as, but not limited to falls, electrical hazards, caught in/between hazards or struck-by hazards.

E. For inspections resulting from formal complaints, the inspection will be limited to the complaint item(s) and "in plain view" items.

F. During inspections, if potential violations are found, i.e., where employees are not exposed to the hazard, IDOL may review the employer's records and provide limited on-site training as needed.

IDOL may conduct periodic reviews (MICCS representative may accompany IDOL), including random monitoring inspections to ensure that "Certified Partner" companies are fulfilling their commitment to the partnership. During these reviews, if the IDOL representative observes hazards or conditions that indicate that the participant is not fulfilling its commitment to the partnership, citations may be issued.

IDOL and MICCS jointly or independently have the discretion to veto companies from participating in this program. Examples of issues that could disqualify a company from participation include, unpaid fines or penalties to IDOL and/or any agency or department of the State of Indiana.

In addition to the incentives provided to participants of this program, and in an effort to demonstrate the joint interest of IDOL and MICCS, IDOL will appoint an ex officio member to the MICCS Board of Directors, with no voting power, etc. Full participation is not consistent with the Ethics laws and statutes of the State.

## V. Participating Member Firm's Commitment/Role

To take advantage of partnership status, the applicant must be a member of MICCS and must:

A. Submit for and receive Certification Status in the MICCS Certification Program.

B. Maintain their Certified status and all required safety processes provided in their application for Certification during the duration of their participation in this partnership program.

C. Certify company-wide that no fatalities or catastrophes within the last three years that resulted in serious, and/or knowing citations, related to the incident.

D. Verify that a comprehensive written safety and health program is in place which is at least equivalent to OSHA's "Safety and Health Program Management Guidelines" of January 26, 1989 in FRN 54:3904-3916, or the American National Standards Institute (ANSI) A-10.38, "Basic Elements of an Employer Program to Provide a Safe and Healthful Work Environment," or the MICCS Model Safety Program.

E. Implement a fall protection program where participants require and enforce the use of conventional fall protection (i.e. personal fall arrest systems, safety net systems or guardrail systems) when their employees or subcontractor employees are performing work covered by 29 CFR 1926 subpart M.

F. Submit their OSHA Log 300 Summary for the past three years, and have a TCIR and DART rate for the prior year of at least 20% below the National average for the NAICS code of the industry in which the participant is classified as determined by the Bureau of Labor Statistics (BLS) for the most current year. See Attachment A for calculation formulae.
   1. An organization's industry specific NAICS code shall be their governing classification as determined by their insurer (Worker's Compensation and General Liability) and submitted on their OSHA 300 log.
   2. SIC codes shall be translated to current NAICS codes.
   3. If the BLS does not have TCIR and DART averages (rates) for the specific 6 digit industry classification, then the rightmost digit(s) of the NAICS code shall be deleted until a summary code with current averages is available.

G. Have a "3-Year TCIR" Rate and "3-Year DART" Rate, for their Indiana operations, equal to or less than the most recently published BLS statistics, Indiana average, for the NAICS code of the industry in which the participant is classified. See V.F. 1 and 2 above for additional clarifications. See Attachment A for calculation formulae.

H. Demonstrate that company policy and procedures hold supervisor(s) and employee(s) accountable for following established safety rules and IDOL regulation.

I. Provide training as follows:

   1. Provide documentation that all new hires receive adequate safety training before beginning work. Topics for the orientation shall include fall protection, electrical, struck-by, trenching, caught-in/between, personal protective equipment and other training as required in the MICCS Certification Program.

   2. Assure that all supervisory field personnel have completed the OSHA 10-Hour Training Course for the construction industry. Records of training certification will be reviewed by MICCS during the Home Office Audits and made available for review as requested by IDOL.

J. Participants agree to serve as a mentor for contractors on its projects who have yet to attain the same level of recognition within the partnership.

K. Allow IDOL access to sites for inspections, if the contractor has the authority to allow inspections of the site. IDOL will follow the guidelines for inspections as outlined in the Field Inspection Reference Manual (FIRM).

L. Participate in a site and/or Home Office Audit by an outside, independent source approved by MICCS. The audit will include management's commitment and an action plan to prevent future hazards, rather than just identifying current hazards.

M. Provide periodic safety-related data or statistics required by MICCS to maintain their status as "Certified Partner" including current OSHA 300 Log for Indiana operations. MICCS will provide a summary of and analysis of pertinent safety related information for review by IDOL not later than the 15th day of each month. The purpose of such summary information is to assist in preparing an annual report necessary for evaluating the merits of the program and making recommendations for continuous improvement.

N. Either participate in the MICCS Substance Abuse Program or one of its reciprocal programs or develop and maintain a substance abuse program consistent with the MICCS program within thirty days of entering the partnership.

## VI. Program Confidentiality

Information submitted by contractor as part of the application or renewal process, as well as information obtained by virtue of the contractor's application or participation in the program, will be held in strict confidence within the confines of the partnership program. The information will be used only to measure the effectiveness of the partnership program. Such information will not be released outside of the program to third parties except upon the Order of a court or agency of competent jurisdiction. In the event a party receives notice of an order to release or provide confidential information, notice shall be provided to all other interested parties as soon as is reasonably practical so that such parties may exercise their rights or potential causes of action to protect the confidentiality of such information. Aggregated program data may be released outside of the program for information purposes or to generally promote safety, so long as no data is identifiable as pertaining to one individual partner company.

## VII. Employer/Employee Rights

As an integral part of an effective safety and health program, the availability of employees to exercise their rights which are guaranteed under the OSH Act and laws of the State of Indiana and regulations such as, but not limited to, the right to file a safety and health complaint, and the right to obtain information pursuant to IDOL requirements, will not be infringed, i.e., access to injury and illness records or medical exposure records.

It is anticipated that routine employee involvement in the day-to-day implementation of worksite safety and health programs will be assured, including employee participation in employer self-audits, site inspections, job hazard analyses, safety and health program reviews, and mishap investigations.

Employers retain all rights guaranteed under the OSH Act.

## VIII. Partnership Evaluation

The partnership will be evaluated annually by IDOL and MICCS. Such evaluation will include a comparison of the Participants' TCIR, DART rate, and the number of days associated with each element of the DART rate with the latest available construction data (NAICS specific classifications) for Indiana from the Bureau of Labor Statistics.

In addition, MICCS shall include a report acknowledging injuries incurred by "Certified Partner" Contractors relative to falls, struck-by, caught in/between and electrocutions.

## IX. Termination of Agreement

Either party may withdraw from this agreement by providing written notification to the other partner. Termination shall be effective thirty (30)days after receipt of notification.

Furthermore, an individual contractor electing to participate in this program may withdraw from this agreement by providing written notification to MICCS and IDOL. Termination shall be effective upon receipt of such notification.

An individual contractor's violation of this agreement shall not be grounds for IDOL to terminate this partnership agreement with any other party or participant.

IDOL or MICCS may terminate an individual contractor from the partnership program if the contractor fails to meet the qualifications or otherwise violates the terms and conditions of this partnership agreement.

Any party of this partnership may propose modification or amendment to the program subject to the written concurrence by IDOL and MICCS to the agreement.

This was originally agreed to on the 6th day of October, 2005, and is now hereby amended as of the 2 day of October 2008.

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## Attachment A

**Rate Calculations**

A. Annual rates are calculated by the formula (N/EH) x 200,000 where:

N = Sum of the number of Recordable injuries and illnesses in the year.

For the TCIR, use the total number of injuries plus illnesses.

For the DART rate use injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer.

EH = total number of hours worked by all employees in the year.

200,000 = equivalent of 100 full-time workers working 40 hours per week, 50 weeks per year.

B. **3-Year TCIR Calculation.** To calculate 3-year TCIR, add the number of all Recordable injuries and illnesses for the past 3 years and divide by total hours worked for those years. Multiply result by 200,000.

$$\frac{[(\#inj + \#ill) + (\#inj + \#ill) + (\#inj + \#ill)]}{[hours + hours + hours]} \times 200{,}000$$

C. **3-year DART Rate Calculation.** To calculate 3-year DART rate, use the same formula as in B. above, except add the number of all Recordable injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer for the past 3 years.

$$\frac{[(\#DART\ inj + ill) + (\#DART\ inj + ill) + (\#DART\ inj + ill)]}{[hours + hours + hours]} \times 200{,}000$$

D. **Rounding Instructions.** You must round the rates to the nearest tenth following traditional mathematical rounding rules. For example, round 5.88 up to 5.9; round 5.82 down to 5.8; round 5.85 up to 5.9.