OCCUPANCY PERMIT AGREEMENT BETWEEN

THE INDIANA DEPARTMENT OF TRANSPORTATION

AND

This Occupancy Permit Agreement (“Agreement”) is entered into by and between the State of Indiana, acting by and through the Indiana Department of Transportation (hereinafter “INDOT”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, “Occupant”). The signatories for INDOT and Occupant warrant and represent that they have been duly authorized to execute this Agreement on behalf of the INDOT and Occupant, respectively. In consideration of the promises and obligations specified in this Agreement, INDOT and Occupant agree as follows:

**1. Description of Occupied Premises.**

 Occupant accepts the Occupied Premises in AS-IS condition. INDOT specifically disclaims any implied warranties as to fitness of the occupied premises for Occupant’s intended use. The Occupied Premises are shown on Exhibit \_\_\_\_\_, attached hereto, and more particularly described as:

Code No.: \_\_\_\_\_ Parcel No.: \_\_\_\_\_ Project No.: \_\_\_\_\_

Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County: \_\_\_\_\_\_\_\_\_\_\_, State of Indiana

**2.** **Individuals Residing in Occupied Premises.**

The following individuals will be residing in the Occupied Premises under this Agreement:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**3. Term of Occupancy.**

1. Timeline. This Agreement shall be effective for a period of not less than thirty (30) days. It shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, and end on or before the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.
2. Renewal. This Agreement is non-renewable.
3. Failure to Vacate**.** Occupant agrees that if Occupant fails to vacate the Occupied Premises by 11:59 pm on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and INDOT is forced to file eviction proceedings, the PARTIES agree that Occupant **is entitled to an immediate Writ of Assistance without need for a hearing AND WITHOUT NEED FOR A WRITTEN UNDERTAKING,** pursuant to Ind. Code 32-30-3 ET SEQ.

**4. Rent and Consideration.**

A. The total rent will be Zero Dollars ($0.00).

B. To accommodate the Occupant’s relocation, INDOT is permitting the Occupant’s continued possession of the Occupied Premises through the above referenced **Term of Occupancy**. No additional payments shall be made to INDOT by Occupant, as the vacation of the Occupied Premises by the Occupant on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the consideration for this Agreement.

**5**. **Permitted Use by Occupant.**

The Occupied Premises shall only be used for commercial purpose of the Occupant or as a personal residence by the Occupant and for no other purpose, the Occupant’s spouse and dependent family members and for no other purpose. Occupant must comply with all State and Federal laws and not engage in any illegal activities.

**6. Installation of Improvements.**

Occupant is not permitted to make any changes, removals, or additions to the premises without the written consent of INDOT.

**7. Maintenance of the Occupied Premises.**

Occupant shall, at its sole cost and expense, keep and maintain the Occupied Premises free of all weeds, debris, trash, snow and ice, and shall keep all landscaping trimmed and in a neat and orderly appearance. Occupant shall take all other steps necessary to maintain the Occupied Premises in an orderly, clean, safe and sanitary condition.

**8**. **Right of Entry**

INDOT, its employees, agents, contractors, and the Federal Highway Administration, its employees, agents, and contractors, shall have the absolute and unfettered right to enter the Occupied Premises throughout the term of this Agreement, and bring workmen and materials on site. Such entry may be undertaken with no notice to Occupant in the event of an emergency. Occupant shall, at INDOT’s request, remove from the Occupied Premises any and all materials, equipment, or motor vehicles necessary to permit such work or inspection. Whenever possible, INDOT will use reasonable efforts to give Occupant forty-eight (48) hours’ notice of such entry.

**9. Liens.**

Occupant shall not cause any liens to be filed against the Occupied Premises as a result of any work done on its behalf. Should such a lien be filed, Occupant shall discharge such lien within thirty (30) days of receipt of notice of the lien and provide INDOT with proof of such discharge.

**10. Insurance; Certificate of Insurance.**

Occupant shall be required to maintain renter's insurance to cover all personal property and liability at his/her own expense. The policy shall name the State of Indiana as an additional insured as to liability only. Provision of insurance shall not be deemed an election of remedies. Occupant shall provide proof of Insurance, and any notice of renewal or cancellation of such insurance, to INDOT.

**11. Indemnification.**

 Occupant agrees to indemnify, defend and hold harmless INDOT, its employees, officials, and agents from all

 claims and suits, including but not limited to court costs and reasonable attorney’s fees, caused by any act

 or omission of Occupant, its employees, agents, contractors, business invitees or guests arising out of this

 Agreement.

**12. Assignment and Subletting.**

Occupant shall not assign this Agreement, sublet the Occupied Premises, or any part thereof, or permit the use or occupancy of any part of the Occupied Premises, by anyone other than Occupant, without the prior written consent of INDOT, which consent may reasonably or unreasonably be withheld.

**13. Surrender of Occupied Premises.**

Upon expiration or termination of this Agreement, Occupant shall remove all of its improvements, fixtures and other movable personal property, unless INDOT has agreed in writing that some or all of the improvements, fixtures or moveable personal property may remain, and shall surrender the Occupied Premises to INDOT in the same condition as the Occupied Premises were at the beginning of this Agreement, ordinary wear and tear, and damage by the elements, excepted.

**14. Default by Lessee.**

If Occupant defaults in the performance of any of the covenants or conditions in this Agreement, INDOT shall give Occupant notice of such default. If Occupant does not cure any default within twenty (20) calendar days, then INDOT may terminate this Agreement on not less than ten (10) days, and on the date specified in said notice. This Agreement shall terminate and Occupant shall quiet and surrender the Occupant Premises to INDOT.

**15. Early Termination.**

 INDOT may terminate this lease upon thirty (30) days written notice to Occupant.

**16. Entire Agreement; Modification.**

This Agreement, upon complete execution, contains the entire agreement of the parties and no prior written or

oral agreement, express or implied, shall be admissible to contradict the provisions of this Agreement. This

Agreement may be modified at any time by a written agreement signed by Occupant and all necessary signatories of INDOT.

**17. Indiana Law.**

This Agreement shall be interpreted in accordance with and be governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**18. Nondiscrimination.**

**A**.       This Agreement is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.  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 OCCUPANT or any subcontractor.

 Under IC 22-9-1-10 the OCCUPANT covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

**B**.           The OCCUPANT understands that INDOT is a recipient of federal funds.  Pursuant to that understanding, the OCCUPANT agrees that if the OCCUPANT employs fifty (50) or more employees and does at least $50,000.00 worth of business with the State and is not exempt, the OCCUPANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7.  The OCCUPANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference.  Breach of this covenant may be regarded as a material breach of Agreement.

 It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT’s nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT’s nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, religion, disability, income status, limited English proficiency, or status as a veteran.)

1. During the performance of this Agreement, the OCCUPANT, for itself, its assignees and successors in interest (hereinafter referred to as the “OCCUPANT”) agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
	1. Compliance with Regulations: The OCCUPANT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
	2. Nondiscrimination: The OCCUPANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The OCCUPANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
	3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the OCCUPANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the OCCUPANT of the OCCUPANT’s obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
	4. Information and Reports: The OCCUPANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a OCCUPANT is in the exclusive possession of another who fails or refuses furnish this information, the OCCUPANT shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
	5. Sanctions for Noncompliance: In the event of the OCCUPANT’s noncompliance with the nondiscrimination provisions of this Agreement, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the OCCUPANT under the Agreement until the OCCUPANT complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
	6. Incorporation of Provisions: The OCCUPANT shall include the provisions of paragraphs 1. through 5. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The OCCUPANT shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the OCCUPANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the OCCUPANT may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the OCCUPANT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

**19. Ethics Compliance.**

The OCCUPANT 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 IC §4-2-6, *et seq*., IC §4-2-7, *et seq*. and the regulations promulgated thereunder.  **If the OCCUPANT has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the OCCUPANT shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the OCCUPANT is not familiar with these ethical requirements, the OCCUPANT should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at <http://www.in.gov/ig/>.  If the OCCUPANT or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the OCCUPANT.  In addition, the OCCUPANT may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

**20. Conflict of Interest.**  As used in this paragraph:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party”, means:

1. The individual executing this Lease;
2. An individual who has an interest of three percent (3%) or more of Lessor, if Lessor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

1. The Department may cancel this Lease without recourse by Lessor if any interested party is an employee of the State of Indiana.
2. The Department will not exercise its right of cancellation under subparagraph B above if Lessor gives the Department an opinion by the Commission indicating that the existence of this Lease and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Lease consistent with an opinion of the Commission obtained under this section.
3. Lessor has an affirmative obligation under this Lease to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this subparagraph extends only to those facts that Lessor knows or reasonably could know.

**21. Force Majeure.** In the event that any either party to this Agreement is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Party.  Further, to the undersigned’s knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.   **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the Party attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**In Witness Whereof**, the Parties have, through their duly authorized representatives, entered into this Agreement.  The Parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

**For Occupant: For INDOT:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Printed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(for)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Michael Smith, Commissioner,

Signature Indiana Department of Transportation

# Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Signature

# Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Signature

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